

Exhibit 2011

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

-----X
4 APPLIED OPTOELECTRONICS, INC.,

5 Plaintiff,

Case No.:
4:24-cv-09041
(HSG)

6 -against-

7 ACCELIGHT TECHNOLOGIES, INC.,

8 Defendant.
9 -----X

10 DATE: 8/27/25

11 TIME: 12:00 P.M. EST
12
13

14 DEPOSITION of MICHAEL LEBBY, Ph.D, an
15 Expert Witness on behalf of the Defendant
16 herein, taken by the Plaintiff, pursuant to
17 Federal Rules of Civil Procedure, and
18 Notice, held virtually via Zoom, at the
19 above-mentioned date and time, before
20 MARINA DUBSON, a Notary Public of the State
21 of New York.
22

23 Job No.: 10171347
24
25

1 APPEARANCES:

2
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22 ARPITA BHATTACHARYYA, ESQ.
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24 ALSO PRESENT:

25 KIM YOUNGUN, Corporate Representative for
Plaintiff ATI

ALAN WILNER, Expert Witness for Plaintiff
ATI

1 IT IS HEREBY STIPULATED AND AGREED,
2 by and between the attorneys for the
3 respective parties, as follows:
4

5 THAT all objections, except as to the form
6 of the questions, shall be reserved to the
7 time of the trial;
8

9 THAT the within examination may be signed
10 and sworn to before any Notary Public with
11 the same force and effect as if signed and
12 sworn to before the Court;
13

14 THAT filing of the original transcript of
15 the examination is waived.
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1 M. Lebby

2 THE REPORTER: Are you ordering
3 a copy of this transcript?

4 MS. BHATTACHARYYA: Yes, copy,
5 regular turnaround final, 1 realtime
6 feeds and a rough draft.

7 MS. CAROTHERS: 0+1, 4-day
8 expedite final by 9/3/2025; 2
9 realtime feed and a rough draft.

10 XXXX

11 THE REPORTER: Will Counsel
12 please stipulate that in lieu of
13 formally swearing in the witness in
14 person, the Reporter will instead ask
15 the witness to acknowledge that their
16 testimony will be true under the
17 penalties of perjury.

18 That, Counsel will not object
19 to the admissibility of the
20 transcript based on proceeding in
21 this way, meaning virtually.

22 And that, the witness has
23 verified that he is, in fact, Michael
24 Lebby.

25 So stipulated?

1 M. Lebby

2 MS. BHATTACHARYYA: So
3 stipulated.

4 MS. CAROTHERS: So stipulated.

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6

7 M I C H A E L L E B B Y,

8 after having first been duly sworn by

9 a Notary Public of the State of New

10 York, was examined and testified as

11 follows:

12 EXAMINATION

13 BY MS. CAROTHERS:

14 Q. Good day, Mr. Lebby --

15 Dr. Lebby. Would you please state your
16 full name for the record.

17 A. It's Michael Steven Lebby.

18 Q. And what is your address?

19 A. It's 1 Hawthorne Street, San
20 Francisco, California.

21 Q. My name is Jo Dale Carothers.

22 I represent Applied Optoelectronics, Inc.

23 I am going to ask you a few questions
24 today.

25 To start with, have you been

1 M. Lebby
2 and looking at the preamble and the
3 claim elements that follow, I see
4 that one of the claim elements is a
5 substrate, and the construction that
6 I've put together on the perspective
7 of ATI, which is on page 16 of my
8 declaration, is an accurate way to
9 describe what is being taught in the
10 '116 Patent from the intrinsic
11 evidence I've seen. That's the spec,
12 the figures, and the prosecution
13 history.

14 So, I believe the proposed
15 construction of substrate that is on
16 page 16 is correct, and that's my
17 opinion.

18 **Q. If you look at Claim 1, the**
19 **claimed element after a substrate states, a**
20 **planar lightwave circuit, PLC, disposed on**
21 **the substrate.**

22 **Do you see that?**

23 A. I do see that.

24 **Q. So, in the construction for**
25 **substrate, you include a phrase that says,**

1 M. Lebby
2 the planar lightwave circuit, PLC, is
3 mounted.

4 Do you see that?

5 A. I do see that.

6 Q. So, what's the difference
7 between the planar lightwave circuit is
8 mounted versus a planar lightwave circuit,
9 PLC, disposed on the substrate?

10 A. Again, you're comparing words
11 from what's been written in the asserted
12 patent in Claim 1 as one of the claim
13 element to the construction that is put
14 together on page 16 of my declaration, and
15 the construction of a substrate, which is
16 quite a supporting base that is part of the
17 AWG chip on which the planar lightwave
18 circuit is mounted, end quote, is to me an
19 accurate way to describe what is happening
20 in the '116 Patent.

