

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE GILLETTE COMPANY; TAIWAN :  
SEMICONDUCTOR MANUFACTURING :  
COMPANY, LTD.; TSMC NORTH : Case No.:  
AMERICA CORP.; FUJITSU : IPR2014-00604  
SEMICONDUCTOR LIMITED; and :  
FUJITSU SEMICONDUCTOR : Case No.:  
AMERICA, INC. : IPR2014-00578  
:  
Petitioners :  
:  
V :  
:  
ZOND, LLC :  
:  
Patent Owner :  
-----:

Boston, Massachusetts

Thursday, December 11, 2014

Deposition of:

RICHARD DeVITO,

called for oral examination by counsel for Patent  
Owner, pursuant to notice, at Wilmer Cutler  
Pickering Hale and Dorr, 60 State Street, Boston,  
Massachusetts, before Elizabeth O. Bailey, CSR, of  
Capital Reporting Company, a Notary Public in and  
for the Commonwealth of Massachusetts, beginning at  
9:12 a.m., when were present on behalf of the  
respective parties:

Capital Reporting Company  
DeVito, Richard 12-11-2014

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ALSO PRESENT:  
Craig Newman - Video Reporter  
Capital Reporting Company

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1 PROCEEDINGS  
2 VIDEO REPORTER: We are now recording and  
3 on the record. My name is Craig Newman. I'm a  
4 legal video specialist on behalf of the Capital  
5 Reporting Company.  
6 Today is December 11, 2014, and the time  
7 is approximately 9:12 a.m. This is the deposition  
8 of Richard DeVito. This case is for the United  
9 States Patent and Trademark Office before the  
10 Patent Trial and Appeal Board. It is case number  
11 IPR2014-00578.  
12 It's entitled, "The Gillette Company,  
13 Taiwan Semiconductor Manufacturing Company Limited,  
14 TSMC North America Corp., Fujitsu Semiconductor  
15 Limited, and Fujitsu Semiconductor America, Inc.,  
16 Petitioners, versus Zond," that's Z-O-N-D, "LLC,  
17 Patent Owner.  
18 This deposition is being taken at Wilmer  
19 Cutler Pickering Hale and Dorr at 60 State Street  
20 in Boston on behalf of the patent owner. The court  
21 reporter is Beth Bailey with Capital Reporting.  
22 At this point, counsel will please state  
23 their appearances, and the court reporter will  
24 administer the oath.  
25 MR. VARDANIAN: Tigran Vardanian,

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1 Radulescu, LLP, on behalf of Zond, LLC. With me is  
2 my colleague, Michael Sadowitz, also with  
3 Radulescu, LLP, also on behalf of Zond, LLC.  
4 MR. FAHMI: Tarek Fahmi of the Ascenda  
5 Law Group on behalf of Zond.  
6 MR. MAIER: Cosmin Maier of Wilmer Hale  
7 on behalf of petitioner The Gillette Company, and  
8 with me is my colleague, Larissa Park, also of  
9 Wilmer Hale.  
10 MR. FIZPATRICK: Anthony Fitzpatrick from  
11 Duane Morris on behalf of Taiwan Semiconductor  
12 Manufacturing Company Limited and TSMC America.  
13 WHEREUPON,  
14 RICHARD DeVITO  
15 called as a witness, and having been satisfactorily  
16 identified by the production of his Massachusetts  
17 driver's license and duly sworn, testifies as  
18 follows:  
19 EXAMINATION BY COUNSEL FOR THE PATENT  
20 OWNER  
21 BY MR. VARDANIAN:  
22 Q Good morning, Mr. DeVito.  
23 A Good morning.  
24 Q Will you please state your full name and  
25 address for the record?

