Trials@uspto.gov
571-272-7822

Paper No. 10
Entered: March 9, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2015-01867[1]
Patent 7,537,370

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

GIANNETTI, *Administrative Patent Judge.*

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

[1] This proceeding is joined with IPR2016-00914.

K.J. Pretech Co., Ltd. ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1, 4, 5, 9, 13, 29, and 47 of U.S. Patent No. 7,537,370 ("the '370 patent"). Paper 2 ("Pet."). Innovative Display Technologies LLC ("Patent Owner") filed a Preliminary Response. Paper 11 ("Prelim. Resp."). The Board instituted *inter partes* review of claims 29 and 47, and denied the Petition as to the remaining challenged claims. Paper 15 ("Institution Decision")

Subsequent to institution, Patent Owner filed a Patent Owner Response. Paper 20 ("PO Resp."). Petitioner filed a Reply. Paper 23 ("Pet. Reply").

An oral hearing concerning this case was held on January 10, 2017.[2] The record contains a transcript of the hearing. Paper 39 ("Tr.").

This proceeding has been joined with IPR2016-00194. Paper 24. This Final Written Decision applies to both proceedings.

The Board has jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has not shown, by a preponderance of the evidence, that claims 29 and 47 of the '370 patent are unpatentable.

I. BACKGROUND

A. The '370 patent (Ex. 1001)

The '370 patent is titled "Light Emitting Panel Assemblies." The Abstract describes the subject matter as follows:

[2] The hearing also included cases IPR2015-01866 and IPR2015-01688, involving the same parties.

> Light emitting panel assemblies include an optical panel member having a pattern of light extracting deformities on or in one or both sides to cause light to be emitted in a predetermined output distribution. The pattern of light extracting deformities on or in one side may have two or more different types or shapes of deformities and at least one of the types or shapes may vary along the length or width of the panel member. Where the light extracting deformities are on or in both sides, at least some of the deformities on or in one side may be of a different type or shape or vary in a different way or manner than the deformities on or in the other side.

Ex. 1001, Abstract.

The patent describes varying the light extracting deformities to control the light:

> By varying the density, opaqueness or translucence, shape, depth, color, area, index of refraction, or type of deformities 21 on an area or areas of the panels, the light output of the panels can be controlled. The deformities or disruptions may be used to control the percent of light emitted from any area of the panels. For example, less and/or smaller size deformities 21 may be placed on panel areas where less light output is wanted. Conversely, a greater percentage of and/or larger deformities may be placed on areas of the panels where greater light output is desired.

Id. at col. 4, ll. 62–col. 5, l. 4. The patent also describes "[v]arying the percentages and/or size of deformities in different areas of the panel . . . in order to provide a uniform light output distribution." *Id.* col 5, ll. 5–7. Figure 4a of the patent follows:

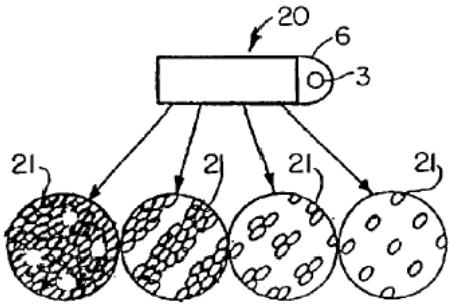


FIG. 4a

Figure 4a shows a portion of a light emitting panel assembly 20 having one form of pattern of light extracting deformities 21 on one side of the panel. *Id.* col. 2. ll. 18–20. The pattern of light extracting deformities in Figure 4a includes a variable pattern. *Id.* col. 4, ll. 40–42. The ’370 patent also discloses that a pattern of light extracting deformities or disruptions 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, as desired. *Id.* col. 4, ll. 31–34.

