

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
Patent 7,537,370

Before THOMAS L. GIANNETTI, NEIL T. POWELL, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 CFR § 42.71(d)

INTRODUCTION

LG Display Co., Ltd. (“Petitioner”) filed a Corrected Petition to institute an *inter partes* review of claims 1, 4, 8, 13, 15, 27, 29, and 47 of U.S. Patent No. 7,537,370 (“the ’370 patent”). Paper 4 (“Pet.”). Innovative Display Technologies LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). In our Decision dated January 13, 2015, we granted the Petition and initiated *inter partes* review as to certain grounds, but denied the Petition as to others. Paper 11 (“Decision”).

Petitioner requests rehearing of our decision denying institution of *inter partes* review on two grounds. Paper 15 (“Req. Reh’g”). Patent Owner, with Board authorization, filed an Opposition. Paper 18.

Petitioner’s stated grounds for rehearing are that (1) the Board overlooked or misapprehended evidence regarding the unpatentability of claims 1, 4, and 29 based on Kobayashi; and (2) the Board overlooked or misapprehended evidence regarding the unpatentability of claims 13 and 47 based on Kobayashi in view of Pristash. Req. Reh’g 2–3. For the reasons that follow, Petitioner’s request for rehearing is denied.

ANALYSIS

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, opposition, or a reply.

1. Claims 1, 4, and 29

Petitioner relied upon Kobayashi (Ex. 1008; U.S. Patent No. 5,408,388) to show anticipation of claims 1, 4, and 29 of the '370 patent. Pet. 38–46. Kobayashi describes a planar illuminating device used as a backlight for liquid crystal displays. Ex. 1008, col.1, ll. 6–9. The device has a rectangular light transmitting plate of a transparent material. *Id.*, col. 4, ll. 10–11. One side of the plate has prismatic cuts. *Id.*, col. 4, l. 27. The other side has a reflecting finish, e.g., an array of spot-shaped light reflecting layers. *Id.*, col. 4, ll. 28–29.

Claims 1, 4, and 29 of the '370 patent describe a light-emitting panel assembly having an optical panel member. Petitioner relied on the spot-shaped reflecting layers in Kobayashi to meet the following limitation of these claims: “both the front and back sides [of the panel member] having a pattern of light extracting deformities *that are projections or depressions* on or in the sides to cause light to be emitted from the panel member in a predetermined output distribution.” Pet. 41–42 (emphasis added).

In the Decision, we determined that Petitioner did not demonstrate that the spot-shaped light reflecting layers in Kobayashi are “projections or depressions” as the claims require. Decision 14. In reaching this determination, we pointed out that these spot-shaped reflecting layers are described by Kobayashi as being produced by white paint or aluminum vapor deposition. *Id.*; Ex. 1008, col. 4, ll. 45–47 (“The array of spot-shaped reflection layers 22 is made, e.g., of a white paint, such as a titanium oxide or dioxide or aluminum oxide, or aluminum vapor deposition.”) We pointed out further that the neither the Petition nor the accompanying Escuti Declaration (Ex. 1004) explained how the spot-shaped reflecting layers in

Kobayashi qualify as “projections or depressions.” *Id.* Petitioner’s rehearing request asserts that the Board overlooked or misapprehended evidence that these spot-shaped layers are projections or depressions. Req. Reh’g 3–7.

The Rehearing Request presents new arguments that could not have been overlooked or misapprehended because they were not presented in the Petition. Nevertheless, we consider Petitioner’s new arguments and find them unconvincing.

Petitioner now contends that the spot-shaped reflecting layers meet the requirement for “projections or depressions” because “the deformities are created via ‘layers,’ which also necessarily demonstrates three-dimensional depth.” *Id.* at 5. We are not persuaded by this argument.

We are unconvinced that a spot-shaped layer is a projection simply because it has “depth.” The dictionary definition of a layer is: “A single thickness, coating, or stratum spread out or covering a surface.” *The American Heritage Dictionary* 742 (1975). The dictionary also defines a projection as: “Something that thrusts outward; a protuberance.” *Id.* at 1046. Petitioner never presented any special meaning for these terms, nor does Petitioner explain how layers of white paint or aluminum vapor deposition would “thrust outward” so as to qualify them as projections.¹

Instead, Petitioner relies on its own statement in the Petition suggesting that the depth of the deformities in Kobayashi varies: “In Kobayashi, the deformities can be either prismatic cuts or reflecting spots and they can vary in size, shape, density, and depth.” Req. Reh’g 5.

¹ From Petitioner’s argument based on the depth of the spots and on Kobayashi Figure 2, *supra*, it does not appear that Petitioner contends that they qualify also as depressions, nor would such an argument be persuasive.

Petitioner concludes: “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.” *Id.* (emphasis original).

We are not convinced that this conclusion is supported by Kobayashi or that it shows that the reflecting spots are projections. While it is true that in Kobayashi the deformities can be either prismatic cuts or reflecting spots, Petitioner does not show where it is described in Kobayashi that the depth of the reflecting spots varies, or why this variation, if it does exist, would otherwise qualify them as projections. As Patent Owner points out, the purpose of this discussion in the Petition was to show that the deformities vary, not that the spots are projections or depressions. Opposition 4.

Finally, Petitioner relies on Figure 1 of Kobayashi, specifically, a magnified portion showing spot-shaped reflecting layers 22. Req. Reh’g 4. According to Petitioner, the Board overlooked this “evidence” that the spot shaped reflecting layers are projections. *Id.* We are not persuaded by this argument.

A similar argument was made in by the defendant in *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1148–49 (Fed. Cir. 2005). There, the district court invalidated the patent in suit on summary judgment based on the measured dimensions of a prior art patent figure. *Id.* at 1148. The Federal Circuit reversed, warning:

The district court erred in not properly applying the principles set forth in our prior precedents that arguments based on drawings not explicitly made to scale in issued patents are unavailing. *Hockerson–Halberstadt* indicated our disfavor in reading precise proportions into patent drawings which do not expressly provide such proportions:

The ‘792 patent is devoid of any indication that the proportions of the groove and fins are drawn to

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