

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION, HP INC., DELL INC., DELL TECHNOLOGIES
INC., ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,
Petitioners,

v.

LITL LLC,
Patent Owner.

IPR2024-00457
U.S. Patent No. 9,880,715

PETITIONERS' PRELIMINARY REPLY

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
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EXHIBIT LIST

Exhibit	Reference
1001	U.S. Patent No. 9,880,715 (“the ’715 patent”)
1002	File History of the ’715 patent
1003	Declaration of Dr. Henry Houh in Support of Petition (“Houh Decl.”)
1004	Dr. Henry Houh CV
1005	U.S. 90/014,958 Ex Parte Reexamination File History
1006	German Patent Application Publication DE10331185A1 (“Pröll”) with certified translation
1007	U.S. Patent 6,137,468 (“Martinez”)
1008	Joan Preppernau & Joyce Cox, <i>Step By Step Windows Vista</i> , Microsoft Press (Jan. 3, 2007) (“Preppernau”)
1009	U.S. Patent 5,847,698 (“Reavey”)
1010	RESERVED
1011	U.S. Patent Application Publication 2008/0062141 A1 (“Chandhri”)
1012	RESERVED
1013	RESERVED
1014	RESERVED
1015	Declaration of June Munford
1016	Complaint, <i>LiTL LLC v. ASUSTeK Computer Inc.</i> , No. 23-cv-00122 (D. Del. Feb. 1, 2023)
1017	Complaint, <i>LiTL LLC v. Dell Techs. Inc.</i> , No. 23-cv-0121 (D. Del. Feb. 1, 2023)
1018	Complaint, <i>LiTL LLC v. HP Inc.</i> , No. 23-cv-00120 (D. Del. Feb. 1, 2023)
1019	Order Granting Microsoft Intervention, <i>LiTL LLC v. HP Inc.</i> , No. 23-cv-00120 (D. Del. Oct. 16, 2023)

Exhibit	Reference
1020	Scheduling Order, <i>LiTL LLC v. HP Inc.</i> , No. 23-120 (D. Del. Jan. 11, 2024), ECF No. 44
1021	Foley, James D., et al., <i>Computer Graphics Principles and Practice</i> , Second Edition in C (July 1997)
1022	Dino Esposito, <i>New Graphical Interface: Enhance Your Programs with New Windows XP Shell Features</i> , MSDN Magazine
1023	Maintenance & Service Guide, <i>HP Pavilion dv1600 Entertainment Notebook PC</i> (June 2006)
1024	Complaint, <i>LiTL LLC v. Lenovo (United States), Inc.</i> , No. 20-cv-00689 (D. Del. May 22, 2020)
1025	Stipulation of Dismissal, <i>LiTL LLC v. Lenovo (United States) Inc.</i> , No. 20-cv-00689 (D. Del. Feb. 3, 2023)
1026	RESERVED
1027	Dan Littman, <i>Fujitsu LifeBook T3000 Tablet PC review</i> , CNET (Oct. 12, 2003)
1028	Stephanie Bruzese, <i>HP Compaq Tablet PC TC1100 review</i> , CNET (Oct. 12, 2003)
1029	Brian Nadel, <i>Acer TravelMate C110 review</i> , CNET (July 9, 2003)
1030	Mark Harris, <i>OLPC XO-1 (One Laptop Per Child) review</i> , CNET (Jan. 7, 2008)
1031	Ltr. From Lenovo Counsel to Microsoft Counsel re Indemnification
1032	RESERVED
1033	RESERVED
1034	RESERVED
1035	<i>Q&A: Microsoft Unveils Details for Ultra-Mobile Personal Computers</i> , Microsoft News (Mar. 9, 2006)
1036	AU Patent Application Publication 2001/100022 A4 (“Adamson”)
1037	RESERVED
1038	RESERVED
1039	Board Authorization to File Preliminary Reply

