

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOME DEPOT U.S.A., INC.,
Petitioner,

v.

LYNK LABS, INC.,
Patent Owner.

PGR2023-00016
11,297,705 B2

Record of Oral Hearing
Held: May 6, 2024

Before ARTHUR M. PESLAK, STEPHEN E. BELISLE, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on May 6, 2024,
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P R O C E E D I N G S

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JUDGE BELISLE: Good afternoon. Welcome to the Patent Trial and Appeal Board. I am Judge Belisle, and I'm joined by Judges Peslak and Raevsky. This is the oral hearing in PGR2023-00016 involving U.S. Patent Number 11,297,705 B2. Petitioner is Home Depot U.S.A., Inc. Patent Owner is Lynk Labs, Inc. The court reporter will prepare the transcript for this hearing in this case. Counsel, please introduce yourselves and anyone else listening to the hearing who's associated with your client. We'll begin with counsel for Petitioner.

MS. LIBRACH NALL: This is Jennifer Librach Nall, counsel for Home Depot. I have with me Mary Dahl and Brian Erickson.

JUDGE BELISLE: Thank you. Patent Owner?

MR. MCBRIDE: For Patent Owner, this is Stephen McBride for Lynk Labs. There's no one else on from Lynk Labs as far as I know, but I do believe there's some people on the public line listening in.

JUDGE BELISLE: Thank you. As is obvious, we are conducting this hearing by video today. And we're going to begin with some general guidance. Those who have done this many times are going to feel like this guidance is quite familiar. First, our primary concern is your right to be heard. If at any time during the hearing you encounter technical difficulties that undermine your ability to argue your case, please let us know or contact our hearings team members who provided you with connection information. Obviously, if you completely drop off, you can't let us know directly, so contact the hearings team with the information they originally provided you.

1 Second, for the benefit of the panel and the court reporter, please speak
2 clearly into your microphone and identify yourself each time you speak.
3 Please do not speak when others are speaking and mute yourself when you
4 are not speaking. Third, we have the entire record, including the party's
5 demonstratives. We remind counsel that demonstratives are not evidence
6 and are used only as visual aids.

7 Any arguments and evidence that are not in the record will not be
8 considered by the panel in rendering the final decision. When referring to
9 demonstratives, papers, or exhibits, please do so clearly and explicitly by
10 slide or page number. Please pause a few seconds after identifying the page
11 you want us to go to -- to provide us time to find it. Finally, please do not
12 interrupt the other party while that party is presenting its arguments. If you
13 have an objection, please raise it during your argument. Pursuant to our
14 hearing order, each party has 60 minutes to present its argument. In
15 addition, one of Petitioner's counsel is participating in this hearing as a
16 LEAP practitioner. And so, we have granted Petitioner an additional 15
17 minutes of argument time for a total of 75 minutes. Petitioner, is it still the
18 case that your LEAP practitioner will be speaking today?

19 MS. LIBRACH NALL: Yes.

20 JUDGE BELISLE: Each party may reserve time solely to rebut
21 the opposing party's arguments. You may not use rebuttal to address an
22 issue for the first time during the hearing. Petitioner will proceed first
23 because it bears the burden of proving unpatentability. I will keep time and
24 try to provide updates on the remaining time for each of your own sessions
25 during the hearing. Please feel free to ask about your remaining time.

1 Petitioner, how much time, if any, do you wish to reserve for rebuttal?

2 MS. LIBRACH NALL: Twenty-five minutes, please, Your Honor.

3 JUDGE BELISLE: Twenty-five minutes. Okay. Petitioner, you
4 may begin when you're ready.

5 MS. LIBRACH NALL: Are you able to see my slides?

6 JUDGE BELISLE: Yes.

7 MS. LIBRACH NALL: Thank you. Moving to slide 2, I will be
8 handling the claim construction, PGR eligibility, and Ground 1, and Ms.
9 Dahl will be handling the remaining grounds. Moving to slide 3, there is a
10 currently pending appeal of the final written decision in the PGR of the
11 parent patent to the '705 Patent, the Patent at issue here. That appeal is fully
12 briefed, but no date yet is set for oral argument, but the parties will inform
13 the Board if an order issues during the pendency of this PGR. In the
14 meantime, if affirmed, Patent Owner is estopped on many issues that are
15 going to be addressed today.

16 I will start with the disputed claim construction terms on slide 9.
17 There are two terms that are at issue -- at in dispute here and starting on slide
18 10, the first one is forward voltage. Forward voltage appears in Claims 3,
19 10, and 17 and Claim 3 as shown on slide 10 is representative of how the
20 term is used in all of those Claims 3, 10 and 17. In particular, all of the
21 independent claims include a switch and the dependent claims require that
22 the switching of the switch provide at least two different DC forward
23 voltages to circuits.

24 Moving on to slide 11, this is a chart showing the proposed claim
25 constructions from Petitioner and Patent Owner. On the left in the top is the

1 construction, the primary construction proposed by Petitioner that the Board
2 preliminarily adopted in the Decision to Institute, and that decision was
3 correct. Moving on to slide 12, the reason that was correct as outlined in
4 the Decision to Institute is because of prosecution history disclaimer and
5 lexicography, a definition that was in the prosecution history, as well as that
6 definition being consistent with the specification. And it's also the definition
7 that was adopted in the parent final written decision, PGR.

8 JUDGE BELISLE: So, counsel, this is Judge Belisle. So, I
9 understand all of what you just said and how all of that's in the prior PGR.
10 Patent Owner is maintaining that we shouldn't give any weight to the prior
11 prosecution history and particularly this statement that's in that history.
12 What happens to your construction if we were not to give that weight?

13 MS. LIBRACH NALL: Your Honor, the construction is based
14 entirely on the definition and disclaimer made in the prosecution history.
15 And if this Board does not give any weight to that express definition that
16 was made in the prosecution history, the construction that should be applied
17 as one of the other, one of the alternative constructions provided by
18 Petitioner or Patent Owner, under either construction, the claims are still, as
19 I'll show later, still invalid under 112 and the PGR should still be instituted.
20 However, the Patent Owner has not provided any reason why the Board
21 should ignore the express definition and disclaimer that was made in the
22 prosecution of the parent application. And there is no basis in the law for
23 ignoring an express definition made by a Patent Owner like this.

24 JUDGE BELISLE: Okay. So, with that said, perhaps I misheard
25 what you said. But it sounded like you were saying that, but for that

1 statement in the prosecution history, Petitioner really doesn't stand behind its
2 definition of forward voltage--the original definition. It's going to drop back
3 to a different construction?

4 MS. LIBRACH NALL: The construction that we would drop back
5 to, as shown on slide 11, is that a forward voltage is a voltage in the diode's
6 forward direction. The definition made during prosecution history is the --
7 that express definition is the basis for why the claim construction is
8 appropriate here. And that express definition is consistent with the
9 specification. But there is no express definition in the specification other
10 than in the intrinsic evidence in the file history.

11 JUDGE BELISLE: So, there's two experts in this case, but have
12 any of those experts made a blatant statement about what's the definition of
13 forward voltage in the electrical engineering world? Just like watts, voltage,
14 amps--doesn't forward voltage have a definition to these folks.

15 MS. LIBRACH NALL: Your Honor, a forward voltage definitely
16 has a definition in the electrical engineering space. And if I remember
17 correctly, Dr. Neikirk said that it's a voltage in the diodes forward direction,
18 which is Petitioner's alternative construction. However, in the prosecution
19 history, in order to overcome Colby, which was the prior reference, the
20 Board, sorry, the examiner put forward against the '001 Patent I believe.

21 The -- moving on to slide 12. In Colby there was a LED circuit
22 that was plugged into the wall and powered by 120 volts. And that LED
23 circuit was turned on by that power in the wall. And in order to overcome
24 Colby, having the forward voltage of 120 volts, Patent Owner made this
25 express definition and the case law is that you -- we -- a person of ordinary

1 skill in the art is allowed to -- is supposed to rely on the express definition of
2 Patent Owner that the examiner accepted to overcome prior art in the
3 prosecution history. And there is no basis to be inconsistent on the same
4 term in the same specification among these Patents. That claim in the parent
5 application required that the forward voltage be greater than 6 volts. And
6 what Patent Owner said was that 120 volts is not a forward voltage greater
7 than 6 volts because it is not the forward voltage. It is not this minimum
8 voltage difference required between the anode and cathode of the LEDs.
9 And that definition, which was the reason that Patent Owner got over Colby
10 in the file history, is an express definition. And the Board was correct in its
11 decision to institute and should maintain it.

12 If Your Honors have no further questions about forward voltage,
13 I'll move on to slide 27, which is the other term that is at issue here. I've
14 highlighted on slide 27 both the term Independent Claim 1 and also the
15 second yellow is a term -- is a limitation that Patent Owner is relying on in
16 order to try and narrow this term further. So, the term is selectable by a user
17 switching the switch. If we move to slide 8, Patent Owner -- what this
18 shows is in the Patent Owner response, Patent Owner has admitted or does
19 not dispute that a switch is given its full ordinary meaning, which includes
20 mechanical, electronic, electromechanical, and programmable switches.
21 Switch is not -- there's no disclaimer of prosecution history to narrow the
22 word switch.

23 Moving back to slide 27, the dispute is whether that final limitation
24 in yellow that requires the switch to be in a particular location, electrically
25 connected between the DC voltage and the LED circuits, whether that

1 limitation means that the switch has -- the selectable by a user switching the
2 switch means that the user has to be able to physically actuate the switch at
3 the electrical connection, where it's DC in between the DC and the LED
4 circuit.

5 Moving on to slide 28, this is Patent Owner's argument. So, if you
6 think about your switch on your wall, when you actuate the switch, you are
7 physically insulated from AC mains. You're not -- unless something goes
8 wrong, you will not get electrocuted by switching the switch because you are
9 electrically insulated. It's an electrical-mechanical device where moving a
10 lever on the outside changes a mechanical switch internally. Similarly, if
11 you tell your Alexa to turn off the light, you as a user are switching the
12 switch. The portion of the switch is not electrically connected to AC mains
13 at that point, but by telling Alexa to turn off the light, you are actuating a
14 switch in its physical location. And there is no disclaimer or definition
15 anywhere in the specification or prosecution history that would limit switch
16 to be only the particular portion of the switch that is in that electrical, in that
17 physical location. It can be a complex switch. It can be a programmable
18 switch. And those things do not, those portions of the switch, do not all
19 have to be located in the exact same space. If Your Honors have no
20 questions about this term, I'll move on to slide 34, PGR eligibility.

