

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JIANGSU FAVORED NANOTECHNOLOGY CO., LTD.,
Petitioner,

v.

P2I LTD.,
Patent Owner.

IPR2024-00380
Patent 11,041,087 B2

Record of Oral Hearing
Held: March 26, 2025

Before: GRACE KARAFFA OBERMANN, AVELYN M. ROSS, and
SHELDON M. MCGEE, *Administrative Patent Judges*.

APPEARANCES:

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P R O C E E D I N G S

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JUDGE OBERMANN: My name is Grace Obermann, Judge Obermann, and I'm here in Alexandria in the courtroom, so I may appear a little small. I just wanted to welcome everyone, and I wanted to introduce my co-panelists. We have also appearing for the Board today, Judge Avelyn Ross, and Judge Sheldon McGee. Who do we have appearing today for Petitioner?

MR. MCKEEVER: Good afternoon, Your Honor. For Petitioner, Patrick J. McKeever with Perkins Coie. One of my colleagues, Jonathan Tietz, may also do some speaking, and then I've got a couple of other colleagues that will be listening in, Han-Wei Chen and Nicholas Lipperd.

JUDGE OBERMANN: Thank you, Mr. McKeever. Who do we have for Patent Owner?

MR. REINITZ: Good afternoon, Your Honor. Ariel Reinitz on behalf of Patent Owner.

JUDGE OBERMANN: Thank you, Mr. Reinitz. Do you have anyone else with you today?

MR. REINITZ: Just myself today.

JUDGE OBERMANN: Okay, great. One thing I wanted to remind Counsel is that there is a public line, so you might not see the people on the line, but that doesn't mean that they can't see you. So just be aware that this hearing is open to the public and I don't think we have any confidential information to share today, but I just wanted you to all be aware of that.

1 We've assigned 30 minutes of total presentation time to each side
2 and Petitioner will start, since they bear the burden of proof, and I'll be
3 asking Petitioner's Counsel before they start if they'd like to reserve any time
4 for rebuttal. Same goes for Patent Owner. You'll have an opportunity to
5 reserve some time for your surrebuttal, and I have a clock here that I will
6 start for both parties.

7 I'll try to give you a couple minutes warning when you're about to
8 run -- expire your time. Hopefully, you'll be able to see the clock behind me
9 so that you can keep track a little bit by yourself, as well. But before I do
10 that, I just wanted to ask each side if there are any preliminary matters that
11 you'd like to discuss before we proceed to the final argument. I'll ask
12 Petitioner's Counsel first. Mr. McKeever?

13 MR. MCKEEVER: Nothing on behalf of Petitioner, Your Honor.

14 JUDGE OBERMANN: Okay. Thank you. And is it Mr. Reneer
15 (sic)?

16 MR. REINITZ: Reinitz, Your Honor, and nothing behalf of --

17 JUDGE OBERMANN: Reinitz.

18 MR. REINITZ: Yeah. Nothing on behalf of Patent Owner.

19 JUDGE OBERMANN: Okay. Thank you, Mr. Reinitz. With that,
20 I'm going to ask Petitioner's Counsel if they would like to reserve any
21 argument time for rebuttal.

22 MR. MCKEEVER: I'd like to reserve 10 minutes and if I go a
23 little bit over, that's fine, but I'll plan to reserve 10 minutes, if that works out.

24 JUDGE OBERMANN: Sure. I am going to put 20 minutes on the
25 clock for you. Can you see the clock, Mr. McKeever?

1 MR. MCKEEVER: I can, yeah. Thank you, Your Honor.

2 JUDGE OBERMANN: Okay. I'm putting 20 minutes on, and I
3 will start the clock ticking when you begin to speak, so take your time.

4 MR. MCKEEVER: Okay. I'm ready to go, Your Honor.

5 JUDGE OBERMANN: All right, thank you.

6 MR. MCKEEVER: Good afternoon, Your Honors. There's really
7 not a whole lot that's in dispute in this proceeding. There are two grounds.
8 The first ground is the Cohen reference and the Legein reference, and the
9 second ground is the Francesch reference and the same Legein reference
10 from Ground 1. P2i first disputes that the Cohen reference and the
11 Francesch reference -- so one reference from each ground -- are not
12 analogous art. The only other issue that they have disputed is motivation to
13 combine for each of the grounds.

14 Now, the bulk of Claim 1, which is really the only claim that
15 parties have been talking about. P2i hasn't made any separate arguments for
16 validity of any of the dependent claims. But the bulk of Claim 1 sets forth
17 the chemical structure for a monomer and also the structure for a cross-
18 linking reagent. There's no dispute that both of those limitations are
19 satisfied for both grounds, so it really is just analogous art and motivation to
20 combine that are in dispute.

21 And so I'll start with analogous art and, you know, as Your Honors
22 know, analogous art issues come up when the prior art is far afield from the
23 patent that's being challenged, but that's clearly not the case here. So if you
24 go through the references sort of one by one, Cohen is about a cross-linked
25 polymer with insulating properties that has utility and electrical applications.

1 That's what Cohen tells us. Legein is about depositing protective coatings
2 on electrical components using plasma deposition. Francesch is about cross-
3 linked polymer coatings that are deposited on silicon wafers using plasma
4 polymerization.

5 So just like, you know, on its face, the argument that any of this
6 prior art is not analogous, really just strains credulity. There's two tests for
7 analogous art. The first is field of endeavor and P2i is trying to limit the
8 field of endeavor essentially to what's claimed, but that's not right. The
9 Federal Circuit said in that the field of endeavor of a patent is not limited to
10 the specific point of novelty, the narrowest possible conception of the field,
11 or the particular focus within a given field. And we cited that the Bigio case,
12 which is, I think, from 2004, the Federal Circuit case that's one of the
13 leading cases in this area that talks about field of endeavor, and it's a pretty
14 simple case to understand.

15 The patent that was at issue there or the patent application, I guess,
16 was about a hairbrush. It literally said hairbrush in the preamble and in the
17 body of the claim. And the question was, does prior art related to a
18 toothbrush, is it analogous. And the Federal Circuit affirmed the BPAI
19 decision that it was analogous art.