I. INTRODUCTION

The Board should reject PO's invitation to exercise its discretion under § 325(d) based on alleged similarities between the Petition and Lenovo's prior *ex parte* reexamination 90/014,958 challenging the '715 Patent ("715 EPR"). The '715 EPR request included four SNQs: (1) Ledbetter, (2) Ledbetter + Pogue, (3) Lane + Ledbetter + Pogue, and (4) Shimura + Ledbetter + Pogue. The Office granted Lenovo's request based on all four SNQs, but the subsequent examination involved only the Ledbetter + Pogue SNQ, with the examiner providing only one sentence of analysis for each of Lane and Shimura in the Notice of Intent to Issue an *Ex Parte* Reexamination Certificate. This IPR includes grounds based on Pröll in combination with the following: (1) Martinez, (2) Martinez + Chandhri, (3) Martinez + Preppernau, (4) Preppernau, and (5) Preppernau + Chandhri. Despite the EPR Examiner's dearth of analysis on Lane, and even though none of the '715 EPR SNQs relied on a combination of Lane (which PO alleges is substantially similar to Pröll) and Pogue (which PO alleges is substantially similar to Martinez and Preppernau) to render obvious the limitation reciting "select...in response to the detected current computer system configuration" in independent claims 1 and 20, PO now urges the Board to exercise its discretion based on Petition's use of Pröll + Martinez and Pröll + Preppernau to render obvious the "select...in response to..." limitation.

The '715 EPR did not involve any of the same art, the art in the Petition is not substantially the same as the art in the '715 EPR, and—even assuming the art was substantially the same—Lenovo did not make, and the Office did not consider, substantially the same arguments as presented in the Petition. Moreover, even assuming there was any substantial similarity between the art and arguments in the '715 EPR and those in the Petition, the Office materially erred because it did not consider the allegedly similar art/arguments to any reasonable extent, did not consider the arguments PO alleges are “substantially similar,” and did not have the benefit of the Petition or Dr. Houh’s analysis. Exercise of discretion under § 325(d) is unwarranted here.

II. FACTS

A. Lenovo’s '715 IPR (IPR2021-00786)

On May 4, 2021, Lenovo filed IPR2021-00786 based on two obviousness grounds: (1) Shimura and Tsuji; and (2) Shimura, Tsuji, and Pogue. *Lenovo (United States) Inc. v. LiTL LLC*, IPR2021-00786, Paper 1, 3 (May 4, 2021). The Board denied institution on the basis that Lenovo’s grounds did not teach a “plurality of views” as the Board construed the term. *Id.*, Paper 6, 23-30 (Oct. 21, 2021). Notably, the Board did not address whether Pogue taught this limitation because Lenovo did not rely on Pogue for this teaching. *Id.*, 29. PO does not argue that the Board should exercise its discretion under § 325(d) in light of Lenovo’s IPR.

B. Lenovo's '715 EPR (No. 90/014,958)

On February 16, 2022, Lenovo filed the request for the '715 EPR and presented obviousness grounds based on Ledbetter, Ledbetter in combination with Pogue, Lane in combination with Ledbetter in view of Pogue, and Shimura in combination with Ledbetter in view of Pogue. EX1005, 947. Relevant here, Lenovo never relied on a combination of Lane and Pogue (nor any other combination with Pogue) to argue that the “select one of the plurality of views...in response to the detected current computer system configuration...” limitation is disclosed by the prior art. *Id.*, 1139-42 (relying on Ledbetter alone), 1176-78 (relying on Lane alone or a combination of Lane and Ledbetter),¹ 1123-25 (relying on Shimura alone or a combination of Shimura and Ledbetter).²

The Office found that all four grounds raised substantial new questions of patentability and ordered reexamination. *Id.*, 1408-30. However, the Examiner issued a rejection based on just one of the SNQs—the combination of Ledbetter and Pogue. *Id.*, 1453-86.

¹ Lenovo's request in the '715 EPR mentions Pogue but provides no argument regarding why it teaches this limitation in combination with another reference.

² *Supra*, n.1.

In a subsequent interview with the Examiner, PO addressed only the Ledbetter-Pogue ground. *Id.*, 1496-515. After the interview, PO's response to the rejection again only addressed the Ledbetter-Pogue ground. *Id.*, 1517-61.

