

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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K.J. PRETECH CO., LTD.,  
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,  
Patent Owner.

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Case IPR2015-01866  
Patent 8,215,816 B2

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Before THOMAS L. GIANNETTI, MIRIAM L. QUINN, and  
BEVERLY M. BUNTING, *Administrative Patent Judges*.

BUNTING, *Administrative Patent Judge*.

DECISION

FINAL WRITTEN DECISION  
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

## I. INTRODUCTION

K.J. Pretech Co., Ltd. (“Petitioner”), filed a Petition pursuant to 35 U.S.C. §§ 311–319 requesting *inter partes* review of claims 1, 3, and 4 of U.S. Patent No. 8,215,816 B2 (Ex. 1001, “the ’816 patent”). Paper 2 (“Pet.”). Patent Owner, Innovative Display Technologies LLC (“Patent Owner”), timely filed a Preliminary Response to the Petition. Paper 11 (“Prelim. Resp.”). Taking into account the arguments presented in the Preliminary Response, we determined that the information presented in the Petition established a reasonable likelihood that Petitioner would prevail on its challenge of claims 1, 3, and 4 (“the challenged claims”) of the ’816 patent under 35 U.S.C. § 102(b). Pursuant to 35 U.S.C. § 314, we instituted this trial on March 17, 2016, based on the following asserted ground of unpatentability: Claims 1, 3, and 4 as anticipated under 35 U.S.C. § 102(b) by Tsunoda. Paper 15 (“Decision on Institution” or “Dec. on Inst.”).

During the course of trial, Patent Owner timely filed a Patent Owner Response (Paper 20 (“PO Resp.”)), and Petitioner timely filed a Reply thereto (Paper 22 (“Pet. Reply”)). An oral hearing was conducted on January 10, 2017, and a transcript of the hearing is entered in the record. Paper 33 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of the challenged claims of the ’816 patent. For the reasons that follow, we determine that Petitioner has demonstrated, by a preponderance of the evidence, that claims 1, 3, and 4 of the ’816 patent are unpatentable.

## II. BACKGROUND

### A. *Related Proceedings*

The parties identify numerous proceedings in which infringement of the '816 patent has been alleged. Pet. 1–2; Paper 5, 2–6. Patent Owner additionally identifies other petitions requesting *inter partes* review of the '816 patent, as well as related patents. Paper 5, 6. In IPR2014-01095 (“IPR-1095”), one such petition was denied as to claims 1–4 of the '816 patent. Ex. 1021. *See LG Display, Ltd. v. Innovative Display Techs. LLC*, Case IPR2014-01095 (PTAB Jan. 13, 2015) (Paper 9). Another petition, IPR2015-00496, relied on the same prior art as the petition in IPR-1095, and was denied by the Board. *See LG Elecs., Inc. v. Innovative Display Techs. LLC*, Case IPR2015-00496 (PTAB July 20, 2015) (Paper 10).

### B. *The '816 Patent (Ex. 1001)*

The '816 patent issued July 10, 2012, from U.S. Patent Application No. 13/315,412 filed on Dec. 9, 2011. Ex. 1001, at [45], [21], [22]. The '816 patent is directed to a light emitting panel assembly having a light emitting panel member with “an input edge that receives light from the light source, and end edge and side edge reflectors” (*id.* at [57]) as illustrated below in Figure 6.

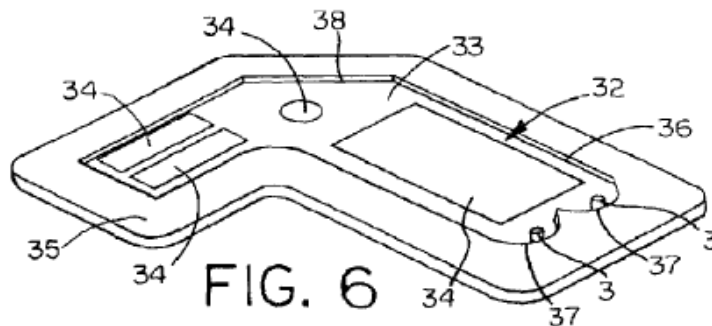


Fig. 6 is a schematic view of a light emitting panel assembly. Light emitting panel assembly 32 includes panel member 33, one or more light sources 3, and one or more light output areas 34. *Id.* at 6:60–63. The panel member has a greater width than height, and the input edge of the panel member receives light from the light source more in the width direction as the light enters the panel member. *Id.* at 10:5–9. One or more secondary reflective or refractive surfaces 38 may be formed on the panel member to reflect a portion of the light around corners or curves in the panel member. *Id.* at 7:1–5. Light extracting deformities “may be provided on one or both sides of the panel members or on one or more selected areas on one or both sides of the panel members.” *Id.* at 4:40–43. The panel assembly is received within recessed portion 36 of tray 35. *Id.* at 6:63–67.