20 And, you know, the Federal Circuit in that case said, we have to
21 look at the specification, look at the embodiments, look at the function and
22 the structure of the invention. And when they did that, they said, you know,
23 look at the structure of a hairbrush. It's got a handle component; it's got
24 another component that has the bristles. It's not, you know, not too different
25 from a toothbrush, and even talked about how functionally, there's really

1 nothing that would prevent you from using a toothbrush to maybe comb, you
2 know, or brush facial hair, for example, you know, a mustache or something
3 like that.

4 And so based on that, even though the claim at issue said
5 hairbrush, the Federal Circuit said, toothbrush prior art was in the same field
6 of endeavor. So not super high-tech but clearly shows that the field of
7 endeavor is not limited to exactly what's claimed. And you have Board
8 decisions like the NXP versus Inside Secure, a Board decision that we cited
9 in our reply brief that said Bigio does not limit the field of endeavor to only
10 what is recited in the claims. That's a quote.

11 The Chaganti case was another one. That's another Federal Circuit
12 case that we cited, you know, basically said the same thing. The fact that a
13 prior art reference doesn't satisfy all the claim limitations doesn't mean that
14 it's not analogous prior art. So that's field of endeavor.

15 Reasonably pertinent, you know, the question is basically, is the
16 prior art relevant to a problem that the inventors of the patent at the issue
17 here, the '087 patent, had to address. Well, here, the inventors had to
18 address what compounds they were going to use in their polymer coating.
19 Most of the specification, in fact, is devoted to, you know, a discussion of
20 the crosslinking reagent and the discussion of the monomer structure. And
21 again, and most of the claim, Claim 1, is devoted to those two components.

22 And so clearly, one of the problems that the inventors were
23 addressing is well, what compound should we use in this coating that we're
24 going to use to deposit on components, surface, you know, substrates, you
25 know, including an electrical environment. And plainly, the Cohen

1 reference and the Francesch reference are reasonably pertinent to that
2 problem.

3 Again, Cohen describes a crosslinking reagent -- DVTMDS -- and
4 various monomers for copolymerizing with that crosslinking reagent, and
5 what's the context for it. They're talking about a polymer that has insulating
6 properties and is useful for electrical applications. That's plainly relevant to
7 the issues that -- and the problems that the '087 inventors were addressing.
8 Internally --

9 JUDGE MCGEE: Counsel, can I interrupt you for a moment?
10 This is Judge McGee speaking. So I'm looking at your demonstrative slide,
11 Slide Number 6, I believe it is. So I see that you've identified the field of
12 endeavor of the '087 patent to be coatings. You had -- at least had that
13 highlighted. So you have that highlighted. You say protective coatings and
14 polymer coating, so my question is, does Cohen disclose a coating?

15 MR. MCKEEVER: Cohen, I would say, discloses coatings.
16 Cohen discloses a polymer that, you know, they say is useful for a wide
17 variety of applications, you know, in electrical applications. And they talk
18 about impregnating, you know, paper that's used in -- to wrap electrical
19 components. And so I think, you know, a person of skill in the art would
20 certainly understand that a polymer with insulating properties that is
21 designed for use in electrical applications would be suitable for coating.

22 That's, you know, one of the things that you want, that the '087
23 patent talks about, you know, a barrier to electronic transport, for example.
24 That's an insulator and that's what Cohen describes the polymer as. And so I
25 think, you know, Cohen talks about a variety of different applications here.

1 It talks about, you know, paper insulated capacitors. It talks about --

2 MR. MCGEE: You're looking at Column 5 here?

3 MR. MCKEEVER: Yeah, I'm looking at -- yes, exactly, Your
4 Honor, Judge McGee. That's where I'm looking there. So, you know, I
5 think Cohen is pretty clear that it's, you know, this is a -- this polymer is a
6 material with insulating properties and would have a wide variety of
7 applications and electronics and electrical components, and I think a person
8 of skill in the art would readily appreciate from that description that that
9 would include coatings because you want to prevent shorting and things of
10 that nature.

11 JUDGE MCGEE: Okay. I just didn't see the term coating, per se,
12 expressly stated in Cohen, at least where the parties had identified that, so I
13 wanted to get your take on that issue because it does seem to speak to this
14 issue of field of endeavor.

15 MR. MCKEEVER: Yeah.

16 JUDGE MCGEE: Thank you.

17 MR. MCKEEVER: Yes. Judge McGee, you're right. I don't --
18 certainly don't believe the term coating is used explicitly there, but I think a
19 person of skill in the art would understand from that, you know -- from that
20 context and, you know, it also talks about, you know, cable impregnates, for
21 instance, and impregnating electrical coils and filling compounds.

22 And all of these things kind of are getting at -- the whole point of
23 it's an insulator, you're filling a cable and preventing different, you know,
24 cables -- you know, maybe cables that are within the same outer cable from,
25 you know, keeping them separate and protecting them from one another, but

1 certainly, Your Honor, I grant you that the term coating is not actually in the
2 Cohen reference.

3 JUDGE MCGEE: Okay. Thank you, Counsel.

4 MR. MCKEEVER: Sure. So I was starting to talk about
5 reasonably pertinent and again, how, you know, Cohen discloses, you know,
6 materials, certainly for copolymerizing and making an insulating polymer.
7 So that would be reasonably pertinent to, again, what compounds the '087
8 inventors were considering using and choosing to use in their protective
9 coating, and similar for Francesch.

10 Now, the trick that P2i is playing here is they're trying to limit the
11 problem. For purposes of reasonable pertinence, they're essentially saying,
12 well the problem that the inventors were confronting here was, you know,
13 plasma polymerized protective coatings in the context of electronic devices
14 or electrical components. And if you look -- and we put this on Slide 10 of
15 our demonstratives, and it was also in our reply brief -- they're literally
16 using, like, the exact same language to confine the field of endeavor and the
17 problem that the inventors were confronting for purposes of reasonable
18 pertinence.

19 Now, why are they doing that? They're doing that so that
20 essentially, you're not allowed to consider any prior art that doesn't fall
21 within their narrow -- overly narrow characterization of a field of endeavor,
22 and that's plainly wrong and contrary to law. This is exactly the issue that
23 came up in the Donner Tech case that we talked about in our reply brief, and
24 the Federal circuit explained in that case that, you know, the whole reason
25 we have two different tests for analogous art, the point of the second test, the

1 reasonable pertinence test, is that sometimes, you're going to look outside
2 your field of endeavor.