The Examiner subsequently issued a Notice of Intent to Issue an *Ex Parte* Reexamination Certificate on December 20, 2022. *Id.*, 1675-82. With respect to Ledbetter, the Examiner stated that "Ledbetter's loading of different software that displays different visual representations of content does not display a plurality of views." *Id.*, 1680. With respect to Pogue the Examiner stated that "the selection of a plurality of views is not *in response to the detected current computer system configuration or responsive to sensor input.*" *Id.* (emphasis in original); *see also id.*, 1681 ("At best, Pogue's selection of views is based on a user selection and not a computer's configuration.").

The Examiner discussed Lane in just one sentence, stating that it "teaches use of a visual display in laptop format and other formats by changing the orientation from landscape or portrait position, but there is not [sic] explicit teaching of organizing visual representations of content differently." *Id.*

C. The Petition

The Petition's grounds do not rely on Ledbetter, Pogue, Lane, or Shimura. Instead, the Petition demonstrates how the combinations of Pröll and Martinez (Ground 1), Pröll, Martinez, and Chandhri (Ground 2), Pröll, Martinez, and

Preppernau (Ground 3), Pröll and Preppernau (Ground 4), and Pröll, Preppernau, and Chandhri (Ground 5) render obvious the Challenged Claims. Notably, the Petition relies on Pröll in combination with each of Martinez and Preppernau to teach the patent limitations 1[f]: “select one of the plurality of views for display on the computer system **in response to the detected current computer system configuration...**” and 20[f]: “select one of the plurality of views for display on the computer system **in response to the detected current computer system configuration....**”

III. THE BOARD SHOULD NOT EXERCISE ITS DISCRETION UNDER § 325(d)

A. The First Part of *Advanced Bionics* Framework Is Not Met

1. The Petition Does Not Rely on Substantially the Same Art

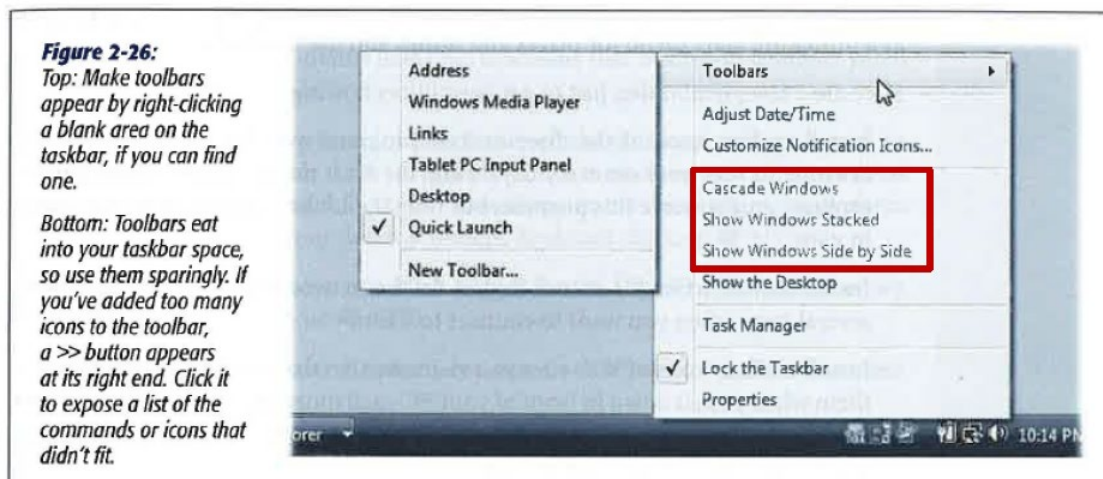
Although the POPR dedicates pages 20 through 29 to superficial comparisons of Pröll to Lane and Pogue to Martinez/Preppernau, these comparisons fail to account for the teachings of the references as a whole. *See also*, POPR, 18-20.

