

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LAM RESEARCH CORP.,

Petitioner

v.

INPRIA CORP.,

Patent Owner.

Case No. IPR2024-00033

U.S. Patent No. 9,823,564

PATENT OWNER'S SUPPLEMENTAL RESPONSE BRIEF

Stowers 2008 (EX1008) was subject to an embargo that made it unavailable to the public for a year after its submission. As a result, it is not prior art. The author of Stowers 2008, Dr. Jason Stowers, testified to this fact, EX2008, ¶7, supported by a contemporaneous email recognizing when the embargo was lifted, EX2008, p. 6. Lam's witness, Ms. Heather Stewart, originally contested the existence of an embargo, but later admitted its existence. EX2013, ¶8; EX2021, 20:4-21:22, 23:22-25:21, 47:16-49:18. This should end the inquiry. Lam's belated allegation of "separate publications" to try to limit its witness Ms. Stowers's concession to ProQuest is simply not credible and ignores Dr. Stowers's testimony and the evidence surrounding his testimony.

Before Lam's final paper during the regular briefing period, Lam never emphasized any "separate publications" distinction, and instead intertwined ProQuest and OSU. First, in its petition, Lam's evidence of public availability was tied (by its own expert) to "Exhibit 1008 ... that I downloaded from ... *ProQuest*[" EX1006, ¶44. Then, in reply, Lam argued that ProQuest's supposed publication showed "OSU failed to place a one-year embargo." MTA Opp., 14-15; Pet. 19; Pet. Reply, 9-10. Lam asks the Board to ignore the embargo based on an untimely theory that the embargo was limited to ProQuest (and Exhibit 1008), introducing nearly six hundred pages of new exhibits (EX1049; EX1051; EX1052; EX1053), and shifting focus to new Exhibit 1051 as supposedly being publicly available. But Lam's

argument is deficient and its evidence is insufficient.

First, for the embargo, Lam has now sought and received discovery from both ProQuest and OSU. All of the evidence shows an embargo. EX2020 (OSU Packet); EX2013, ¶8 (ProQuest Decl.); EX2021, 20:4-21:22; EX2008 (Stowers Decl. and attachments). Lam provides nothing but improbable speculation to try to limit that embargo to ProQuest. Pet. Supp. Br., 4-5. Nothing in the OSU packet indicates the embargo did not apply to OSU itself, and an embargo at ProQuest and not at OSU would make no sense. *See* PO Supp. Br. 4-5. Indeed, it was OSU that produced the document showing that Dr. Stowers checked the one-year embargo box on the form that was provided to him *by OSU* and retained *by OSU* in its files. Lam's assertion that "the one-year embargo was requested solely for ProQuest on a ProQuest publishing form" belies common sense in view of OSU's use and retention of the document. Lam also misplaces reliance on Ms. Stewart's testimony about OSU processes, Pet. Supp. Br., 5, because she is not an OSU employee, "ProQuest is not connected to the OSU repository," EX2021, 43:4-7, and she has "no idea whether OSU published Dr. Stowers' 2008 dissertation that ProQuest also published," *id.*, 42:13-18.

Second, looking at the record as a whole, other than Lam's conclusory reliance on the October 21, 2008 date (discussed below), Lam's evidence only speaks to prior availability from ProQuest (which has since been disproven) or *current* availability

of Dr. Stowers’s dissertation from an OSU website. For instance, Dr. Hall-Ellis’s testimony was directed to Exhibit 1008, which she testified she “downloaded from ... *ProQuest*” in her paragraph regarding authenticity. EX1006, ¶44. As such, her testimony says nothing about whether a separate copy was available from OSU *at the relevant time*. At best, she testified that the catalog record that she reviewed around October 2023 “*indicates that a copy of the dissertation is located*” or “*is currently available*” in OSU’s digital repository and the *ProQuest* database. *Id.*, ¶¶46, 49 (emphasis on present tense added).