3 And so reasonable pertinence is all about, okay, what references
4 are we allowed to look at outside the field of endeavor that would still be fair
5 game, and so you have to look at, well, is it a reference that actually
6 addresses one of the problems that the patent is addressing, and they
7 specifically said in Donner Tech -- and we have the relevant language on
8 Slide 11 of our demonstratives, and I'll read from the first highlighted
9 portion there.

10 Importantly, this analysis must be carried out from the vantage
11 point of a POSITA who is considering turning to the teachings of references
12 outside her field of endeavor. And skipping to the second highlighted
13 section, the Board's characterization of the problem to which the claimed
14 invention relates effectively collapses the field of endeavor and reasonable
15 pertinence inquiries and ignores that the reasonable pertinence analysis must
16 be carried out through the lens of a POSITA who is considering turning to
17 art outside her field of endeavor.

18 So the Board was criticized in Donner and reversed -- or the case
19 was remanded because the Board essentially looked at the problem for
20 purposes of reasonable pertinence through the same lens as the field of
21 endeavor, and that's wrong. And that's exactly what P2i is doing in this case,
22 Your Honors. So that's reasonable pertinence. I'm going to turn to
23 motivation to combine.

24 Now, regarding motivation to combine, we've presented a lot of
25 evidence in the petition and Dr. Gleason's declaration and sort of a high level

1 summary of that evidence or at least where it primarily shows up in the
2 petition and opening declaration on Slide 13. Now, the vast majority --
3 virtually all of that evidence is not addressed, not disputed by P2i. And it's
4 not, you know -- it's -- there's a lot there, Your Honors.

5 I'm guessing you've already looked at that, but if you haven't, I
6 would urge you to take a look at that. This is non-conclusory testimony
7 from an expert. Dr. Gleason walks through this stuff, explains why -- you
8 know, what a person of skill in the art would've known. There's a lot of
9 corroborating documentary evidence that are exhibits in the record that are
10 discussed and cited by Dr. Gleason, and really none of that has been
11 disputed by P2i.

12 And I'll just hit the kind of high level summary here and then I'm
13 sure they're going to speak to this and then I'll save some of our response on
14 that for our rebuttal, but you know, as to Ground 1, Cohen, again, disclosing
15 a crosslinking reagent -- that's DVTMDS -- and Cohen also discloses
16 monomers for copolymerizing with that crosslinking reagent. And notably,
17 among the monomers that Cohen discloses are benzyl acrylate and benzyl
18 methacrylate. And again, Cohen suggests that the resulting polymer from
19 copolymerizing DVTMDS and those monomers is a good insulator that can
20 be used in a wide variety of electrical applications.

21 Okay. So that's Cohen. Then we turn to Legein, which we're
22 combining with Cohen in Ground 1. Legein talks about using plasma
23 polymerization to deposit protective coatings on electrical components, so
24 same exact context as the '087 patent. Legein focuses on three classes of
25 compounds and suggests using at least one of those. Potentially, more than

1 one of those. And those are acrylates, methacrylates, and organosilanes.
2 Now, those three classes of compounds that Legein calls out and
3 recommends line up perfectly with the compounds we're relying on in
4 Cohen. DVTMDS, Cohen's crosslinker, is an organosilane. There's no
5 dispute about that.

6 And then as I mentioned, Cohen discloses, you know -- among the
7 monomers, Cohen discloses for copolymerizing with that crosslinking
8 reagent are benzyl acrylate and benzyl methacrylate. Well, those are -- that's
9 an acrylate and that's a methacrylate. So all three of the compounds we are
10 relying on from Cohen are within the preferred classes of compounds that
11 Legein specifically suggests that we use to create a polymer protective
12 coating for electrical components.

13 So these references fit together like puzzle pieces. It's very
14 straightforward. There's really, you know -- and this is why, I think, they
15 don't dispute, you know, any of the evidence we've come up with. They run
16 to, well, even if you wanted to combine all this stuff, it's just too hard. A
17 person of skill in the art wouldn't be able to do it. And I would imagine we'll
18 hear that from Mr. Reinitz in a few minutes.

19 Turning to Ground 2 and motivation to combine, it's, you know --
20 it's pretty similar. So we have Francesch which talks about depositing,
21 again, a crosslinked polymer using plasma polymerization on a silicone
22 wafer. Silicone wafer, same substrate that the '087 patent talks about.

23 Now, Francesch's monitor is PFM, which is a methacrylate. So
24 again, methacrylates are one of the classes of compounds that Legein
25 specifically suggests using in creating a polymer that's useful for a protective

1 coating on electrical components. Beyond that, Francesch's coating is
2 crosslinked and Francesch notices -- notes that that crosslinking improves
3 solvent resistance, so that's a protective attribute of the coating. And Dr.
4 Gleason explained, and P2i has not disputed, that a person of skill in the art
5 would've understood that crosslinking makes polymer -- you know, makes a
6 polymer more durable, more protective, increases barrier properties.

7 Again, really -- none of that is in dispute, so the fact that, you
8 know, Legein has PFM, which is one of the preferred classes of compounds
9 that Legein -- sorry, I misspoke -- Francesch discloses PFM. That's one of
10 the -- that's within -- that's a methacrylate. It's within one of the preferred
11 classes of compounds that Legein focuses on, and then bonus points, it's got
12 a crosslinking reagent that's going to make it only better for purposes of
13 being a protective coating for electrical components as described in Legein.

14 So that's, you know -- that's a high level summary, but, you know,
15 the motivation to combine is very strong. There really shouldn't be a dispute
16 about the motivation to combine any of these references. And again, all of
17 this was laid out in the petition in Dr. Gleason's opening declaration. P2i
18 hasn't really attacked Dr. Gleason's analysis, evidence, anything beyond
19 saying that, you know, she gives too much credit to the level of skill in the
20 art. And again, assuming that's where they go in their argument, we'll have
21 something to say about that in rebuttal. With that, Your Honors, unless
22 there's any further questions, I will save my remaining time.