B. Challenged Claims

Claims 29 and 47 follow:

> 29. A light emitting panel assembly comprising
>
> at least one light source,
>
> an optical panel member having at least one input edge for receiving light from the at least one light source, the panel member having front and back sides and a greater cross sectional width than thickness, both the front and back sides having a pattern of light extracting deformities that are projections or depressions on or in the sides to cause light to be emitted from the panel member in a predetermined output distribution,
>
> where the pattern of light extracting deformities on or in at least one of the sides varies along at least one of the length

> and width of the panel member and at least some of the light extracting deformities on or in one of the sides vary in a different way or manner than the light extracting deformities on or in the other side of the panel member, and at least one film, sheet or substrate overlying at least a portion of one of the sides of the panel member to change the output distribution of the emitted light such that the light will pass through a liquid crystal display with low loss.
>
> 47. A light emitting panel assembly comprising
>
> at least one light source,
>
> an optical panel member having at least one input edge for receiving light from the at least one light source, the panel member having front and back sides and a greater cross sectional width than thickness, both the front and back sides having a pattern of light extracting deformities that are projections or depressions on or in the sides to cause light to be emitted from the panel member in a predetermined output distribution,
>
> where the pattern of light extracting deformities on or in at least one of the sides varies along at least one of the length and width of the panel member and at least some of the light extracting deformities on or in one of the sides vary in a different way or manner than the light extracting deformities on or in the other side of the panel member,
>
> wherein the panel member has a transition region between the at least one input edge and the patterns of light extracting deformities to allow the light from the at least one light source to mix and spread, and at least one side of the transition region contains optical elements for reflecting or refracting light from the at least one light source.

C. Related Proceedings

Patent Owner identifies numerous proceedings in which it has alleged infringement of the ’370 patent. *See* Paper 5 for a listing. In addition, Patent Owner identifies several other petitions requesting *inter partes* review

of the ’370 patent and related patents. *Id*. In IPR2014-01096 (“IPR-1096”), a petition was granted as to claims 15 and 27 of the ’370 patent, and an *inter partes* review was instituted by the Board as to those claims on January 13, 2015. Ex. 1027. A second petition, in IPR2015-00493, relied on the same prior art as the petition in IPR-1096, and was granted by the Board. The Board also granted the petitioner’s motion for joinder of that proceeding with IPR2014-01096. A Final Written Decision determining that claims 15 and 27 are unpatentable was entered by the Board on December 18, 2015. IPR-1096, Paper 40.

D. References

The Board instituted *inter partes* review of claims 29 and 47 based on the following references:

Pristash	US 5,005,108	Apr. 2, 1991	Ex. 1007
Suzuki	JP H03-189679	Aug. 19, 1991	Ex. 1008[3]

Petitioner also relies on a Declaration from Dr. Thomas L. Credelle (“Credelle Decl.”). Ex. 1004. With its response, Patent Owner submitted a Declaration of Kenneth Werner (“Werner Decl.”). Ex. 2006. Transcripts of the depositions of Dr. Credelle (“Credelle Dep.”) and Mr. Werner (“Werner Dep.”) are entered in the record as Exhibits 2007 and 1032, respectively.

E. Grounds Asserted

The Board instituted *inter partes* review of claims 29, and 47 of the ’370 patent under 35 U.S.C. § 103(a) on the following grounds:

[3] Exhibit 1008 is the English translation of the Suzuki Japanese publication (Ex. 1009).

Reference(s)	Claim(s) Challenged
Suzuki	29
Suzuki and Pristash	29 and 47

II. ANALYSIS

A. Level of Ordinary Skill

There is no discussion of the level of ordinary skill in the Petition or in Patent Owner's responses, but the subject is addressed in the expert declarations. Petitioner's expert, Dr. Credelle, testifies:

> It is my opinion that a person of ordinary skill in the art relevant to the '370 patent would have at least an undergraduate degree in physics, optics, electrical engineering, or applied mathematics AND 3 years of work experience (or a graduate degree) in a field related to optical technology.

Credelle Decl. ¶ 25. Patent Owner's expert, Mr. Werner, generally accepts this framework, but according to his formulation,

> a person of ordinary skill in the art of the '370 patent would hold an undergraduate degree in physics, material science, electrical engineering, or mathematics and have one or both of the following: (1) three or more years of work experience in a field related to optical technology; or (2) a graduate degree in a field related to optical technology.