### *C. Illustrative Claim*

Challenged claim 1 is independent, and is illustrative of the challenged claims. Claim 1 is reproduced below:

1. A light emitting assembly comprising at least one light source, a light emitting panel member having at least one input edge for receiving light from the light source and a light emitting surface, a tray or housing having a cavity or recess in which the panel member is entirely received, wherein the panel member has a pattern of light extracting deformities on or in at least one surface to cause light to be emitted from the light emitting surface of the panel member, end edge reflectors and side edge reflectors, and an additional component overlying the panel member, *wherein the panel member has a greater width than height, and the light input edge has a refractive surface that redirects the light output distribution of the light source more in the width direction as the light enters the panel member.*

Ex. 1001, 9:15–10:9 (emphasis added).

#### *D. Evidence of Record*

Petitioner relies on the following reference (Pet. 8–9), and the Admitted Prior Art (“APA”) discussed in the ’816 patent (*id.* at 8).

| Reference | Publication No. | Date                       | Exhibit |
|-----------|-----------------|----------------------------|---------|
| Tsunoda   | JP H6-051130    | Feb. 25, 1994 <sup>1</sup> | 1006    |

Petitioner also relies on a Declaration from Mr. Thomas L. Credelle. Ex. 1004. With its response, Patent Owner submitted a Declaration of Kenneth Werner. Ex. 2007.<sup>2</sup> Transcripts of the depositions of Mr. Credelle and Mr. Werner are entered in the record as Exhibits 2008 and 1026, respectively.

#### *E. Instituted Ground*

As explained in the Introduction section above, we instituted trial based on the following asserted ground of unpatentability: claims 1, 3, and 4 as anticipated under 35 U.S.C. § 102(b) by Tsunoda. Dec. on Inst. 20.

### *III. ANALYSIS*

#### *A. Claim Construction*

Petitioner asserts that the ’816 patent expired on June 27, 2015, and Patent Owner concurs. Pet. 6; PO Resp. 5. The Board interprets claims of an expired patent using the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). See 37 C.F.R.

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<sup>1</sup> Tsunoda is a Japanese unexamined patent application, and Petitioner relies on the February 25, 1994, publication date. Pet. 8.

<sup>2</sup> Petitioner’s general argument that Mr. Werner’s testimony should be accorded “little or no weight” (Pet. Reply 16–17) is unavailing. The Board is fully capable of reviewing the testimony of each party’s expert and allocating the appropriate weight to such arguments and supporting evidence.

§ 42.5(b); *see also In re Rambus Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2012) (“While claims are generally given their broadest possible scope during prosecution, the Board’s review of the claims of an expired patent is similar to that of a district court’s review.” (internal citation omitted)).

“In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). The words of a claim generally are given their ordinary and customary meaning, which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *See Phillips*, 415 F.3d at 1312–13. Although it is improper to read a limitation from the specification into the claims, the claims still must be read in view of the specification of which they are a part. *See Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1347 (Fed. Cir. 2004). In certain circumstances, however, a claim term may not be given its ordinary and customary meaning. “[A] claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). A claim term also will not receive its ordinary meaning where the intrinsic record contains “an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Phillips*, 415 F.3d at 1316.

In the Petition, Petitioner only proposed a construction for the claim term “deformities” appearing in claim 1. Pet. 7. Patent Owner argued in its

Preliminary Response that the claim limitation, “the light input edge has a refractive surface that redirects the light output distribution of the light source *more in the width direction* as the light enters the panel member” (“light input edge limitation”) requires construction.<sup>3</sup> Prelim. Resp. 8–10. For purposes of the Decision on Institution, we determined that construction of the term “deformities” was unnecessary. Dec. on Inst. 6. We also determined that the claim phrase “more in the width direction” “should be construed in accordance with its ordinary and customary meaning, ‘more in the width direction than another direction.’” *Id.* at 7.