21 Moving on to slide 35. There are multiple different grounds in the
22 petition for explaining why this Patent is eligible for PGR. The Decision to
23 Institute focused on the '705 Patent, and unless Your Honors have any
24 particular questions about the '341 and '001 Patent, I will also focus now on
25 the '705 Patent. However, all of those grounds for PGR eligibility in the

1 '001 and the '341 do make the '705 Patent eligible for PGR because the
2 statute is that the '705 Patent is eligible for PGR if it or any of its priority
3 applications contains or ever contained at any time a claim with an effective
4 filing date after March 16, 2013. And as I'll explain, the Decision to
5 Institute correctly found that the '705 Patent has such claims. But as the
6 petition shows, so do the '001 and the '341.

7 I'm going to start with Claims 3, 10, and 17. Having just said I'm
8 not going to address the '341, I do want to point out that there are three
9 claims in the '341 that have the exact same subject matter as the '705 Patent.
10 As shown on slide 37, both of the Patents have claims that require the
11 forward voltage limitation that we addressed in claim construction, and we
12 will be addressing right now. As found in the parent PGR and in the
13 Decision to Institute, these claims are not entitled to a priority date before
14 2013. There is no support for AIA for a switch that provides two different
15 DC forward voltages to a circuit.

16 Moving on to slide 39, this is paragraph 28 from the '597 PCT,
17 which is one of the priority applications Patent Owner is attempting to rely
18 on to show that there was disclosure before 2013 of this limitation. What
19 this limitation shows, what this paragraph shows is that what is disclosed is
20 an unconnected circuit that has LEDs in it. And what it says is if those
21 LEDs are connected in series, it has one forward voltage. And if those
22 LEDs are connected in parallel, it has half that forward voltage. I think it
23 actually says the opposite, that if it's connected in series, it's twice as much
24 as connected in parallel. But the point is that it's -- this circuit, whether or
25 not it's connected in series or connected in parallel, determines whether the

1 circuit has one forward voltage or a different forward voltage. And this
2 circuit is not, moving on to slide 40, what the PCT application says is that
3 the circuit is, whether or not it's connected in parallel or series, is defined at
4 packaging. That's a wiring decision made at the packaging level. It's not
5 made after it's shipped, because it has to be done in the packaging scenario.

6 Slide 40 is showing a portion of paragraph 15 of the '597 PCT and
7 what it says is that the decision about series or parallel is achieved and/or
8 completed at the packaging level. And if you move on to slide 41, this is an
9 excerpt from the '705 Patent. It says the exact same thing that whether or
10 not these -- the disclosure of these unconnected led circuits whether or not
11 they are connected in series or parallel is determined by the packager during
12 the packaging process. It is not determined after the fact that when the LED
13 circuit is shipped, it has a forward voltage. There is no disclosure of any
14 kind in any of the priority applications or in the '705 Patent that the
15 determination of series versus parallel can be made after packaging. And
16 there's no disclosure that the determination of series versus parallel can be
17 made by a switch, and there's no disclosure that series versus parallel can be
18 made by a dimmer switch. None of that is there.

19 Moving on to slide 42. This is the disclosure in the '215
20 application of the dimmer switch that Patent Owner relies on for disclosure -
21 - that Patent Owner says is disclosure of this limitation in Claims 3, 10, and
22 17 requiring two forward voltages to a circuit. What paragraph 22 says is
23 that a driver can be coupled to a dimmer switch. It does not say that the
24 dimmer switch can change a connection from series to parallel. Series to
25 parallel is what is disclosed as what changes the forward voltage and that is

1 not disclosed in paragraph 22 as an option for what a dimmer switch is able
2 to do. Moreover, paragraph 22 is about a dimmer switch that's connected to
3 an AC circuit. All of the '215 application is about an AC LED circuit, there
4 is no disclosure in the '215 Patent about connecting a dimmer switch to DC,
5 which is also what is required by these claims. They require that the switch
6 provide two different DC forward voltages.

7 JUDGE BELISLE: Counsel, this is Judge Belisle. Was either
8 expert asked the question of whether they could connect a dimmer switch or
9 a switch that could change wiring configurations using the switch from
10 parallel to series?

11 MS. LIBRACH NALL: Your Honor, they weren't asked that exact
12 question, but if you move to slide 43, Dr. Ducharme was asked whether or
13 not the switch in paragraph 22 changes the connection from parallel to series
14 and he says it does not, and that's not what's described. I don't think we
15 exactly -- anybody exactly asked whether it was ever possible. But Dr.
16 Ducharme did say that it was not described in paragraph 22 of the '215
17 application. And if we move on to page 44, slide 44, what this shows is the
18 figures from the -- the same figures that are in the priority applications and
19 in a version which is in the '705 Patent and what it shows is that there's a
20 switch in the figures. It shows a switch connected to AC. It does not show a
21 switch that receives DC voltages. It also does not show a switch that's able
22 to change from parallel to series. If we start on Figure 7 and you look at the
23 top of the figure, it's a parallel connection to two LED strings. And so, there
24 is no way for that switch to connect, it's physically impossible for that switch
25 to make it a series connection because it's connected in parallel. The same

1 with Figure 9, these circuits, as they're shown in Figures 7 and 9, are parallel
2 connected circuits. The switch has the option to turn one, the other, or both
3 on, but not a series connection. That is not disclosed anywhere as a
4 possibility in any of the priority applications or in the '705. And the
5 excerpts from Dr. Ducharme's deposition, which are shown on page 44 as
6 well, confirm that these switches do not do that. They do not change the
7 circuit from parallel to series. For those reasons, Your Honor, moving on to
8 slide 45, the -- the Board was correct in its Decision to Institute that there is
9 no disclosure of Claims 3, 10, and 17 that predates March 16, 2013, and for
10 that reason, the '705 Patent is PGR eligible. If there are no questions about
11 these claims, I'll move on to Claims 1 through 20, starting at slide 46.

12 Even though Claims 3, 10, and 17 are sufficient for the Board to
13 determine that the '705 Patent is PGR eligible, this discussion of Claims 1
14 through 20 is necessary because the determination of the effective filing date
15 is required for addressing Grounds 4 and 5. So, moving on to slide 47,
16 highlighted on slide 47 at the bottom of the screen is a limitation that
17 appears in all of the independent claims of the '705 Patent, and it requires
18 that the switch be physically located, electrically connected, between a DC
19 voltage output, which is output of the driver, and one -- at least one of the
20 LED circuits. This limitation is disclosed nowhere in the priority
21 applications before 2013. In fact, this limitation was first disclosed no
22 earlier than the effective filing date of the '705 Patent, which is March --
23 sorry, February 22, 2021.

24 Moving on to slide 48, paragraph 22 of the '215 application, which
25 we addressed earlier, is the paragraph Patent Owner -- is one of the

1 paragraphs Patent Owner relies on as evidence of pre-2013 support for this
2 limitation. In particular, Patent Owner says that the disclosure that an LED
3 circuit can be coupled to a dimmer switch that allows for adjustability of the
4 output of the LED circuit means that there was disclosure to a person of
5 ordinary skill in the art that there was a dimmer switch after the output of the
6 LED circuit driver. However, that is not what this paragraph says. Moving
7 on to slide 49, in the Patent Owner response later at 60 and 61, Patent Owner
8 makes an admission. What Patent Owner says is this paragraph 22 can be
9 read to a person of ordinary skill in the art to indicate that the dimmer switch
10 is located before the LED circuit driver. In this section of the Patent Owner
11 response, Patent Owner is discussing Claim 15 of the '001 Patent. But this
12 admission is dispositive. This admission is important because what it
13 means, going back to 48, what it means is paragraph 22 does not inherently
14 disclose that the dimmer switch is located after the LED circuit driver
15 because Patent Owner is relying on it to disclose a dimmer switch before the
16 LED circuit driver. And we also know there's nowhere in paragraph 22 that
17 explicitly says where the dimmer switch was. And because this paragraph
18 doesn't inherently or expressly describe exactly where the dimmer switch is,
19 under Power Oasis, we know that it lacks written description support for
20 what Patent Owner is trying to read into it which is that the dimmer switch
21 would be after the LED circuit driver. So, looking at the plain language of
22 paragraph 22, what it says is that the dimmer switch being coupled to the
23 driver allows for the output to be adjustable. However, if as Patent Owner is
24 trying to rely on the dimmer switches after the output, then the dimmer
25 switch is not adjusting the output of the driver. The dimmer switch is

1 adjusting the signal after it is output from the driver. And so, that is not
2 what is described in this paragraph. This paragraph is discussing a dimmer
3 switch that means that the output of the LED circuit driver is adjusted, which
4 if it was located after the output, it is not adjusting the output.

5 In addition, moving on to slide 52, these figures shown in slide 52,
6 these are from the '215 application, but they are as substantively the same as
7 the figures in all of the file history and in the '705. These figures show that
8 there is no disclosure of a figure with a switch located after the DC output
9 and before the LED circuit. So, Figure 12 doesn't have -- Figures 12 and 15
10 don't have DC outputs, and they, all three figures are shown as the switch is
11 explicitly connected to AC and not DC. On the far right, it shows Figure 19,
12 which does have a DC output inside of the LED circuit. There is a bridge
13 rectifier shown. It's the first four LED connections. That's a bridge rectifier,
14 and it creates DC voltage, and there is no spot there for a switch. There's no
15 switch there. There's no place where it shows a connection can be made,
16 where a switch can be inserted. It shows instead that the DC output is
17 directly connected to the LEDs. So, there is no disclosure in any of the file
18 history, priority applications or in the figures that shows this limitation in all
19 Claims 1 through 20 of the '705 Patent. If Your Honors have no questions
20 about this, I'll move on to slide 88.