Werner Decl. ¶ 44.

Our decision does not turn on the minor differences between these definitions. However, for the purpose of our analysis, we accept Mr. Werner's more inclusive formulation, with the addition of Dr. Credelle's identification of optics as a permissible undergraduate degree.

B. Claim Construction

The ’370 patent expired on June 27, 2015. Pet. 6. For expired patents, we apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). *See In re Rambus, Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2012).

1. “deformities”

The term “deformities” appears in all challenged claims. In our Institution Decision (at p. 4), we adopted Petitioner’s proposed construction based on the specification, which was “any change in the shape or geometry of a surface and/or coating or surface treatment that causes a portion of light to be emitted.” Pet. 7 (citing Ex. 1001, col. 4, ll. 36–40). The same construction was used in IPR-1096. Patent Owner does not contest this construction in its Patent Owner Response. *See* Paper 16, 3 (“The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.”). Having considered the construction in light of the evidence submitted during trial, we determine that the construction should be maintained. Other aspects of the claimed deformities will be discussed *infra*.

2. “transition region”

This term appears in challenged claim 47 but not claim 29. Petitioner submits that the term “a transition region between the at least one input edge and the patterns of light extracting deformities to allow the light from the at least one light source to mix and spread” should at least include any “region configured to transmit light [between the at least one input edge and the patterns of light extracting deformities to allow the light from the at least one light source to mix and spread].” Pet. 8. We do not need to resolve this

construction issue in light of our disposition of the challenge to claim 47, as discussed *infra*. Only terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

3. "at least some of the light extracting deformities on or in one of the sides vary in a different way or manner than the light extracting deformities on or in the other side of the panel member"

Both challenged claims include this limitation. In its claim charts, Petitioner identifies this limitation as element [29.e] in claim 29, and element [47.e] in claim 47. Pet. 49, 51. Petitioner contends that this limitation is met by Suzuki's disclosure of a light emitting panel with embossed patterns having different pitches on the front and back surfaces. Pet. 49; Pet. Reply 4. Patent Owner contends that this limitation should be construed as requiring a different varying pattern on both sides of the panel. Prelim. Resp. 19–20; PO Resp. 7–8; Werner Decl. ¶ 56. This theory of two-way variations was addressed also at oral argument. Tr. 56:11–16. During oral argument, the following exchange took place between Patent Owner's counsel and the panel regarding this claim term:

> [THE BOARD]: Counsel, let me interrupt you. Do you agree that there's a difference in the interpretation of this claim between you and the petitioner?
>
> [COUNSEL FOR PATENT OWNER]: I do. So what we understand is the claim language requires is that the deformities have to vary on both sides in a different manner. And having a different pitch on one side on the other isn't a variance on either side much less a variance in a different manner from one another.

Tr. 56:9–18.

We are persuaded by Patent Owner's argument that the language of the claims supports Patent Owner's proposed construction. Claims 29 and 47, by their express terms, require the pattern of light deformities to vary "along at least one of the length and width of the panel member . . . on or in at least one of the sides" of the panel. The additional claim language—"vary in a different way or manner"—suggests a comparison between two sides of the panel, each of which contains deformities that vary along the length of the panel a different way or manner. "Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillip*s, 415 F.3d at 1314 (citations omitted).