21 When I look at the intrinsic
22 evidence, I look at the four corners of
23 '116 and interpret that as a person of
24 ordinary skill in the art as somebody at
25 the time of the invention.

1 M. Lebby

2 I agree with you the words are
3 different, but my interpretation as an
4 expert is that the construction that I've
5 put in paragraph 44 to 49 is the correct
6 way to look at the '116 Patent.

7 **Q. Do you understand that the only**
8 **term being construed with respect to the**
9 **substrate is merely the word "substrate"?**

10 MS. BHATTACHARYYA: Objection.
11 Vague.

12 THE WITNESS: I don't
13 understand the question.

14 **Q. So, the claimed term for**
15 **construction here is substrate, correct?**

16 A. The term that we're construing
17 in page 16 of my declaration is substrate.
18 I would agree with you on that.

19 **Q. The claim term being construed**
20 **is not the next element that begins a**
21 **planar lightwave circuit, PLC, disposed on**
22 **the substrate, correct?**

23 A. That claim term is not in the
24 box on page 16. So, the claim term that's
25 being construed on page 16 is substrate

1 M. Lebby

2 from Claim 1.

3 Q. So, there's already a claim
4 limitation in Claim 1 that discusses the
5 planar lightwave circuit relative to the
6 substrate, correct?

7 A. I don't understand your
8 question.

9 Q. There's a claim term in Claim 1
10 that relates to the planar lightwave
11 circuit being disposed on the substrate,
12 correct?

13 A. Well, if you look at Claim 1 of
14 the '116 Patent, certainly the term
15 "substrate" comes up more than once. But
16 there's only one substrate, and this is the
17 term that we're construing in paragraphs 44
18 to 47. And it's very clear to me, as a
19 person of ordinary skill in the art at the
20 time of the invention, that substrate is,
21 quote, a supporting base that's part of the
22 AWG chip on which the planar lightwave
23 circuit is mounted, end quote.

24 But your observation is
25 correct. Substrate comes up a number of

1 M. Lebby
2 times, but we construed substrate in
3 paragraphs 44 to 47. And I think it's very
4 clear to me this is what a substrate is.

5 Q. So, if we were to use your
6 proposed construction for substrate
7 starting with the limitation, a substrate
8 in Claim 1, and replacing it with that
9 proposed construction, it would read, a
10 supporting base that is part of the AWG
11 chip and on which the planar lightwave
12 circuit, PLC, is mounted, a planar
13 lightwave circuit disposed on a supporting
14 base that's part of the AWG chip and on
15 which the planar lightwave circuit, PLC, is
16 mounted, correct?

17 MS. BHATTACHARYYA: Objection.
18 Vague.

19 THE WITNESS: Certainly,
20 construing substrate with what ATI's
21 proposed construction is, certainly
22 you can replace "substrate" with that
23 phrase, quote, a supporting base
24 that's part of the AWG chip and on
25 which planar lightwave circuit is

1 M. Lebby
2 mounted, end quote. And certainly
3 you can substitute that in anywhere a
4 substrate is used in that claim
5 element or Claim 1. So, I don't
6 dispute what you're trying to do.
7 But my interpretation of what a
8 substrate is has been taught by the
9 '116. And, looking at the intrinsic
10 evidence, it's very clear to me that
11 the construction I've put down in my
12 declaration and I detailed the
13 support from that from the specs and
14 the figures from paragraphs 44 to 47,
15 is the right way to look at this.

16 **Q. So, what does "mounted" mean to**
17 **you in this context?**

18 A. I indicate that in detail in
19 paragraphs 45 and 46. I mean, if you want
20 me to go through what I've actually
21 written, I am happy to do it. It may take
22 some time.

23 **Q. I am asking you not to read**
24 **your declaration to me. I am asking you**
25 **what the word "mounted" means to you in**

M. Lebby

this context.

A. What it means to me in this context is as I've indicated in paragraph 45 and 46. I indicate that, in the specifications of the '116 Patent, the specification discloses that the 503, which is the AWG chip, certainly includes a substrate, which is 502, which is what I would expect to somebody who's been in the field for 40 years and worked on AWG chips. Typically, you put dielectric layers on top of the substrate. And that's supported by a couple of citations I've given in paragraph 45.

The specifications also gives some details about the physical size and some of the thicknesses of the substrate 502, which is more detailed about substrate 502. And then it tells the person of ordinary skill in the art at the time of the invention in paragraph 46 what the substrate is, and it's clearly a supporting base for the AWG chip on which the PLC is mounted.

1 M. Lebby

2 Now, you can use a different
3 word than "mounted" if you wish. But I
4 certainly use that word mounted, and I've
5 given some of the support for that in
6 paragraph 46 which comes from columns 8 and
7 12, if you like, but I don't know how much
8 more detail you want me to get into here.

