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D. Brahmbhatt
UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MACRONIX INTERNATIONAL CO.,
MACRONIX ASIA LIMITED, MACRONIX
(HONG KONG) CO., LTD., and
MACRONIX AMERICA, INC.,

Petitioner,

- against -

IPR2014-00108
Patent 7,151,027 B1

SPANSION LLC,

Patent Owner.

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VIDEOTAPED DEPOSITION OF
DR. DHAVAL BRAHMBHATT
New York, New York
Wednesday, July 3, 2014

Reported by:
THOMAS A. FERNICOLA, RPR
JOB NO. 81810

1 D. Brahmhatt
 2
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 4
 5
 6 July 3, 2014
 7 9:01 a.m.
 8
 9
 10 Videotaped Deposition of DHAVAL J.
 11 BRAHMBHATT, held at the Law Offices of Winston &
 12 Strawn LLP, 200 Park Avenue, New York, New York,
 13 before Thomas A. Fernicola, a Registered
 14 Professional Reporter and Notary Public of the
 15 State of New York.
 16
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 25

1 D. Brahmhatt
 2 APPEARANCES:
 3
 4 WINSTON & STRAWN
 5 Attorneys for Petitioner
 6 1700 K Street, NW
 7 Washington, DC 20006
 8 BY: ANDREW SOMMER, ESQ.
 9
 10
 11
 12 ROPES & GRAY
 13 Attorneys for Patent Owner
 14 700 12th Street
 15 Washington, D.C. 20005
 16 BY: J. STEVEN BAUGHMAN, ESQ.
 17
 18 - and -
 19 ROPES & GRAY
 20 191 North Wacker Drive
 21 Chicago, Illinois 60606
 22 BY: JANICE JABIDO, ESQ.
 23
 24
 25 ALSO PRESENT:

1 D. Brahmhatt
 2 THE VIDEOGRAPHER: This is the start
 3 of tape labeled No. 1 of the videotaped
 4 deposition of Dhaval Brahmhatt, in the
 5 matter of Macronix International Company
 6 Limited, et al., versus Spansion, LLC, in
 7 the United States Patent and Trademark
 8 Office before the Patent Trial and Appeal
 9 Board, Case No. IPR2014-00108.
 10 This deposition is being held at 200
 11 Park Avenue, New York, New York, on
 12 July 3rd, 2014, at approximately 9:01 a.m.
 13 My name is Robert Rinkewich from TSG
 14 Reporting, Incorporated, and I am the legal
 15 video specialist.
 16 The court reporter is Tom Fernicola,
 17 in association with TSG Reporting.
 18 Will counsel please introduce
 19 yourselves.
 20 MR. BAUGHMAN: Steven Baughman from
 21 Ropes & Gray, counsel for Patent Owner.
 22 MS. JABIDO: Janice Jabido, also from
 23 Ropes & Gray.
 24 MR. SOMMER: Andrew Sommer with
 25 Winston & Strawn, on behalf of the

1 D. Brahmhatt
 2 Petitioner and the witness.
 3 THE VIDEOGRAPHER: Will the court
 4 reporter please swear in the witness.
 5
 6 D H A V A L J. B R A H M B H A T T,
 7 called as a witness, having been duly sworn
 8 by a Notary Public, was examined and
 9 testified as follows:
 10 BY THE REPORTER:
 11 Q. Please state your full name and
 12 address for the record.
 13 A. Dhaval J. Brahmhatt. Address, 25
 14 North 14th Street, Suite 400, San Jose,
 15 California 95112.
 16
 17 CROSS EXAMINATION
 18 BY MR. BAUGHMAN:
 19 Q. Good morning, Mr. Brahmhatt.
 20 A. Good morning.
 21 Q. Just to start off, is there any
 22 reason that you're not able to answer questions
 23 fully and truthfully this morning?
 24 A. No.
 25 Q. And I understand you're testifying

1 D. Brahmhatt
 2 today in a proceeding that concerns U.S. Patent
 3 No. 7,151,027; is that right?
 4 A. Yes.
 5 Q. I'll put a copy in front of you so
 6 you can check that number for me. It's
 7 Exhibit 1001, already marked in this
 8 proceeding.
 9 And, again, for ease of reference,
 10 like we did with yesterday's deposition, I may
 11 refer to Exhibit 1001 as the '027 patent.
 12 Is that understood?
 13 A. Yes.
 14 Q. So if I refer to that, you'll
 15 understand that I'm referring to Exhibit 1?
 16 A. Yes.
 17 Q. Thank you.
 18 And you submitted a declaration in
 19 this proceeding; is that right?
 20 A. Yes.
 21 Q. And that is Exhibit 1002, which I'm
 22 handing you that's been previously marked.
 23 Is that Exhibit 1002 your corrected
 24 declaration?
 25 A. Yes.

