

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.

IPR2024-00458
U.S. Patent No. 10,564,818

PETITIONERS' PRELIMINARY REPLY

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P.O. Box 1450
Alexandria, VA 22313-1450

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EXHIBIT LIST

Exhibit	Reference
1001	U.S. Patent No. 10,564,818 (“the ’818 patent”)
1002	File History of the ’818 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	RESERVED
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)

Exhibit	Reference
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)
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	RESERVED
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	File History of U.S. Patent No. 9,880,715
1027	Fujitsu LifeBook T3000 Tablet PC review: Fujitsu LifeBook T3000 Tablet PC, available at https://www.cnet.com/reviews/fujitsu-lifebook-t3000-tablet-pc-review/
1028	HP Compaq Tablet PC TC1100 review: HP Compaq Tablet PC TC1100, available at https://www.cnet.com/reviews/hp-compaq-tablet-pc-tc1100-review/
1029	Acer TravelMate C110 review: Acer TravelMate C110, available at https://www.cnet.com/reviews/acer-travelmate-c110-review/
1030	OLPC XO-1 (One Laptop Per Child) review: OLPC XO-1 (One Laptop Per Child), available at https://www.cnet.com/reviews/olpc-xo-1-one-laptop-per-child-review/

Exhibit	Reference
1031	Microsoft Indemnity Request
1032	RESERVED
1033	RESERVED
1034	RESERVED
1035	Q&A Microsoft Unveils Details for Ultra-Mobile Personal Computers
1036	Australia Patent Application Publication AU2001100022A4
1037	RESERVED
1038	RESERVED
1039	June 12, 2024 email from Board authorizing filing of Preliminary Reply

I. INTRODUCTION

The claims of the '818 patent have never been challenged in a post-grant proceeding, nor has their validity been adjudicated in any other venue. Petitioners challenge claims 1-4 and 11-14 (“Challenged Claims”) as obvious over the combinations of Pröll (EX1006) and Martinez (EX1007) and Pröll and Preppernau (EX1008) (collectively, the “Asserted Prior Art”). Only Martinez was before the Examiner during prosecution, which was cited in an IDS and never applied by the Examiner. EX1002, 193, 372; EX1026, 239, 388. The Petition provides a detailed explanation of the grounds and is supported by the expert testimony of Dr. Henry Houh (EX1003).

Despite the Petition’s strong showing of invalidity, PO attempts to distract from the merits of the Petition by including a multiple page discussion regarding prior proceedings involving the parent of the '818 patent—U.S. Patent No. 9,880,715 (“’715 patent”). POPR, 11-23.

First, PO notes that the Board previously denied IPR2021-00786, which Lenovo filed against the '715 patent (“’715 IPR”). *Id.*, 11-12. Aside from its relevance to a claim construction issue that the Petition has addressed, PO appears to admit that the '715 IPR is irrelevant to the Board’s analysis of the merits of the Petition. *See id.*, 12.

Second, PO addresses *ex parte* reexamination 90/014,958 involving the '715 patent (“’715 EPR”), which the CRU initiated at the request of Lenovo. *Id.*, 12-23. Specifically, PO argues that two references in the '715 EPR—Lane and Pogue—are substantially the same as Pröll and Martinez/Preppernau, respectively, and that the Office confirmed that the art does not render obvious a limitation that PO alleges is similar in both the '715 and '818 patents. *Id.* Thus, PO argues that the '715 EPR is “informative” because “[t]he Office rejected an obviousness argument advanced by Lenovo that largely tracks the arguments Petitioners advance here,” and “the Board should reject Petitioners’ obviousness arguments for the same reasons.” *Id.*, 12.

PO does not cite a single decision, regulation, or statute to support this bold request. This is not surprising, as the '715 EPR involved a different patent and different prior art. Moreover, Lenovo filed the request related to the '715 EPR in February 2022, which is approximately two years after the '818 patent issued in February 2020. Thus, it would have been impossible for the Office to have considered the arguments in the '715 EPR during prosecution of the '818 patent. For these reasons alone, the Board should reject PO’s invitation to substitute the analysis in the '715 EPR for its own. Nevertheless, to the extent the Board deems the '715 EPR relevant, e.g., under § 325(d), the '715 EPR does not counsel against institution because the Petition presents new arguments and expert testimony that the Office has not previously considered.

II. FACTS

A. Lenovo's '715 IPR (IPR2021-00786)

On May 4, 2021, Lenovo filed the '715 IPR 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.

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.

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 grounds—the combination of Ledbetter and Pogue. *Id.*, 1453-86.

In a subsequent interview with the Examiner, PO addressed only the Ledbetter-Pogue ground. *Id.*, 1496-1515. 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. Relevant to PO’s arguments in the POPR, the Examiner stated with respect to Pogue—which PO alleges is substantially the same as Martinez and Preppernau—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.*, 1680 (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.”).