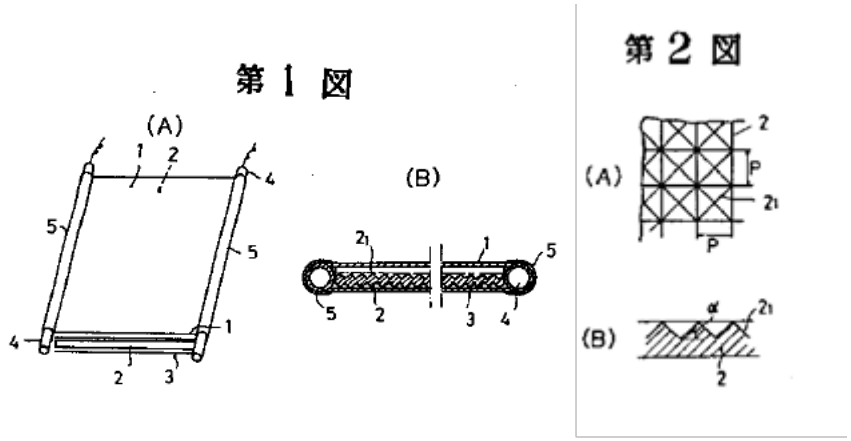
Moreover, Figure 4a of the '370 patent, reproduced *supra*, is cited by Patent Owner. Werner Decl. ¶ 29; Hearing Tr. 57:12–18. Figure 4a illustrates a varying pattern of light extracting deformities on one side of the panel and, together with the claim language discussed *supra*, supports Patent Owner's interpretation requiring a different varying pattern on each side. We, therefore, agree with Patent Owner that this term should be construed to require a pattern of deformities that varies along at least one of the length and width of the panel member on each side of the panel, and that varies in a different way from the pattern on the other side.

C. Claim 29 – Suzuki (Ex. 1008)

1. Overview of Suzuki

Suzuki describes a surface light source device that includes an extremely thin transparent light guide layer. Suzuki's stated objective for this device is to emit light with a brightness that is equivalent to or higher

than that of light emitted by a structure of the related art, which can be reduced in size and weight, and which has a simple structure that can be easily manufactured. Ex. 1008, 5. Several different embodiments are disclosed. Figures 1 and 2 of Suzuki are reproduced here:



Ex. 1008, 7. Figure 1 of Suzuki shows light diffusion layer 1 arranged to extend over the entire area between tubular light sources 4. Figure 1 also shows that transparent light guide layer 2 and reflective layer 3 are successively stacked below the light diffusion layer 1. In one embodiment, the transparent light guide layer 2 is produced by forming an embossed pattern 2_1 on both sides of acrylic resin plates over the entire area thereof. *Id.* at 8. Other embodiments show an embossed pattern on one side of the transparent light guide. *Id.* at 16.

In Suzuki's Figure 2(A), the embossed pattern 2_1 is shown as a pattern of quadrangular-pyramid-shaped recesses formed at a pitch of 0.5 mm and having oblique surfaces at an angle of 45°. *Id.* at 8. Suzuki presents a series of "studies" based on the embossed pattern shown in Figure 2(A) *supra*. *Id.* at 8. The results appear in Table 1. *Id.* at 9. Alternative patterns are described in the disclosure, including triangular pyramids, conical shapes,

and mountain and valley shapes. *Id.* at 13. As described, the pyramids may be either projections or depressions. *Id.*

Suzuki also describes varying the oblique surface angle and the pitch of the embossed pattern. *Id.* at 13–14. For example, Suzuki's Figure 5 shows an example where the pitch is gradually changed:

第 5 図

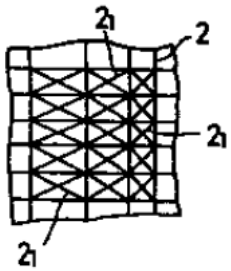


Figure 5 of Suzuki shows an example of embossed patterns formed on a transparent light guide layer. *Id.* at 13–14. Suzuki also states: "Embossed patterns having different pitches may be formed on the front and back surfaces of the transparent light layer 2." *Id.* at 14.