Now, in consideration of the Parties’ arguments and evidence developed during trial, we are not persuaded that we need to revisit our previous determination regarding the claim term “deformities.” We do, however, reconsider our construction of the term “more in the width direction,” as discussed below. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”).

In its Patent Owner Response, Patent Owner repeats its contention that the phrase “more in the width direction” should be construed to mean “more in the width direction than height direction.” PO Resp. 5. To support this proposed construction, Patent Owner again argues that another claim 1

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<sup>3</sup> Patent Owner’s challenge as to whether Petitioner met the burden of demonstrating how the claims are to be construed in an *inter partes* review proceeding is unavailing. PO Resp. 2–5. There is no requirement that Petitioner propose a construction for “a key term” as Patent Owner suggests. PO Resp. 2, 3. Nonetheless, by proffering a construction of “deformities,” Petitioner has complied with 37 C.F.R. § 42.104(b)(3).

limitation, namely, that the “panel member has a greater width than height,” suggests that “more in the width direction” “is meant as a dimensional comparison to the height direction.” *Id.* (citing Ex. 2007 ¶ 43). This argument is not persuasive because, unlike the disputed phrase, the claim phrase “wherein the panel member has a greater width than height” explicitly compares the width dimension of the panel member to its height dimension.<sup>4</sup> As noted by the district court in its claim construction memorandum opinion, the use of the word “more” “implies a comparison: more one way than another” (Ex. 2006, 14), as well as a “type of ‘before and after’ comparative” (*id.* at 16 (citations omitted)).<sup>5</sup>

Patent Owner also directs our attention to the specification of the ’816 patent and its stated goal of providing for thinner panel members (PO Resp. 6 (citing Ex. 1001, 2:8–13; Ex. 2007 ¶ 44)) and concludes that one of skill in the art would understand that refracting light more in the width direction than the height direction comports with the goal of a thinner panel (*id.* at 7–8). According to Patent Owner, annotated Figures 1 and 2 from the ’816 patent further illustrate that “the thin or thickness of the panels corresponds to the panel’s height relative to the light source, as opposed to the width.”

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<sup>4</sup> According to its ordinary meaning, “width” is “the horizontal measurement taken at right angles to the length.” See Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/width> (last viewed March 1, 2017). The dictionary definition of “height,” evidence of the term’s ordinary meaning, is “the distance from the bottom to the top of something standing upright.” See Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/height> (last viewed March 1, 2017).

<sup>5</sup> We observe that the district court determined that this term is indefinite. Ex. 2006, 16.

*Id.* at 6 (citing Ex. 2007 ¶ 44).<sup>6</sup> Patent Owner does not direct us to, nor can we find, any disclosure in the '816 patent specification expressly correlating the goal of thinner panel members with the light input edge of the light emitting panel having a refractive surface that redirects the light output distribution of the light source more in the width direction than the height direction. Indeed, our review of the specification reveals that the purpose of the refractive surface is

for changing the path of a portion of the light, emitted from the light source, that would not normally enter the panel member at an acceptable angle that allows the light to remain in the panel members for a longer period of time and/or increase the efficiency of the panel members.

Ex. 1001, 1:55–59.

As noted by the district court in its claim construction memorandum opinion, the use of the word “more” “implies a comparison: more one way than another” (Ex. 2006, 14), as well as a “type of ‘before and after’ comparative” (*id.* at 16) (citations omitted). While we agree that “more” implies a comparison, it is not clear from the specification of the '816 patent that such comparison is limited to only the height dimension, versus another dimension, such as length.

Thus, within the context of the claims, we remain unpersuaded by Patent Owner’s contentions that the term “width” is used other than according to its ordinary and customary meaning to describe the shape of the input edge of the optical conductor, the output distribution of the light source, and the shape of the LED light source. Similarly, we are not

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<sup>6</sup> The phrase “more in the width direction” was found indefinite in the related district court litigation. Ex. 2006, 14–15.

persuaded that the term “height” is used other than according to its ordinary and customary meaning with respect to the light output distribution. Having further considered the arguments and evidence developed during trial, we maintain our determination that the claim phrase “more in the width direction” should be construed in accordance with its ordinary and customary meaning, i.e., “more in the width direction than another direction.”