<p style="text-align: right;">6</p> <p>1 Jamaica Plain, Mass. 2 Q So, I know you've given a deposition 3 before in November -- late November, and I think 4 you mentioned back then that you also testified in 5 a divorce case. Is that correct? 6 A Yes. 7 Q So, other than the deposition that you -- 8 the testimony you provided in November and the 9 divorce case, did you provide any testimony in any 10 other proceeding? 11 A I have not. 12 Q So, I know you've been through the drill 13 before, but I'll go through some basic rules of 14 deposition with you if you don't mind. 15 A That's fine. 16 Q Do you understand that I'm going to be 17 asking you questions today? 18 A I do. 19 Q You understand that you have an 20 obligation to answer my questions? 21 A I do. 22 Q You understand that, from time to time, 23 your attorney may object to my questions? 24 A I do. 25 Q Do you understand that, nevertheless, you</p>	<p style="text-align: right;">8</p> <p>1 may impair your ability to testify truthfully 2 today? 3 A I am not. 4 Q Is there any other reason why you are not 5 able to testify truthfully today? 6 A There is not. 7 Q So, we are here today in connection with 8 US patent number 6,896,775, to which I will be 9 referring to as 775 patent. That's okay with you? 10 A That's fine. 11 Q You understand which patent I'm talking 12 about? 13 A I do. 14 Q Before we jump into the, you know, 15 substance of the patent, I wanted to ask you -- I 16 was taught that there are four states of matter. 17 Is that correct? 18 MR. MAIER: Objection. Foundation. 19 A I was taught the same so... 20 Q You agree with me? 21 A Yes. 22 Q What are the four states of matter? 23 A There's -- well, the plasma is the one 24 that I'm going to talk about today. So, I don't 25 recall the other four states, but plasma is the one</p>
<p style="text-align: right;">7</p> <p>1 have an obligation to answer those questions? 2 A I do. 3 Q The only instance where you do not have 4 to answer my questions is if the attorney objects 5 for attorney-client privilege or work product. Do 6 you understand that? 7 A I do. 8 Q If you need a break at any time, please 9 let me know, and we will be happy to go on a break. 10 A Great. 11 Q One exception is if there's a question 12 pending, I will ask you to answer the question 13 before we go on the break. Is that okay? 14 A That's fine. 15 Q If I ask you a question that you don't 16 understand, please let me know, and I'll rephrase 17 or I'll repeat the question. Is that okay? 18 A That's fine. 19 Q If you answer a question, I'm going to 20 assume you understood it. Is that all right with 21 you? 22 A That's fine. 23 Q You will tell the truth today, right? 24 A I will tell the truth. 25 Q Are you taking any medication today that</p>	<p style="text-align: right;">9</p> <p>1 I'm here to talk about. 2 Q Your testimony today is that you don't 3 recall the other four -- the other three states 4 other than plasma? That's what you're saying? 5 A There is a solid. There is the liquid. 6 There is the plasma. Solid, liquid, and vapor. 7 Vapor phase. 8 Q Or gas? 9 A Gas. 10 Q So, solid, liquid, gas, and plasma. 11 That's fair? 12 A That's fair, I guess. Yes. 13 Q Solid and liquid are different states, 14 right? 15 A They -- yes. 16 Q Gas and liquid are different states, 17 right? 18 A Yes. 19 Q Solid and gas are different states, 20 right? 21 A Yes. 22 Q And gas and plasma are different states, 23 right? 24 A Yes. 25 Q So, if you see in a reference a</p>

<p style="text-align: right;">10</p> <p>1 reference to gas, would one of ordinary skill in 2 the art that's relevant to this petition read gas 3 and think plasma? 4 MR. MAIER: Objection. Form. 5 A It depends on the context of how it's 6 used. I mean a neutral gas is a gas, and once it's 7 ionized, it becomes a plasma. 8 Q So, your testimony today is that once you 9 ionize gas, it necessarily becomes plasma. That's 10 your testimony? 11 A Yes. 12 Q Your testimony is that there isn't an 13 ionized gas that isn't plasma. Is that right? 14 A There isn't -- there isn't an ionized 15 gas. I'm just trying to understand the question. 16 Could you repeat that again? 17 Q Sure. Let me see if I can do it from a 18 different angle. So, we take gas, neutral gas, 19 right? 20 A Uh-huh. 21 Q We start ionizing that gas? 22 A Uh-huh. 23 Q Does it immediately become plasma? 24 MR. MAIER: Objection. Form. 25 A I mean -- I mean -- I think you're</p>	<p style="text-align: right;">12</p> <p>1 A No. I didn't say that. I mean you could 2 have -- it depends on what your definition is. I 3 mean -- so, if I have a gas and I have -- you know, 4 this room is filled with cosmic rays, and there's 5 ionization going on. So, is that an ionized gas? 6 Probably not. 7 Q Why not? 8 A Well, there's a level of ionization in 9 there. If that were the truth, then there would be 10 no gas phase, right. It would all be -- there 11 would only be three phases of matter, right. 12 Q So, you're agreeing that gas can have 13 ions in it and not be plasma, correct? 14 A In the context of the fact that there are 15 high-energy particles all around us causing -- I 16 mean that would have to be correct. I mean... 17 Q So, if one of ordinary skill in the art 18 that's relevant -- actually, before we get to that 19 question. So, how do you define a person of 20 ordinary skill in the art in the context of the 775 21 patent? 22 A Someone who knows and understands the 23 references that are associated with the technology 24 and the patents. 25 Q What kind of an educational background</p>
<p style="text-align: right;">11</p> <p>1 talking about time scales here when you say 2 immediate. I don't know what you mean by that. 3 To the human being, when you put a gas in 4 a chamber and you press your power supply, to the 5 human eye, it appears instantaneous, right, but 6 there are things that are going on in the 7 microscopic and subatomic level that takes some 8 time for excitation, for ionization. So, immediate 9 is a relative term, I guess. 10 Q So, I guess what I'm trying to understand 11 is: Is there ionized gas -- strike that. Is there 12 gas that's ionized to an extent where it hasn't 13 turned into plasma? 14 MR. MAIER: Objection to form. 15 A Well, I guess the only way I can answer 16 that question -- I mean there are different types 17 of ionized -- there are different levels of 18 ionization. 19 You could have weakly ionized. You could 20 have highly ionized. You could have intermediate. 21 So, it depends on where your cut off is, and I 22 don't know where that cut off could be. 23 Q So, you agree that you can ionize gas to 24 some degree without turning the gas into a plasma, 25 correct?</p>	<p style="text-align: right;">13</p> <p>1 should this person have, in your opinion? 2 A Well, it's a combination, I think, of 3 experience in the field and education as well. 4 Q Can you be more specific about both 5 experience and education? 6 A What do you mean? Like years or degree 7 level? 8 Q Sure. Both. I guess we judge experience 9 in years and education in degrees. So, let's start 10 with education. 11 A So, I think probably -- bachelor's, 12 master's degree, certainly a Ph.D., and, you know, 13 depending on the level of education, the years 14 could vary. It's very subjective. 15 I mean I have 30 years' experience and a 16 master's degree, and I consider myself a person of 17 ordinary skill; and at the time, I had a master's 18 degree and maybe 15, 20 years' experience, and I 19 still considered myself the same. 20 Certainly, you should be working in the 21 field, which I am and was at the time so... 22 Q Right. So, let's put you aside. Let's 23 try to figure out what is the minimal educational 24 background a person of ordinary skill in the art 25 would need to be able to be considered a person of</p>

