

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 IPR2024-01094

Patent 8,558,223

**PETITIONER'S AUTHORIZED RESPONSE TO DIRECTOR REVIEW
REQUEST**

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I. INTRODUCTION

Patent Owner's Request for Director Review is a thinly veiled attempt to relitigate issues related to technical disclosures that the Board fully considered and decided in Petitioner's favor. Having failed to persuade the Board on the merits, Patent Owner resorts to accusing Petitioner of gamesmanship, including alleging failures by Petitioner to provide documents to Patent Owner, which already had them. Patent Owner likewise seeks to terminate this proceeding based on an alleged inconsistency between the Board's carefully considered findings of unpatentability and a jury verdict of non-infringement by Petitioner's related company (Samsung Electronics) that did not address the validity of any claim of the '223 patent.

There is no inconsistency or misconduct by Petitioner, and Patent Owner's attempts to cast doubt on the Board's careful reasoning are unfounded. The Board concluded that the challenged claims of the '223 patent were unpatentable as obvious over Ma. FWD 2. That is not inconsistent with any jury determination—the jury did not even address validity, nor did it provide any particular basis on which it found noninfringement. Patent Owner attempts to create inconsistencies by extracting out-of-context snippets from testimony by experts hired by different Samsung entities represented by different counsel. The testimony was made on a wide variety of issues, including noninfringement, by experts focusing on those issues. Patent Owner's attempts to manufacture “inconsistencies” where none exist in an effort to

undermine the Board’s well-reasoned decision based on (but unpersuaded by) the record Patent Owner presented to it, should fail.

Prior to institution, Patent Owner did not even challenge the merits of whether Ma satisfied claim 1 (containing both the “joint vaporization” and “central metal atom” terms Patent Owner now addresses). Rather, Patent Owner’s only argument for claim 1 (among others) was that Ma was not prior art (POPR at 36–68) – an argument that the Board has now fully rejected. FWD 9–14. Nor did Patent Owner advocate for any particular construction of any claim term, as the Board acknowledged (*see* FWD 9, observing “[n]either party indicates that an express construction for any claim term is necessary to resolve the disputes at hand. Pet. 15, *see generally* Resp.”), although the Board did address Patent Owner’s arguments regarding “metal complex” and “central metal atom.” FWD 9, 16–17.

Petitioner’s arguments here concerning the technical disclosures of Ma are not inconsistent with those raised in the District Court litigation. Petitioner respectfully requests that the Director deny Patent Owner’s Request for Director Review.

II. BACKGROUND

In its Final Written Decision, the Board carefully considered all relevant evidence before it and found that the Ma reference renders obvious claims 1, 2, 6 and 8–14 of the ’223 patent. Ma disclosed the creation of a layer in an organic electronic device using the compounds LiQ and BPhen, as part of an experiment

assessing current densities of devices using different doping percentages of LiQ.

As the Board found, Ma discloses the process by which the layer comprising LiQ and BPhen is formed, observing that the details disclosed (a “co-deposited” layer of “BPhen:LiQ” that is “50 nm thick”, *see* FWD 15) supported Petitioner’s position, especially where “vaporizing materials together would best achieve Ma’s objective of assessing the current density using different LiQ doping percentages.” FWD 16, *citing* Ex1007, 811. In light of the Board’s observation that “Patent Owner admits that joint vaporization means ‘two materials vaporize together,’” FWD 15, *citing* Reply 21, Resp. 54, the Board properly concluded that, under the preponderance standard, “‘the most natural interpretation of ‘co-deposition’ for forming a layer, particularly where there is nothing to indicate that the materials’ are ‘vaporized sequentially’ is that the materials are co-deposited by joint vaporization.” FWD 16.

The Board also found that Petitioner presented persuasive evidence that the “natural result” of the joint vaporization of LiQ and BPhen in Ma is the “coordination” of those two molecules, especially in light of the fact that Patent Owner asserted that LiQ is a metal complex with a central metal atom and BPhen is expressly disclosed by the ’223 patent as comprising “several coordination sites for metal complexes.” FWD at 18. The Board also cited to further evidence in the prior art that LiQ and BPhen form a complexation in support of its opinions. *Id.* at 19.

