

1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE
3 -----
4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

5 -----
6 CARL ZEISS SMT GmbH
7 Petitioner
8

v.

9 NIKON CORPORATION
10 Patent Owner

11 -----
12 Case IPR2013-00362 and IPR2013-00363
13 Patent 7,348,575 B2
14

15 -----
16
17 Oral Hearing Held: July 17, 2014
18

19 Before: SALLY C. MEDLEY, HOWARD B. BLANKENSHIP,
20 MATTHEW R. CLEMENTS (via video conference), *Administrative*
21 *Patent Judges.*
22

 The above-entitled matter came on for hearing on
23 Thursday, July 17, 2014 at the U.S. Patent and Trademark
24 Office, 600 Dulany Street, Alexandria, Virginia at 1:00 p.m.,
25 in Courtroom A.

1 APPEARANCES:

2 ON BEHALF OF THE PETITIONER:

3 KURT L. GLITZENSTEIN, ESQ.
4 MARC M. WEFERS, Ph.D., ESQ.
5 Fish & Richardson P.C.
6 One Marina Park Drive
7 Boston, MA 02210-1878
8

9

10

11 ON BEHALF OF THE PATENT OWNER:

12 JOHN S. KERN, ESQ.
13 ROBERT C. MATTSON, ESQ.
14 Oblon Spivak McClelland Maier
15 & Neustadt, LLP
16 1940 Duke Street
17 Alexandria, VA 22314
18

19

20

21

22

23

24

25

1 MR. GLITZENSTEIN: Your Honor, I will be.

2 JUDGE MEDLEY: Okay. Thank you. And for Patent
3 Owner?

4 MR. KERN: Good afternoon, Your Honor, John Kern
5 presenting for Patent Owner, Nikon Corporation.

6 JUDGE MEDLEY: Thank you.

7 MR. MATTSON: Good afternoon, Robert Mattson,
8 Oblon Spivak for Patent Owner, Nikon Corporation. Mr. Kern
9 will be presenting.

10 JUDGE MEDLEY: Okay. Thank you.

11 Petitioner, you may begin. And would you like to
12 reserve rebuttal time?

13 MR. GLITZENSTEIN: I would, Your Honor.

14 I would like to reserve 25 minutes, please.

15 JUDGE MEDLEY: Okay.

16 MR. GLITZENSTEIN: May I proceed, Your Honors?

17 JUDGE MEDLEY: Yes.

18 MR. GLITZENSTEIN: May it please this Court, the
19 issue with regard to the '362 IPR where I am going to begin
20 this afternoon is an issue of obviousness, and in particular
21 the issue of obviousness of combining Terasawa and what we
22 have termed the immersion references.

23 Now, there are two separate and independent
24 reasons why it would have been obvious to modify the Terasawa
25 reference to include an immersion fluid between the boundary

1 lens and the wafer. Those two reasons are to increase the
2 depth of focus and also, separately, to increase the
3 numerical aperture or NA.

4 There was motivation in the prior art to do both
5 and the prior art enabled both. This is not an unpredictable
6 field. The field of optics is, in fact, highly predictable
7 and highly deterministic.

8 There was nothing undue about any experimentation
9 and none has been shown on this record. There is no
10 enablement impediment to combining these references.

11 Turning first to the issue of depth of focus, the
12 prior art in this case expressly discloses the desirability
13 of using immersion to increase depth of focus, including in
14 catadioptric systems, which are the types of systems recited
15 in the specification claimed in claim 1 of the Omura patent.
16 We see that in Nikon's own reference, the Fukami application,
17 as well as Switkes, an article.

18 Nikon's expert in these IPRs, Dr. Sasian conceded
19 that there was, in fact, motivation to modify the prior art
20 in order to achieve an increased depth of focus. And, in
21 fact, Nikon's position that a person of ordinary skill in the
22 art would not have been motivated to use immersion in order
23 to increase depth of focus cannot be squared with the
24 testimony of its own expert, with the disclosure of its own
25 patent application Fukami, and in fact, cannot even be

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.