Figure 10 of Suzuki is an example of a light guide layer where the projection area of the embossed pattern increases with distance from the light source to obtain a uniform brightness distribution over the effective light emitting area:

第10図

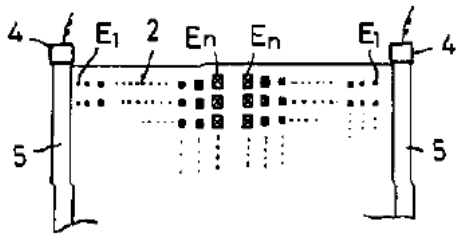
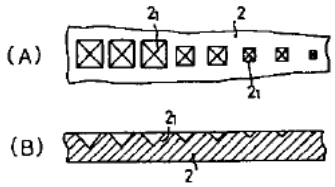
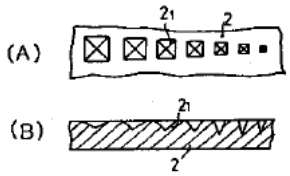


Figure 10 shows a light guide layer in which the embossed pattern changes with distance from the light source 4. *Id.* at 14–15. Suzuki's Table 2 presents the results of a study in which the embossed pattern changes with distance from the light source in accordance with a logarithmic equation. *Id.* at 16–18. Other embossed patterns that vary with distance from the light source are shown in Suzuki's Figures 11–20. Exemplary Figures 13, 15, and 19 follow:

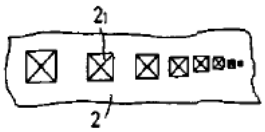
第13図



第15図



第19図



Figures 13, 15, and 19 show light guides with varying embossed patterns. Suzuki states: "All or some of these examples may also be employed in combination. *Id.* at 20.

2. Analysis

Petitioner's obviousness analysis of claim 29 in relation to Suzuki appears at pages 48–50 of the Petition. Petitioner supports its analysis with testimony from Dr. Credelle. Credelle Decl. ¶¶ 150–154.

Patent Owner's rebuttal focuses on the claim element [29.e] in the Petition, discussed *supra* in connection with claim construction. Pet. 49; PO Resp. 4. The same element appears in claim 47, identified as element [47.e]. This analysis, therefore, applies to both claims.

According to that element, "at least some of the light extracting deformities on or in one of the sides vary in a different way or manner than the light extracting deformities on or in the other side of the panel member." Patent Owner does not dispute that Suzuki teaches using projections having different pitches on opposite sides of the panel. PO Resp. 7. Nor does Patent Owner contest that Suzuki has projections that vary on one side of the panel. At oral argument, counsel for Patent Owner identified at least Figures 14, 15, and 20 from Suzuki as having variations in the deformities of the type called for in the challenged claims. Tr. 60:5–19.

Patent Owner contends that, nevertheless, Suzuki does not meet the language of claim element [29.e]. With reference to Suzuki's description of having deformities with different pitches on front and back sides of the panel, Patent Owner states: "This does not disclose a panel in which the pitch on both sides may *vary*; instead they [sic] pitches on each side remains the same." PO Resp. 7. Thus, according to Patent Owner, such an arrangement does not satisfy the requirement of the claims for a different varying pattern on opposite sides of the panel. *Id.*

We agree with Patent Owner, and, therefore, find that Suzuki fails to teach the claimed relationship between the deformities on opposite sides of the panel. The discussion of using different pitches on opposite sides of the panel in Suzuki does not mention varying the pitches on both the front surface of the transparent light guide layer and the back surface of the transparent light guide layer. Ex. 1008, 14. As Patent Owner points out, the tests described in Suzuki in which the pitch was varied involved embossed patterns on one side of the panel only. PO Resp. 7–8 (citing Ex. 1008, Table 2). As we recognized in our Institution Decision, in Suzuki's study of panels with an embossed pattern on both sides, the pattern is of the same type. Institution Decision 14 (citing Ex. 1008, Table 1). There, we stated: "In Table 1, the samples tested either had no pattern, the embossed pattern was on a single side, or the same pattern (quadrangular pyramid or hairline) was on both sides." *Id.*

Patent Owner argues with regard to element [29.e], "Petitioners concede that there is not one embodiment of Suzuki having that requirement, and thus attempt to combine different teachings of Suzuki." PO Resp. 4. Thus, in addition to the disclosure in Suzuki of using different pitches on the front panel surface and back panel surface, Petitioner's analysis of this claim element relies also on Suzuki's Figures 10, 15, and 19, reproduced above, and on Suzuki's statement that "all or some of these examples may also be employed in combination." *See* Pet. 49–50 (element [29.e]; 51 (element [47.e]). Thus, according to Petitioner, "Suzuki discloses applying one of the patterns disclosed in Figs. 2-20 to a first surface of the light guide and applying a different pattern to the second surface of the light guide." Pet.

