

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY,
Petitioner,

v.

ZOND, LLC,
Patent Owner.

Case IPR2014-00988
Patent 7,147,759 B2

Before KEVIN F. TURNER, DEBRA K. STEPHENS, JONI Y. CHANG,
SUSAN L.C. MITCHELL, and JENNIFER M. MEYER,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

The Gillette Company (“Gillette”) filed a Petition requesting an *inter partes* review of claim 40 of U.S. Patent No. 7,147,759 B2 (Ex. 1401, “the ’759 patent”). Paper 3 (“Pet.”). Zond, LLC (“Zond”), filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides:

THRESHOLD.—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition and Preliminary Response, we conclude that the information presented in the Petition demonstrates that there is a reasonable likelihood that Gillette would prevail in challenging claim 40 as unpatentable under 35 U.S.C. § 103(a). Pursuant to 35 U.S.C. § 314, we hereby authorize an *inter partes* review to be instituted as to claim 40 of the ’759 patent.

A. *Related District Court Proceedings*

Gillette indicates that the ’759 patent was asserted in *Zond, LLC v. Gillette*, No.1:13-cv-11570-RGS (D. Mass.). Pet. 1. Gillette also identifies other proceedings in which Zond asserted the ’759 patent. *Id.*

B. Related Inter Partes Reviews

The following Petitions for *inter partes* review also challenge the same claim based on the same grounds of unpatentability as those in the instant proceeding: *Intel Corp. v. Zond, LLC.*, Case IPR2014-00447; *GLOBALFOUNDRIES U.S., Inc. v. Zond, LLC.*, Case IPR2014-01083.

In each of IPR2014-00447 and IPR2014-01083, we instituted an *inter partes* review of claim 40 of the '759 patent, based on the sole ground that claim 40 is unpatentable under 35 U.S.C. § 103(a) over the combination of Wang and Kudryavtsev.

In IPR2014-00447, we terminated the proceeding in light of the Written Settlement Agreement, made in connection with the termination of the proceeding in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b), between Intel and Zond. IPR2014-00447, Papers 15, 16; IPR2014-00443, Ex. 1035.

Gillette filed a revised Motion for Joinder with IPR2014-01083. Paper 10. In a separate decision, we grant Gillette's revised Motion for Joinder, joining the instant proceeding with IPR2014-01083, and terminating the instant proceeding.

C. Prior Art Relied Upon

Gillette relies upon the following prior art references:

Wang US 6,413,382 B1 July 2, 2002 (Ex. 1405)

D.V. Mozgrin et al., *High-Current Low-Pressure Quasi-Stationary Discharge in a Magnetic Field: Experimental Research*, 21 PLASMA PHYSICS REPORTS 400–409 (1995) (Ex. 1403, "Mozgrin").

A. A. Kudryavtsev and V.N. Skrebov, *Ionization Relaxation in a Plasma Produced by a Pulsed Inert-Gas Discharge*, 28(1) SOV. PHYS. TECH. PHYS. 30–35 (1983) (Ex. 1404, “Kudryavtsev”).

D. Asserted Grounds of Unpatentability

Gillette asserts the following grounds of unpatentability:

Claim	Basis	References
40	§ 103(a)	Mozgrin and Kudryavtsev
40	§ 103(a)	Wang and Kudryavtsev

II. ANALYSIS

A. Claim Construction

The parties make the same claim interpretation arguments that GlobalFoundries and Zond made in IPR2014-01083. *Compare* Pet. 15–20, *with* IPR2014-01083, Paper 2 (“1083 Pet.”), 14–20; *compare* Prelim. Resp. 16–26, *with* IPR2014-01083, Paper 7 (“1083 Prelim. Resp.”), 16–26.

We construed the claim terms identified by GlobalFoundries and Zond in IPR2014-001083. *See* IPR2014-01083, Paper 9 (“1083 Dec.”), 6–14. For the purposes of the instant decision, we incorporate our previous analysis and apply those claim constructions here.

B. Obviousness over the Combination Wang and Kudryavtsev

In its Petition, Gillette asserts the same ground of unpatentability based on the combination of Wang and Kudryavtsev, as the ground of unpatentability on which a trial was instituted in IPR2014-001083.

See Pet. 39–54; ’1083 Dec. 30. Gillette’s arguments are substantially identical to the arguments made by GlobalFoundries in IPR2014-001083. *Compare* Pet. 39–54, *with* ’1083 Pet. 38–53. Gillette also proffers the same Declaration of Dr. Uwe Kortshagen that GlobalFoundries submitted in support of its Petition. *Compare* Ex. 1402, *with* IPR2014-001083, Ex. 1402. Zond’s arguments in the Preliminary Response are essentially identical to those arguments that it made in IPR2014-001083. *Compare* Prelim. Resp. 26–55, *with* ’1083 Prelim. Resp. 26–55.

We incorporate our previous analysis regarding the asserted ground of unpatentability based on the combination of Wang and Kudryavtsev (’1083 Dec. 14–29), and determine that Gillette has demonstrated a reasonable likelihood of prevailing on the asserted ground of unpatentability.

C. Other Asserted Ground of Unpatentability

Gillette also asserts that claim 40 is unpatentable under 35 U.S.C. § 103(a) over the combination of Mozgrin and Kudryavtsev. The Board’s rules for *inter partes* review proceedings, including those pertaining to institution, are “construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b); *see also* 35 U.S.C. § 316(b) (regulations for *inter partes* review proceedings take into account “the efficient administration of the Office” and “the ability of the Office to timely complete [instituted] proceedings”). Therefore, we exercise our discretion and do not institute a review based on this asserted ground for reasons of administrative necessity to ensure timely completion of the instituted proceeding. *See* 37 C.F.R. § 42.108(a).

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