PO’s comparison of Pröll to Lane fails to account for key differences between the references, instead reducing 48 pages of specification between the two references to a characterization that both references disclose “laptops with a plurality of physical configurations” and “sensors to keep displayed content right-way-up.” *Id.*, 20, 22. But there are important differences in the disclosures of these references that are relevant to the challenged claims and cannot be reduced to a comparison of a

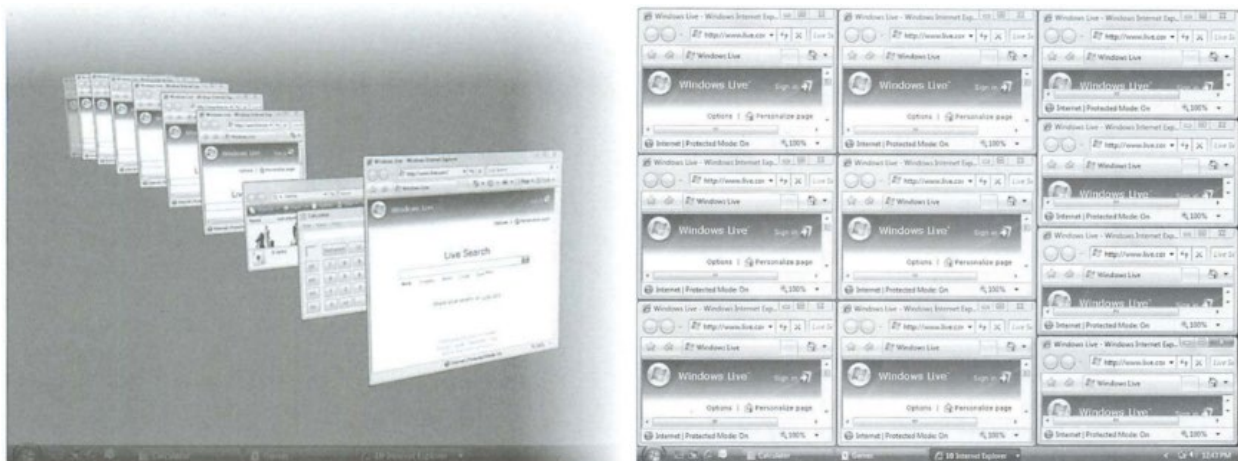
handful of figures and two sentences of analysis. For example, Pröll's switch/sensor is located in its hinge to detect swiveling of the first body of its computer relative to the second body (Pröll, ¶49, claim 18), while Lane's sensor detects the position of the laptop relative to gravity (and, relevant to the challenged claims, is not necessarily indicative of the computer system's configuration). Lane, EX2009, 5-6; *see also Dell Techs. Inc. v. LiTL LLC*, IPR2024-00480, Paper 13, 18-23 (May 28, 2024) (in denying institution, Board noting that Lane's accelerometer provides information only about spatial orientation of its keyboard, not the orientation of its two modules relative to one another).

PO provides an even more high-level comparison of Pogue with Martinez/Preppernau. PO provides a brief characterization of Martinez and Preppernau's disclosure and a comparison to Pogue's figures. POPR, 22-29. This again fails to account for key differences, including, for example, the fact that Martinez's display adjustment is based on movement detected by a sensor (Petition, 23), which supports the motivation to combine with Pröll, which detects movement of the two bodies of a laptop by a sensor (*id.*, 27-30, 34-35 (discussing motivation to combine Pröll and Martinez)); *see also* EX1003, ¶¶69-77, 84-85 (Dr. Houh explaining the same). And although PO at least compared figures from Pröll and Lane side by side (POPR, 21-22), PO's only side-by-side comparison with Pogue is between Pogue and Preppernau's covers (*id.*, 26). This cannot account for the

differences in how Pogue and Preppernau teach the features PO briefly summarizes. For example, Preppernau illustrates various window configurations (e.g., the Cascade view) that a POSITA would have understood to lend themselves to either of Pröll's tablet and conventional laptop orientations. Petition, 78-84; EX1003, ¶¶168-72, 174 (Dr. Houh discussing the same). PO's high-level characterization of Preppernau and comparison to Pogue's figures omits this important visualization disclosed in Preppernau, as is apparent from the figure comparison below:



POPR, 28 (citing Pogue, Fig. 2-26).



Petition, 81 (citing Preppernau, 50-51).