III. ARGUMENTS

Patent Owner purports to raise “inconsistencies” in arguments made by Petitioner in this proceeding, as compared to arguments raised by Samsung Electronics, which is party to a jury trial proceeding in the Eastern District of Texas, where it is represented by different counsel. Patent Owner’s arguments misapprehend the record and misstate the procedural history of the case. The Board’s Final Written Decision does not set the stage for an inconsistent result with the District Court outcome. On the contrary, it is fully consistent result with the District Court’s claim construction ruling as well as the jury verdict.

A. The Board Was Presented with All Evidence Concerning Ma’s Disclosure of “Joint Vaporization,” and Properly Determined There Was No Inconsistency.

Patent Owner raises two related arguments on the Board’s decision regarding Ma’s disclosure of “joint vaporization.” For the reasons set forth below, Patent Owner’s arguments are incorrect, and they certainly do not warrant vacatur or termination. The Board, fully aware of all such testimony both in these proceedings and in the parallel district Court proceeding, properly found that Ma disclosed “joint vaporization.”

1. Dr. Rand’s and Dr. Kymissis’ Opinions Regarding Ma Are Not Inconsistent.

Patent Owner is incorrect in asserting that Petitioner’s IPR expert (Dr. Rand), and the expert in the District Court (Dr. Kymissis), read Ma in inconsistent ways.

Patent Owner's selective citations (and editorialized explanatory bracketing) omit critical relevant testimony, which properly frames Dr. Kymissis' opinions.

Petitioner's expert Dr. Rand opined that Ma disclosed that the LiQ and BPhen were jointly vaporized. *See e.g.*, EX1003, ¶141, *see also* Pet. 59. Dr. Kymissis, Samsung Electronics' expert in the District Court proceeding, did not disagree. Instead, he opined that Ma's disclosure did not inform his opinion with respect to whether Samsung Electronics infringed or that he was unable to form an opinion as to what Ma disclosed. Neither presents an inconsistent position.

In EX2051, Dr. Kymissis' opening report on invalidity, Dr. Kymissis stated:

Under Pictiva's view that the accused products contain an electron-conducting layer that is obtained by "joint vaporization" (which I disagree with), then Ma discloses this limitation. I do not agree that ***this process*** constitutes "joint vaporization." I intend to offer more detailed opinions on this topic in my rebuttal report [on non-infringement].

EX2051, ¶453 (emphasis added). Patent Owner self-servingly reads in "Ma" into the sentence in place of "this process" where no such reading is warranted. The more appropriate reading is that the "this process" refers to Samsung Electronics' process: indeed, without it, the following sentence, indicating that Dr. Kymissis will offer more detailed opinions on "this topic" in his rebuttal report (on non-infringement) emphasizes this point—if "this process" does not refer to Samsung Electronics' process, then "this topic" (referring to Samsung Electronics' process) would have

no place in a non-infringement rebuttal report. Accordingly, contrary to Patent Owner's oft-repeated assertion (*see e.g.*, Req. 1, 4, 8), Dr. Kymissis did not state that Ma does not disclose "joint vaporization."

Indeed, when asked that question at his deposition, Dr. Kymissis stated that he was not sure:

Q. Does Exhibit 19 [Ma] disclose joint vaporization?

A. So *I'm not sure*. And there is some discussion of the deposition, but it is not -- you know, it is a relatively short paper; so *I can't say whether or not it represents joint vaporization*.

Q. Does codeposition necessarily result in joint vaporization or does joint vaporization -- does this codeposition necessarily mean there was joint vaporization?

[objection omitted]

A. So, again, not necessarily. The -- the question of joint vaporization depends on a number of factors, including the presence of the materials together; also, their opportunity to interact; some energetic and kinetic factors. And so, again, we need to know more details in order to reach any conclusion about joint vaporization in the system.

EX2106 154:3–20 (emphases added). In other words, Dr. Kymissis opined that Ma may very well disclose "joint vaporization," assuming the materials were present together and able to interact, which Dr. Rand said they were (*see e.g.*, EX1020 ¶¶42–54). Thus, Dr. Kymissis' testimony is not inconsistent with the positions advanced

by Petitioner or Dr. Rand in this matter.

