UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO (UNITED STATES) INC. and
MOTOROLA MOBILITY LLC,
Petitioners,

v.

THETA IP, LLC,
Patent Owner

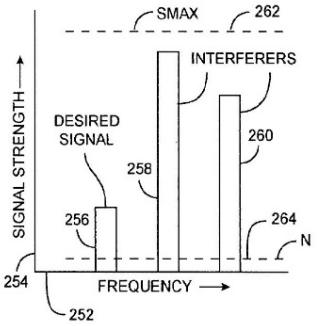
IPR2023-00698
U.S. Patent No. 10,524,202

THETA IP'S OPPOSITION TO PETITIONERS' MOTION TO EXCLUDE

I. THE INVENTOR ARTICLES ARE RELEVANT AND ADMISSIBLE

Theta offered Exhibits 2002, 2003, and 2004—articles about and by Professor Tsividis and his inventions in the ’825 and ’202 Patents—as background story and to rebut any hindsight-derived aspersions that Professor Tsividis’ inventions were somehow obvious at the time.

The articles are relevant to multiple issues in this Board trial, including because they show background to the invention, the level of skill in the art as of 2003 (EX2003), and evidence of non-obviousness—through contemporaneous and continued interest in publication of techniques discussed in the patents, in articles even fifteen years later. *See, e.g.*, EX1001, Figs. 2B, 8A; EX2004, Figs. 18, 11:



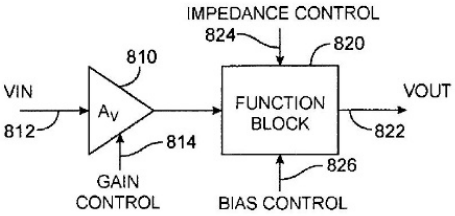


FIG. 8A

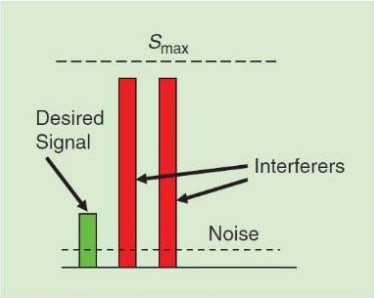


FIGURE 18: The worst-case scenario: minimum desired signal with maximum interference.

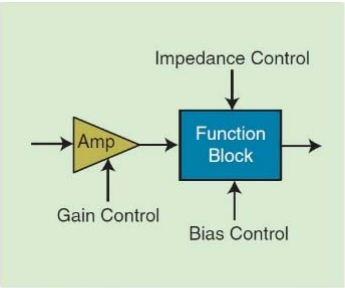


FIGURE 11: The three adaptive power strategies: adaptive gain, adaptive bias, and adaptive impedance.

The fact that Professor Tsividis was and is a widely known and respected teacher, oft-cited author, and prolific inventor is plainly relevant to the question of whether his patented inventions were novel and non-obvious at the time—as is the IEEE's publication, in 2003 and again in 2018, of teachings directly from the patents. *See, e.g.*, Response, 6-11, 18, 63 (*citing* EX2002, EX2003, EX2004: "The inventions therein are novel, were not obvious to persons of ordinary skill—and offer valuable contributions not previously disclosed in the art."). If this were a jury trial, presentation of materials related to the inventor and the invention story would be common and unquestioned. Surely the Board can also consider such material when evaluating the inventions of the '825 and '202 Patents. Petitioners' suggestion that inventor or invention materials are somehow prejudicially irrelevant to a Board trial about the inventions is absurd.

Indeed, even Petitioner's expert Dr. Baker knows of Professor Tsividis and his work. *See* EX2016 (Baker Tr.), 78:9-79:17. Professor Tsividis' most widely cited book—shown on page 7 of Theta's Response, and called out by Petitioner on page 4 of the Motion—is cited in Dr. Baker's own book as recommended "Additional Reading." EX2019, p. 195:

[6] Y. P. Tsividis, *Operation and Modeling of the MOS Transistor*, 2nd ed., Oxford University Press, 1999. ISBN 978-0195170146.

Petitioner's statements alleging irrelevance in the Motion are simply wrong. To begin with, Theta ***did argue*** and explain that the articles are evidence of non-obviousness. *See, e.g.*, Response, 6-11, 18, 63. And the nexus to the claimed invention is clear from the similar or identical disclosures between the patents and articles. *See, e.g.*, *id.*; *see also* Figures above.

Admittedly, non-obviousness has not been a focus of the testimony and briefing, because Petitioners ***only asserted anticipation*** by *Rauhala* of the claim elements that are disputed here. Petitioner has not argued that *Rauhala* alone, or in combination, renders the disputed elements obvious. *See* Response 24-25, 46-47, 57; Sur-Reply, 11. Because Petitioners failed to prove anticipation of these elements, the Board can dismiss Petitioner's arguments and uphold the challenged claims entirely without considering obviousness. But to the extent that any question of obviousness is considered by the Board, the exhibits are clearly relevant to rebut such an allegation.

The articles are not hearsay because they are not offered for the truth of statements therein. Instead, as mentioned above and in Theta's briefs, they evidence non-obviousness—from the simple fact that they discuss and praise techniques disclosed in Professor Tsividis' patents, often with the same disclosures and figures.