23 JUDGE MCGEE: Standby, Counsel. I think we're having some
24 audio difficulties.

25 JUDGE OBERMANN: I'm so sorry. That's my fault. I had my --

1 JUDGE MCGEE: Okay.

2 JUDGE OBERMANN: -- microphone off. Let me just ask first if
3 any of my panelists have any questions before you step away.

4 JUDGE ROSS: I don't. Thank you.

5 JUDGE MCGEE: Nothing further from me.

6 JUDGE OBERMANN: Thank you. Okay. Hearing none, you are
7 just perfect on your timing. You took 20 minutes, so you have your full 10
8 minutes left. I'll ask Mr. Reinitz, of your 30 minutes, would you like to
9 reserve any time for surrebuttal?

10 MR. REINITZ: Five minutes, Your Honor.

11 JUDGE OBERMANN: Five minutes. Okay. With that then, I am
12 going to set the clock for 25 minutes and once I get it set, I won't start the
13 clock until you are ready to speak, so please take your time. Okay. When
14 you're ready, I'll start the clock.

15 MR. REINITZ: Thank you. And I'll attempt to share my
16 demonstrative, if that's all right.

17 JUDGE OBERMANN: That'd be great, but we also do have the
18 ability here -- we have them in front of us, so you can also refer by slide
19 number, if that doesn't work, but it is nice to see them on the screen.

20 MR. REINITZ: Let's see if I can pull this off. Is the Board able to
21 see the demonstrative that I'm sharing?

22 JUDGE OBERMANN: I am not. Here in the courtroom, it's not
23 coming up, but you can do it for the other Judges and then just show me --
24 tell me --

25 MR. REINITZ: Sure.

1 JUDGE OBERMANN: -- the number and I can pull it up, all
2 right?

3 MR. REINITZ: Sure. I'm starting on Slide 1 then, from Patent
4 Owner's demonstrative. And just to maybe pick up where Mr. McKeever
5 left off, Patent Owner fundamentally does not disagree that the general
6 notion, as disclosed in, I believe, it's the Legein reference, the general notion
7 of plasma polymerization was, again, in a general sense, known in 2015.

8 One of the central questions at issue in this proceeding is whether
9 the relevant POSITA would've been motivated or even capable, let's say, of
10 combining the other references, Cohen and Francesch, which in Patent
11 Owner's -- from Patent Owner's perspective, are well outside the relevant
12 field, to identify monomers and crosslinkers to be used within the context of
13 a pulse plasma polymerization, to obtain an improved protected coating for
14 an electric -- or electronic component.

15 As Patent Owner explained in its response, Dr. Senkevitch, Patent
16 Owner's expert, explained in his declaration, relevant POSITA in our view
17 would not have been able or been motivated to do so, and even if the
18 POSITA got as far as attempting to, it would've required an undo amount of
19 experimentation and knowledge for the POSITA to arrive at what's claimed
20 in the claims that are challenged.

21 Petitioner's argument is to the contrary. In the petition and in the
22 reply, in our view, reduced to a classic case of hindsight bias and there's also
23 a question, which we'll address, regarding whether or not the Petitioner has
24 met its burden as far as demonstrating if the relevant POSITA would've been
25 capable of combining the references as they're proposed.

1 I'm now on Slide 2 of Patent Owner's demonstrative and this is just
2 a high level summary of the arguments presented. As to Ground 1, which is
3 the combination -- proposed combination of the Cohen and Legein
4 reference, in our view, the Cohen reference is not analogous art and
5 therefore, cannot be considered, should not be considered relevant in the
6 context of an obviousness challenge. The relevant POSITA also, even if
7 they would've considered Cohen, would not have been motivated to combine
8 Cohen and Legein. And therefore, the proposed combination does not teach
9 all of the elements of the challenged claims.

10 There's also a question which arose in Petitioner's reply and in
11 Patent Owner -- our surreply -- regarding whether or not -- what exactly the
12 contours of the capabilities of the POSITA are. In our view, the Petitioner
13 attempted to introduce evidence that is beyond the defined capabilities of the
14 POSITA. And the same general arguments are also -- also apply with regard
15 to Ground 2, which is the proposed combination of the Francesch and
16 Legein reference.

17 Again, in our view, the Francesch reference would not be properly
18 considered because to qualify as analogous art, it would need to be either
19 within the same field of endeavor, which Francesch, like Cohen, in our view
20 is not. And would also not have been reasonably pertinent for the inventor
21 to have considered because it's not the -- excuse me -- it's not reasonably
22 pertinent to the problem that the inventors of the '087 patent were
23 addressing.

24 I'm now on Slide 3 of the Patent Owner's presentation. The field
25 of endeavor of the '087 patent as we explained in our reply -- or response,

1 excuse me -- is that plasma polymerized protective coatings for electronic
2 devices. That's reflect both in the field of invention, which specifically
3 highlights the protective coatings for electronic or electrical devices, and it's
4 also referenced explicitly in Claim 1, which references electronic -- or
5 electrical devices -- coatings for them, which involve exposes the device or
6 component to plasma.

7 JUDGE MCGEE: Counsel, this is Judge McGee. I have a
8 question. Excuse me. So I'm reading this field of the invention paragraph
9 that you've highlighted on your Slide 3, and I see nothing there regarding
10 plasma polymerization specifically. It does refer to protective coatings,
11 generally, and also, protective coatings for electronic devices. So why
12 should we cabin the field of endeavor to plasma polymerization with this
13 disclosure?

14 MR. REINITZ: Well, in addition -- you're correct, of course. It
15 doesn't -- the term plasma polymerization is not explicitly recited there. It
16 does refer, still in the first -- second sentence of the field of invention --
17 methods of forming such coatings, which is highlighted throughout the
18 specification and the claims, as well, is the method of plasma
19 polymerization.

20 JUDGE MCGEE: Okay, thank you.

21 MR. REINITZ: I'm now on Slide 4 of Patent Owner's
22 demonstrative. The background of the '087 patent describes at length that
23 the inventors were specifically focused on problems arising in context of
24 plasma polymerization. This section of the background highlights the
25 challenges associated with the impact of the power input in the plasma and

1 changes that that affects as far as how plasma and the nature of the coating
2 that is applied to the substrate, depending on the changes and the energy
3 that's applied in the context of plasma polymerization.