9 Q. Claim 1 says a planar lightwave
10 circuit, PLC, disposed on the substrate.

11 How does the term "disposed"
12 differ in your opinion from the term
13 mounted? Or does it?

14 A. Well, certainly, I didn't come
15 into this deposition memorizing dictionary
16 definitions, but I've come into this
17 deposition as an expert, as a person of
18 ordinary skill in the art at the time of
19 the invention. And I looked through the
20 '116 asserted claims and claim elements,
21 and I've read through the specifications
22 and figures. And I've given you my
23 opinions.

24 So, while you're complaining
25 that the word "disposed" is different than

1 M. Lebby
2 "mounted," I am giving you my opinion how
3 to construe the term substrate with the
4 support from the intrinsic evidence. And I
5 think I've done that very clear. A
6 substrate is a supporting base that's part
7 of the AWG chip and on which the planar
8 lightwave circuit is mounted end.

9 Q. Just wanting to understand your
10 opinion, because why did you essentially
11 replace the word "disposed" from the claim
12 language with your term "mounted"?

13 A. As a person who has been in
14 this field for 40 years and understanding
15 the technology in the '116, I certainly
16 read through the claims, the asserted
17 claims, the specifications, and the
18 figures, and I've looked at this as a
19 person of ordinary skill in the art at the
20 time of the invention. I've certainly
21 indicated what I think is the right way to
22 construe substrate. And I've indicated
23 that on page 16 of my declaration.

24 I don't believe I am required
25 to use exactly the same words. I've used

1 M. Lebby
2 words that I think are meaningful and
3 convey what I believe is the right way to
4 construe substrate using the English
5 language.

6 Q. In the proposed construction,
7 could the term "mounted" be replaced with
8 "disposed" in your opinion?

9 A. I believe that the construction
10 I've used for the claim term "substrate,"
11 which we find in Claim 1 of the '116
12 Patent, and the use of the word,
13 quote/unquote, "mounted" is a good term to
14 use to construe substrate.

15 And when I look in my
16 opinions -- which you could see from
17 paragraphs 44 to 47 of my declaration --
18 and I look at some of the areas of the
19 specifications that I cite to support my
20 opinion -- in particular, I am looking at
21 column 8, lines 35 to 40 -- and I note that
22 the specification says, deposition and/or
23 epitaxial growth on the substrate. So, the
24 specification tells a person of ordinary
25 skill in the art at the time of the

1 M. Lebby
2 invention that you can dispose or deposit
3 AWG on a substrate or you can epitaxially
4 grow AWG on the substrate.

5 But the claim element in claim
6 12 only really talks about disposed. So,
7 when I look at this with my experience base
8 over the last 40 years and I opine on the
9 claim term "substrate," I believe the term
10 I've used, "mounted," is a reasonable word
11 to use to construe as part of the phrase
12 substrate claim on the '116.

13 **Q. So, if AWG was made by**
14 **depositing the layers on the substrate, you**
15 **would consider it to be disposed or mounted**
16 **on the substrate; is that correct?**

17 A. I think you mischaracterized
18 what I just said. I reincorporate my
19 previous answer by reference, which will
20 save a lot of time here because I don't
21 want to recite everything again on the
22 record.

23 **Q. I would like you to explain to**
24 **me how I misunderstood your answers.**

25 A. I understand my answer. I

1 M. Lebby
2 don't know if you understood my answers.
3 But certainly, I understood my answer, and
4 I reincorporate my previous answer to this
5 question as part of this answer.
6 When I look at the term
7 "substrate," I propose the construction,
8 quote, a supporting base that's part of the
9 AWG chip on which the planar lightwave
10 circuit is mounted, end quote. And I've
11 supported those words from the
12 specifications and the figures, and I've
13 indicated my opinion in paragraphs 44 and
14 47.

15 **Q. I had a different question.**
16 **If an AWG was deposited -- if**
17 **an AWG was made by depositing layers on a**
18 **substrate, would it be mounted on the**
19 **substrate?**

20 A. I've used the term, quote,
21 mounted, end quote, in my proposed
22 construction of the term "substrate" in
23 Claim 1. And substrate appears as one of
24 the claim elements in Claim 1 of the '116.
25 I believe the term I've used of "mounted"

1 M. Lebby
2 is a reasonable term to support what is
3 being taught in the specification of the
4 '116 to teach a person of ordinary skill in
5 the art at the time of invention how to
6 implement the invention of the '116.

7 I certainly opined what the
8 construction for substrate should be in
9 paragraphs 44 to 47 to my declaration. And
10 I believe the term "mounted" is a
11 reasonable word to use, to address your
12 question.