21 Moving on to slide 89 actually. This is Ground 1, Your Honors,
22 that Claims 3, 10 and 17 are invalid under section 112. These are the claims
23 that we addressed earlier in the claim construction section about that all
24 require a forward voltage. In particular, they require that switching the
25 switch provides at least two different DC forward voltages to circuits. The

1 Board correctly found that these claims lack enablement and written
2 description support and are indefinite under 112 in the Decision to Institute.
3 They also correctly found that in the parent PGR, and as discussed at length,
4 there is just no disclosure anywhere in the '705 or in its priority applications
5 that disclose a switch that provides two different DC -- two different forward
6 voltages at all, let alone two different DC forward voltages to at least one of
7 the circuits. If Your Honors have no questions about this Ground, I will turn
8 it over to my colleague, Ms. Dahl.

9 JUDGE BELISLE: Okay.

10 MS. DAHL: Mary Dahl for Petitioner, and I will be addressing the
11 remaining grounds, Grounds 2 through 6. So, starting with Ground 2 on
12 slide 92, it is an anticipation ground based on Bruning. Going to slide 93.
13 Patent Owner does not make any arguments with respect to Ground 2 in
14 either of its response or sur-reply. And thus, the Board should find that
15 Bruning anticipates Claims 15, 17, and 19. Unless the Board has any
16 questions regarding Ground 2, I will turn to discussing Ground 3.

17 Moving to slide 94. Ground 3 is an obviousness ground based on
18 Bruning and Evanicky. Going to slide 95. Patent Owner specifically
19 disputes whether Bruning in view of Evanicky renders obvious the two
20 limitations that are shown on this slide. And the petition advances two
21 different combinations, but specifically relies on the second combination
22 which is highlighted on the slide for Dependent Claims 2, 9, and 16. And
23 the second proposed combination is Bruning's color-specific transistors and
24 controllers and Evanicky's slider and knob. And the argument for why this
25 second proposed combination satisfies Dependent Claims 2, 9, and 16

1 applies to all claims in this ground. So, I'm going to focus on this argument
2 -- focus on why all the claims are disclosed, and also why the proposed
3 combination has at least two positions.

4 As a reminder, and as my colleague previously discussed, Patent
5 Owner has admitted that a switch can be a complex multi-component switch
6 assembly encompassing, for example, programmable switches or electro-
7 mechanical switches. And that admission can be found at Patent Owner's
8 response at pages 26 and 27. But Patent Owner's argument with respect to
9 Ground 3 essentially is nitpicking the proposed switch arguing that each
10 subcomponent of the switch must meet limitations, and that does not fairly
11 address the proposed combination. So, to address the first disputed
12 limitation, the proposed switch is electrically connected between the driver's
13 DC and the LED circuit, as claimed because the transistor portion of the
14 proposed switch is connected as claimed. So, if we go to slide 96, Bruning's
15 color-specific switches are outlined in blue. There's no dispute that
16 Bruning's color-specific transistors are connected as claimed. And as a
17 reminder, all claims of the '705 Patent recite the limitation of the switch
18 being electrically connected between the driver's DC and LED circuits.
19 Patent Owner did not dispute Ground 2, does not dispute that Bruning's
20 transistors are electrically connected as claimed.

21 So, if we go back to slide 95, the second disputed limitation is
22 whether or not the switch has at least two positions. There's no dispute that
23 the slider knob portion of the proposed switch has at least two positions.
24 Evanicky's slider knob has two positions. Unless the Board has any
25 questions regarding Ground 3, I will move to discussing Ground 4.

1 Okay. Going to slide 99. Ground 4 is an anticipation ground
2 based on Doheny. Going to slide 100. Patent Owner's only argument with
3 respect to Ground 4 is that Doheny does not qualify as prior art. But as the
4 Board correctly found in its institution decision, and as my colleague
5 previously discussed, the '705 Patent is not entitled to an effective filing date
6 prior to when its application was filed, which was in February 2021. And
7 so, Doheny, which was filed in 2017, published in 2018, does qualify as
8 prior art. Unless the Board has any questions regarding Ground 4, I will turn
9 to discussing Ground 5.

10 Turning to Ground 5 on slide 102, it is an obviousness ground
11 based on Van Winkle. Turning to slide 103. Patent Owner's argument with
12 respect to Ground 5, similar to Ground 4, is that Van Winkle is not prior art,
13 but Van Winkle, which was filed and published in 2018, is prior art as it is
14 before the 2021 effective filing date of the '705. Unless the Board has any
15 questions regarding Ground 5, I will turn to discussing Ground 6.

16 Moving to slide 105. Ground 6 is an obviousness ground based on
17 Bruning and Lee. And Patent Owner's arguments with respect to Ground 6
18 are similar to its arguments with respect to Ground 3 and fail for similar
19 reasons. So, Patent Owner does not address the proposed combination
20 which is highlighted on the slide which is the switch being the combination
21 of Bruning's color-specific transistors and controllers and Lee's slider, and
22 the portion of the proposed switch that is disclosed by Bruning's color-
23 specific transistors is connected as claimed, so between the LED driver's DC
24 output and the LED circuit and the portion of the proposed switch that is
25 disclosed by Lee's slider has at least two positions. Unless the Board has

1 any questions regarding this ground, I will reserve the remainder of time for
2 rebuttal.

3 JUDGE BELISLE: Counsel, can you just walk us through a little
4 more detail as to how you're combining these switches to arrive at the claim
5 limitation?

6 MS. DAHL: Sure. So, in Grounds 3 and 6, the specific
7 combination relied on for 2-9-16, it's Bruning's color-specific transistors and
8 controllers, and the disclosure, the teaching that it is combined with is the
9 manual user input. So, Lee's slider in the case of Ground 6 and Evanicky's
10 knob in Ground 3. It's not bodily incorporating the two references. The
11 teaching that's applied from the secondary reference is that the user would be
12 able to directly control the switches in Bruning. Does that address your
13 question?

14 JUDGE BELISLE: Let's go back. Do we have a slide that can
15 show us the color-specific switches of Bruning?

16 MS. DAHL: Yes. It would be slide 96.

17 JUDGE BELISLE: Okay. So, which ones are the color-specific
18 switches?

19 MS. DAHL: They're in blue. They're the three transistors
20 corresponding to red, green, and blue LED circuits. And so, the teaching
21 that would be applied is that the user can directly select the user interface to
22 change these switches. So, in the first instance, if we go to the previous
23 slide 95, if we look at the first proposed switch combination, Bruning's
24 color-specific transistors, they're indirectly selectable by a user. Where
25 Evanicky or Lee come in is to render obvious Claims 2, 9, and 16. So, then

1 the proposed switch is the whole assembly. Again, Patent Owner does not
2 dispute a switch can be a complex multi-component assembly, and the
3 Evanicky or Lee's user input has at least two positions, and that whole
4 switch assembly would be directly selectable by the user.

5 JUDGE BELISLE: So, how many of Evanicky's switches are you
6 adding into the color-specific switches? One for each one, or how are you
7 using the manual switch concept with the color-specific switches? How is
8 that teaching coming together? The bigger picture here is I just want to
9 make sure I fully understand Petitioner's argument as to how and why they're
10 bringing these disclosures together to create the claim, you know, achieve
11 what's recited in the claim limitation.

12 MS. DAHL: Yeah. So, Bruning already discloses a user panel
13 setting so it already like envisions a user being able to control its multiple
14 transistors which control each colored circuit. And so, with Evanicky and
15 Lee it's just even more explicit that there would be multiple positions when
16 you -- that allow the user to like physically adjust in order to control the
17 circuits. So, Bruning already envisioned user control. This is just even
18 more explicit to have multiple positions for the user control.

19 JUDGE BELISLE: Okay. Just to solidify this idea that there's at
20 least two positions?

21 MS. DAHL: Yes, correct, Your Honor.

22 JUDGE BELISLE: Okay. Thank you.

23 MS. LIBRACH NALL: Your Honor, if I may just put a point on
24 that which I believe I'm allowed to do.

25 JUDGE BELISLE: Yes, yes.

1 MS. LIBRACH NALL: So, the combination is that the color-
2 specific transistors, which transistors don't turn on and off on their own, they
3 have to be controlled. And the control together which is the slider knob of
4 Evanicky is providing the control for the transistors and together that is the
5 switch is the knob plus the transistor. And even though a person of ordinary
6 skill in the art calls a transistor a switch they also call many things a switch.
7 So, a transistor is a switch but also a -- the control of the transistor plus the
8 transistor itself is a programmable switch. And so, that combination is what
9 we are proposing in in this ground.

10 JUDGE BELISLE: Okay.

11 MS. LIBRACH NALL: And, Your Honor had asked me earlier
12 about the -- about forward voltage and how the grounds work if you do not
13 adopt the disclaimer and definition from the file history, and I'm not sure
14 that I adequately addressed your question with respect to if Your Honors do
15 not adopt the construction that is the definition in the file history the proper
16 construction is the plain and ordinary meaning extrinsically since there is no
17 definition in the Patent other than the express definition in the file history,
18 and that would be the forward voltage -- the voltage in the forward direction
19 of the diode. And even in that scenario Claims 3, 10, and 17, the
20 specification still does not disclose of any switch that provides two different
21 voltages to a circuit. Sorry, did I interrupt?

22 JUDGE BELISLE: No.

23 MS. LIBRACH NALL: Oh, I'm sorry. Okay. Two different
24 forward voltages to a circuit, because the specification requires and states
25 that the forward voltages change between the series and the parallel. And

1 the definition, whether Your Honors adopt the definition or not, does not
2 change the discussion in the specification that the way that a forward voltage
3 of a circuit, or the way that characteristic has changed is the wiring between
4 series and parallel. And so, though the claim construction is proper, it is not
5 required for determining that Claims 3, 10, and 17 are not disclosed
6 anywhere in the file history.