*B. Anticipation by Tsunoda*

Petitioner challenges claims 1, 3, and 4 as anticipated under 35 U.S.C. § 102(b) by Tsunoda. Pet. 10–23. In support thereof, Petitioner provides a claim chart identifying the disclosure in Tsunoda alleged to describe the subject matter in the challenged claims. Petitioner further cites the Declaration of Mr. Credelle in support of the analysis advocated in the Petition. Ex. 1004. Patent Owner disagrees, arguing that the challenged claims are not anticipated because Tsunoda does not disclose the light input edge limitation. PO Resp. 8 (citing Ex. 2007 ¶ 51).

For the reasons given below, after consideration of the Petition, the arguments in the Patent Owner Response, Petitioner’s Reply, and the evidence of record, we conclude that Petitioner has demonstrated, by a preponderance of the evidence, that challenged claims 1, 3, and 4 are anticipated by Tsunoda.

*1. Principles of Law*

A claim is anticipated if each limitation of the claim is disclosed in a single prior art reference arranged as in the claim. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). As recently reiterated by the Federal Circuit, “a reference can anticipate a claim even if it ‘d[oes]

not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.” *Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (citing *In re Petering*, 301 F.2d 676, 681 (CCPA 1962)). We analyze this ground based on anticipation in accordance with the above-stated principles.

## 2. Overview of Tsunoda (Ex. 1006)

Tsunoda is a Japanese Unexamined Patent Application Publication entitled “Light-guide plate for a surface lighting device using a spot light source.” Ex. 1006, 11, 54. The Abstract describes:

A light-guide plate (4) for a surface lighting device using spot light sources (3) that has roughly triangular notches (2) installed between installation depressions (1) on the lateral surface of said light-guide plate (4) that comprises a transparent plate with a plurality of spot light source installation depressions (1) installed on the lateral surface.

(*Id.* at 57). Light-guide plate 4 is shown in Figure 1, reproduced below.

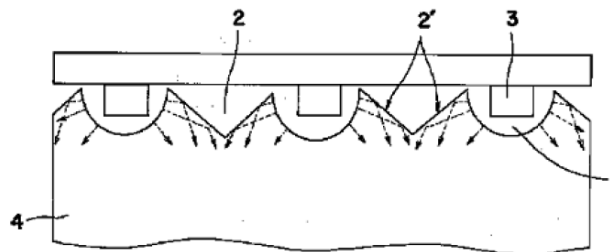


Fig. 1 is a diagrammatic view of the light-guide plate.

The light beam from the light source is reflected “from the spot light source off of notches.” *Id.* ¶ 15. Tsunoda describes lateral surface 2' of triangular notch 2 as “smooth or coarsened.” *Id.* ¶ 18. Tsunoda contemplates that the light-guide plate may be placed in holder 9 as shown in Fig. 10. *Id.* ¶ 27.

### 3. Discussion

Petitioner relies on Tsunoda to describe each of the limitations recited in challenged claims 1, 3, and 4. Pet. 10–23. Patent Owner challenges the sufficiency of Petitioner’s proofs with respect to the light input edge limitation that we discuss *infra*. PO Resp. 8–12. We note, however, that most of the claim elements of claims 1, 3, and 4 are undisputed. As to the undisputed limitations, we find that, based on the evidence cited in the Petition, Petitioner presents sufficient evidence to support a finding that those limitations are disclosed by Tsunoda, arranged as recited in the claims. *See In re Nuvasive, Inc.*, 842 F.3d 1376, 1383 (Fed. Cir. 2016) (Although the Board did not make findings as to whether any of the other claim limitations (such as fusion apertures or anti-migration teeth) are disclosed in the prior art, it did not have to: NuVasive did not present arguments about those limitations to the Board.).

Petitioner argues that the light input edge limitation is satisfied by (1) the disclosure in Figure 1 of light source 3 positioned within depression 1 formed in light guide plate 4 and triangular notches 2 for light reflection; and (2) how the light emitted from the light source enters the light-guide plate and is diffused radially. Pet. 14–15 (citing Ex. 1004 ¶¶ 93, 114–115; Ex. 1006 ¶¶ 15, 20, Fig. 1). Relying on the testimony of Mr. Credelle, Petitioner argues that one of skill in the art would understand that “the radial diffusion by the depressions 1 redirects light in the width direction, and that the reflection by the notches 2 further redirects the light more in the width direction toward the comparatively dark sections between adjacent light sources.” *Id.* at 15 (citing Ex. 1004 ¶ 114). Petitioner notes also that we

agreed in IPR2014-1095 that Tsunoda discloses this limitation. *Id.* at 15–16 (citing Ex. 1021, 9–10).