Patent Owner asserts that Petitioner cannot argue that Dr. Kymissis’ testimony is not inconsistent with Dr. Rand’s because that argument was not fully articulated until the oral hearing. Not so. Patent Owner’s arguments concerning EX2106 were first made in its sur-reply (Sur-reply. 19–20), so Petitioner’s first opportunity to address the argument was at the oral hearing. Moreover, the inaccuracy of Patent Owner’s assertions regarding Dr. Kymissis’ opinions is plainly apparent from EX2051 and EX2106 themselves, which show that Patent Owner’s selective pronoun replacement (*see* Resp. 56) is erroneous (*See* EX2051 ¶453). This understanding is further confirmed by Dr. Kymissis’ deposition testimony that Ma may, in fact, disclose “joint vaporization.” EX2106 154:3–20. Petitioner’s oral argument—pointing out that Dr. Kymissis did not opine as Patent Owner suggested—merely highlighted for the Board what was facially apparent.

The Board was well within its discretion to find that Ma disclosed “joint vaporization” in light of the disclosure of Ma itself, and Dr. Rand’s explanation of why Ma’s disclosure was sufficient. FWD 14–16. Far from there being an issue of inconsistent opinions, Patent Owner’s Request here is an attempt to relitigate an issue where the Board sided with Petitioner as to what Ma discloses.

2. The Board Did Not Abuse Its Discretion in Not Relying on Patent Owner’s Evidence, Which Did Not Show Inconsistency.

Patent Owner also wrongly argues that the Board “disregarded” Dr. Kymissis’

testimony. Req. 5, 12. Preliminarily, to the extent Patent Owner is asserting that the Board excluded evidence, that is incorrect. It denied Petitioner's motion to strike the evidence, so both Dr. Kymissis' report (EX2051) and deposition testimony (EX2106) are part of the record of this case. FWD 31. Instead, the Board concluded only that it was not going to "rely on Exhibits 2057, 2105, and 2106" (FWD 31) in reaching its ultimate decision, likely because those exhibits do not support Patent Owner's assertions that inconsistent testimony was offered. *See* FWD 14–16.

Patent Owner's assertions that the Board's decision did not specifically address Patent Owner's concerns about Ma's disclosure, Req. 11–14, are also inaccurate. The Board's decision spent two full pages on whether Ma disclosed joint vaporization, including consideration that Ma's disclosure of co-deposition was not sufficiently detailed to mean "joint vaporization." FWD 14–16. The Board concluded to the contrary: that Ma's disclosure was enough to disclose "joint vaporization." *Id.* at 15 (concluding that although Patent Owner "argu[es] that Petitioner falls short of demonstrating that 'LiQ and BPhen were jointly vaporized' in Ma's experiments," "[b]ased on the information presented, we find Petitioner has the better position").

Throughout its Request, Patent Owner attempts to malign Petitioner, asserting that Petitioner acted contrary to the Board's rules. Req. 5, 12. But Petitioner did no such thing, and Patent Owner omits that it was Patent Owner that attempted to

circumvent the Board’s rule 37 C.F.R. § 42.23(b) by introducing EX2106 on sur-reply. *See* Paper 36. Patent Owner further improperly accuses Petitioner of “withholding” documents that Patent Owner already had.

As Petitioner’s motion to strike set out (Paper 36), there is no dispute that EX2106 was not part of the evidence submitted with the Petition, Response, or Reply. The Board’s rules are clear that no new evidence could be introduced in sur-reply. 37 C.F.R. § 42.23(b). But, instead of seeking leave to supplement the record with its sur-reply, Patent Owner attempted to shoehorn in new evidence through redirect during the deposition of its own witness, Dr. Schanze. The record is clear that EX2106 was an exhibit that *Patent Owner* introduced during a lengthy redirect of Dr. Schanze, after counsel for Patent Owner first took an hour-long break to discuss with Dr. Schanze how to respond to questions on this exhibit. EX1021 168:21–174:2 (citing to “EX2106”); 179:22–25. Patent Owner attempts to gloss over its role in the introduction of EX2106 by merely stating that it was an exhibit introduced “during deposition.” Req. 5. Patent Owner then blames Petitioner for not submitting this exhibit as part of Petitioner’s Reply, when Patent Owner cites to no rule—and Petitioner is unaware of such a rule—that would obligate Petitioner to submit evidence used only by Patent Owner on redirect of its own (coached) witness.

