

Filed on behalf of Innovative Display Technologies LLC.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG DISPLAY CO., LTD.

Petitioner

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC

Patent Owner

Case IPR2014-01096

U.S. Patent No. 7,537,370

**PATENT OWNER'S OPPOSITION TO PETITIONER'S REQUEST FOR
REHEARING**

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I. INTRODUCTION

Patent Owner Innovative Display Technologies LLC (“IDT” or “Patent Owner”) hereby files this opposition to Petitioner’s Request for Rehearing Under 37 C.F.R. § 42.71(c) and (d) (the “Rehearing Request”). When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must identify, specifically, all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

Petitioner argues that “the Board overlooked or misapprehended evidence regarding the deformities disclosed in Kobayashi.” Rehearing Request at 1-2. The Rehearing Request includes two sections where it argues against the Board’s decision (1) not to institute ground 3 against claims 1, 4, and 29 and (2) not to institute ground 4 against claims 13 and 47. As shown in the sections below, Petitioner’s Rehearing Request is nothing more than an attempt to introduce new arguments that it failed to make in its Petition. Thus, Patent Owner respectfully requests that the Board deny the Rehearing Request in its entirety.

II. GROUND 3 AGAINST CLAIMS 1, 4, 29

For Ground 3, Petitioner takes issue with the Board’s ruling that “Petitioner [did] not explain how the spot layers, produced by white paint or aluminum vapor deposition, qualify as ‘projections or depressions.’” Rehearing Request at 4. The Board’s position there is correct, but the Rehearing Request attempts to add new arguments allegedly showing that the Kobayashi reference discloses “projections.” But the word “projection” appears nowhere in the Petition outside of the claim charts’ replication of claim language. Petitioner is not allowed to correct that deficiency by making new arguments that allegedly explain how the spot layers are projections. 37 C.F.R. § 42.104(b)(5); *see also* IPR2014-00511, Paper 16 at 5 (“A request for rehearing is not an opportunity to present new arguments or evidence that could have been presented in the petition.”).

Petitioner first argues that the Board overlooked Figure 1, which Petitioner argues “plainly shows light reflecting spots 22 projecting from the bottom surface of light transmitting plate 2.” Rehearing Request at 4-5. But the crux of the Board’s statement was that Petitioner never explained how the spots qualify as projections. Petitioner points to no part of its Petition where it explains that it is relying on the physical depiction of Figure 1 as evidence that the spots are projections. Instead in its Rehearing Request, Petitioner makes a vague citation to its Petition at page 39. Rehearing Request at 4. At page 39, the Petition states “[t]he elements of Claims 1,

4, and 29 of the annotated figure below, composed of Figures 1 and 2 of Kobayashi that are labeled as claim elements.” In that annotated Figure 1, there is no identification of spots 22 being projections. In fact, Figure 1 is so small as reproduced in the Petition, that it is difficult to even see spots 22. Petition at 39. There is no magnified callout of Figure 1, like Petitioner added in its Rehearing Request. If Petitioner wanted to argue that the physical dimensions of Figure 1 were evidence of projections, it should have done so in the Petition. Petitioner cannot rely on newly presented arguments in its rehearing request. 37 C.F.R. § 42.104(b)(5) (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”). And Petitioner cannot rely on the Board to piece together its evidence to support arguments it never made. IPR2014-00511, Paper 16 at 5-6 (“Petitioner should not expect the Board to search the record and piece together the evidence necessary to support Petitioner’s arguments.”).

Second, the Rehearing Request argues that “Petitioner also explains that the *depth* of the deformities varies ... The only way to understand a difference in *depth* of deformities is if those deformities either project from or are depressed into the surface of the panel.” Rehearing Request at 5 (emphasis in Rehearing Request). Again, Petitioner never made that argument in its Petition, and it is not proper material for a rehearing request. To support its new argument, Petitioner cites to this

statement from the Petition at page 40: “the deformities can be either prismatic cuts or reflecting spots and they can vary in size, shape, density, and *depth*.” (emphasis in Rehearing Request). But that citation leaves out the surrounding sentences that show that the citation was used to argue that the deformities allegedly vary – not that they are projections. The underscored part of the block quotation below shows the portion that the Rehearing Request cites, while the bold sentences were omitted from the Rehearing Request:

The deformities of Kobayashi may also vary in type (claim 1) and in way or manner (claim 29). In Kobayashi, the deformities can be either prismatic cuts or reflecting spots and they can vary in size, shape, density, and depth. Ex. 1008, 4:25-29, 4:33-35, 4:39-50, 2:2, 5:1-4, 6:30-40, 7:12-17, Figs. 1-2. **Thus, the deformities may be varied in type or manner.** See Escuti Decl., ¶227.

Petition at 40. It is clear from that whole context of that statement that Petitioner’s citation is related to whether Kobayashi discloses deformities that vary – not whether there are deformities that are projections or depressions. It is not the Board’s responsibility to take evidence that Petitioner has advanced for different arguments and use it to fix deficiencies in the Petition. IPR2014-00377, Paper 17 at 5-6 (“It is not the Board’s role to play archeologist to uncover any additional support in the record that is not raised.”).

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