2. The Petition Does Not Raise Substantially the Same Arguments

PO's assertion that "Petitioner's grounds make substantially the same argument Lenovo made" is plainly incorrect. Lenovo did not rely on a combination of Lane and Pogue (or indeed any combination with Pogue) for the "select...in response to the detected current computer system configuration" limitation on which PO anchors its arguments. POPR, 30. PO's citations to the '715 EPR prove as much. *Id.* (citing EX1005, 1177 (discussing a combination of Lane, Ledbetter, and Pogue but only relying on the teachings of Lane and/or Ledbetter to disclose the "select...in response to the detected current computer system configuration" limitation and cross-referencing EX1005, 1033-36 (relying on a combination with Pogue for only the limitations reciting "display a plurality of views..." and "wherein the computer content includes at least one of selectable digital content...")); *see also*, EX1005, 1139-42 (relying on Ledbetter alone for "select...in response..." limitation), 1123-25 (relying on Shimura alone or a combination of Shimura and Ledbetter).

Accordingly, the Petition does not rely on substantially the same art as the '715 EPR because there are key differences between Pröll and Lane, as well as Martinez/Preppernau and Pogue. Neither does it rely on substantially the same arguments because Lenovo never argued that a combination with Pogue teaches the "select...in response..." limitation, which is the limitation as to which PO alleges

the Petition's arguments are substantially the same. Thus, part one of *Advanced Bionics* is not met, and the Board need not reach part two.

B. The Second Part of *Advanced Bionics* Is Not Met

If the Board nonetheless decides to consider part two of the *Advanced Bionics* framework, the Office erred in a manner material to the patentability of the challenged claims.

Under *Becton, Dickinson* factor (c), even assuming, *arguendo*, there is substantial similarity between (1) Lane and Pröll and (2) Pogue and Martinez/Preppernau, the Office did not consider the Lane-Pogue combination PO alleges is substantially the same as the Petition's combinations. As explained in Section II.B, Lenovo's Ledbetter-Pogue combination was the only one discussed in the Non-Final Rejection, the Interview, and PO's Response. It was not until the Notice of Intent to Issue a Reexamination Certificate that the Examiner even mentioned Lane, doing so in only a sentence that is unrelated to the arguments that PO alleges are substantially the same as in the Petition. *See* Section II.B. Further, as explained in Section III.A.2, Lenovo did not even present what PO alleges to be "substantially the same arguments" as in its EPR request because Lenovo never argued that Lane combined with Pogue (or indeed any other reference combined with Pogue) teaches the "select...in response to..." limitation. Thus, the Examiner did not evaluate Lane in combination with Pogue in the manner alleged by PO.

Under *Becton, Dickinson* factor (e), Petitioner has explained how the Examiner erred in evaluating Lane and Pogue (again assuming, *arguendo*, substantial similarity between those references and the Petition’s asserted art) because the Examiner did not consider a combination of Lane and Pogue for teaching the “select...in response to...” limitation. The Petition, supported by the testimony of Dr. Houh, explains why a POSITA would have been motivated to make the Pröll-Martinez and Pröll-Preppernau combinations. *See* Petition, 20-21 (citing Houh Decl. ¶¶60-67); *id.*, 42-45 (citing Houh Decl. ¶¶107-09). The Petition also explains how each combination renders obvious the Challenged Claims, including the “select...in response to...” limitation. *Id.*, 20-21, 29, 51.

Finally, under *Becton, Dickinson* factor (f), additional evidence in the form of Dr. Houh’s testimony warrants consideration by the Board because the examiner in the ’715 EPR did not have the benefit of Dr. Houh’s analysis regarding why the Pröll-Martinez and Pröll-Preppernau combinations, along with the other grounds in the Petition, render obvious the Challenged Claims. *See, e.g., Mylan Pharms. Inc. v. Merck Sharp & Dohme Corp.*, IPR2020-00040, Paper 21, 20 (May 12, 2020) (declining to exercise discretion to deny institution under § 325(d) in part because the Petition presented expert testimony regarding the prior art that was not before the Examiner).

Dated: July 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2024 true and correct copies of the foregoing PETITIONERS' PRELIMINARY REPLY was served via electronic mail upon the following counsel of record for Patent Owner:

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