1 D. Brahmhatt
 2 Q. And that is your sworn testimony in
 3 this matter; correct?
 4 A. Yes.
 5 Q. And I know you were deposed
 6 yesterday, Mr. Brahmhatt, in another matter.
 7 Because we stipulated there that some
 8 background information could be used in the
 9 proceeding we're talking about today, I'm going
 10 to skip some of that, but I have a couple of
 11 background questions for you.
 12 I know you've been deposed before,
 13 but you've been deposed a number of times; is
 14 that right?
 15 A. Yes, sir.
 16 Q. And you've been previously testified
 17 been deposed about the '027 patent that we're
 18 talking about today?
 19 A. Yes.
 20 Q. And you've provided opinions and
 21 testimony, including a witness statement, in
 22 the ITC about the '027 patent; is that right?
 23 A. Yes.
 24 Q. Okay.
 25 And like yesterday, do you understand

1 D. Brahmhatt
 2 that while our cross-examination today is
 3 pending, you're not to consult or confer with
 4 counsel about the substance of your testimony?
 5 A. Yes.
 6 Q. Thank you.
 7 So, Mr. Brahmhatt, turning to your
 8 declaration, Exhibit 1002, could you please
 9 take a look at paragraph 22? And it's on
 10 page 9, looking at the little numbers on the
 11 right bottom side of the page.
 12 A. (Document review.)
 13 Yes, sir.
 14 Q. In paragraph 22 you summarize your
 15 opinions relating to a number of prior are
 16 references in connection with the '027 patent;
 17 is that right?
 18 A. That's correct.
 19 Q. And I believe you've listed four
 20 patents there with bullets; is that right?
 21 A. Yes.
 22 Q. Are you aware that the Patent Trial
 23 and Appeal Board has issued an order
 24 instituting trial in this matter?
 25 A. Yes, sir.

1 D. Brahmhatt
 2 Q. And do you know how many references,
 3 how many prior art documents the Board has
 4 decided to make part of the proceeding that's
 5 going forward?
 6 MR. SOMMER: I object to form.
 7 A. You mean out of the four listed here?
 8 Q. Yes.
 9 A. Yes. I believe going forward
 10 Yuzuriha, Shukuri, and I believe Lee, maybe.
 11 Q. Mr. Brahmhatt, I'm going to show you
 12 what's being marked now as Exhibit 2002.
 13 That's the decision instituting trial in this
 14 matter.
 15 Have you seen that before?
 16 A. Yes, I have.
 17 Q. If you look at page 33 of
 18 Exhibit 2002, I think it might be help identify
 19 the references that are part of the proceeding
 20 going forward.
 21 A. (Document review.)
 22 Q. Do you see on page 20 -- sorry, page
 23 33, that there are three items listed under
 24 Conclusion, and they include a reference to
 25 Yuzuriha, the second reference to Yuzuriha and

1 D. Brahmhatt
 2 Shukuri, and a third reference to Yuzuriha and
 3 Nakagawa. Is that --
 4 A. Okay, sir. Yes, you're right.
 5 Q. Okay.
 6 So, is it correct that in your
 7 understanding there are three references that
 8 remain in the proceeding we're talking about
 9 today?
 10 MR. SOMMER: I object to form.
 11 A. Okay. Yes, sir.
 12 Q. And just so we have clarity on the
 13 record going forward, the Yuzuriha document
 14 we're talking about is a patent that's been
 15 marked as Exhibit 1003 in this case; is that
 16 your understanding?
 17 I'm showing you Exhibit 1003.
 18 A. Yes, sir.
 19 Q. And that is marked as Exhibit 1005 in
 20 this matter; is that correct?
 21 I'm showing you 1005.
 22 A. That is correct.
 23 Q. I'm going to show you Exhibit 1006.
 24 Is that the Nakagawa prior art
 25 reference that's discussed your declaration?

1 D. Brahmhatt
 2 Q. 61.
 3 MR. SOMMER: I object to form.
 4 A. Did you ask 3, 9, 4 and 10?
 5 Q. Yes. We can break that up to address
 6 counsel's objection.
 7 So in paragraphs 58 and 59 you
 8 address the application of Yuzuriha to Claims 3
 9 and 9; is that correct?
 10 A. That is right.
 11 Q. And in paragraph 60 and 61 you
 12 provide your opinions about the applicability
 13 of Yuzuriha to Claims 4 and 10; correct?
 14 A. That's right.
 15 Q. Thanks.
 16 I want to ask you a few questions
 17 about your discussion in paragraphs 57 and 58.
 18 I'm sorry, actually, let me see here. I've got
 19 the wrong paragraph.
 20 58 and 59. So in paragraph 58 --
 21 strike that.
 22 In paragraph 59 you refer to
 23 MX027-1003.
 24 Do you see that there in the second
 25 line?