Patent Owner disagrees that the input edge formed by the depressions and notches in the light guide plate of Tsunoda represents a refractive surface as required by the light input edge limitation. PO Resp. 8–12. This limitation is not satisfied, in Patent Owner’s view, because the notches positioned between the light sources reflect light in order to direct light away from the light sources. PO Resp. 8–10 (citing Ex. 2007 ¶¶ 51, 53–55). Patent Owner supports its position with the testimony of Mr. Werner, who opines that Tsunoda provides the notch sections on the light-guide plate to reflect light “in the direction of the lateral surface opposite the lateral surface of incidence” for the purpose of directing light away from the light source, thus avoiding a bright section close to the light source. *Id.* at 9 (citing Ex. 2007 ¶ 53).

This argument by Patent Owner does not rebut adequately Petitioner’s arguments and evidence. We agree with Petitioner’s argument that both Tsunoda and the ’816 patent strive for uniform distribution of light in the light guide using comparable techniques. Pet. Reply 2–4. Petitioner explains persuasively that the notches redirect light because “the depressions (1) spread light from the light sources in the width direction toward the triangular notches that further redirect the light ‘toward the comparatively dark sections between adjacent spot light sources. This illumination enhances the uniformity of the comparatively dark sections between the spot light sources.”” *Id.* at 3 (citing Ex. 1006 ¶ 15). In addition, Petitioner argues persuasively that just because the notches reflect light “does not mean that Tsunoda discloses **only** reflecting light or **excludes** refraction of light.” *Id.*

at 4. Petitioner supports this argument by directing our attention to the disclosure in Tsunoda regarding the propagation of light from the light source, the refraction or radial diffusion of the light as it enters the light-guide plate and discussion of how “**some**—not all—of the light that is not refracted is reflected by reflective notches 2.” *Id.* at 5 (citing Ex. 1006 ¶ 15).

Next, Patent Owner disputes Petitioner’s contention that Tsunoda discloses refraction, including refraction of light entering the light guide plate. PO Resp. 10 (citing Ex. 2007 ¶ 56). Pointing to the disclosure in Tsunoda describing the example of a light beam emitted from a light source small in size relative to the light guide plate and having “a **virtually isotropic** directional character” (*id.* (citing Ex. 1006 ¶ 19)), Patent Owner observes that “[a]n isotropic light distribution is roughly equal in all directions” (*id.* (citing Ex. 1006 ¶ 19; Ex. 2007 ¶ 55; Ex. 2008, 111:17–25, 120:8–14)). Based on this observation, and the position of Tsunoda’s point light source within the center of the circular installation depression, Patent Owner contends that the emitted light rays “enter the edge of the light guide at right angles.” *Id.* at 11 (citing Ex. 2007 ¶ 56). Patent Owner cites Snell’s Law to support its contention that the “[emitted] light rays are not refracted.” *Id.* (citing Ex. 2007 ¶ 56).

Also noting that Tsunoda does not disclose variations in the shape of the input edge of the light guide plate in the height direction, Patent Owner contends that there is no disclosure in Tsunoda specifying that the equally directed isotropic light distribution would be “more in any particular direction than another.” *Id.* (citing Ex. 2007 ¶ 56). Specifically, the light distribution is “equal in all directions, including in the height and width

directions.” *Id.* (citing Ex. 2008, 111:17–25 and 120:8–14 (agreeing that an isotropic distribution is equal in the horizontal plane and vertical plane)).

Both parties’ experts seemingly agree that an isotropic light source distributes light equally in all directions. Pet. Reply 11 (citing Ex. 1004 ¶ 44; Ex. 2007 ¶ 55). Nonetheless, Petitioner argues persuasively that Tsunoda does not disclose “light being distributed or redirected isotropically after it enters the input edge of light guide 4” because Tsunoda does not limit how light is distributed within the light guide itself. *Id.* We agree that the light input edge limitation itself refers to light distribution “as the light enters the panel member.” *Id.* (citing Ex. 1001, 10:1–9). Patent Owner does not direct us to, nor can we find, any disclosure in Tsunoda specifying “that all the light rays enter the input edge at ‘90 degrees’ or ‘perpendicular’ to the input edge,” as Patent Owner contends to support its argument that the light rays are not refracted. *Id.* at 12 (citing Ex. 1026, 190:11–191:8, 209:15–23). As Petitioner correctly observes, Patent Owner characterizes the input edges of Tsunoda as “curved refractive surfaces (1).” Pet. Reply 4 (citing PO Resp. 12).