4 Now on Slide 5, this is continuing from the background of the '087
5 patent. There is a discussion here of need for water resisting coatings and
6 how changes, again, to the use in the context of plasma polymerization can
7 result in coatings that are sub-optimal or at disadvantages, including the
8 coating having a tacky feel or being smeared, and that those, using existing
9 methods, were -- remained challenges to -- that inventors were faced with.

10 Now on Slide 6 of Patent Owner's demonstrative, the background
11 of the '087 patent continues, describing the power -- the effect of power on
12 the plasma coatings and how the inventors were trying to address the
13 problems that existing coatings were unable to address, including having
14 smudge free coatings with -- that still retain properties, such as water
15 resistance. All of those, again, are problems that arise in the context of
16 plasma polymerization and not in other fields.

17 Cohen, the primary reference Petitioners rely on in Ground 1 is far
18 afield in our view of the field of endeavor of the '087 patent. There's no
19 reasonable dispute as we understand it, on Petitioner's side, that the Cohen
20 reference has no relevance to -- or certainly does not disclose anything
21 regarding plasma polymerization. What Cohen does disclose is this
22 DVTMDS monomer that's shown in the -- in Slide 7 and using it in -- with
23 conventional polymerization reactions, such as suspensions or emulsions,
24 but not plasma polymerization.

25 I'm now on Slide 8 and that is as we explained in our response.

1 Cohen is -- in addition to not being of the field of endeavor, also would not
2 have been reasonably pertinent to the problem faced by the inventors of the
3 '087 patent. Cohen does not explicitly describe any problem, but at best, it
4 discloses, again, the DVTMDS monomer, using a solvent or emulsion
5 polymerization, and again, that's a very different problem than plasma
6 polymerization for electronic devices or electronic components.

7 As we understand it and as Dr. Senkevitch explained in his
8 declaration, the only way to consider Cohen in the context of plasma
9 polymerization would be with the benefit of a hindsight, but as we cited
10 here, the Federal Circuit is explicitly directed that the Board needs to
11 consider the problem from the prospective of foresight. Hindsight is
12 irrelevant from the perspective of whether a reference is reasonably
13 pertinent.

14 So in our view, because Cohen has nothing to do with plasma
15 polymerization, it would -- it's therefore not analogous art and therefore,
16 cannot be properly applied in obviousness rejection, as the petition suggest.
17 But even were the Board to consider Cohen, the combination would still
18 fail -- Ground 1 would still fail because there would be no motivation to
19 combine it with the Legein reference.

20 Now, Legein, as we noted earlier, does disclose plasma
21 polymerization, but what's notable is that -- and we've highlighted several
22 sections here from Legein -- it discloses or references low power or low
23 pressure plasma polymerization. That's in several places throughout the
24 Legein reference. And the reference, as we explained in our response,
25 provides little additional specifics as to how those low power or low

1 pressure techniques -- plasma techniques -- would actually be implemented.

2 Now, on Slide 10 of the demonstrative, Legein does not disclose
3 the addition of a crosslinker, whether in a continuous wave or even in a
4 pulse plasma polymerization context. Again, there is a disclosure, as we
5 concede, of plasma polymerization, but there's only a handful -- we were
6 only able to identify three specific precursors, which as Dr. Senkevitch
7 explained in his declaration, would be insufficient for the relevant POSITA
8 to have been able to arrive at the claimed invention of the '087 patent.

9 JUDGE MCGEE: This is Judge Mcgee, again. I have a question
10 on that point. So you say that Legein does not disclose a crosslinking
11 reagent, but Legein does disclose the organosilane, so perhaps Legein does
12 not call it a crosslinking reagent. Perhaps you're holding Legein to an
13 improper standard there as far as what the disclosure needs to refer to its
14 different elements as.

15 MR. REINITZ: Understood. Again, in our view, even if you
16 would read Legein, as Your Honor noted, that would still, again, not get you
17 all the way when combined with Cohen to enable the POSITA to have
18 implemented all of the claimed elements in Claim 1 on the other claims.

19 JUDGE MCGEE: Thank you. You can continue.

20 MR. REINITZ: Thank you. Now, as we noted, the Petitioner
21 claims the POSITA would've been -- and that's in Dr. Gleason's -- in the
22 petition in Dr. Gleason's declaration, would've been motivated to use
23 Legein -- again, the reference to or the disclosure of plasma polymerization
24 techniques -- using Legein's technique and adopting Cohen's copolymer, the
25 monomer that Cohen discloses. And the argument that Petitioner presents is

1 that, well, a POSITA, in their view, would've known that plasma
2 polymerization is a dry process and that there would've been an advance to
3 implementing that using the monomer disclosed in Cohen.

4 Now, that still, in our view, doesn't satisfy Petitioner's burden, and
5 the reason is, as shown in Slide 12, as Dr. Senkevitch explained in his
6 declaration, using the pulsed plasma polymerization techniques, necessary to
7 achieve the results of the -- that are claimed in the '087 patent, would've
8 been well outside of the capabilities of the relevant POSITA. The POSITA,
9 again, given the unpredictability and the challenges associated with a plasma
10 polymerization, simply informing or making the POSITA aware of Cohen's
11 monomer would not have enabled them to combine the elements in a way
12 that the Petitioner wants to or suggests that they should be getting credit for.

13 And I'm now on Slide 13 of the demonstrative. As Dr. Senkevitch
14 explained, the POSITA would not have looked to Legein or Cohen to
15 understand that the addition of the crosslinker in the manner claimed in the
16 '087 patent. Again, and that's because Cohen discloses the addition of a
17 crosslinker in the context of increasing the heat resistance or -- but there's no
18 suggestion, even in Legein, of addition -- and there's no suggestion in Legein
19 of the addition of a separate crosslinker, and so even combining the two, in
20 our view, would still not enable the POSITA to arrive at the claimed
21 invention of the '087 patent.

22 Finally, and this is now in Slide 14 of Patent Owner's
23 demonstrative, even assuming the POSITA might've found Cohen and
24 Legein, they would not have been motivated to combine the two because,
25 again, as we noted earlier, the complexities of -- associated with plasma

1 polymerization, which Petitioner seems to give, in our view, the POSITA far
2 too much credit for, would not have -- there would've been no reasonable
3 expectation of success. And as a result, the POSITA would not have been
4 motivated to combine Cohen and Legein, and the Ground 1, therefore, fails.

