Filed on behalf of Textron Innovations Inc.
By: Patrick A. Doody (patrick.doody@pillsburylaw.com)
Bryan P. Collins (bryan.collins@pillsburylaw.com)
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: (703) 770-7900
Fax: (703) 770-7901

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVELOCK ADVANCED TECHNOLOGY CO., LTD.
Petitioner

v.

TEXTRON INNOVATIONS INC.
Patent Owner

Case IPR2013-00149
Patent 6,455,138

PATENT OWNER TEXTRON INNOVATIONS MOTION TO EXCLUDE PURSUANT TO 37 C.F.R. §42.64

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I. STATEMENT OF REQUESTED RELIEF

Pursuant to 37 C.F.R. §42.64 and Patent Owner Textron Innovations ("Textron's") Objections to Evidence ("Objections") served on Petitioner Wavelock Advanced Technology Co., Ltd., ("Wavelock") and filed with the Patent Trial and Appeal Board (PTAB) on December 6, 2013, paper No. 18, (Copy of the Objections is attached as Exhibit 2003). Textron seeks the exclusion of Petitioner's Reply, the Second Declaration of Robert Iezzi, Ph.D., Exhibit 1018, and the improperly attached exhibits to Dr. Iezzi's Second Declaration (Exhibits AA-GG). Each of these items raises a new issue, belatedly presents new evidence and presents no reason as to why the evidence was not presented when the petition was filed. The new evidence and Petitioner's reply also are not related to the grounds of rejection adopted by the Patent Trial and Appeal Board (PTAB), is prejudicial to Patent Owner, and is outside the scope of these proceedings. Accordingly, these documents should be excluded from this proceeding under the PTABs own rules, as well as at least under Fed. R. Evid. Rule 402 and Fed. R. Evid. Rule 403.

II. RELEVANT PROCEDURAL HISTORY

Each of the challenged claims of U.S. Patent No. 6,455,138 (the "'138 patent") requires first and second thermoplastic layers with a discontinuous layer positioned therebetween, in which the discontinuous layer includes "discrete

islands of metal in an adhesive." Ex. 1001, at col. 9, ll. 7-9. The Petition filed on February 15, 2013, alleged that the disclosure of Kuwahara's examples anticipated claim 1. IPR2013-00149, Petition for Inter Partes Review, Paper No. ("Petition"), at 8, 9. The Petition alleged the following: "When this disclosure is illustrated as shown below,[1] it is clear that Kuwahara fully anticipates claim 1." *Id.* at 9. The Petition included a claim chart and alleged the following: "The vinyl chloride-vinyl acetate copolymer resin is an adhesive between the metalized film surface and the 200 μm thick vinyl chloride film. (Iezzi (Ex. 1017), ¶ 57.) Because the vinyl chloride adhesive is applied directly over the discrete islands of metal, the discrete islands of metal would be in the adhesive." Id at 12. Paragraph 57 of Dr. Iezzi's declaration states: "One of ordinary skill in the art would have also understood that since the adhesive (vinyl chloride-vinyl acetate copolymer resin) is applied by a coater to the Sn islands deposited on the PET film, the Sn islands are in the adhesive." Ex. 1017, ¶57, pg. 27. While not relied upon in the Petition, Dr. Iezzi also states: "Since the adhesive is applied on top of the discontinuous metal layer in a liquid state, the adhesive would inherently flow around the island metal

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[1] The Petition reproduced an alleged illustration of examples 1 and 2 of Kuwahara from Dr. Iezzi's declaration, Exhibit 1017, at paragraph 52, pg. 25.

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