

Filed on behalf of Patent Owner by:

Paper No. ____

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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.

Case No. IPR2024-00458

Patent No. 10,564,818

PATENT OWNER'S PRELIMINARY SUR-REPLY

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I. INTRODUCTION

Petitioners represented to the Board that “good cause exist[ed] for a preliminary reply because ... Petitioners could not have anticipated Patent Owner’s characterization of the art in previous challenges to the ’715 Patent and this proceeding.” EX1039, 1. Yet, Petitioners’ preliminary reply (Paper 15, “Reply”) never identifies any characterization of the prior art that Petitioners allege LiTL got wrong. The reason is clear – LiTL’s POPR accurately characterized the prior art.

Instead of using the Reply for the purpose that Petitioners represented they needed it for, Petitioners devote much of the Reply to regurgitating the Petition’s merits-based arguments. Those Petition-based arguments fail for the reasons LiTL explained in its POPR.

Petitioners also build up and knock down strawmen. Petitioners argue that discretionary denial would not be appropriate under § 325(d) or the Board’s *General Plastics* framework. But LiTL never argued for discretionary denial. Petitioners also argue that the Board should not substitute the Office’s analysis from the reexamination of the ’715 Patent (the “’715 EPR”) for the Board’s own analysis of the Petition. But LiTL never suggested that the Board do any such thing.

Petitioners argue that “the ’715 EPR does not counsel against institution” because the Petition’s exact same prior art and expert testimony was not before the

Office during the '715 EPR. Reply, 2. LiTL never argued that they were. Rather, LiTL explained that Petitioners' prior art and arguments were *substantially* the same as those the Office considered before concluding that claims requiring selecting a view "in response to [a] detected current computer system configuration" – a limitation common to LiTL's '715 and '818 Patents – were not obvious. Petitioners fail to identify a single meaningful difference between Petitioners' art, expert testimony and arguments, and the evidence and arguments the Office considered during the '715 EPR. The central reexamination unit ("CRU") got it right during the '715 EPR. The Board should deny institution for the reasons explained in the POPR because Petitioners failed to meet their burden of establishing any challenged claim unpatentable.

II. THE OFFICE'S ANALYSIS IN THE '715 EPR IS INFORMATIVE

LiTL explained that the "ex parte reexamination of the '715 Patent is [] informative because the Office rejected an obviousness argument advanced by Lenovo that largely tracks the arguments Petitioners advance here." Paper 14 ("POPR"), 12. LiTL did not ask the Board to substitute the analysis of the CRU for its own. Reply, 2. Instead, LiTL explained that the "Board should reject Petitioners' obviousness arguments for the same reasons" the CRU rejected Lenovo's substantively similar obviousness arguments. POPR, 12.

Petitioners do not meaningfully refute that the CRU considered substantially the same prior art and arguments that the Petition advances before finding that the prior art did not render obvious claims requiring selecting a view “in response to [a] detected current computer system configuration” – just like the challenged ’818 Patent claims do. *Id.*, 11-23. Petitioners allege that LiTL’s “comparisons of Pröll to Lane and Pogue to Martinez/Preppernau” were somehow “superficial.” Reply, 9. Yet, Petitioners fail to identify any meaningful difference between these prior art references.

Petitioners did not – because they could not – dispute that the Office previously considered Lenovo’s assertion that a prior art reference (Lane) that discloses a computer configurable into a plurality of physical configurations (like Pröll does), together with a reference (Pogue) that discloses multiple *user*-selectable views (like Martinez and Preppernau do), does not render obvious a claim that requires selecting a view “in response to [a] detected current computer system configuration.” POPR, 11-23; *see also id.*, 22 (*citing* EX1005, 1680-1681 where the Office found that even if Pogue’s Windows Vista operating system disclosed a plurality of views, Pogue teaches selecting a view “based on a user selection and not a computer’s configuration” and Lane does “not cure [Pogue’s] deficiencies” because Lane has no “teaching of organizing visual representations of content differently”).

The Office's analysis in the '715 EPR is informative because the '818 Patent claims have an identical limitation (Limitations 1[c] and 11[c]) to the '715 Patent limitation that the Office found distinguished over the prior art and because Petitioner's cited prior art and arguments are substantially the same as those the Office considered during the '715 EPR. POPR, 11-23.

