UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY
Petitioner

v.

ZOND, LLC
Patent Owner

U.S. Patent No. 7,604,716

Inter Partes Review Case No. 2014-00972

PATENT OWNER's PRELIMINARY RESPONSE UNDER 37 CFR § 42.107(a)

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I. Introduction

The Petitioner has represented in a motion for joinder that this petition "is identical to the Intel IPR no. IPR2014-00520 in all substantive respects, includes identical exhibits, and relies upon the same export declarant." Accordingly, based upon that representation, the Patent Owner opposes review on the same basis presented in opposition to Intel's request no. IPR-2014-00520, which is reproduced below:

The present petition for *inter partes* review of U.S. Patent No. 7,604,716 ("the '716 patent") is the first of four petitions filed by Intel challenging the '716 patent. This petition challenges claims 1 – 11, and 33 of the '716 patent.

All Grounds in the Petition are flawed because they rely upon claim charts submitted in violation of rules 42.24(a)(i) and 42.6(a)(3). The Petition attaches three sets of claim charts as exhibits 1020 - 1022, and incorporates them by reference in its petition with a single sentence asserting that its expert witness, Dr. Kortshagen, "reviewed that chart and agrees with it."[1] The Petition thereby exceeds the page limits of rule 42.24(a)(i) by over 30 pages. All grounds should therefore be denied at least on the basis that they are

[1] Petition at 15, 36, 39.

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premised on claim charts submitted in violation of rules 42.24(a)(i) and 42.6(a)(3).

The Petition's first ground challenges these claims as anticipated by Mozgrin. But Mozgrin does not teach the claimed ionization of a gas within a chamber from an ongoing gas feed. Mozgrin never mentions or describes feeding gas to a chamber while an ionization source generates a weakly ionized plasma from the feed gas within the chamber as claimed. He says only that the electrode structured was "filled up" with gas, but does not say that the gas is fed into the chamber while a weakly ionized plasma is formed from that feed gas. As a matter of law, such a difference is fatal to the Petition's anticipation ground: As the Federal Circuit has noted when assessing anticipation, "the difference … may be minimal and obvious to those of skill in this art. Nevertheless obviousness is not inherent anticipation. Given the strict identity required of the test for novelty, on this record no reasonable jury could conclude that the" prior art expressly or inherently disclosed each claim element.[2]

The Petition also challenges these claims as anticipated by Wang. As explained in our claim construction, the claim requires the formation of a

[2] *Trintec Industries, Inc. v. TOP-USA Corp.*, 295 F.3d 1292, 294 (Fed Cir. 2002).

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