

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

PICTIVA DISPLAYS INTERNATIONAL LTD.,
Patent Owner.

Case No. IPR2024-00855

Patent No. 8,314,547

PETITIONER'S PRELIMINARY REPLY

I. Igarashi is prior art under 35 U.S.C. § 102(b).

The '547 patent issued from a PCT application filed on August 4, 2008. Ex. 1001. U.S. Patent Application Publication 2007/0023734 (“Igarashi”) published on February 1, 2007, more than one year prior to the date of the PCT application. Ex. 1004. Igarashi therefore qualifies as prior art under pre-AIA 35 U.S.C. § 102(b).

Patent Owner erroneously attempts to rely on the September 9, 2007 filing date of a German patent application, POPR at 2, 8–26, disregarding that the relevant priority date is “the date of the application for patent *in the United States*,” 35 U.S.C. § 102(b) (emphasis added). It is well established that a patentee cannot rely on a foreign application for purposes of avoiding 102(b) prior art. *See, e.g.,* M.P.E.P. § 2133.02 at II (“A rejection under pre-AIA 35 U.S.C. 102(b) cannot be overcome by ... foreign priority dates”) (citing *In re Foster*, 343 F.2d 980, 984 (CCPA 1965)). As the Board has explained, “[t]he ‘statutory bar’ date, or critical date, of one year prior to the date of the United States application set forth in pre-AIA 102(b) is not overcome or extended by a foreign priority claim.” *Unified Patents, LLC v. 2BCom, LLC*, IPR2020-00996, Paper 65, at 10–11 (Jan. 10, 2023). Patent Owner’s reliance on the German patent application is therefore misplaced.

II. The Board should not deny institution under 35 U.S.C. § 325(d).

The Board applies a two-part framework in evaluating a Patent Owner’s arguments under Section 325(d). *Advanced Bionics, LLC v. Med-El*

Electromedizinische Geräte GmbH, IPR2019-01469, Paper 6 at 7 (Feb. 13, 2020) (precedential). First, the Board considers whether the same or substantially the same art or arguments were previously presented to the Office. If so, in the second part, the Board considers whether Petitioner has demonstrated that the Office erred in its evaluation of that art.

Patent Owner’s argument fails at the first step. The Office has not considered any of the art cited in the Petition or anything substantially the same. The POPR discusses the Kobori reference (Ex. 1008) that was cited during prosecution of the ’547 patent. POPR at 88. But the two primary references cited in the Petition—Igarashi (Ex. 1004) (Grounds I–III) and Shiotani (Exs. 1005, 1011) (Ground IV–VI)—are unrelated to Kobori. The inventions described and claimed in Igarashi and Shiotani are independent of Kobori. Moreover, the arguments in the Petition, and supported by the expert declaration of Dr. Gary Eden (Ex. 1003), are based on the specific teachings of Igarashi and Shiotani and are therefore not the same, nor substantially the same, as the arguments previously considered by the Office.

Patent Owner’s attempt to analogize these references to Kobori also fails. Kobori uses an “organic light emitting device 10M of *multicolor* light emission for emitting *blue, red, and green* light, or of white light emission.” Kobori, ¶[0033] (emphasis added). Thus, as explained in the Petition, its red color filter (“filter layer”) is not transparent to the blue light emission or the green light emission of its

“multicolor” (or white) light emission. *See* Petition at 8–9. This differs markedly from both Igarashi and Shiotani, which teach the use of *blue* emitting OLEDs that they describe as emitting “light in the blue region,” Igarashi, ¶[0088], and “generat[ing] blue light,” Shiotani, ¶[0022]. That is, unlike Kobori, neither Igarashi nor Shiotani teach that their OLEDs should produce “multicolor light emission.”

Patent Owner’s argument that Igarashi and Shiotani’s OLEDs emit green light is flawed. *First*, it ignores the references’ express teachings, which are to the contrary. Igarashi states that “[i]n particular, in this embodiment, light in the blue region having a wavelength range of 450 to 470 nm is emitted” by the OLED. Igarashi, ¶[0088]. Similarly, claim 18 recites a display device “wherein blue light is emitted from the organic EL element.” *Id.*, claim 18. Shiotani likewise teaches that its OLED “generates blue light.” Shiotani, ¶[0022]. Neither reference states that the OLED should emit blue and green light.

Second, Patent Owner improperly attempts to limit Igarashi and Shiotanti to exemplary emitter materials that are discussed in those references, arguing about alleged properties of BCzVBi and DPVBi. *See* POPR at 89–90. But nothing in Igarashi or Shiotani requires that their displays use those particular emitter materials or otherwise requires them to include OLEDs with “significant emissions in the 500-540nm green light range.” *Id.* at 89. Indeed, Patent Owner’s own expert acknowledges that art at the time included blue organic emitters having “narrow

emission bandwidths between 350-450 nm.” Ex. 2010 at ¶¶ 41–42; *see also id.* at ¶ 43 (“[I]n the 2006-2007 time period, there were known OLED systems whose emission spectra do not have significant emission at wavelengths above 500 nm.”).

III. The Board should not deny institution under 35 U.S.C. § 314(a) and *Fintiv*.

The ’547 patent is now asserted against Samsung in two matters, *Pictiva Displays International Ltd. v. Samsung Electronics Co., Ltd.*, Case No. 2:23-cv-00495 (E.D. Texas) (the “-495 matter”), and *Pictiva Displays International Ltd. et al., v. Samsung Elecs. Co., Ltd. et al.*, No. 2:24-cv-00532 (E.D. Texas) (“-532 matter”). Both cases remain in early stages, and there is significant uncertainty as to whether the -495 matter in particular will continue.

Patent Owner argues for discretionary denial in view of -495 matter, in which trial is currently scheduled for August 4, 2025. Yet that lawsuit remains in an early stage, with little discovery activity beyond service of contentions and initial discovery requests. Patent Owner’s only argument on *Fintiv* factor three is that by the institution date, “the parties would have filed their joint claim construction statement and invested in claim construction discovery.” POPR at 91. This is not a material investment in the litigation.

Petitioner also filed this IPR less than two months after service of infringement contentions on March 11, 2024, demonstrating that it acted with diligence. And as noted in the Petition, Patent Owner would need to narrow the

asserted claims in advance at any trial, such that a trial could not resolve all of Petitioner’s claim challenges. Discretionary denial is further inappropriate because the Petition presents compelling evidence of unpatentability, for the reasons shown in Section VIII of the Petition.¹

Moreover, there is significant uncertainty whether the -495 matter can proceed to trial as currently scheduled. On July 26, 2024, Samsung filed a motion to dismiss due to the plaintiff’s lack of standing. *See* -495 matter, Dkt. 62 (redacted motion). Patent Owner also joined with an entity named Key Patent Innovations Ltd. to file a replacement lawsuit on July 12, 2024 (the -532 matter). That replacement suit remains in the pleading phase, with the answer due November 4, 2024 (shortly before the due date for the Institution Decision) and no schedule has yet been issued.

Exercising discretionary denial would be particularly inappropriate here, given the early stages of both matters, and the uncertainty as to whether the -495 matter can actually proceed to a potential trial. Petitioner will seek to apprise the Board of any material developments before the institution deadline.

¹ Patent Owner also argues for denial because “Grounds 1-3 would involve complicated swear-behind analysis, and Patent Owner does not have access to the inventors.” POPR at 92. This is incorrect, because the asserted prior art qualifies under 35 U.S.C. § 102(b), as discussed in Section I above.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Petitioner's Preliminary Reply was served by electronic mail on the following counsel of record for patent owner:

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