5 Now, as Mr. McKeever, I think, eluded to, and this came up, as I
6 mentioned, in the Petitioner's reply and in our surreply -- in our view, the
7 parties disagree as to what the capabilities of the -- even while we agree
8 perhaps regarding the definition of the POSITA, we disagree regarding what
9 the actual capabilities of that POSITA would or wouldn't have been.

10 Petitioner, in its reply, cites Dr. Gleason's reply declaration in
11 which he cites the capabilities of several of her MIT graduate students. As
12 we noted and as Dr. Gleason's credentials reflect, Dr. Gleason spent her
13 entire career -- academic career -- at MIT. And the capabilities of -- the
14 handful of extraordinary MIT graduate students that Dr. Gleason cites, in our
15 view by definition, cannot be ordinary and cannot -- more importantly,
16 should not -- frame the capabilities of the relevant POSITA in this case.

17 I'm now on Slide 16, which is an excerpt from Dr. Gleason's
18 deposition, in which he confirmed that not only stating the obvious that MIT
19 is one of the top research universities in the world, but also that that is, in no
20 small art, due to the caliber of the students, which again, is the anecdotal
21 evidence that Dr. Gleason cites regarding the supposed capabilities of the
22 POSITA here regarding implementing plasma polymerization. That's the
23 extent of it and in our view, that cannot be the standard that is relevant here
24 for the POSITA.

25 And we've cited here, this is -- both the Board and Federal Circuit

1 have highlighted that the relevant standard for considering the abilities of the
2 POSITA is the 'O' in POSITA, as we all know, is ordinary. The capabilities
3 have to be the capabilities of an ordinary -- one of ordinary skill in the art --
4 not extraordinary skill in the art. And in our view, that is in no small part of
5 the fallacy of -- part of the fallacy of Petitioner's argument is that they are
6 citing what Dr. Gleason claims to have been the capabilities of extraordinary
7 individuals. Not ordinary ones -- individuals of ordinary skill in the art.

8 Turning to Ground 2, which, as we noted, is the combination of
9 Francesch and Legein, for similar reasons to those, we explained earlier
10 regarding Cohen, the Francesch reference is also not analogous art, both
11 because it is outside the field of endeavor of the '087 patent. Here in Slide
12 18, we've shown the -- that Francesch is directed to plasma coatings for
13 bioactive services. Again, a field that is far beyond the relevant field of
14 endeavor of the '087 patent plasma polymerization for electrical devices.

15 Continuing in Exhibit -- excuse me -- on Slide 19, Francesch, in
16 addition to being beyond the -- outside the field of endeavor of the '087
17 patent, also is not reasonably pertinent because as explained earlier, the '087
18 patent relates to challenges in the realm of plasma polymerization and
19 specifically, improved or enhanced coatings for electrical devices in that --
20 using those techniques, but Francesch -- the problems Francesch addresses,
21 which are targeting cell adhesion, targeting materials with specific cells,
22 tissue, engineering, all of those are well beyond and different from the
23 challenges the inventors of the '087 patent were focused on and were not --
24 would not be reasonably pertinent to the issues -- or to the references that the
25 inventors would've considered.

1 JUDGE MCGEE: Counsel, this is Judge McGee. Hopefully, one
2 last time here. A question here about Francesch. What do we make of
3 Francesch's disclosure of silicone wafers? The polymerization process of
4 coating on the silicone wafers there? I believe it's page 607 of that
5 reference.

6 MR. REINITZ: Yes. Yeah. Understood in context, yes, there's a
7 reference, of course, to silicone wafers, but in the context of the reference,
8 it's far afield because again, the entire reference is explicitly directed to,
9 again, these bioactive services and the reference to silicone wafers there is
10 in that context, as well. And so reading the entire reference there, simply the
11 fact that there's literally a mention of silicone wafers, it's still a different field
12 of endeavor overall, and it's also a different problem in our view than what's
13 addressed in the '087 patent.

14 JUDGE MCGEE: But aren't silicone wafers of the electrical
15 components of the '087 patent being coated, at least in some of the
16 examples?

17 MR. REINITZ: They are among the examples, yes, but to go back
18 to it on context, we understand Francesch to still be beyond the field of
19 endeavor, given the overall disclosure of the reference and the specific --
20 even within the context of silicone wafers, it would've been a -- it's still
21 addressing a different problem.

22 JUDGE MCGEE: Okay, thank you.

23 MR. REINITZ: So as we explained, for similar reasons to the
24 Cohen reference, Francesch therefore would not have been reasonably
25 pertinent. It's addressing a different problem, as I just explained, of

1 Francesch than the one that the inventors of the '087 patent would've been
2 faced with, and the only way that Francesch would have been relevant or
3 would have been pertinent, is with the benefit of hindsight. Again, once you
4 were in context of this proceeding, are aware of the disclosure of the '087
5 patent, but not with foresight. A POSITA considering the problem at issue
6 would not have looked to Francesch.

7 Likewise, again, for similar reasons as explained with respect to
8 Ground 1, there would've been no motivation to combine Francesch and
9 Legein. As noted, Francesch only discloses plasma deposition in the context
10 of bioactive surfaces. Francesch does not disclose why adding a
11 crosslinking reagent would've had any benefit, and the only thing that I
12 believe Dr. Gleason was able to cite was something regarding improving
13 durability, which in our view, is not sufficient to meet the burden --
14 Petitioner's burden. Now, on Slide 22, again, the POSITA would not have
15 been motivated to combine Francesch to add the crosslinking reagent as
16 explained --

17 JUDGE OBERMANN: You're down to six seconds, if you wanted
18 to go into your other time, just to let you know. Oh, you're down to nothing.
19 Do you want to just wrap up?

20 MR. REINITZ: I'll stop here, and we can -- I'll pick it up on
21 rebuttal. Thank you.

22 JUDGE OBERMANN: Okay. Thank you. So Mr. McKeever,
23 you have 10 minutes and I'm going to -- let's see what I did here. I'll put 10
24 minutes on the clock for you and when you're ready to start your rebuttal, I'll
25 start the clock ticking.