35–36. Petitioner cites supporting testimony from Dr. Credelle. Credelle Decl. ¶¶ 134–135.

Patent Owner responds that this statement by Suzuki "only applies to the examples described by Table 2 and Figs. 10-20." PO Resp. 10. Further, the logarithmic equation of Table 2 "could not be used with the examples of Table 1" and "a person of ordinary skill would not attempt to do so." *Id.*

Petitioner replies by repeating its argument that Suzuki meets element [29.e] "by disclosing that embossed patterns having different pitches may be formed on the front and back surfaces of light guide layer 2." Pet. Reply 4. This argument is unavailing in light of our determination, discussed *supra*, that the pattern must also *vary* on opposite sides of the panel. Suzuki's reference to "different pitches" does not meet this requirement of a varying pattern, because it does not disclose that the pattern on the front and back surfaces would vary. Further, Petitioner cites testimony from Mr. Werner's deposition. *Id.* (citing Werner Dep. 255:8–13). There, Mr. Werner testifies that Suzuki's statement is referring to "a different pitch on the front and back that was fixed." Werner Dep. 255:–10. We find that this testimony referring to the pitch as "fixed" is not helpful to Petitioner's argument for the same reason.

We are not persuaded by Petitioner's arguments because they do not convincingly address the lack of a disclosure in Suzuki of a panel with patterns on opposite sides where each side varies in a different way. We do not understand Suzuki's generalized statement regarding using different pitches on the front and back of the panel to refer to the panels of Table 2 or other panels in which the pitch is varied. In that respect, we credit Mr. Werner's testimony. Werner Decl. ¶¶ 52–56.

As we stated in our Institution Decision, we are not persuaded by Petitioner's argument that it would have been obvious to alter the light panels described in Suzuki to combine "exemplary embossed patterns" from the figures to provide different varying embossed patterns on each of the front and back surfaces of the light panel. Pet. 36. The Petition does not set forth a sufficient rationale for making this modification. The fact that Suzuki states that various patterns can be "used in combination" (Ex. 1008, 20) does not, by itself, suggest using patterns that vary in different ways on each of the front and back surfaces of the panel. In fact, Suzuki even states that "it is not necessary" to form the embossed pattern on both sides of the panel. *Id.* at 13. The Petition provides no persuasive rationale for making such an alteration to the panels described in Suzuki. Petitioner has failed to identify adequately a reason why a person of ordinary skill would have combined the various features of Suzuki. *See In re Nuvasive, Inc.*, 842 F.3d 1376, 1383 (Fed. Cir. 2016) (conclusory statements "insufficient articulations of motivation to combine" references)

Moreover, we do not find Dr. Credelle's declaration testimony credible on this issue. The declaration, like the Petition, states conclusions without appropriate factual support. Credelle Decl. ¶¶ 134–140. For example, Dr. Credelle testifies that one varying pattern (e.g., Fig. 14) "may be used" on one side of the transparent light guide in Suzuki, while a different varying pattern (e.g., Fig. 18) "may be used" on the other side. *Id.* at ¶ 139. This testimony, however, does not explain why a person of ordinary skill would do so. Under our rules, expert testimony that does have a proper basis is entitled to little or no weight. 37 C.F.R. § 42.65(a). In contrast, Mr. Werner explains that Suzuki does not suggest putting different

varying patterns on both sides of the panel because the tests described in Suzuki show that the best results were achieved by panels having a single-sided variable pattern. Werner Decl. ¶ 57.

We find this testimony from Mr. Werner to be persuasive, and the proof by Petitioner of a motivation to combine the examples discussed in Table 1 of Suzuki having embossed elements on both sides with the examples in Table 2, all of which have embossed elements on one side only, insufficient. Moreover, we find that Petitioner's reliance in its reply on Mr. Werner's cross-examination testimony to be misplaced. Pet. Reply 6–7. For example, in response to a question whether it is "at all possible" that Suzuki's statement refers to Tables 1 and 2, Mr. Werner responded as follows:

> [MR. WERNER:] Is it at all possible he's talking about the example of Tables 1 and 2? It's possible, but *given the context, it's —it's less likely*.