As to Lane—which PO alleges is substantially the same as Pröll—the Examiner stated 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 the Ledbetter, Pogue, Lane, or Shimura references at issue in the ’715 EPR. Instead, the Petition demonstrates how the combinations of Pröll and Martinez (Ground 1) and Pröll and Preppernau (Ground

2) render obvious the Challenged Claims, including the limitations that PO alleges are similar to the limitations at issue in the '715 EPR ('818 patent limitations 1[c]: “selecting one of the plurality of views for display on the computer system **in response to** the detected current computer system configuration” and 11[c]: “selecting one of the plurality of views for display on the computer system **in response to** the detected current computer system configuration”).

III. THE '715 IPR AND '715 EPR DO NOT SUPPORT REJECTING PETITIONERS' OBVIOUSNESS ARGUMENTS

A. The '715 IPR and '715 EPR Are Not Relevant to Issues Regarding Discretionary Denial

PO does not cite a single decision, regulation, or statute to support its request that the Board reject Petitioners' obviousness arguments. The prior proceedings are plainly irrelevant to the Board's analysis under *General Plastic*, which concerns “the filing of follow-on petitions after the Board's *denial* of one or more first-filed petitions on **the same patent**.” *NFL Enters. LLC v. OpenTV, Inc.*, IPR2017-02092, Paper 7, 17 (Mar. 19, 2018) (citing *Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, 15 (Sept. 6, 2017)) (bold emphasis added). As to § 325(d), although panels in some IPRs have considered related patents in the analysis, the circumstances here counsel against doing so. As previously discussed, the relevant events in the '715 EPR—and the '715 IPR for that matter—occurred after the '818 patent's issuance, and the Office could not have considered them

during the '818 patent's prosecution. In this regard, PO's request is akin to requesting that the Board deny institution because the Office considered similar arguments in a child application, and the Board has declined to apply § 325(d) in such circumstances. *Cf. Apple Inc. v. Seven Networks, LLC*, IPR2020-00285, Paper 10, 30-31 (July 28, 2020) (“[W]e are not persuaded that we should exercise our discretion under § 325(d) in this Petition by Patent Owner’s assertion regarding the prosecution of a child application, a separate and distinct application with separate and distinct claims from those in this Petition (albeit Patent Owner contends that the claims are ‘substantially similar’). ... Further, we determine whether to exercise our discretion to deny based on the framework set forth in the precedential decision in *Advanced Bionics*. *Advanced Bionics* does not expressly extend the 325(d) inquiry to art considered in a related application. ... As Petitioner points out, ‘the references relied upon in this Petition ... were not applied during prosecution of the [challenged patent].’”).

B. Even if the Board Deems the '715 IPR and '715 EPR Relevant, They Do Not Support Rejecting Petitioners' Obviousness Arguments

1. The '715 IPR Does Not Support Rejecting Petitioners' Obviousness Arguments, and PO Concedes as Much

PO mentions the '715 IPR, but only to say that it is “relevant to the claim interpretation of the ‘plurality of views.’” POPR, 12. The Petition has addressed the claim construction issue (Petition, 8-10), and the '715 IPR is otherwise irrelevant to

the Board’s analysis. Indeed, as noted, the Board did not consider a combination with Pogue for the “plurality of views” limitation because Lenovo did not rely on Pogue for this teaching. *Lenovo (United States) Inc.*, IPR2021-00786, Paper 6, 29 (“Even if Pogue teaches a plurality of views (within the claim construction we provide above), Petitioner does not rely on Pogue to meet [this limitation]”).

2. The ’715 EPR Does Not Support Rejecting Petitioners’ Obviousness Arguments Because the Petition Presents New Art, Arguments, and Expert Testimony That the Office Has Not Previously Considered

The Petition explains in detail the disclosures of Pröll, Martinez, and Preppernau references and the motivation to combine, with citations to the expert declaration of Dr. Houh. *See* Petition, 20-21 (explaining motivation to combine Pröll and Martinez and citing Houh Decl. ¶¶60-67); *id.*, 28-30 (explaining how the Pröll/Martinez combination discloses 1[c] and citing Houh Decl. ¶¶79, 84, and 85); *id.*, 38 (with respect to analysis of 11[c] for the Pröll/Martinez ground, referring back to 1[c] and citing Houh Decl. ¶98); *id.*, 42-45 (explaining motivation to combine Pröll and Preppernau and citing Houh Decl. ¶¶107-09); *id.*, 50-51 (explaining how the Pröll/Preppernau combination discloses 1[c] and citing Houh Decl. ¶¶117-19); *id.*, 58 (with respect to analysis of 11[c] for the Pröll/Preppernau ground, referring back to 1[c] and citing Houh Decl. ¶131).