7 JUDGE BELISLE: So, while we're on this, and as you're talking,
8 maybe my question wasn't clear. My question wasn't what if we don't adopt
9 what's stated in the prosecution history as the definition, my question is,
10 Petitioner has a construction of forward voltage and that construction, or at
11 least the first one, is the minimum voltage difference required between the
12 anode and cathode with additional text. If we didn't have that prior
13 prosecution history, if it didn't exist, would we still arrive at this definition
14 of forward voltage? Meaning if we just couldn't rely on, or on the
15 prosecution history statement, which is, I mean I understand it's a point
16 blank statement, but if that didn't exist, would we still get to this same
17 definition? Is this the definition that the skilled artisan would attribute to
18 forward voltage regardless of what the prosecution history is saying?

19 MS. LIBRACH NALL: No, Your Honor, it would be the
20 alternative construction provided by Petitioner, which is the voltage in the
21 forward direction.

22 JUDGE BELISLE: Okay.

23 MS. LIBRACH NALL: If Your Honors have no further questions
24 we will reserve the remaining time for rebuttal.

25 JUDGE BELISLE: Okay. You're right at 44 minutes. You had an

1 additional six to your rebuttal. Patent Owner, do you wish to reserve any
2 time for rebuttal?

3 MR. MCBRIDE: Yes, Your Honor, we'd like to reserve 20
4 minutes if possible.

5 JUDGE BELISLE: Twenty minutes. Okay. You may start.

6 MR. MCBRIDE: Thank you, Your Honor. May it please the
7 Board, I am planning just to go through the slides without sharing the slides.
8 So, if Your Honors would prefer me to share the slides, let me know.
9 Otherwise, I will refer to page numbers and cites to the record where
10 appropriate if that's okay.

11 MR. BELISLE: It's okay. It is easier, though, when you share
12 your slides, but it's okay the other way also.

13 MR. MCBRIDE: Absolutely, Your Honor. I'll share the slides
14 then. Whatever is --

15 JUDGE BELISLE: It just helps us stay focused on what you're
16 saying instead of hunting for the --

17 MR. MCBRIDE: I understand, Your Honor. Yes, whatever is
18 easier for Your Honors is what I want to do here. So, I should be sharing my
19 slides. Let me know, Your Honor, if you don't see them.

20 JUDGE BELISLE: I see them.

21 MR. MCBRIDE: Okay. So, I'm at the title page right now. This
22 is a PGR just for some background. This is a PGR filed by Home Depot
23 against Lynk Labs. Lynk Labs is a small operating company that is a
24 pioneer in the field of LED lighting and has produced and sold LED lighting
25 products for over 20 years. The '705 Patent is not asserted in litigation. We

1 just heard from a Petitioner about the previous PGR against the parent
2 patent, a few things about that. And it is true that some of the issues in this
3 PGR are similar to the previous PGR. However, as we will discuss and as
4 the Petitioner has already discussed, there are a number of new issues and
5 then several new problems.

6 JUDGE BELISLE: Counsel, can I just interrupt you for a second?

7 MR. MCBRIDE: Yes, Your Honor.

8 JUDGE BELISLE: Just in case you do not intend this, what I'm
9 seeing on your sharing of slides appear to be your notes.

10 MR. MCBRIDE: Oh, I'm sorry. Well, let's see. Is it better now?

11 JUDGE BELISLE: Now I have your slides. Yes.

12 MR. MCBRIDE: Okay.

13 JUDGE BELISLE: Well, it's probably better with your notes, but.

14 MR. MCBRIDE: Well, let's go with the slides here.

15 JUDGE BELISLE: Okay. We'll go with the slides.

16 MR. MCBRIDE: If you don't mind, Your Honor. However, as we
17 will discuss, there are a number of new issues and new grounds. Even for
18 similar issues, Patent Owner has identified additional evidence and
19 additional authority in its briefing that clarify the error in Petitioner's
20 hindsight arguments. And Petitioner, by the way, hasn't bothered to rebut
21 many of these new points that Patent Owner has raised. We heard with
22 respect to the claim construction and a few other places a lot about what the
23 law requires, but Petitioner provides almost --

24 JUDGE PESLAK: Counsel?

25 MR. MCBRIDE: Yes, Your Honor.

1 JUDGE PESLAK: This is Judge Peslak. At the beginning of Ms.
2 Nall's presentation, she said that if the Federal Circuit comes down with a
3 decision affirming the prior PGR that Patent Owner is estopped in this case.
4 Do you agree with that?

5 MR. MCBRIDE: To a certain extent, yes. I mean, we would have
6 to see what exactly is affirmed. Assuming everything is affirmed, there are
7 new issues here. There are new grounds that are different. Frankly, I think
8 pretty much all the grounds are slightly different than they were in the prior
9 PGR. But I think there are one or two PGR eligibility issues that may be
10 different, too. So, I would expect a full affirmance would cause some
11 estoppel issues. But I hesitate to say that everything would be estopped in
12 this PGR because I know there are new grounds and, frankly, I just haven't
13 run the comparison, if that makes sense.

14 JUDGE PESLAK: Well, if you're going through your argument
15 today and you come across one of those issues that you think would not be
16 estopped, can you just point that out for us, please?

17 MR. MCBRIDE: I will try to, Your Honor.

18 JUDGE PESLAK: Thank you.

19 MR. MCBRIDE: Most of the Petitioner's arguments boil down to
20 reading out claim language or embodiments in favor of out-of-context
21 statements from the intrinsic and extrinsic record. That is, we have fairly
22 broad claim terms that Petitioner's arguing should be limited to specific
23 embodiments as disclosing without talking about other embodiments in the
24 specification. Patent Owner's position, on the other hand, is that the claims
25 mean what they say. Petitioner's position is often that the claims and

1 specification mean the opposite of what they say. As I will discuss today,
2 Petitioner's position is incorrect hindsight analysis.

3 Moving to slide three, the '705 Patent is directed to multi-voltage
4 and multi-brightness LED lighting devices and methods of using the same.
5 In terms of the grounds here, I think Ground 1, to Your Honor's question, I
6 think Ground 1 is the same. And the other five grounds are slightly different
7 because of new limitations and also new combinations of art. Ground 4 and
8 5, Doheny and Van Winkle simply weren't in the previous PGR, so those
9 would not be estopped. And I think most of the merits issues are not
10 estopped here. Right in the abstract here, it's a little tough to read, but the
11 '705 Patent is discussing a switch capable of switching a voltage level input
12 to at least one of the first LED circuit or the second LED circuit. So, we're
13 immediately talking about multi-voltage LED circuits.

14 Slide 4, as Petitioner pointed out, the new limitations here are --
15 there are new limitations in the claims of the '705 Patent that were not
16 present in the previous PGR, and those new limitations are the last two, the
17 LED driver including an input, so on, and then the last limitation wherein the
18 switch is electrically connected between the DC voltage output and at least
19 one of the first operating LED circuit, or the at least one additional LED
20 circuit. So, in both instances there, arguments relating to those two
21 limitations are effectively new to this PGR.

22 Slide 5, I want to talk quickly about the priority chain for the '705
23 Patent. It's the latest in a number of different priority chains stretching back
24 to a number of different applications, excuse me, stretching back to October
25 6, 2007. Now, each of the '705 Patent and all the applications dating back to

1 May 28th, 2010, where you see the '597 PCT application, each of these
2 applications is a continuation of the previous application and incorporates by
3 reference every single application on this page that came prior to it. So, in
4 each case, there's a perfect continuity of disclosure in each of these
5 applications going back to the '597 application. So, the '597 application is
6 what we're talking about because it is the first with the continuity of
7 disclosure and it's May 28th, 2010, which obviously is a pre-AIA
8 application. The '597, correspondingly, incorporates by reference the '215
9 and '771 provisionals and the '267 application by reference. So, the
10 disclosure in those applications should be read as part of the '597 application
11 in light of what the '597 application says.

12 Slide 6. So, this is an important point, as Your Honors are going
13 through the materials here, that the '705 Patent embodiments are all
14 combinable. Petitioner is acting as though certain embodiments disclosed in
15 the specification cannot be combined with anything else and would not be.
16 And because a figure has an AC input and has a switch, that means the
17 corresponding disclosure in the specification talking about DC driver input
18 or switches that switch between different voltage levels without reference to
19 parallel or serial embodiments are simply not important to the disclosure.
20 And we don't think that's correct. We think on the law, there's a strong
21 presumption against claim construction that excludes a disclosed
22 embodiment, as we'll go through today.

23 There are a lot of embodiments Petitioner is excluding, and that's
24 the Nobel BioCare case in our briefing, there are a number of other cases
25 like that. On the facts, the specification of the '705 Patent states, and here's

1 one place. We have several other places in the briefing talking about this.
2 But at the '705 Patent column 8, lines 10 through 15, it specifically says that
3 the packages of the '705 Patent can be of varied makeup and can be
4 combined with each other to create desired systems given the scalable and
5 compatible arrangements possible with and resulting from this invention.
6 So, the embodiments in the '705 Patent are each meant to be combined with
7 each other. And that's very important to understand. And this is something
8 that Petitioner I don't think has ever rebutted in any of their briefing. This is
9 what the patent says, and they haven't explained why we should consider
10 things like the single voltage parallel serial embodiments to override other
11 embodiments talking about multi-voltage LED circuits, which is what the
12 claim is requiring is multi-voltage LED circuits.

13 JUDGE PESLAK: Counsel?

14 MR. MCBRIDE: Yes, Your Honor.

15 JUDGE PESLAK: This is Judge Peslak again. Aren't you familiar
16 with the cases that say, like, written description is different than
17 obviousness? Just because you could combine them, that's not sufficient
18 description. Sounds to me like you're arguing that because, one of ordinary
19 skill in the art, could combine the embodiments to come up with what's in
20 the claim, that satisfies written description. Is that what you're saying?