Instead, Patent Owner attempts to turn 37 C.F.R. §42.51(b)(1)(iii)—a rule governing discovery between the parties—into a rule necessitating Petitioner to

provide Dr. Kymissis' District Court deposition transcript to the Board. Req. 7, 13. Contrary to Patent Owner's assertion, even if this deposition transcript were evidence of an inconsistent statement (it is not, see *supra*), this C.F.R. provision does not govern what Petitioner must provide to the Board. In any event, even treating 37 C.F.R. §42.51(b)(1)(iii) properly, as a rule of discovery, Patent Owner's assertions of "gamesmanship" do not stand up. Not only does Petitioner not consider Dr. Kymissis' testimony as evidence of an inconsistency, but Patent Owner already had a copy of the transcript at EX2106—*Patent Owner introduced it during its own witnesses' deposition*. Patent Owner's insinuations of gamesmanship are even more disingenuous given that it routinely refused Petitioner access to any District Court material Patent Owner deemed confidential. Indeed, Patent Owner's introduction of EX2106 during Dr. Schanze's deposition was the first time counsel for Petitioner saw Dr. Kymissis' transcript from the District Court proceeding.

Patent Owner's attempts to relitigate whether Ma discloses "joint vaporization" do not raise questions that require the Director's review. The Board, considering all of the arguments and evidence, determined the reliable evidence supported Petitioner's position: that Ma disclosed "joint vaporization."

B. LiQ as a Metal Complex with a "Central Metal Atom" Is Fully Consistent with the District Court's Adopted Construction.

There is no dispute that Ma satisfies the "central metal atom" limitation under the interpretation advanced by Patent Owner, agreed to in the Petition, and adopted

by the District Court's *Markman* Order as well as the Board's Final Written Decision.

Patent Owner asserts that Director Review is "necessary to discourage gamesmanship and ensure consistency with co-pending litigation." Req 1. Yet Patent Owner's approach would do the opposite, as the Board explained:

Patent Owner counterargues that Petitioner, without adequate explanation, applies a claim construction inconsistent with positions taken by Petitioner and its real party-in-interest in the District Court action. Resp. 56–58. But after the filing of Patent Owner's Response, the *district court adopted the same construction of "a metal complex, which comprises a central metal atom" that Petitioner asserts in the Petition*. Reply 23 (citing Pet. 58–59; Ex. 2055, 25).

None of the arguments raised by Patent Owner persuade us that the correct approach in this review is to apply a claim construction that neither party asserts in this case and differs from the one resolved in the District Court action based on full claim construction briefing and a *Markman* hearing. *See* Sur-reply 22–23; *see also* Ex. 2055 (district court's claim construction order). ***Patent Owner advances an approach that would likely lead to inconsistent opinions across the forums.***

FWD 17 (emphases added).

Nor does *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) suggest otherwise. As an initial matter, Patent Owner never sought to challenge the Petition for alleged failure to satisfy 37 C.F.R. §42.104(b)(3). Indeed, Patent Owner's Preliminary Response did not raise *any*

merits challenge for claim 1 of Ma or its requirement of “a metal complex, which comprises a central metal atom.” *See* Dec. Ins. 20 (“Patent Owner opposes this challenge based only on its view that Petitioner has not established that Ma was publicly accessible—a view that we reject . . .”).

Additionally, even if Patent Owner *had* preserved such an argument, *Revvo* acknowledges that “a petitioner is not necessarily precluded from arguing different claim constructions positions before a district court and the Board,” *Revvo* at 5, and that:

[I]f a party advances a narrow construction in the district court and the district court declines to adopt the narrow construction, the party would have sufficient reason for advancing the broader, court-adopted construction in a proceeding before the Board.

Id. (quoting *Sun Pharm. Indus. Inc. v. Nivagen Pharm Inc.*, IPR2025-00893, Paper 18, at 3).