We are further persuaded by Petitioner’s arguments and evidence that Tsunoda discloses that light is refracted more in the width direction than another direction as it enters the panel member because the width of the light guide is greater than its height. Pet. 11 (citing Ex. 1004 ¶ 114; Ex. 1006 ¶ 32, Figure 1). As discussed *supra*, our claim construction remains unchanged from the Decision on Institution. Likewise unaffected is our conclusion that based on the “disclosure in Tsunoda of a light-guide plate ‘of 3 cm x 4 cm size with thickness of 1.5 mm’ (Ex. 1006 ¶ 32), Tsunoda would

meet [the light input edge] limitation even under Patent Owner's proposed construction, which we declined to adopt." Dec. on Inst. 12.

Patent Owner asserts the notches in Tsunoda's plate effectively prevent, not spread, transmission of light in the width direction. PO Resp. 11 (citing Ex. 2007 ¶ 57). This assertion, however, implies that the light is traveling in the width direction. Indeed, Petitioner explains persuasively how the light traveling in the width direction and obstructed by a notch would be redirected, e.g., "some of the light is reflected off the lateral surfaces formed by the notches (2) as shown in Figure 1." Pet. 15, citing Ex. 1006 ¶ 15.

In view of our construction of the light input edge limitation as discussed *supra*, and having considered the arguments and evidence developed during trial, Petitioner presents sufficient evidence to support a finding that Tsunoda describes the light input edge limitation as recited in independent claim 1. Specifically, that triangular shaped portion 3 along the input edge of panel 4 refracts light more in the width direction than another direction as the light enters the panel member.

#### 4. Summary

Based on further review of the record and for the reasons discussed above, Petitioner has demonstrated, by a preponderance of the evidence, that claims 1, 3, and 4 are anticipated under 35 U.S.C. § 102(b) by Tsunoda.

#### *C. Statutory Time Bar -- 35 U.S.C. § 315(b)*

Referring to its unsuccessful contention from the Preliminary Response that the Petition fails to name LG, a supplier to Petitioner, as a real party in interest, Patent Owner reiterates that the Petition should be denied

under the one year time-bar of 35 U.S.C. § 315(b). PO Resp. 12–14. The Petition, in Patent Owner’s view, was filed by Petitioner “at LG’s behest.” PO Resp. 2. In particular, Patent Owner contends:

Petitioner is a supplier to LG (who indisputably is time-barred) and is represented by the same counsel that represents LG both before the PTAB and in the District of Delaware regarding the same patents, and LG and its counsel used this and two other IPR petitions by Petitioner as the basis for their motion to stay the district court proceedings (which was denied).

*Id.* at 12. The Board previously determined that this showing was insufficient. Dec. on Inst. 18–19. Pointing to “recent events,” Patent Owner requests reconsideration of that decision. PO Resp. 12. Namely, after institution of review in this proceeding, LG renewed its motion to stay in the District of Delaware. *Id.* at 12–13 (citing Ex. 2009). In arguing that motion, which was denied, LG’s counsel stated “[w]e’ll have one patent that completely – and I’m presuming that **we win** the IPRs – that KJ Pretech wins the IPRs,’ and the court said “I think the ‘we’ was right.” *Id.* at 13 (citing Hr’g Tr. at 9:11–14 (C.A. 13-2109-RGA, D.I. 348, D. Del. June 2, 2016)).

We are not persuaded by this argument. First, the hearing transcript referred to by Patent Owner has not been entered as evidence in this proceeding. Thus, we have no basis to evaluate the context in which this statement was made. Our determination from the Decision on Institution stands uncontroverted, namely, that “Patent Owner has provided insufficient evidence of control of this proceeding by LG.” Dec. on Inst. 19. That Petitioner used the pronoun “we” during oral argument in another proceeding is not, by itself, evidence “that Petitioner is acting at LG’s behest in this proceeding.” PO Resp. 13.

We, therefore, determine that the Petition should not be denied on this basis.

#### IV. CONCLUSION

For the foregoing reasons, we determine that Petitioner has established, by a preponderance of the evidence, that claims 1, 3, and 4 of the '816 patent are anticipated under 35 U.S.C. § 102(b) by Tsunoda.

#### V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1, 3, and 4 of the '816 patent are held to be unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

Case IPR2015-01866

Patent 8,215,816 B2

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