21 MR. MCBRIDE: No, Your Honor. No, I'm not saying that. I
22 think the disclosure for each of these limitations is in the patent, and the
23 patent is specifically talking about the fact that you should combine these
24 various different disclosures together. We go through and we walk through
25 exactly, in our briefing, exactly how these different embodiments are -- the

1 specification supports each of these different embodiments being combined
2 together. For example, for the dimmer switch, it's obviously talking about
3 adding a dimmer switch to an existing LED driver and LED circuit, right?
4 So, it's stating right there it should be combined with the others. With
5 respect to packages, the -- with respect to column 8, lines 10 through 15,
6 where it's talking about packages, what it's calling packages, the '705 Patent
7 gives a very broad description of what is in a package and what can be
8 included, and that includes things like drivers and switches in a single
9 package. So, it's telling you, hey, we can have a package that includes
10 switches, for example, and that's, I think, at column -- I think if I pull the
11 patent up here, that would be at column 7, starting at lines 6 through
12 essentially 11. It's talking about multi-voltage packages that configure to
13 provide a means of switching. So, the packages themselves can't have
14 switches on them. That's disclosed in the '705 Patent. And one thing that
15 we talk about as well in our briefing is the fact that as you go through the
16 figures in the '705 Patent, they talk about combining each of the previous
17 disclosures with each other. So, this is the point of this invention to a large
18 extent. One of the goals here is to have combinable and scalable
19 arrangements of LED devices, if that makes sense, Your Honor.

20 JUDGE PESLAK: Is there any explicit disclosure of putting a
21 switch between the DC voltage output and the first operating LED circuit,
22 either in the figures or in the text?

23 MR. MCBRIDE: Yes, Your Honor. Bear with me one second.
24 So, it's slide 24, where we're talking about Claims 1 through 20 which the
25 claim just requires wherein the switch is electrically connected between the

1 DC voltage output and at least one of the first operating LED circuit, or at
2 least one additional LED circuit. Paragraph 22 discloses this. It discloses
3 the LED circuit driver may be coupled to a dimmer switch that regulates
4 voltage and allows for adjustability of the otherwise relatively fixed voltage
5 and/or relatively fixed frequency output. So, the LED circuit driver is
6 adjusting the output of the LED circuit driver. Right. So, it's attached to the
7 -- it's attached to the output of the LED circuit driver. Now, Petitioner is
8 trying --

9 JUDGE BELISLE: Sorry, counsel. This is Judge Belisle.
10 Paragraph 22 does not say where it's attached. Is that correct?

11 MR. MCBRIDE: No, Your Honor, that's a limiting -- the claim
12 that says where it's attached is a limiting claim that limits the scope of this
13 disclosure. And as our expert --

14 JUDGE BELISLE: I'm asking if paragraph -- where in paragraph
15 22, does it say that the switch is at the output of the driver?

16 MR. MCBRIDE: Our position, Your Honor, is that that is the
17 natural interpretation of this disclosure. And a POSITA would understand
18 that that is what this disclosure meant. Not that it will be obvious, not that it
19 will be, yeah, not that it will be obvious and inherent, but that's what this
20 means. Because at the end, when you talk about the -- when we look at the
21 last sentence, it states the LED circuits get brighter as the voltage and/or
22 frequency of the LED circuit driver output is increased to the LED circuits.
23 So, the dimmer switch is what they're talking about there that is increasing
24 the output of the LED circuit driver.

25 JUDGE BELISLE: So, if I have the switch on the front end of that

1 driver, why would that not do the same thing?

2 MR. MCBRIDE: Well, Your Honor, I think our, we talk about this
3 in our briefing, and where we talk about the fact that they commonly
4 understood information, you know, commonly understood information in the
5 technology, doesn't have to be spelled out 100 percent in the disclosure, that
6 a POSITA would understand that what this is talking about is putting a
7 driver. Now, to one of Petitioner's points about whether you could put it
8 somewhere else. Yeah, I mean, I think our expert gets into the fact that
9 yeah, a POSITA would understand you could also place it elsewhere. This
10 is a basic circuit design issue. Right. Whether you put it at the input or the
11 output. But what paragraph 22 seems to be talking about, if it has any
12 meaning at all, is that you're putting a dimmer switch at the output of the
13 LED circuit driver. Now --

14 JUDGE BELISLE: But doesn't that then create another issue in
15 the claim? That if you do in fact put this dimmer switch in this location,
16 that that dimmer switch then has to be capable of switching -- of being the
17 switch that's referenced earlier in the claim, which then requires it to be able
18 to switch. I don't have the claim in front of me at the moment, but how do
19 you sort of resolve putting this dimmer switch in the location you want it to
20 be after the driver on the other side of the driver and have it then satisfy the
21 switching of the input to at least one of those circuits?

22 MR. MCBRIDE: Well, Your Honor, the switch capable of
23 switching the voltage level input to at least one of the first operating LED
24 circuit with at least one additional LED circuit, the dimmer switch is
25 changing the voltage from the output of the driver, which feeds directly into

1 the LED circuits. So, it's already placed at that location. Does that make
2 sense, Your Honor?

3 JUDGE BELISLE: I understand what you're saying, yes.

4 MR. MCBRIDE: Now, I don't think that the -- I don't think this is
5 limiting like the functionality of the dimmer switch being able to turn on or
6 off an LED circuit. I don't think it's saying the dimmer switch can't turn a
7 circuit on or off or provide different voltages to the circuits, right? I just
8 think it's saying the dimmer switch is increasing the voltage and current.
9 The LED circuits get brighter as the voltage and/or frequency of the LED
10 circuit driver output is increased to the LED circuit. So, I think it's saying
11 it's brightening or dimming one or more LED circuits if that makes sense.

12 JUDGE BELISLE: Well, let's stay on paragraph 22. Is there any
13 other disclosure that shows or discusses putting a switch between the DC
14 voltage output and the LEDs?

15 MR. MCBRIDE: Yes, Your Honor. We think paragraph 15 here,
16 we're talking about constant voltage DC power source coupling with at least
17 two forward voltage drive levels. So, you have different voltage levels
18 coming out of there. So, we think that what they're talking about there is
19 switching between two different forward voltage drive levels to the LED
20 circuits. We have some other places discussed in our briefing as well. At
21 sur-reply 15 through 16, and Patent Owner response 34 through 37. These
22 are talking about, for example, let me see. Yeah, the discussion in
23 paragraphs 18 through paragraph 22 of the '215 provisional. We think is
24 generally talking about a switch at the output of circuit, the LED driver. We
25 make the point that the switching means is broad enough to encompass the

1 dimmer switch at the paragraph at page 35. So, we do talk about a number
2 of places in the specification that we think are talking about placing a
3 switch, whether it be a dimmer switch or something else, at the output of a
4 LED circuit driver, to drive LED circuits.

5 And on slide 25 as well, I think Patent Owner -- Petitioner even
6 talked about the rejection in the file history of Lefebvre. In the context of
7 Lefebvre, we think this is another place where it's demonstrating that the
8 inventor actually understood, had possessed knowledge of putting a switch
9 after an LED circuit driver and as an input to the LED circuits. Because in
10 the discussion, this is a response and in the file history, to a rejection over
11 Lefebvre piece of prior art. So, Lefebvre is a piece of prior art that discloses
12 putting switches before an LED driver. And here, Patent Owner is talking
13 about claims that require a switch after the output of the LED driver. And
14 they say the switches of Claim 1 instead are located after a DC voltage
15 output of an LED driver, which provides for control of a DC voltage, rather
16 than attempting to control an AC voltage that is later converted into a DC
17 voltage. And then the applicant states placing a switch after an LED driver
18 is more efficient since the LED driver can optionally output a lower voltage,
19 thereby reducing the amount of high voltage isolation needed for the switch.
20 This LED driver switch configuration enables the user with smaller and safer
21 switches and is safer for a user to actuate the switch while there is power
22 being delivered throughout the lighting system. So here, the applicant is
23 actually talking about the reasons that you would want to put the switch after
24 the LED driver. So, we think this is also evidence that the applicant was in
25 possession of the knowledge to place the LED driver, the LED switch after

1 the LED driver.

2 JUDGE BELISLE: Would this be evidence perhaps of possession
3 at the time that this was written? Not at the time the specification was filed?

4 MR. MCBRIDE: Possibly, Your Honor. But I think we're
5 rebutting the point that the Petitioner is making. And I think this is some
6 evidence of possession of the knowledge.

7 JUDGE BELISLE: Okay. Continue.

8 MR. MCBRIDE: Yeah, and going back to slide 14, I think one of
9 the issues, Your Honor, where the way we framed this, which wasn't clear
10 from Petitioner's arguments, is that whether a POSITA would have
11 understood that the switch could be placed somewhere else is irrelevant to
12 the fact that a POSITA would have understood the inventor possessed the
13 knowledge to place the switch at the output of the driver based on paragraph
14 22 and the other disclosures discussed. And that's our expert report at
15 paragraphs 110 through 112, discusses that.

16 JUDGE BELISLE: Counsel, while you're sort of in between
17 things right now, what is the status of the appeal in the prior PGR, the 00009
18 PGR? Do you know that offhand?

19 MR. MCBRIDE: I do know generally what the status is. The
20 status is that the briefing is complete, but there has not been an oral
21 argument scheduled yet. So, if I was to prognosticate, I would say that we
22 will finally get a final -- we will probably get a final written decision here
23 under the statutory deadline than before we get anything out of the Federal
24 Circuit, if that makes sense.

25 JUDGE BELISLE: Yes. So oral argument is not yet set?

1 MR. MCBRIDE: That's correct.

2 JUDGE BELISLE: Okay. Thank you.

3 MR. MCBRIDE: Okay. Moving to forward voltage. Go ahead,
4 Your Honor.

5 JUDGE BELISLE: Counsel, if you could go back to that slide that
6 we were sitting on for a bit right before you moved.

7 MR. MCBRIDE: Yes, Your Honor.

8 JUDGE BELISLE: Right there. This is your expert's declaration?

9 MR. MCBRIDE: That's correct.

10 JUDGE BELISLE: Well, I see in that paragraph 112, it states a
11 broad interpretation of this disclosure, the dimmer switch disclosure,
12 presumably paragraph 22. A broad interpretation of this disclosure teaches
13 that the dimmer switch can be placed at the input or the output of the LED
14 circuit driver. So, I think in this case, we're having some difficulty with
15 even your expert is sort of referring to that disclosure in paragraph 22 as --
16 that it requires a broad interpretation to get a teaching that you can put it on
17 either side as opposed to what the text of that disclosure states. So, perhaps
18 without rehashing, how do we come to agree with Patent Owner that there's
19 a disclosure of putting a switch where your own expert is suggesting that we
20 have to kind of go to obviousness to get there?