14

1 ordinary skill in the art for the purposes of the  
2 775 patent.  
3 MR. MAIER: Object to form.  
4 A I can't sit here and define a boundary  
5 right now. When I was -- at the time, I had the  
6 amount of experience and the degree level and I  
7 understood the literature, and that's how I came to  
8 that decision so...  
9 Q Okay. You don't need to be defensive  
10 about your background. I'm just trying to  
11 understand.  
12 A I'm not being defensive.  
13 Q So, you understand in order for -- let me  
14 strike that. So, you're providing some of your  
15 opinions in this proceeding from the vantage point  
16 of a person of ordinary skill in the art, correct?  
17 A Right.  
18 Q In fact, that term or some variations of  
19 that term are all over your declarations, correct?  
20 A Yes.  
21 Q So, what I would like to understand is  
22 precisely who is this person of ordinary skill in  
23 the art with respect to that person's educational  
24 background and experience or combination thereof.  
25 A Again, I don't know if I can give a

15

1 precise definition. For example, there could be  
2 some people with a master's degree that could have  
3 five years' experience, and they could be very good  
4 and they could work in the field at a very good  
5 company, and they certainly could be considered a  
6 person of ordinary skill. There's just a lot of  
7 variation there, and I can't give an exact  
8 criterion.  
9 Q So, a master's degree in philosophy would  
10 be sufficient?  
11 A No. I think that we talked about a  
12 degree in an engineering field, physics, chemical  
13 engineering. You know, a lot of the engineering  
14 degrees would apply. Probably not mechanical  
15 engineering.  
16 I happen to be a physicist. You know, a  
17 physicist or a chemical engineer, an electrical  
18 engineer working in the field for some number of  
19 years doing the specific type of sputtering or  
20 related work in plasma physics.  
21 Q So, a master's degree in physics and  
22 certain areas of engineering is sufficient with  
23 respect to a minimum educational background for a  
24 person of ordinary skill in the art. Is that your  
25 testimony?

16

1 A Well, no. It's not exactly my testimony.  
2 That's one. Again, like I say, it's tough to put a  
3 precise definition. That's one definition I'm  
4 using right now.  
5 Q Why is it tough to put a precise  
6 definition of one of ordinary skill in the art?  
7 A You know, everybody is different. I can  
8 only -- I know some people who are very good. I  
9 know some people who are exceptionally good.  
10 I just can't give a precise definition  
11 except that, you know, it's a combination of years  
12 and education and working in the field, and the  
13 education, of course, has to be of a relevant  
14 nature.  
15 Q So, is it fair to say that whether a  
16 person qualifies as a person of ordinary skill in  
17 the art for the purpose of the 775 patent or not  
18 depends on each particular individual. Is that  
19 fair?  
20 A That's --  
21 MR. MAIER: Object to the form.  
22 A Could you make it -- could you rephrase  
23 the question so it's not as long so I could get a  
24 grasp on it?  
25 Q Right. So, I think you mentioned that it

17

1 depends on the particular person whether a person  
2 is a person of ordinary skill in the art for the  
3 purposes of the 775 patent or not. Is that fair?  
4 A Depends on the person and their  
5 background. Yes.  
6 Q Right. You can't define, you know,  
7 precise parameters of education and experience of  
8 that person that would necessarily make, you know,  
9 your definition of a person of ordinary skill in  
10 the art, correct?  
11 A Right, but I gave you a range. That's  
12 the best I can do.  
13 Q So, let me ask you this: If there's a  
14 person with master's degree in physics and 30 years  
15 of experience in -- with magnetron-sputtering  
16 equipment, does that necessarily qualify the person  
17 to be one of ordinary skill in the art, in your  
18 opinion?  
19 A Certainly, I can't know what he -- what  
20 this imaginary person was working on, but certainly  
21 at the level you've specified, at the 50,000-foot  
22 level, the person possibly could be.  
23 Q So, what about the person with high  
24 school diploma as the highest level of academic  
25 achievement and 30 years of working with

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