Werner Dep. 136:2–5 (emphasis added). Petitioner relies on this testimony—or at least the statement that "[i]t's possible." Pet. Reply 6. When the whole answer is considered, however, it does not support Petitioner's statement that Suzuki's statement refers to Tables 1 and 2. Similarly, we find credible Mr. Werner's testimony that, based on its context, the statement in Suzuki refers to Figures 14–20:

> [MR. WERNER:] But he [Suzuki] is talking about a particular set of examples in this context . . . . The more and more I read this, the more and more clear it becomes that he is talking about these — these illustrative examples in these figures [referring to Figures 14–20 of Suzuki].
>
> ***

> [COUNSEL FOR PETITIONER:] So it is your opinion that that sentence, all or some of these examples are not referring to the tables but they're referring to figures 14, 15, 16, 17, 18, 19, 20?
>
> [MR. WERNER:] Yes. As I have testified.

Werner Dep. 264:22–25; 268:10–14.

We conclude from the foregoing evidence and arguments of record, including the testimony of Mr. Werner, that Petitioner has not demonstrated by a preponderance of the evidence that claim 29 would have been obvious over Suzuki.

D. Claim 47 – Suzuki and Pristash (Ex. 1007)

As noted, the above analysis of claim element [29.e] applies also to element [47.e]. Pristash is relied on only to meet the additional requirement in claim 47 of a transition region. Pet. 56.

Patent Owner responds that Pristash does not disclose the claimed transition region and a person of ordinary skill would not have combined Suzuki and Pristash. PO Resp. 11. We do not reach this issue, however, in view of our conclusion above regarding Suzuki and claim 29, which applies also to claim 47. Therefore, for the reasons stated above for claim 29, we conclude that Petitioner has not demonstrated by a preponderance of the evidence that claim 47 would have been obvious over Suzuki and Pristash.

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

Patent Owner contends that the Petition is time-barred under 35 U.S.C. § 315(b). PO Resp. 18–19. Patent Owner asserts, in the Preliminary Response, that the Petition fails to name a real party-in-interest, LG, who

was served with a complaint charging infringement of the ’370 patent more than a year before this Petition was filed and therefore is barred from filing a petition under § 315(b). Prelim. Resp. 10. According to Patent Owner, the Petition was filed by Petitioner “at the behest of LG,” thus making LG a real party-in-interest. *Id.* at 11. Patent Owner asserts:

> 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).

PO Resp. 18. The Board previously determined that this showing was insufficient. Institution Decision 18–19. Pointing to “recent events,” Patent Owner requests reconsideration of that decision. PO Resp. 18.

In view of our decision on the merits of Petitioner’s challenge, we do not decide Patent Owner’s argument the proceeding is time-barred under § 315(b).

III. SUMMARY

We conclude that Petitioner has failed to demonstrate by a preponderance of the evidence that, under 35 U.S.C. § 103, claim 29 of the ’370 patent is unpatentable over Suzuki and claim 47 is unpatentable over Suzuki and Pristash.

IV. ORDER

It is, therefore,

ORDERED that Petitioner has failed to prove by a preponderance of

the evidence that claims 29 and 47 of the ’370 patent are unpatentable;

FURTHER ORDERED that this is a final written decision of the Board under 35 U.S.C. § 318(a); 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.

PETITIONER:

Robert G. Pluta
Amanda K. Streff
Baldine B. Paul
Anita Y. Lam
MAYER BROWN LLP
rpluta@mayerbrown.com
astreff@mayerbrown.com
bpaul@mayerbrown.com
alam@mayerbrown.com

PATENT OWNER:

Justin B. Kimble
BRAGALONE CONROY P.C.
jkimble@bcpc-law.com