21 MR. MCBRIDE: No, Your Honor. I don't think that's at all what -
22 - I read this slightly different, Your Honor, than obvious.

23 JUDGE BELISLE: Give me everything.

24 MR. MCBRIDE: So, the sentence following says, a narrow
25 interpretation of disclosure teaches that the dimmer switch must be placed at

1 the output of the LED circuit or driver. So, the expert is saying, I can look at
2 this thing and, you know, if I want to be very laser focused on what
3 paragraph 20 is talking about -- 22, it's saying you've got a dimmer switch
4 that is adjusting the voltage of an output of an LED driver. So, you put the
5 dimmer switch at the output. What Petitioner is saying is, well, no, you
6 would actually put it any place but. And I think the expert is making
7 anything but the output. The expert here is making the point that, well, you
8 could interpret this disclosure more broadly. But either way, the disclosure
9 is teaching a POSITA that a dimmer switch can be placed at the output of an
10 LED circuit driver. Does that make sense, Your Honor? Right. The
11 limitation narrows, specifies where the circuit driver has to be placed. So,
12 it's a narrower limitation than the claim would have otherwise. So, when
13 you look at paragraph 22, when you look at what is disclosing, you know, of
14 course, putting the dimmer switch at the output of the LED circuit driver is
15 what was in possession of the inventor at the time, because that's the most
16 natural way to interpret that paragraph if that makes sense.

17 JUDGE BELISLE: I understand your argument.

18 MR. MCBRIDE: Right. And there is some case law I'm trying to
19 find about written description talking about the fact that a POSITA can rely
20 on background knowledge and commonly understood things in reading the
21 written description. So, basic circuit design principles and things like that
22 don't need to be spelled out in the written description, if that makes sense.

23 JUDGE PESLAK: Counsel, is there anything in the record that's
24 going to tell us what background information your expert relied on to come
25 to this interpretation?

1 MR. MCBRIDE: I think he goes over the -- I think in the
2 declaration he discusses why he arrived at the conclusion he did.

3 JUDGE PESLAK: But is there specific evidence that would
4 support this type of reading? That's what I meant, objective evidence that
5 would support his interpretation.

6 MR. MCBRIDE: I think he's relying on the disclosure itself of
7 paragraph 22 in the paragraph that's brought up here that Your Honors are
8 looking at. So, he's talking about the fact that the dimmer switch is coupled
9 to an LED driver and adjusts the output of the LED circuit driver. So, he's
10 looking at paragraph 22 here. Now, I think he discusses this in a little more
11 detail in his declaration and I'd have to go back and look at that.

12 JUDGE PESLAK: Well, the reason I was asking the question, I
13 think you just before I asked it you said he was relying on the knowledge of
14 a POSITA. And what I'm asking is, is there any evidence in the record that
15 would substantiate knowledge of a POSITA that would interpret paragraph
16 22 the way your expert has?

17 MR. MCBRIDE: Well, certainly the level of ordinary skill of a
18 POSITA is what he's basing his opinions on knowledge of a POSITA from,
19 Your Honor. I would have to go back and look and see if there's anything
20 else in there, and I can do that for sur-rebuttal.

21 JUDGE PESLAK: Okay. Thank you.

22 MR. MCBRIDE: Yeah.

23 JUDGE BELISLE: Counsel, you're at 30 minutes of your 40
24 minutes that you originally said.

25 MR. MCBRIDE: Thank you, Your Honor. So, I'll move into

1 Claims 3, 10, and 17 now since we're already here, it's slide 27. So, the
2 claim language here is simply at least two different DC forward voltages to
3 at least one of the first operating LED circuit, or the at least one additional
4 LED circuit. So, as I understand Petitioner's argument that its construction
5 doesn't really matter here, but I do want to point out that its construction
6 creates impossibility issues that aren't otherwise present in this claim, facial
7 impossibility. And I do want to point out that the file history they're relying
8 on is limited to Claim 1 of the then-pending application, which was a single,
9 an LED circuit with a single voltage explicitly. Here we're talking about two
10 different DC forward voltages.

11 JUDGE BELISLE: Counsel, this is Judge Belisle. I asked counsel
12 for Petitioner, in electrical engineering and electronics, we have terms such
13 as amps, watts, voltage, resistance, those all mean something to a skilled
14 artisan. Is the term “forward voltage” a term of art that means something to
15 the skilled artisan without having to look at anything more than seeing that
16 term?

17 MR. MCBRIDE: Yes, Your Honor. Yes, I think so.

18 JUDGE BELISLE: Does it not mean the minimum amount of
19 voltage necessary to pass basically to get something to operate?

20 MR. MCBRIDE: No, Your Honor. If the claim is talking about a
21 single forward voltage, then maybe that's an acceptable definition. But this
22 claim is talking about at least two.

23 JUDGE BELISLE: Okay, sorry. You want forward voltage to
24 mean operating voltage?

25 MR. MCBRIDE: Yes.

1 JUDGE BELISLE: Why doesn't the claim just say operating
2 voltage? I mean, operating voltage is a known thing. Forward voltage is a
3 known thing, I would believe, from what I've seen in the record. So, why
4 are we trying to take forward voltage and now have it mean operating
5 voltage?

6 MR. MCBRIDE: Well, so I'm not sure this claim really needs
7 construction because Petitioner is the one that's importing an impossibility
8 argument into it. But as Patent Owner, we have to propose a construction.
9 And as Your Honor rightly points out, why not just use operating? Why use
10 operating voltage? Well, the reason we did that was because the claim
11 requires a first operating LED circuit and at least one additional LED circuit.
12 So, operating is in the claims already, if that makes sense.

13 JUDGE BELISLE: Well, actually, I don't think I fully understand
14 that just because the word operating is in front of the other term, how that
15 translates into operating voltage. But my question wasn't why don't we just
16 interpret it to be operating? My question is the claim explicitly recites
17 forward voltage. Why doesn't it say operating voltage if that's what was
18 meant? I mean, it's forward voltage seemingly from our understanding of
19 the record is something that is a known term in electronics. So, why use that
20 term, if what was meant was operating voltage?

21 MR. MCBRIDE: Well, Your Honor, I think what he's talking
22 about when he's talking about providing two different DC forward voltages,
23 what the inventor was talking about in the claim, two different DC forward
24 voltages. What he's talking about is different forward voltages that will
25 cause the LED circuit to operate because it's a first operating circuit and then

1 you're turning on another LED circuit at two different voltages. So, it's not -
2 - there's a concept of a turn on voltage, which is closer to what Petitioner is
3 talking about in the prior art. And that's -- that's closer to Petitioner's
4 construction. And then there's a concept of an operating voltage, which
5 says, well, okay, across a forward voltage, you can have -- you can have a
6 forward voltage that has a range, if that makes sense, Your Honor.

7 JUDGE BELISLE: Well, actually, let's talk about that, because
8 there's some exhibits and evidence that's been submitted that, for example, a
9 tech sheet on an LED that suggests that the forward voltage or V_F with the
10 little F has a minimum, a typical, and a maximum. And it's sort of presented
11 to us as we should interpret that to be that there can be more than one
12 forward voltage. But my question is, is not that tech sheet just telling us that
13 over a batch of these LEDs that basically, when you're talking about
14 minimum voltage across a batch of LEDs, all of which have various
15 tolerances in manufacturing and in doping and such that I have a basically I
16 have a minimum -- minimum, I have a typical minimum and I have a
17 maximum minimum, but it's all afforded -- each LED itself would have a
18 minimum voltage. And if I had 100 of them together, that's how I would get
19 that range in the tech sheet. So, why is that understanding wrong of what
20 that tech sheet is telling us for forward voltages?

21 MR. MCBRIDE: Well, I think, Your Honor, I think slide 15 kind
22 of helps to show this out. Some of the tech sheets it's not really clear
23 whether they're talking about a voltage range or manufacturing range, and I
24 understand that argument. We can fight about that, but with -- with
25 Petitioner. But slide 15 here, and we have other data sheets in this. This is

1 talking -- this is showing the diode curve for a typical LED. This is a
2 Samsung data sheet showing a forward volt -- current forward voltage
3 characteristics against forward current characteristics for a typical LED.
4 This isn't any range. This isn't any manufacturing. This is one LED. This is
5 what Samsung is saying here is this is basically how the LED is going to
6 operate. And if you change the forward current from zero to 880 milliamps,
7 you're going to get a forward voltage change of roughly five to six and a half
8 volts. That's what this data sheet is saying. That's how every LED works.
9 If that makes sense. Even Dr. Neikirk, this is Petitioner's expert up in the
10 right-hand column. It says this graph in Exhibit 2036 illustrates that you can
11 apply a whole range of voltages in the forward direction. So, Dr. Neikirk is
12 not disputing that this is a range of forward voltages disclosed here across
13 one LED. And once you --

14 JUDGE BELISLE: That statement itself though, that you can
15 apply a whole range of voltages in the forward direction. That statement is
16 different than saying there are -- there's more than one forward voltage. At
17 least that one sentence that's presented to us on the slide.

18 MR. MCBRIDE: Well, he's talking about Exhibit 2036 which is
19 graphing forward voltage versus current forward current. So, he may be
20 trying to change the wording a little bit to help petition his case, but what
21 he's referring to is the range of forward voltage in Exhibit 2036, which goes
22 from five to six and a half. And that's consistent. We have several data
23 sheets in evidence that have similar diode, you know, versus current ranges
24 that show this current range. This is how the LEDs work. And that's in part
25 what's being claimed in the claims with at least two different DC forward

1 voltages is saying, well, you can actually drive more current and you're
2 going to get more voltage. And that's in Exhibit 2051. That's also what it's
3 talking about. And it gives more detail into it where initially it talks about,
4 you know, forward voltage is going to define what the minimum voltage
5 across an LED is. And then it goes on and it talks about the diode equation.
6 And it says actually forward voltage drop is more complex. An equation
7 describes the exact current to the diode given the voltage dropped across the
8 junction, the temperature of the junction, and several physical constants. It
9 is commonly known as the diode equation.

