

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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Wavelock Advanced Technology Co., Ltd.,  
Petitioner

v.

Textron Innovations Inc.  
Patent Owner

Patent No. 6,455,138  
Issue Date: September 24, 2002  
Title: METALLIZED SHEETING, COMPOSITES,  
AND METHODS FOR THEIR FORMATION

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*Inter Partes* Review No. IPR2013-00149 (SCM)

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**PETITIONER WAVELOCK ADVANCED TECHNOLOGY CO., LTD'S  
OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE**

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## I. INTRODUCTION

Petitioner provides this Opposition under 37 C.F.R. § 42.23 to Patent Owner's Motion to Exclude dated January 22, 2014 (Paper 19) ("Motion"). The Motion seeks to exclude Petitioner's Reply (Paper 17), the Second Iezzi Declaration (Ex. 1018) and the Exhibits accompanying the Second Iezzi Declaration (collectively, the "Reply Submissions"). As the moving party, Patent Owner has the burden of proof to establish that it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c). The Motion should be summarily denied.

The Board instituted this trial based on its finding that the prior art reference Kuwahara raises a *prima facie* case of invalidity for claim 1. (Institution Decision (Paper 8) at 9-11, 21.) In its Corrected Response (Paper 16), Patent Owner challenged this finding by concocting deficiencies in Kuwahara, where the Board had found none. Petitioner rebutted each and every deficiency in its timely Reply Submissions. These submissions were not to fill any "holes" in Kuwahara as Patent Owner asserts, but rather to rebut Patent Owner's groundless attacks on Kuwahara.

Moreover, the Patent Owner has distorted this proceeding's history in attempting to claim that Petitioner has raised a "new ground of rejection." Patent Owner asserts that the *prima facie* case in the Petition (Paper 3) and the Board's Institution Decision was based "entirely" or "exclusively" on a 500 Angstrom

island spacing in Kuwahara's examples 1 and 2. This assertion is meritless.

Kuwahara is to be considered in its entirety, and neither the Petition nor the Board's Institution Decision suggested that only portions of Kuwahara were to be considered. Moreover, Patent Owner fails to provide the proper context in which Petitioner cited the spacing range of Kuwahara. Kuwahara discloses a metallized layer having metal islands spaced "between 100 and 5000 Å" and then provides two "examples" in that range. (Ex. 1007 at 3:1-15; 4:6-7; 5:12-28.) However, Patent Owner attempted to limit Kuwahara to a single spacing in that range, so Petitioner cited Kuwahara's spacing range "between 100 and 5000 Å" as rebuttal.

Finally, Patent Owner asserts that it has been "ambushed" and "prejudiced." Its shrill claims are misplaced. Rebuttal, such as provided by Petitioner, is envisioned in the framework for *inter partes* review. Furthermore, the framework permits cross-examination of any declarant – including a reply declarant – as routine discovery and further permits, if necessary, the submission of observations on that cross-examination. *See* 37 C.F.R. § 42.51(b)(1)(ii); Scheduling Order (Paper 9) at 4. Here, Patent Owner has failed to cross-examine Dr. Iezzi. Patent Owner now muses that "perhaps it would have deposed Dr. Iezzi," but it has only itself to blame for not conducting routine discovery.

Thus, the Motion should be summarily denied for these reasons, which are also addressed in detail below.

## II. PETITIONER'S REPLY SUBMISSIONS WERE RESPONDING TO PATENT OWNER'S ATTACKS ON KUWAHARA

When one properly considers the Petition, the Institution Decision and the Patent Owner's Response, it is clear that Petitioner was simply rebutting the attacks against Kuwahara raised by Patent Owner in its Response.

In its Petition, Petitioner explained that Kuwahara anticipates claim 1, because it discloses two thermoplastic layers and a discontinuous layer between them, with the discontinuous layer including discrete islands of metal in an adhesive. (*See, e.g.*, Petition at 7-12; Iezzi First Dec. (Ex. 1017) at ¶¶ 37-39, 50-58.) With respect to the discontinuous layer, Petitioner pointed to Kuwahara's roll coating an adhesive over a metallized layer and then applying heat and pressure to laminate all the layers together. (*Id.*) The Board "evaluat[ed] the disclosure of Kuwahara" and did not find it deficient. (Institution Decision at 9-11, 21.) It determined that a *prima facie* case of invalidity had been met based on the evidence and instituted this trial. (*Id.*)

Patent Owner's Response attacked the finding of invalidity by concocting five deficiencies in Kuwahara. In its Reply, Petitioner simply quoted or cited to each purported deficiency and rebutted it with analysis backed up with testimony as discussed below.

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