13 **Q. I know your goal is to answer**
14 **my question, but I believe that there's**
15 **more to my question than what you just**
16 **said.**

17 **I am asking whether an AWG made**
18 **by depositing layers on a substrate would**
19 **be considered to be mounted on this**
20 **substrate, in your opinion.**

21 MS. BHATTACHARYYA: Objection.

22 Asked and answered. Vague.

23 THE WITNESS: So, I
24 reincorporate my previous answer by
25 reference to this answer in order to

1 M. Lebby
2 save some time here. I believe the
3 term "mounted" is a reasonable term
4 to use to be part of the construction
5 or the term substrate, which appears
6 in Claim 1 of the '116, and I think
7 the term quote, mounted, end quote,
8 is a reasonable way to describe what
9 is being taught in the '116,
10 specifically, column 8, lines 35 to
11 40, where a person of ordinary skill
12 in the art at the time of invention
13 would look at the intrinsic evidence
14 to understand what the claim
15 substrate really means.

16 So, I believe the construction
17 that I've given in paragraphs 44 to
18 47 is reasonable.

19 **Q. Let's look at column 3 of the**
20 **'116 Patent, which is Exhibit 3, starting**
21 **at line 33, please.**

22 **Tell me when you're there.**

23 **A. Yeah, I'm there.**

24 **Q. Do you see that it says, in**
25 **more detail the direct coupling AWG device**

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M. Lebby
may be formed using, for example, PLC
techniques?

A. I do see that.

Q. Does your construction of
substrate that includes the word mounted
comport with this disclosure?

A. The '116 Patent in column 3
lines 33 to 35, quote, in more detail on
the direct coupling AWG device may be
formed using, for example, PLC techniques
or rather suitable formation processes or
stop, end quote.

So, when I look at that
sentence, that teaches a person of ordinary
skill in the art at the time of the
invention there are suitable formation
processes that can be used to support the
construction of the claim term substrate
which we find in Claim 1. And so, the
proposed construction that I support is,
quote, a supporting base that is part of
the AWG chip and on which the planar
lightwave circuit is mounted, end quote,
and in particular, the use of the term

1 M. Lebby
2 "mounted," I believe, is reasonable to
3 construe what I think a person of ordinary
4 skill in the art at the time of invention
5 would understand after reading the
6 specifications and looking at the figures
7 of the '116 and see what the construction
8 for substrate should be.

9 Q. So, do I understand you
10 correctly to say that you believe that your
11 proposed construction would be reasonable
12 in light of the portion of the
13 specification that you just read from
14 column 3?

15 A. I think that mischaracterizes
16 what I gave in my last answer. So, if
17 you'll like, I'll give the last answer
18 again, but I incorporate that last answer
19 by reference. You pointed me to column 3,
20 line 33 to 35, asked me a question whether
21 I thought the use of the term mounted in my
22 construction is reasonable, and the quick
23 answer, yes, it is, it's very reasonable.

24 I believe the term that I've
25 used in how I've construed substrate in

1 M. Lebby
2 Claim 1 of the '116 as a -- quote, the
3 supporting base that is part of the AWG
4 chip on which the planar lightwave circuit
5 is mounted, end quote, is a good
6 construction, and I've supported that with
7 citations and support from the spec from
8 paragraphs 44 to 47 of my declaration.

9 Q. And I'm just asking if your
10 construction is consistent with the
11 disclosure in column 3 at line 33 through
12 35.

13 MS. BHATTACHARYYA: Objection.
14 Asked and answered.

15 THE WITNESS: My proposed
16 construction, which you find on page
17 16 of my declaration, for the claim
18 term substrate which appears in Claim
19 1 of the '116 Patent is supported by
20 the specification and is supported by
21 the figures and the intrinsic
22 evidence of the '116. And so, by
23 default, whatever you're citing to in
24 column 3 is supported because the
25 specification does support my

1 M. Lebby
2 proposed construction of the claim
3 term substrate in the '116.

4 MS. CAROTHERS: Okay. Let's
5 mark as Exhibit 4 US Patent Number
6 10,379,301.

7 (Plaintiff's Exhibit 4, '301
8 Patent, was marked for identification
9 as of this date by the Attorney.)

10 BY MS. CAROTHERS:

11 Q. Do you have that document,
12 Dr. Lebby?

13 A. I'm just bringing it in front
14 of me.

15 Q. Okay.

16 A. I have that in front of me now.

17 Q. And have you seen this document
18 before?

19 A. Yes, I have.

20 Q. Okay. If I refer to it as the
21 '301 Patent, will you understand that I'm
22 referring to Exhibit 4?

23 A. Yes, I will.

24 Q. Okay. Did you review the
25 prosecution history for the '301 Patent in

1 M. Lebby

2 MS. CAROTHERS: And I have no
3 further questions.

4 Thank you, Dr. Lebby, for your
5 time today.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 MS. BHATTACHARYYA: I want to
9 put on the record that we reserve the
10 right to review and correct under the
11 rules.

12 (Whereupon, at 4:00 P.M. EST,
13 the Examination of this Witness was
14 concluded.)

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