Lam’s brand-new Exhibit 1051 is also only relevant to the *current* availability of Dr. Stowers’s dissertation. Lam’s counsel “attested” that he downloaded Exhibit 1051 from an unidentified “OSU’s website,” and that he ran redlines comparing Exhibit 1051 to Exhibit 1008. EX2021, 35:8-39:17.¹ But the fact that Exhibit 1008 (which was unavailable at the relevant time) contains the same substance as a document Lam’s counsel claims to have recently downloaded from an OSU website in 2025 says nothing about the availability of Dr. Stowers’s dissertation from OSU *at the relevant time* (early 2009). And Dr. Stowers explained that he understood the

¹ Lam’s counsel’s attestation is a facially deficient authentication, providing no details about when it was obtained or from which “OSU’s website.” EX2021, 35:8-39:17.

“oregonstate.edu” website he sent in 2010 to his colleague “did not exist for [his] dissertation” “prior to that one-year embargo ending.” EX2008, p. 6; EX1032, 60:7-21. Lam did nothing to rebut or undermine this testimony.

As such, the only evidence that Lam relies on to show availability of Dr. Stowers’s dissertation at the relevant time is evidence regarding an October 21, 2008 date. EX1006, ¶¶47; EX1042. But Inpria explained early on in the proceeding why Lam’s evidence was conclusory and why the October 2008 date was irrelevant because “embargo functionality was handled separately” meaning that date “doesn’t necessarily mean it was fully public.” EX2012, 1; POR, 27-28; PO Sur-reply, 8-10. Lam has never countered this evidence despite many opportunities to try.

For Dr. Hall Ellis’s reliance on this date, as Inpria explained multiple times, POR, 27-28; PO Sur-reply, 8-9, Dr. Hall-Ellis failed to explain how the date a MARC record was “Entered” into the library system translates to public availability of Stowers 2008, EX1006, ¶¶44-50. Even after facing these criticisms, Lam remained silent and has never responded in its four subsequent briefs. *See* Pet. Reply 9-10; MTA Opp. 14-15; MTA Sur-reply, 7-8; Pet. Supp. Br., 1-5. Instead, Lam tries to obfuscate the record, generically arguing that it relied on “record evidence” and “MARC records.” MTA Sur-reply, 8 (citing EX1006, ¶¶44-50); Pet. Supp. Br. 4 (citing same).

Lam also points to Brad Engelbert’s reliance on the October 2008 date, Pet.

Supp. Br., 4, but as Inpria previously explained, his statement is purely conclusory, EX1042, 1, unlike OSU Digital Repository Librarian Cara Key's earlier email that both explained her rationale and provided the referenced records, EX2012, 1-26. *See* POR 27-28; PO Sur-reply, 9-10. Lam once again simply ignores the problems with Mr. Engelbert's email. Pet. Supp. Br. 4.

Instead of bolstering or explaining Mr. Engelbert's email, Lam, for the very first time, tries to undermine Ms. Key's email (EX2012). Pet. Supp. Br., 5. Besides being far too late to make this argument, Lam misunderstands the import of the email and attached records. Exhibit 2012 was never relied upon to establish the embargo on Stowers 2008. Instead, it shows that even with access to OSU's "full database record" (which was attached to Ms. Key's email), one cannot simply rely on a "Date Available timestamp" because "embargo functionality was handled separately." EX2012, 1. And in any event, even if Mr. Engelbert's and Ms. Key's emails were both disregarded (*e.g.*, as unsworn statements), that still means that Lam has simply failed to meet its burden to demonstrate the public accessibility of Stowers 2008.

In sum, Lam's October 21, 2008 date is insufficient in light of the embargo. Lam's other evidence is irrelevant as it only goes to (1) current availability of Dr. Stowers's dissertation from OSU, or (2) now-disproven prior availability from ProQuest. Lam failed to meet its burden to prove Stowers 2008 (EX1008) is prior art.

Respectfully submitted,

Dated: March 12, 2025

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CERTIFICATE OF SERVICE

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