10 So, and Exhibit 2051 has a detailed discussion on this and has the
11 actual equation there and it says just understand that the voltage drop across
12 a current conducting diode does change with the amount of current going
13 through it. And it goes on to talk about Exhibit 2051 goes on to talk about
14 the fact that there are applications out there where the variation of voltage
15 and variation of current is actually important for the LED circuit design
16 principles if that makes sense. So, it's a case where what was said in the file
17 history was in respect to a claim that was requiring a single forward voltage,
18 and the issue of whether there are two or more forward voltages just wasn't
19 really at issue there. And in that case, you know, it kind of makes sense, you
20 know, why you wouldn't get into two or more forward voltages. Now we
21 have a claim that talks about you're changing it up a little bit to provide two
22 different forward voltages across. What you're actually talking about is that
23 voltage range, that operating voltage back in slide 15. Now, we do think that
24 this patent is broad enough it's talking about adding in LEDs, right, as you
25 have a switching mean to add in LEDs. So, it's even, that's another way you

1 can have more of a change in forward voltages simply to put additional
2 LEDs in series as you switch them in. So, that's another way that this patent
3 is talking about changing forward voltages, having multiple forward
4 voltages across an LED circuit. If you have an LED circuit and you add a
5 few LEDs in series, the forward voltage is going to change. If that makes
6 sense, Your Honor. Are you following me, Your Honor?

7 JUDGE BELISLE: Yeah. I mean, I understand what you're
8 saying, yes.

9 MR. MCBRIDE: Okay. And that's at slide 29 with Claims 3, 10,
10 and 17, where we're talking about them being supported by pre-AIA
11 applications. You know, it's important to note that with Claims 3, 10, and
12 17, we're not talking about two single voltage circuits. We're talking about
13 two different LED circuits that are multi-voltage LED circuits.

14 Moving back to slide 28 for a second, this is another place the
15 Petitioner doesn't really dispute here. The claim requires two different LED
16 circuits that have different colors and are multi-voltage. And the quote at
17 the top of slide 28 discloses pretty much that arrangement. It talks about
18 individual LED circuits, so more than one LED circuits, being the same or
19 different colors, so two different color LED circuits, each requiring different
20 forward voltages. So, it's saying the individual LED circuits each require
21 different forward voltages, multiple, plural forward voltages. So, the '215
22 provisional right there is disclosing essentially what's being claimed. And
23 that statement is also in the '705 Patent at I believe column 9 starting at
24 about line 12. That's something that Petitioner doesn't address in their
25 briefing. So --

1 JUDGE BELISLE: So, counsel, you're at coming up on just about
2 42 minutes. If you want to keep going, that's fine. It just comes out of
3 rebuttal.

4 MR. MCBRIDE: That -- go ahead, Your Honor.

5 JUDGE BELISLE: I did have one question, the slide you're on
6 right now.

7 MR. MCBRIDE: Yes. That's a creation of Patent Owner, is that
8 correct?

9 MR. MCBRIDE: That is correct.

10 JUDGE BELISLE: Okay.

11 MR. MCBRIDE: That is correct. That's illustrating the passage I
12 just read from Exhibit 1014, from the '215 provisional.

13 JUDGE BELISLE: Okay. So, go back please to that illustration.
14 So, on the left there's a blue box that says first multi-voltage operating LED
15 circuit. Could you just tell us in your words, why is that a multi-voltage
16 circuit?

17 MR. MCBRIDE: Well, if you see the green circle marked switch.

18 JUDGE BELISLE: Yep.

19 MR. MCBRIDE: So, if you were to connect it to one of the
20 contacts, you would only be illuminating two LEDs, right?

21 JUDGE BELISLE: Correct.

22 MR. MCBRIDE: So, then say each LED is a three-voltage drop.
23 So, that would be a six-volt LED circuit. And if you were to move the
24 contacts to the farthest outside of the blue circuit, if that makes sense, the
25 contact farthest outside for the blue circuit, now you're creating a circuit that

1 is going to draw current through four LEDs. In that case, it's going to be a
2 12-volt drop. So, it's the difference between, in this example, six volts and
3 12 volts when you switch the switch between the two.

4 JUDGE BELISLE: Right. So, the different voltages that are being
5 obtained here are due effectively to the change in how it's wired. Correct?

6 MR. MCBRIDE: They're changing circuit arrangements, yes.

7 JUDGE BELISLE: Not that the input voltage has changed.

8 MR. MCBRIDE: The input voltage. Well, yes. And there's
9 disclosure -- discussion in the '705 Patent about capacitors and resistors size
10 for whatever voltage and current is needed at the output. Yes. As you
11 change the current -- as you as you change your -- you change a switch
12 between embodiments this with two LEDs and four LEDs. The LED driver
13 is going to be sized to output the corresponding voltage that's required. So,
14 the two LEDs, if they both drop three volts, that's six volts. And if you have
15 four LEDs in series that's going to drop 12 volts. So, the assumption there is
16 that the LED driver is configured. What it's doing is actually providing the
17 appropriate voltage. It's a multi-voltage LED driver. It's disclosed
18 throughout the '705 Patent.

19 With that, I'll reserve the rest of my time, Your Honor. Thank you.

20 JUDGE BELISLE: Okay.

21 MR. MCBRIDE: Unless there are further questions.

22 JUDGE BELISLE: Does not appear so. So that's just 44 minutes.
23 And that still leaves you 16 minutes for rebuttal. Petitioner, when you're
24 ready, you have 31 minutes of rebuttal time.

25 MS. LIBRACH NALL: Thank you, Your Honor. I'd like to start

1 with slide 24 from Patent Owner. This is the slide where Patent Owner said
2 in response to one of the Judges asking about disclosure of a switch between
3 DC and the LED circuits. Patent Owner pointed to this paragraph 22, as I
4 discussed earlier, does not inherently or expressly disclose an exact location
5 of the dimmer switch. In fact, Patent Owner in their Patent Owner response
6 admitted that this can be read to mean it's at the output. As shown on slide
7 49 of Petitioner's slides, Patent Owner in their Patent Owner response at 60
8 and 61 said paragraph 22 does not require the dimmer switch to be located at
9 the output of the driver. It can be coupled to the input. And that's how you
10 know it's adjusting the output.

11 Paragraph 22 is not disclosing what Patent Owner is trying to read
12 into it. And paragraph 15 on Patent Owner's slide 22 also does not expressly
13 or inherently disclose a location of a switch after the DC. The other thing
14 that I want to point out is that for paragraph 22 of the '215, the '215 Patent
15 application is a patent application about AC drivers. Petitioner slides at, I
16 think it's slide 61, slide 61. And also, in the reply at 11-12, go through all of
17 the portions of the '215 application about the drivers. And the '215 Patent is
18 about AC driven circuits, as shown on slide 61 the discussion is about how
19 it's about the AC driver. There's no discussion about it being a DC driver as
20 well as shown on slide 62. It's all about the driver being an AC source.

21 JUDGE RAEVSKY: This is Judge Raevsky. I have a big picture
22 question. So, when discussing the issues with Patent Owner's counsel, Mr.
23 McBride suggested that there are new issues between this case and the prior
24 PGR involving the '341 Patent throughout the grounds here. Do you agree
25 with that? In particular, I'm curious if you view any material differences

1 between the 112 grounds here and in the prior PGR.

2 MS. LIBRACH NALL: Your Honor, there are no material
3 differences between the 112 grounds and the prior PGR as the slide 2 shows,
4 Petitioner's slide 2 shows the grounds. So, whether the PGR is eligible is
5 addressed in the parent PGR and that is if that one is eligible, this one is
6 eligible and that would be dispositive, as well as the claim constructions of
7 forward voltage, which may not be dispositive, although in Petitioner's view,
8 it is that the definition in the parent for one term should apply to its child and
9 its child. But Your Honors might not find that to be dispositive. But that is
10 addressed in the parent PGR. Whether or not the switch is required to be
11 physically directly manipulated by a user is addressed in the parent PGR, as
12 well as the 112 issues are addressed in the PGR. Grounds 2 through 6 are
13 not addressed in the PGR.

14 JUDGE RAEVSKY: Thank you.

15 MS. LIBRACH NALL: Your Honor, Patent Owner brought up
16 Lefebvre, I'm going to say it wrong, Lefebvre as one of the -- as evidence
17 that paragraph 22 of the '215 Patent discloses inherently that the location of
18 the dimmer switch is after the DC output. But if you look at the file history
19 of the '705, what Patent Owner was saying is that Lefebvre does not render
20 obvious the location of the switch after the DC voltage is created because
21 there are so many reasons why it was special and new. But none of those
22 special and new issues, ideas were disclosed in the '705 Patent or any of the
23 priority applications. The reasons Lefebvre doesn't render obvious, in Patent
24 Owner's words, the claims of 1 through 20 of the '705 Patent apply just as
25 equally to why paragraph 22 does not render inherent, explicit, or obvious,

1 the putting a dimmer switch after the output of the driver.

2 In slide 15 of Patent Owner, in slide 15 of Patent Owner slides
3 from sharing, Patent Owner pointed to this extrinsic evidence as evidence
4 that an LED diode has a range of forward voltages, but that's not what this
5 shows. What this shows is that for any one current, there is a line that shows
6 the forward voltage, and Patent Owner's statements about the diode equation
7 proves the point. The diode equation is not -- does not change based on -- it
8 is a -- forward voltage is a characteristic of an LED circuit. It is definable by
9 an equation. It is not something that can be changed by a dimmer switch. It
10 can be changed by adding LEDs so that the circuit has, if you add them in
11 series, the circuit has a different characteristic. It has a different forward
12 voltage. But a dimmer switch does not change the diode equation
13 characteristic that is a characteristic of the LED circuit. In fact, if we go to
14 slide 23 of Patent Owner -- of Petitioner's slides, Dr. Ducharme talking
15 about what was shown on slide 15 of Patent Owner slides. Dr. Ducharme
16 admits that for any single current, there is a single forward voltage. It's a
17 relationship. They equal each other. So, that extrinsic evidence does not
18 change the fact that it is a characteristic of the circuit. It actually supports
19 the fact that forward voltage is a characteristic of the circuit. If you look at
20 the circuit, the operating circuit, it'll have a forward voltage.