For example, the Board need not believe the truth of Figure 11 of EX2004 to recognize that it is a publication by the IEEE of Figure 8A of the patents—fifteen

years after their priority date. The Board can and should look to the patents themselves for the teachings therein. The IEEE's interest in, and dates of, publication of some of those teachings is not a hearsay statement of the articles. Exhibits EX2002, EX2003, and EX2004 are non-hearsay evidence of non-obviousness, and as such are relevant and admissible here.

II. DR. BAKER CONFIRMED THE INFORMATION IN EX2017 AND EX2018

Theta presented Dr. Baker's extensive number and wide subject matter variety of "expert" IPR declarations to Dr. Baker directly on cross examination, and he did not dispute the veracity of information in EX2017 and EX2018. *See* EX2016 (Baker Tr.), 9:7-10:2 (declared in "about 200" IPRs), 14:16-20:14 ("you have declared within the last year in IPRs covering thermostats, display optics, wireless charging, flash memory, IC packaging, and RF wireless circuits"), 33:7-40:22 (declared in twelve IPRs in March of 2023). Petitioners are not seeking to exclude this confirming testimony, nor could they.

The fact that Dr. Baker has declared in hundreds of IPRs—including a dozen in the month he declared in these proceedings, and on such a wide and disparate variety of subject matters—is confirmed by Dr. Baker's testimony. The Board can consider that testimony, from a serial declarant, as additional reason to discount his alleged opinions here. *See* Response, 43-46, fn. 5.

EX2017 and EX2018 are no more than collections of public data already available to the Board about Dr. Baker's numerous serial declarations in Board proceedings. Petitioners have identified no basis to doubt the trustworthiness or authenticity of the Board's records referenced in the compilation, which come from the Lex Machina legal analytics platform generally relied on by those in the legal industry, and where such a summary is necessary for convenient examination by the parties and Board, and all underlying data is readily available. *See* Fed. R. Evid. 803(8)(B); 803(17); 803(18); 901(b)(7); 901(b)(8); 1006. Dr. Baker had ample opportunity but ***did not dispute*** that he declared in each of the proceedings identified—not during his deposition nor in his Reply declaration. There is simply no prejudice and no reason to exclude the compilations from the record here.

III. PROFESSOR LARSON CONFIRMED THE INFORMATION IN EX2020

Theta's expert Professor Larson testified about the operation of a diode detector and its relevance to the disclosures of *Rauhala*. EX2015, ¶60; Response, 39 (*also citing* EX2020). Petitioners could have asked, but chose not to cross-examine Professor Larson on this point. Instead, Petitioners submitted a Reply declaration arguing that "*Rauhala* does not specify the type of detector or the components constituting the detector." EX1019, ¶45. Petitioners had ample opportunity to discuss EX2020 but chose to ignore it—instead inexplicably arguing

lack of disclosure in an anticipation Ground—and Petitioners' Motion does not even argue or suggest prejudice.

EX2020 is submitted only and entirely as background information for the Board, about a type of ⇥ detector that Professor Larson identified as being suggested by the "diode" symbol in *Rauhala*, and that is "known and often used in RF receivers to measure the total received signal strength power, in a band around the frequency to which the receiver is tuned." EX2015, ¶60. Petitioners are not seeking to exclude this testimony, nor could they.

EX2020 is not hearsay, including because it is not offered for the truth of any statement on the webpage—but only to show that this type of diode detector is known. That diode detectors exist and are known is a fact that the continued presence of a basic Wikipedia entry is probative of.

See https://en.wikipedia.org/w/index.php?title=Envelope_detector.

The Board may take notice of basic well-known principles of the art—here electronic circuits and their symbols—as discussed in widely used reference sources such as Wikipedia. Professor Larson's testimony about how the detector in *Rauhala* would be understood to work is not dependent on EX2020, nor is it part of Petitioner's Motion. But even though Professor Larson relies on his own knowledge and expertise rather than on EX2020, there is simply no prejudice and no reason to exclude the non-hearsay exhibit from the record here

IV. CONCLUSION

For the foregoing reasons, Petitioner's Motion should be denied.

Dated: July 9, 2024

/s/ Aaron R. Hand

Aaron R. Hand, Lead Counsel
Reg. No. 80,694
Corey Johanningmeier, Back-Up Counsel
(*pro hac vice*)
BUNSOW DE MORY LLP
701 El Camino Real
Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
ahand@bdiplaw.com
cjohanningmeier@bdiplaw.com

Counsel for Patent Owner

CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on July 9, 2024, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

Dinesh N. Melwani (Reg. No. 60,670)
dmelwani@bomcip.com
docketing@bomcip.com
Sangwoo Ahn (Reg. No. 76,905)
sahn@bomcip.com
William R. Uhr (Reg. No. 71,282)
wuhr@bomcip.com
BOOKOFF MCANDREWS, PLLC
2000 Pennsylvania Ave., NW, Suite 4001
Washington, DC 20006
Phone: (202) 808-3497
Fax: (202) 450-5538

Dated: July 9, 2024

/s/ Aaron R. Hand

Aaron R. Hand
Reg. No. 80,694
BUNSOW DE MORY LLP
701 El Camino Real
Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
ahand@bdiplaw.com

Lead Counsel for Patent Owner