1 MR. MCKEEVER: Okay. I am ready, Your Honors. Thank you.
2 I just wanted to touch back, if I could, on Judge McGee's question earlier
3 from the -- about the Cohen reference and the coating question. So the point
4 that I was trying to reference earlier is that the reference to the paper
5 insulated capacitors -- that is in Column 5, Judge McGee, as you had
6 referenced. But, you know, my understanding of that is, you know, paper
7 insulated of capacitors, that would be a capacitor that would be wrapped in
8 paper.

9 This is, you know, essentially insulating paper that was used. I
10 mean, again, this is a reference from 1955, so this is going back a ways, but,
11 you know, paper being used to wrap electrical components to keep them
12 separate and prevent shorts and things like that. So I would certainly point
13 to that.

14 The other thing I would note, and I think we referenced this in the
15 petition, as well, or certainly in one of the papers, is near the end of Column
16 5, before we get into the claims, it talks about the polymerization being
17 affected in situ, which seems to suggest that you're talking about a
18 component that is already in a position and then you're, you know -- you're
19 adding a polymer to it, which I think also is at least suggestive of using these
20 insulating -- using this insulating material as a coating, but certainly, the
21 word coating is not there. I'd grant you that.

22 So I'm going to follow-up on a couple of things that Mr. Reinitz
23 said. So first of all, on Francesch, the point that, you know, Francesch talks
24 about bioactive surfaces, it becomes irrelevant. That's just wrong under the
25 law. Mr. Reinitz said multiple times there, you know, Francesch addresses a

1 different problem. It addresses a different problem, but that's not the task,
2 certainly not the way that they're applying it. And I think maybe the best
3 case I can think of for illustrating that is KSR, a case that we all know and
4 have read a thousand times, but in KSR, if you recall, one of the issues was,
5 you know, that the Asano prior art pedal and the Federal Circuit had said
6 that, you know, they didn't -- it wasn't fair to combine that reference with the
7 other reference because it was addressing a different problem. And the
8 Supreme Court in KSR said the idea that a designer hoping to make an
9 adjustable electronic pedal would ignore Asano because Asano was designed
10 to solve the constant ratio problem, makes little sense. A person of ordinary
11 skill is also a person of ordinary creativity, not an automaton.

12 So in KSR itself, the, you know -- probably the leading case on all
13 of obviousness, there was this issue of, okay, you've got a reference that's
14 addressing a different problem. Asano was about this constant ratio
15 problem. If you haven't looked at KSR in a while, that was about, you
16 know, when you adjust the pedal, keeping the force consistent so that, you
17 know, the driver doesn't have to, you know, push down harder or less when
18 they adjust the pedal. And the Federal Circuit said, it doesn't matter that
19 that's not the same problem that the inventors of the patent at issue were
20 trying to solve. You know, it's still an adjustable pedal. It's still an example
21 of that. It's got a fixed pivot point. Therefore, it's relevant. Well, the exact
22 same thing applies here.

23 Yeah, Francesch talks about bioactive surfaces, but it also talks
24 about polymerizing or, you know, copolymerizing a monomer and a
25 crosslinker and depositing it on a silicone wafer, as Judge McGee, you

1 know, just referenced in his question. So it's plainly relevant, just as the
2 Asano reference was relevant in KSR. The fact that it was primarily
3 addressing a different problem, it doesn't matter. It's still relevant.

4 Part of, I think, what they're doing on reasonable pertinence is
5 they're trying to pretend that, you know, the entire patent, you know, can
6 only address one problem and that's not right and that's not how the cases
7 work. As I said in the earlier part of my argument, one of the problems that
8 the inventors of the '087 patent were addressing was plainly which
9 compounds to use, which crosslinker to use. They talk about which, you
10 know -- the different structures of those compounds, which monomer should
11 be used.

12 Mr. Reinitz talked about, you know -- they make a lot of the
13 background section of the '087 patent and he says it's all about these
14 problems with plasma polymerization, but if you look at the background in
15 the context of the application and compare it to the claims, there's a big
16 disconnect. The whole background is about these, you know, layers or
17 polymerizing, you know, PFAC -- what is it -- pro fluoroalkyl chain
18 monomers. That's not what the claims are about. The claims require a
19 completely different monomer. They require -- you know, they require, you
20 know, an acrylate monomer with a terminal aryl group.

21 So the whole idea that like this invention was about solving, you
22 know, shortcomings, using that particular monomer, and how, you know --
23 how it works with plasma polymerization is a -- is really not a fair
24 characterization of the patent, especially when you look at what's actually
25 claimed. And the other thing with that is really, that background section, if

1 you read it in context, there's no mention of any crosslinking reagent in
2 there.

3 What that background section seems to really be saying is just
4 setting up the justification for why the invention relies on a crosslinking
5 reagent. It solves a bunch of these problems. It talks about, well, if you try
6 to use the power level to adjust the amount of crosslinking, it causes other
7 problems. And then the solution that shows up in Column 2 in the statement
8 of the invention section seems to be, well, add a crosslinking reagent and
9 then you can get crosslinking without having to increase the power which
10 damages the functional groups and the monomer.

11 Okay. So beyond that, I just wanted to touch on the level of skill
12 issues. Mr. Reinitz said a number of times that, you know, various things
13 would be beyond the level of skill of a POSITA and I'm going to share my
14 demonstratives for a couple of slides, if I can. Hopefully Your Honors can
15 see this. I'm looking at Slide 17 of our demonstratives. You know, we have
16 an agreed level of ordinary skill in this case, and that level of ordinary skill
17 talks about having at least two years of experience with plasma
18 polymerization techniques.

19 So they're telling the Board in this case that a person of skill in the
20 art who's been doing plasma polymerization for two years, basically can't do
21 anything. Doesn't know how to, you know -- doesn't know how to adjust
22 any parameters, doesn't know what the outcome will be if you adjust any
23 parameters. I mean, some of the things that Dr. Senkevitch said at
24 deposition were almost comical. He said at some point, like a person with
25 this level of skill could wash the dishware. It's just -- it's completely out of

1 step with the level of skill that they've agreed to in this case.