This case presents precisely such a scenario. The District Court rejected the narrower construction proposed by defendants, providing “sufficient reason” under *Revvo* for Petitioner to advocate for—and for the Board to adopt—the “broader, court-adopted construction.” *See also Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12, at 8–9 (PTAB Dec. 13, 2024) (informative) (“As a clarification, our rules do not necessarily prohibit petitioners from taking inconsistent claim construction positions before the Board and a district court.”)

(citing *10x Genomics, Inc. v. Bio-Rad Lab's, Inc.*, IPR2020-00089, Paper 8, at 18 (PTAB April 27, 2020)).

C. The '223 Patent and Prior Art Confirm that LiQ and BPhen “Coordinate” when Jointly Vaporized.

Patent Owner's arguments regarding purported inconsistency between Samsung Electronics' positions on “coordinates” in the District Court and Petitioner's arguments here are again contrary to the record. As the Board concluded, the '223 patent itself supports the argument that LiQ “coordinates” to BPhen via Ma's joint vaporization process, based on 1) the existence of the central metal atom in LiQ; and 2) the free electrons on the heteroatoms of BPhen; where BPhen is “one of the organic compounds specifically disclosed in the '223 patent as comprising ‘several coordination sites for metal complexes’ via ‘joint vaporization.’” FWD 18, *citing* Pet. at 62. The Board also acknowledged Petitioner's additional evidence of other prior art references that proved that LiQ and BPhen can coordinate. Rep. 23–25, *citing* EX1026, ¶¶40–41 and EX2050. Patent Owner's complaint appears to be that Dr. Rand did not specifically articulate the construction adopted in the District Court.¹ Req. 10. But if Ma discloses the same components and processes that

¹ As the Board stated, it “construe[s] claim terms only as relevant to the parties' contentions and only to the extent necessary to resolve the issues in dispute.” FWD

the '223 patent says will “coordinate” (which it does, as the Board acknowledged. FWD at 18, *citing* EX1001 at 2:6–11; 2:19–21, and 7:43–48), then it follows that Ma discloses this limitation. Additional prior art, including EX2050, confirms that LiQ and BPhen coordinate, as the Board properly acknowledged. FWD 19.

Patent Owner’s attempts to relitigate whether Ma discloses “coordination” of LiQ and BPhen do not raise questions that require the Director’s review. The Board, considering all of the arguments, concluded that the evidence supported Petitioner’s position: that the natural result of the joint vaporization of LiQ and BPhen is that the two molecules “coordinate” as required by Claim 2 of the '223 patent.

D. The Board Decided the Merits Based on Arguments Properly Before It.

Patent Owner erroneously asserts that the Board adopted a different ground for Ma’s disclosure of “joint vaporization” than had been raised in the Petition. Not so: the Board’s analysis regarding “joint vaporization” was grounded in whether Ma *disclosed* this element. Patent Owner’s selective quotation of the Final Written Decision omits critical language that confirms their decision was based on Ma

9 (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017)). An expert has no additional obligation to articulate a construction.

disclosing this element. In full, the Board’s decision states:

On this record, therefore, we agree with Petitioner that, *as to the relevant disclosure in Ma*, “the most natural interpretation of ‘co-deposition’ for forming a layer, particularly when there is nothing to indicate that the materials” are “vaporized sequentially,” is that the materials are co-deposited by joint vaporization. Reply 22 (citing Ex. 1020 ¶ 46–51). We further agree that, “[u]nder a preponderance standard, Ma’s disclosures are sufficient to render joint vaporization at least obvious.” *Id.*

For the above reasons, we determine that Petitioner demonstrates by a preponderance of the evidence *that Ma discloses joint vaporization as required by the challenged claims.*

FWD 16 (emphases added). As the emphasized portions make clear, the Board’s decision was grounded in Ma’s disclosure. Patent Owner’s citation omitted not only this relevant context, but also the bridging language of “we further agree.” In other words, “Ma’s disclosures are sufficient to render joint vaporization at least obvious,” FWD 16, was a “further” reason supporting their decision. Therefore, there was no change in rationale between the Petition and Reply, and Patent Owner’s complaints of “sandbagging” are misplaced.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Director to deny Director review.

Dated: March 3, 2026

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 AUTHORIZED RESPONSE TO DIRECTOR REVIEW

REQUEST was served by electronic mail on the following counsel of record for patent owner.

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