LiTL never argued that the Office's analysis in the '715 EPR binds the Board. Reply, 5. But that does not make the Office's analysis in the '715 EPR irrelevant. Petitioners' grounds are not "strong." Reply, 1. They are based on the same hindsight assertion that Lenovo advanced in the '715 EPR – the allegation that a POSA would have combined the prior art to select a view in response to a detected computer system configuration despite that claim limitation being entirely missing from the prior art. POPR, 26-35. The CRU's rejection of that very same argument is informative. The "Board should reject Petitioners' obviousness arguments for the same reasons" the Office rejected Lenovo's substantively similar obviousness arguments during the '715 EPR, because Petitioners' arguments are based on nothing but improper hindsight. POPR, 12.

III. PETITIONER'S REPLY WASTES THE BOARD'S RESOURCES

Instead of identifying any unanticipated "characterization of the art in previous challenges to the '715 Patent and this proceeding" in the POPR (EX1039, 1), Petitioners use the Reply to regurgitate their merits-based arguments and knock

down strawmen arguments LiTL never advanced. Reply, 2 (arguing the Board should not substitute the CRU’s analysis for its own); Reply, 5-6 (arguing against discretionary denial “under *General Plastic*” and § 325(d)); Reply, 7-8 (regurgitating the Petition’s merit-based arguments).

A. Petitioners’ Regurgitated Merits-Based Arguments Fail

Petitioners’ assertion that “PO does not cite a single decision, regulation, or statute to support its request that the Board reject Petitioners’ obviousness arguments” (Reply, 5) is extraordinary. The POPR cited extensive authority demonstrating that Petitioners failed to carry their burden to demonstrate any claim unpatentable. POPR, 22-74 (citing authority). Petitioners’ regurgitated merits-based arguments fail for the reasons LiTL explained in the POPR.

B. LiTL’s POPR Never Argued for Discretionary Denial

The Reply argues that the Board should not exercise its discretion to deny institution of the Petition as a follow-on petition under *General Plastics*, nor exercise its discretion to deny institution under § 325(d). Reply, 5-6. Petitioner’s arguments devoted to discretionary denial are irrelevant obfuscation because LiTL never argued for discretionary denial.

C. LiTL Never Argued that Petitioners’ Art and Arguments Were the *Same* as Those the Office Addressed in the ‘715 EPR

After pages of string cites repeating the Petition’s arguments (Reply, 7-9), Petitioners argue that the Office’s analysis during the ‘715 EPR is irrelevant

because the Petition presents “new” prior art, arguments and expert testimony that were not before the Office in the ‘715 EPR. Reply, 10 and 7 (“the Petition Presents New Art, Arguments, and Expert Testimony”). LiTL never argued that Petitioners’ art and arguments were identical to those the Office considered during the ‘715 EPR. POPR, 11-23. Rather, LiTL explained that Petitioners’ prior art and arguments were *substantially the same* as those the Office considered during the ‘715 EPR. *Id.* Petitioners never meaningfully refute this.

Petitioners fail to identify a single material difference between Lane and Pröll, or between Pogue and Martinez or Preppernau. Petitioners argue that the CRU only considered Lane and Pogue in “isolation.” Reply, 10. Not so. The CRU found that references teaching a configurable computer (“Lane and Shimura”) “do not cure the deficiencies with respect to” references that teach only *user*-selectable views (“Ledbetter and Pogue”) because none of these prior art references teach selecting a view in response to a detected computer configuration as claimed. POPR, 22 (quoting EX1005, 1680-1681). The CRU considered a *combination* including Lane and Pogue – this was Ground 3 in Lenovo’s request. EX1005, 1151 (alleging “Lane in combination with Ledbetter and Pogue renders obvious claims 1-20 of the ‘715 Patent”) (capitalization normalized). The CRU found that Lane and Pogue in *combination* did not render obvious claims that – like the claims challenged in this IPR – require selecting a view in response to a detected

current computer system configuration. *Id.*, 1680-1681 (finding that even if Pogue’s Windows Vista operating system disclosed a plurality of views, Pogue teaches selecting a view “based on a *user selection* and *not a computer’s configuration*” and Lane does “not cure [Pogue’s] deficiencies” because Lane has no “teaching of organizing visual representations of content differently”).

IV. CONCLUSION

The Petition’s grounds allege that a reference that teaches a configurable computer but nothing about a plurality of views, in combination with a reference that teaches only *user*-selectable views, somehow renders obvious claims that require selecting a view in response to a detected computer configuration. The Office rejected this baseless hindsight assertion during the ‘715 EPR. The Board should do the same.

Date: July 5, 2024

Respectfully submitted,

/ Richard Giunta/

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on July 5, 2024, I will cause a copy of the foregoing document, including any exhibits filed therewith, to be served via electronic mail, as previously consented to by Petitioner, upon the following:

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