1 D. Brahmhatt
 2 A. That is correct.
 3 Q. Okay.
 4 Now turning in your declaration, I
 5 know you've got a lot of paper in front of you,
 6 let's get Exhibit 1002, your declaration.
 7 A. Yes.
 8 Q. If you could look at paragraph 43,
 9 please. And from paragraphs 43 to 57 of your
 10 declaration, would you agree that you're
 11 discussing the application of Yuzuriha to
 12 Claims 1, 2 and 8 of the '027 patent?
 13 A. May I check them?
 14 Q. Sure thing.
 15 A. Up through 57; correct.
 16 Q. Yes.
 17 So I was asking you about
 18 paragraphs 43 to 57.
 19 A. Yes, that is correct, sir.
 20 Q. Thank you.
 21 And while we are here looking at
 22 paragraphs 58 through 61, is that where, in
 23 your opinion, you discuss the application of
 24 Yuzuriha to Claims 3, 4, 9 and 10?
 25 A. So 58 until --

1 D. Brahmhatt
 2 A. Yes, sir.
 3 Q. That is a citation form that refers
 4 to what we just called Exhibit 1003 or
 5 Yuzuriha; correct?
 6 A. Oh, okay. That's right.
 7 Q. I just want to make sure we're all on
 8 the same page here.
 9 A. Correct.
 10 Q. Okay. Thanks.
 11 Now, turning to the patent, the '027
 12 patent that's Exhibit 1001 somewhere in front
 13 of you there.
 14 Got it?
 15 A. Yes, sir.
 16 Q. Okay.
 17 If you look at Claims -- Claim 3,
 18 would you agree that Claim 3 generally adds the
 19 limitation of a stacked gate etch to its base
 20 Claim 1?
 21 MR. SOMMER: I object to form.
 22 A. So the Claim 3 reads that the method
 23 as recited in Claim 1 wherein the said
 24 etching -- by performing a stack gate etch.
 25 So, yes.

1 D. Brahmhatt
 2 Q. And, similarly, Claim 9 adds the
 3 limitation of a stacked gate etch to its base
 4 Claim 8; is that correct?
 5 MR. SOMMER: I object to form.
 6 A. That is correct.
 7 Q. Looking at Claim 4, does Claim 4
 8 generally add the limitation of a second gate
 9 etch to its base Claim 1?
 10 MR. SOMMER: I object to the form.
 11 A. Oh, I'm sorry. So the question was?
 12 I'm looking at --
 13 Q. Sure. I'll read it again.
 14 Looking at Claim 4, does Claim 4
 15 generally add the limitation of a second gate
 16 etch to its base claim, Claim 1?
 17 MR. SOMMER: Same objection.
 18 A. Yes.
 19 Q. And now looking at Claim 10, does
 20 Claim 10 generally add the limitation of a
 21 second gate etch to its base claim, Claim 8?
 22 MR. SOMMER: I object to form.
 23 A. Yes, sir.
 24 Q. Stepping back for a moment to the
 25 image on page 23 of your declaration, that's

1 D. Brahmhatt
 2 Exhibit 1002, below your paragraph 55, if that
 3 helps, page 23.
 4 Do you have that?
 5 A. Yes, I do.
 6 Q. Thank you.
 7 On page 23 of your declaration you
 8 annotated in Figure 9 of Yuzuriha where you
 9 believe the memory is, the memory array, and
 10 that is on the left-hand side of the drawing;
 11 is that right?
 12 A. Yes, sir.
 13 Q. To the left of sort of a vertical
 14 dashed line?
 15 A. Oh, let me correct that.
 16 Q. Sure.
 17 A. So what we have are three areas that
 18 are identified in this Figure 9 that we're
 19 focusing on right now. And I want to just make
 20 sure we understand that we have memory
 21 transistor region on the left side of the
 22 diagram. The lines, the annotated lines are
 23 not exact; in other words, they are there to
 24 just illustrate. I just wanted to make that
 25 clear.

1 D. Brahmhatt
 2 Q. I appreciate that.
 3 So, and just so the record is clear
 4 because it's a typed record and they can't see
 5 where we are pointing in the diagram --
 6 A. Right.
 7 Q. -- the image on page 23 of your
 8 declaration, Exhibit 1002, is Figure 9 of
 9 Yuzuriha that you've copied here and then added
 10 some notations to; is that right?
 11 A. Yes, sir.
 12 Q. We just talked about some vertical
 13 lines. I think there are two of them, each
 14 with a red arrow pointing down above it; is
 15 that right?
 16 A. You mean the dotted lines?
 17 Q. Yes.
 18 A. That is correct.
 19 Q. And you added the arrows and the
 20 dotted lines?
 21 A. Yes, sir.
 22 Q. And I think what you just testified,
 23 but please correct me if I'm mistaken, you said
 24 that the placement of the dotted lines is not
 25 exact?

1 D. Brahmhatt
 2 A. I wanted to make that clear.
 3 Q. Understood.
 4 But what you've tried to indicate
 5 here is that to the left of that leftmost
 6 dotted line is generally what you're indicating
 7 is the memory array, as you read in it
 8 Figure 9?
 9 A. So my understanding would be that,
 10 generally speaking -- and I want to emphasize
 11 the dotted line is not an accurate position,
 12 but, generally speaking, the memory array, the
 13 first transistor I would say starts what is
 14 shown here at -- as 16, the first time around,
 15 left of the bottom going -- I mean, bottom
 16 pointed arrow. That's where the first memory
 17 transistor would come up at the end of the
 18 process; and, therefore, the memory array would
 19 begin for sure at that location.
 20 Q. Okay.
 21 If you don't mind, I'm going to
 22 actually hand you a pen --
 23 A. Yes.
 24 Q. -- just so we can indicate where
 25 you're talking about on that copy of

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