Importantly, and more specifically, both the Petition and Dr. Houh’s declaration explain why a POSITA would have been motivated to combine the

references to select a view from among a plurality of views in response to the current physical configuration of the computer. *See, e.g., id.*, 20-21 (“Rather than use Martinez’s shake gesture, a POSITA would have been motivated to trigger Martinez’s views based on Pröll’s switch indicating rotation of its two halves by more or less than 180°. Houh Decl., ¶66. Modifying Pröll by adding the teachings of Martinez would have been desirable to allow for a more user-friendly GUI organization when Pröll’s keyboard is blocked (i.e., when Pröll’s two halves are rotated by more than 180° relative to each other). *Id.*, ¶65.”); *id.*, 29 (“[A] POSITA would have been motivated to trigger the display of Martinez’s views (‘selecting’) based on Pröll’s switch indicating rotation of Pröll’s two halves by more or less than 180°. For example, Martinez teaches that its icons and windows can be ‘arranged in any preselected manner the user or programmer desires’ ..., and it would have been within the skill level of a POSITA to program the Pröll-Martinez device to display (‘select’) the most-appropriate view from those preselected views based on whether the keyboard is or is not operable.”); *id.*, 51 (“A POSITA would have been motivated to combine Pröll and Preppernau to predictably improve the usability of Pröll’s system by displaying different views that reorganize the icons and windows, including based on the configuration of the laptop device. *See* Houh Decl., ¶119.”).

Despite this, PO argues that the ’715 EPR is “informative because the Office rejected an obviousness argument advanced by Lenovo that largely tracks the

arguments Petitioners advance here” and “[t]he Board should reject Petitioners’ obviousness arguments for the same reasons.” POPR, 12. Not so. Lenovo never argued that a combination of Lane (which PO alleges is substantially the same as Pröll) and Pogue (which PO alleges is substantially the same as Martinez/Preppernau) teaches the “select one of the plurality of views...in response to the detected current computer system configuration” limitation. EX1005, 1139-42 (relying on Ledbetter alone for “select...in response...” limitation), 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 POPR dedicates pages 12 through 21 to superficial comparisons of Pröll to Lane and Pogue to Martinez/Preppernau. PO then urges the Board to ignore the Petition’s analysis and instead adopt the Office’s conclusion in the ’715 EPR. POPR, 22-23 (“[T]he Office found that disclosure of a computer that can be configured into different configurations (like Lane and Pröll) together with disclosure that Windows Vista has different arrangements of windows a *user* can select (as in Pogue, Martinez and Preppernau) does not render obvious claims that recite selecting a view from

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.

among a plurality of views *in response to the current physical configuration* of the computer as the '715 Patent claimed.”) (emphasis in original).

Even assuming *arguendo* that the Asserted Prior Art and the '715 EPR art are similar at a high level, PO's superficial comparisons to the references in the '715 EPR and the Examiner's statements regarding them do not support the relief PO seeks. As an initial matter, as summarized in Section II.B, the Examiner's analysis focused on the teachings of the references in isolation. Thus, the Examiner failed to address whether a POSITA would have been motivated in view of the combined teachings of Lane and Pogue to “select[] one of the plurality of views...in response to the detected current computer system configuration.” Moreover, and as previously explained, the Petition presents arguments and expert testimony that were not before the Examiner regarding the prior art and the motivation to combine a reference like Pröll with Martinez/Preppernau to render obvious selecting a view from among a plurality of views in response to the current physical configuration of the computer. Accordingly, the Board should disregard PO's urging to adopt the Examiner's prior conclusions not based on substantially the same art or arguments. *See, e.g., Mylan Pharms. Inc. v. Merck Sharp & Dohme Corp.*, IPR2020-00040, Paper 21, 20 (May 12, 2020) (in the context of a § 325(d) analysis, declining to exercise discretion to deny institution in part because the Petition presented expert testimony regarding the prior art that was not before the Examiner).

Dated: June 24, 2024

Respectfully submitted,

/ Jessica Kaiser /

Jessica Kaiser

Reg. No. 58,937

Attorney for Petitioners

Perkins Coie LLP

1900 Sixteenth Street, Ste. 1400

Denver, CO 80202-5255

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 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:

Richard F. Giunta: RGiunta-PTAB@WolfGreenfield.com
Gerald B. Hrycyszyn: GHrycyszyn-PTAB@WolfGreenfield.com

Dated: June 24, 2024

Respectfully submitted,

/ Jessica Kaiser /

Jessica Kaiser

Reg. No. 58,937

Perkins Coie LLP
1900 Sixteenth Street, Ste. 1400
Denver, CO 80202-5255