21 Moving to slide 29 of Patent Owner's slides, Your Honors
22 correctly stated this is not a figure that exists anywhere in the file history or
23 in the Patent. This is a figure that is made up from Patent Owner and there's
24 nothing in the priority applications or in the file in the specification that
25 show that disclosure of a driver that can change the voltage provided to the

1 circuit from 12 volts to 6 volts. If so, what the specification discloses is that
2 if the circuit is connected to 12 volts, when you switch the switch, it's still
3 connected to 12 volts. You can have a dimmer switch, but it's not going to
4 change it to 6 volts. And what we know from the testimony of Dr.
5 Ducharme and the testimony of Dr. Bretschneider, who was Patent Owner's
6 expert in the parent PGR is that if you were driving an LED circuit with 12
7 volts.

8 So, and then you switch the switch and you're suddenly driving
9 two LEDs with 6 volts, it will blow the circuit. The LEDs can't handle a
10 change like that. That's in the expert deposition at 63 colon 1 through 64
11 colon 21, and Dr. Bretschneider is -- I don't think I said that exhibit. It was
12 Exhibit 1036 and then 1038 at 69 colon 1 through 70 colon 4 is that
13 testimony that if you change the driving circuit -- the driving voltage on an
14 LED from 12 volts to 6 volts either is going to melt the circuit or it will
15 blow. It will either melt the circuit, or it won't be powerful enough to turn
16 on the circuit. But it's certainly not disclosed to be able to handle that
17 change. And Patent Owner also brought up paragraph 15 of the '597 PCT as
18 evidence that the switch could be located after the DC voltage is created and
19 before the LED circuit, and this is discussed at length in the briefing. But
20 that disclosure in paragraph 15 of the PCT does not disclose expressly or
21 inherently a switch in the claimed position. It does not disclose providing
22 multiple DC forward voltages, and for those reasons, Patent Owner is
23 incorrect that paragraph 15 of the PCT provides that support. If Your
24 Honors have any questions that I could answer about the petition or
25 anything, otherwise, I turn it over to Patent Owner.

1 JUDGE BELISLE: Okay. Well, thank you, counsel. Patent
2 Owner, you have 16 minutes of your rebuttal time remaining.

3 MR. MCBRIDE: Thank you, Your Honor. Let me share. Try to
4 share without incident at this point -- this time. So, we go back to the slide
5 15. I think Petitioner said that for any single one current there is a line that
6 there's only a single forward voltage. And I mean, that's true enough, but the
7 '705 Patent is talking about multi-voltage, multi-current, multi-brightness
8 LEDs that are achieved, yes, in some configurations by wiring and in some
9 configurations by switches. So, the voltage and the current are changing.
10 That's the point of the Patent. If you take it -- if you keep it constant, then
11 there's no point to the Patent. I mean, the title is multi-voltage and multi-
12 brightness LED lighting device and methods of using the same.

13 So, what this is showing on slide 15 is one way to achieve a multi-
14 voltage and multi-current, which would also increase the brightness, be a
15 multi-brightness LED.

16 JUDGE BELISLE: Counsel, if you intend to share, we're not
17 seeing anything at this point.

18 MR. MCBRIDE: Oh, no. Share.

19 JUDGE BELISLE: You can go back to your notes if you'd like.

20 MR. MCBRIDE: Thank you, Your Honor. I'll pass that. Do you
21 see my screen one now?

22 JUDGE BELISLE: No.

23 MR. MCBRIDE: All right. Unfortunately, I would just have to --
24 it's telling me it's sharing screen one. Unfortunately, I'll just have to go back
25 to calling out the slides. So, if we take a look at slide 15 of Patent Owner's

1 demonstratives, that's what I was talking about. This Patent is not a single
2 voltage, single current LED Patent. It's a multi-voltage, multi-brightness
3 LED lighting device Patent. So, the idea that you would just hold the
4 current steady is not what this Patent is talking about. One of the arguments
5 that Petitioner was raising with respect to slide 29 was that this is not
6 disclosed anywhere in the figures or disclosure. But if you look at slide 28,
7 it talks about individual LED circuits being the same or different colors,
8 each requiring different forward voltages. So, it's telling you right there that
9 LED circuits can have different colors and have required different forward
10 voltages. And that's all that slide 29 is illustrating. It's illustrating the '215
11 provisional at paragraph 21, which is also present in the '705 Patent as well.
12 And that's all it's being illustrated is one way you could configure that.

13 Petitioner was also talking -- was also arguing that there's no way
14 you could change from, say, a 3-volt, or to a 6-volt to a 12-volt LED circuit.
15 But the Patent and the priority documents specifically talk about connecting
16 and disconnecting LED circuits together. And that says on slide 27, gives a
17 couple examples, excuse me. So, the first is, you know, creating a selectable
18 desired operating voltage level that is achieved by electrically connecting the
19 LED circuits in a series or parallel circuit configuration. So, what that is
20 going to do is this is the embodiment that the Petitioner has relied on.
21 You've got two single voltage circuits, and if you connect them in parallel,
22 it's going to be double the voltage. I'm sorry, if you connect them in series,
23 it's going to be double the voltage. If you connect them in parallel, it's going
24 to be the base voltage. So, for two 3-volt LEDs connected in parallel, they
25 will drop three volts. Connected in series they'll drop six. Then you move

1 down to multi-brightness, a little bit lower on slide 27 on the bottom quote.

2 It states, more than one level of brightness, quote, multi-
3 brightness, end quote, based on a switching means that connects and or
4 disconnects at least one additional LED circuit to and/or from a first LED
5 circuit. If an LED circuit is being connected to and/or from a first LED
6 circuit, you can do that either series or parallel. If you do it series, that's
7 going to create a bigger voltage drop. So, if you have a 3-volt LED that you
8 connect in series, now with another LED, 3-volt LED, now you're going to
9 have a 6-volt drop. So, all this stuff is basic background knowledge for a
10 POSITA in this case, and our expert talks about that. One argument -- one
11 issue that Your Honors have asked about was support for background
12 knowledge being sufficient to satisfy the written description. Page 16 of our
13 sur-reply, I believe, cites the Streck case, which states a Patentee can rely on
14 information that is well known in the art to satisfy written description. The
15 Boston Sign Corp. case, cited on the same page, also states that. And with
16 respect to the following on that --

17 JUDGE BELISLE: Counsel, before you move on, I'm not sure the
18 question was necessarily what is the legal support for that. It was what is the
19 factual support?

20 MR. MCBRIDE: Right, Your Honor.

21 JUDGE BELISLE: I don't think the concept of being able to have
22 rely on skilled artisan, but what is the expert relying on to support his
23 statement?

24 MR. MCBRIDE: Well, it's certainly the statement in -- at
25 paragraph 22 in the surrounding context of that statement, which is clear

1 from his declaration. But also, I think he's relying on the level of skill in the
2 art as disclosed at page 23 of the petition. No. So, a POSITA would have a
3 bachelor's degree in electrical engineering or similar technical field with two
4 years of relevant experience in the field of design and/or development of
5 LEDs and circuits in the context of lighting control systems. So, he's
6 thinking a POSITA has that background knowledge. He's thinking what
7 would somebody with a bachelor's in engineering, electrical engineering,
8 and then a few years of experience designing and developing LEDs
9 understand. So, I think that's his basis for his understanding of a POSITA's
10 level of knowledge.

11 JUDGE BELISLE: Counsel, are you waiting for us, or did we lose
12 audio?

13 MR. MCBRIDE: No, Your Honor, I'm still here. Give me a
14 moment. I'm just checking my notes to see if there's anything else I want to
15 respond to.

16 JUDGE BELISLE: Okay.

17 MR. MCBRIDE: Yes, Your Honor. Just following up on that.
18 That last point. So, as I'm looking through Dr. Ducharme's declaration, he's
19 relying on additional disclosure in the '597 PCT with respect to where a
20 switch would be placed with respect to an LED circuit driver. So, he
21 provides a description there.

22 And one final point that I wanted to bring up, Your Honor, is
23 Petitioner had talked about relying on Patent Owner's reliance on the '215
24 provisional in certain places that are talking about because the '215
25 provisional is talking about AC voltage LEDs. But the '597 PCT that

1 incorporates the '215 by reference opens that concept up to DC voltage
2 drivers. So, the '597 is introducing the concept of being driven with DC
3 voltages. And obviously, the '597 is ultimately the document that Patent
4 Owner is relying on for the pre-AIA support.

5 Unless Your Honors have any other questions, I think that's all I
6 have.

7 JUDGE PESLAK: Hey, counselor, this is Judge Peslak. I just have
8 a question.

9 MR. MCBRIDE: Yes, Your Honor.

10 JUDGE PESLAK: There's two interpretations that your expert
11 gave, the broad one and the narrow one. Are you submitting them to us as
12 both being reasonable interpretations of that paragraph?

13 MR. MCBRIDE: Yes, I think both are reasonable interpretations
14 of the paragraph. Either one could interpret it, that paragraph to mean that
15 the dimmer switch must be placed at the output, or it could be placed at the
16 output or the input, a POSITA would understand based on the language of
17 paragraph 22 and other disclosure cited in his declaration.

18 JUDGE PESLAK: Okay. Thank you.

19 MR. MCBRIDE: You're welcome. Right. And I think he even
20 talks about, sorry to belabor. Yeah, the knowledge that was clearly within
21 the possession of the inventor at the time. So, he's, he's going beyond the
22 knowledge of a POSITA here, and even going into stating that the
23 knowledge was within the possession of the inventor at the time. That
24 would be something that could be implemented several different ways and
25 would be well known in the art.

1 And if there's no further questions, I rest our argument.
2 JUDGE BELISLE: Thank you, counsel.
3 MR. MCBRIDE: Thank you, Your Honor.
4 JUDGE BELISLE: Counsel, the case is submitted. It's taken under
5 advisement. We are off the record.
6 (Whereupon the above-entitled matter went off the record at 2:58
7 p.m.)

PGR2023-00016

11,297,705 B2

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