2 And beyond that, look at the patent itself. I mean, the patent
3 says -- and this is on Slide 18 now -- this is Column 14, line 66 to Column
4 15, line 7 -- I'll just read the green highlighted text here. In all aspects of the
5 invention, the precise conditions under which the protective polymer coating
6 is formed in an effective manner -- I'll just read the whole thing -- will vary
7 depending upon factors such as, without limitation, the nature of the
8 monomer compound, the crosslinking reagent, the substrate, as well as the
9 desired properties of the coating.

10 These conditions can be determined using routine methods. So the
11 patent itself in this case tells us that it's routine to figure out how to adjust
12 things to get the type of coating that you're looking for. That completely
13 contradicts what P2i is telling the Board, what P2i's expert is telling the
14 Board. They have never addressed this. Maybe Mr. Reinitz will address it
15 in his remaining time. The other thing, which goes hand in hand with that
16 previous disclosure is the claimed monomer in the '087 patent requires a
17 terminal aryl group. That monomer is not even discussed anywhere in the
18 patent specification. And if we go back to the previous slide, it says that one
19 of the --

20 JUDGE OBERMANN: You have 20 seconds.

21 MR. MCKEEVER: Sure. One --

22 JUDGE OBERMANN: Twenty second check.

23 MR. MCKEEVER: Okay. It says that one of the things that
24 changes the conditions is the nature of the monomer compound. Well, here,
25 they've claimed a different monomer compound than the one that's described

1 in the patent specification, and they literally tell you nothing about any of
2 the conditions that you need to use to make an effective coating with that
3 compound.

4 Well, if a person of skill in the art doesn't know how to do any of
5 this stuff, unless you tell them exactly what they need to do and what all the
6 settings need to be and what all the conditions need to be, how could this
7 thing possibly be enabled? There's no way. And so again, it just shows that
8 their position on level of skill is just -- is not credible. It's belied by the
9 intrinsic evidence itself, and the Board should reject it for that reason.

10 Unless there's any other questions, I have nothing further, Your Honors.

11 JUDGE OBERMANN: I see no questions from my co-panelists.
12 With that, you did go over about 30 seconds, so Mr. Reinitz, if you need five
13 minutes and 30 seconds, you may have it. I'm going to put that on the clock,
14 and when you're ready to start your surrebuttal, we'll get going.

15 MR. REINITZ: Thank you. I'll try to pull this slide --

16 JUDGE OBERMANN: I'm not sure how to do the minutes -- the
17 seconds here. I think I'm just going to have to give you three -- or I'm sorry,
18 five -- and then if you need an extra 30 seconds, feel free. But when you're
19 ready to begin, I'll start the clock.

20 MR. REINITZ: Thank you, Your Honor. Yeah, I'm ready.
21 Maybe just to pick up on, I think, one of Mr. McKeever's last points. He
22 mentioned Dr. Senkevitch and the agreed upon level of skill in the art
23 regarding two years of plasma polymerization experience. I think the
24 disconnect or the difference between the Petitioner's view or understanding
25 of that and ours, is that Petitioner, in our view, overlooks the inherent

1 complexity of the techniques. I mean, of the technology that we're
2 discussing here, which I believe Dr. Senkevitch did address at some length
3 in his declaration. And that is that plasma polymerization is inherently
4 several things. It's complex, it's also, as Dr. Senkevitch explained, I know at
5 length, unpredictable.

6 And so as we understand it, and again, in Patent Owner's view, that
7 is one of the inherent fallacies in the -- both proposed grounds. The grounds
8 of challenge that they present is they say, well, the notion of plasma
9 polymerization was known and therefore, the POSITA who had been doing
10 it for two years could've simply done it to do almost anything, including,
11 again, in our view, in this case, to go well beyond the basics that a two
12 year -- someone with two years of experience would've been able to do, to
13 do something extraordinary with that technique. By that, specifically
14 combining these monomers and crosslinkers in a specific way to achieve the
15 specific coating that is claimed in the '087 patent.

16 And so to go back to it, I mean, that is, in our view, among the
17 fallacies, as well -- I know that's where I left off regarding the Francesch
18 reference -- and that is that the disclosure there is -- in the Francesch
19 regarding the use of plasma in the context of bioactive coatings, which
20 again, is far afield and would not have -- there would've been no reasonable
21 expectation of success, nor with a relative POSITA have thought to look to
22 Francesch to be able to achieve the coatings for electronic devices that are
23 disclosed in the '087 patent.

24 Likewise, the -- given the scope of Francesch and given the
25 complexity, again, like I mentioned earlier, the inherent complexity of

1 plasma polymerization, the -- there would've been no predictable -- the result
2 that the Petitioner suggests the POSITA could've arrived at would not have
3 been predictable. Again, as Dr. Senkevitch explained at length, plasma
4 polymerization is inherently not only a complex field, but it's also an
5 unpredictable one and it is only with the benefit of hindsight that the
6 Petitioner can suggest, in our view, that combining the specific monomers
7 with, in the context of a plasma polymerization, there they would've been
8 able to arrive at the -- what's claimed in the '087 patent without hindsight.

9 Finally, as far as the complexity, what also necessitated undue
10 experimentation -- even the relevant POSITA with two years of experience,
11 some familiarity with, again, plasma polymerization, would not, without
12 undo experimentation, in our view, had been able to arrive at the coatings
13 and the product as claimed in the '087 patent. With that, I'll turn it over -- if
14 there aren't any questions, otherwise, that'll -- that's it for us.

15 JUDGE OBERMANN: Any questions from my co-panelists? It
16 appears not. So I want to thank Counsel very much for your participation
17 today. We greatly appreciate your level of preparedness, and the case is
18 submitted. Before I let you go, I'm just going to ask Counsel for each side
19 whether -- since you have the panel here on the phone -- if there's any other
20 matters that you'd like to discuss with us. Mr. McKeever?

21 MR. MCKEEVER: Nothing, Your Honors, on behalf of
22 Petitioner, but thank you for your time.

23 JUDGE OBERMANN: Thank you. Mr. Reinitz?

24 MR. REINITZ: Likewise. Nothing from Patent Owner. Thank
25 you.

1 JUDGE OBERMANN: Very good. I'd ask both Counsel to please
2 stay on the line for the Court Reporter in case there are any questions, but
3 with this, the case is submitted, and the hearing is adjourned. Thank you so
4 much.
5 (Whereupon the above-entitled matter went off the record at 2:08
6 p.m.)

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