

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG DISPLAY CO., LTD., and LG ELECTRONICS, INC.,
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2014-01096
Patent 7,537,370 B2

Before THOMAS L. GIANNETTI, MIRIAM L. QUINN, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

LG Display Co., Ltd. filed a Corrected Petition¹ pursuant to 35 U.S.C. §§ 311–319 seeking 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.”). Applying the standard set forth in 35 U.S.C. § 314(a), the Board instituted an *inter partes* review of claims 15 and 27 and denied the request as to the other challenged claims. Paper 11 (“Institution Decision”). LG Display Co. Ltd.’s request for rehearing as to certain claims was denied. Papers 15, 21. Following institution, the proceeding was joined with IPR2015-00493, filed by LG Electronics, Inc., challenging the same claims of the ’370 patent on the same grounds as in this proceeding. For the purpose of this Decision, we will refer to LG Display Co., Ltd. and LG Electronics, Inc., jointly, as “Petitioner.”

During the trial, Patent Owner filed a Patent Owner Response (Paper 24, “PO Resp.”), and Petitioner filed a Reply to the Patent Owner Response (Paper 30, “Reply”). An oral hearing was held on September 21, 2015, and a copy of the transcript has been made part of the record. Paper 39 (“Hearing Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claims on which we instituted trial. Based on the record before us, Petitioner has shown, by a preponderance of the evidence, that claims 15 and 27 of the ’370 patent are unpatentable under 35 U.S.C. § 103(a).

¹ In this proceeding we will refer to the Corrected Petition as “the Petition.”

I. BACKGROUND

A. *The '370 patent (Ex. 1001)*

The '370 patent is entitled "Light Emitting Panel Assemblies." The Abstract describes the subject matter as follows:

Light emitting panel assemblies include an optical panel member having a pattern of light extracting deformities on or in one or both sides to cause light to be emitted in a predetermined output distribution. The pattern of light extracting deformities on or in one side may have two or more different types or shapes of deformities and at least one of the types or shapes may vary along the length or width of the panel member. Where the light extracting deformities are on or in both sides, at least some of the deformities on or in one side may be of a different type or shape or vary in a different way or manner than the deformities on or in the other side.

Ex. 1001, Abstract.

B. *Challenged Claims*

Claims 15 and 27 of the '370 patent are at issue in this trial. They are reproduced here with emphasis added to certain elements that will be discussed *infra*.

15. A light emitting panel assembly comprising at least one light source, an optical panel member having at least one input edge for receiving light from the at least one light source, the panel member having front and back sides and a greater cross sectional width than thickness, at least one of the sides having a pattern of light extracting deformities that are projections or depressions on or in the at least one side to cause light to be emitted from the panel member in a predetermined output distribution, *where the pattern of light extracting deformities on or in the at least one side has at least two different types of light extracting deformities* and at least one of the types of deformities on or in the at least one side varies along at least one of the length and width of the panel member,

and at least one film, sheet or substrate overlying at least a portion of one of the sides of the panel member to change the output distribution of the emitted light such that the light will pass through a liquid crystal display with low loss.

27. A light emitting panel assembly comprising at least one light source, an optical panel member having at least one input edge for receiving light from the at least one light source, the panel member having front and back sides and a greater cross sectional width than thickness, at least one of the sides having a pattern of light extracting deformities that are projections or depressions on or in the at least one side to cause light to be emitted from the panel member in a predetermined output distribution, *where the pattern of light extracting deformities on or in the at least one side has at least two different types of light extracting deformities and at least one of the types of deformities on or in the at least one side varies alone at least one of the length and width of the panel member, wherein the panel member has a transition region between the at least one input edge and the patterns of light extracting deformities to allow the light from the at least one light source to mix and spread*, and at least one side of the transition region contains *optical elements* for reflecting or refracting light from the at least one light source.

C. Related Proceedings

Patent Owner states that it has asserted infringement by Petitioner of the '370 patent in the following proceeding: Delaware Display Group LLC et al. v. LG Electronics, Inc. et al., No. 1:13-cv-02109 (D. Del., filed Dec. 31, 2013). Paper 7.

Patent Owner identifies numerous other proceedings in which it has alleged infringement of the '370 patent. *See* Paper 7 for a listing.

There is one other pending petition for *inter partes* review of the '370 patent: IPR2015-01867, filed September 11, 2015. Another such petition

(IPR2015-00753) was filed February 17, 2015. That case was terminated by a settlement before the Board reached a decision on institution.

D. Claim Construction

The Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Because the '370 patent expired during the trial, however, we must consider whether this has an effect on our determination. Patent Owner contends that in view of the expiration, the Board must follow the *Phillips* standard. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Patent Owner did not bring the expiration of the patent to the attention of the Board until the final hearing, even though the '370 patent expired in June 2015, after Patent Owner filed its Response but before Petitioner's Reply was filed. Hearing Tr. 44:17–45:19.

Putting aside the untimeliness of its argument, Patent Owner has not persuaded us that applying the *Phillips* standard would affect our determination of this case. In fact, throughout this proceeding, Patent Owner has taken no position on claim construction. Prelim. Resp. 4; PO Resp. 6. The only claim term the Board construed in its Institution Decision is the term “deformities,” appearing in both challenged claims. Paper 11, 4. It was Petitioner who asserted that the '370 patent “expressly defines” the term to mean “any change in the shape or geometry of the panel surface and/or coating or surface treatment that causes a portion of light to be emitted.” Pet. 7 (citing Ex. 1001, col. 4, ll. 36–40). Patent Owner did not oppose that construction. Hearing Tr. 45:20–25. In fact, Patent Owner

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