

Case IPR2015-00359

Patent 7,384,177

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

MERCEDES-BENZ USA, LLC and  
MERCEDES-BENZ U.S. INTERNATIONAL, INC.,  
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,  
Patent Owner.

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Case IPR2015-00359  
U.S. Patent No. 7,384,177

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**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR  
*INTER PARTES* REVIEW OF U.S. PATENT NO. 7,384,177**

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## **I. INTRODUCTION**

Patent Owner Innovative Display Technologies LLC (“IDT” or “Patent Owner”) hereby files this Preliminary Response to the Petition (the “Petition” or “Instant Petition”) for *Inter Partes* Review of U.S. Patent No. 7,384,177 (the “’177 patent”) in IPR2015-00359 filed by Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc. (“Mercedes-Benz” or “Petitioner”).

The PTAB should deny the Petition’s request to institute IPR because the grounds in the Petition do not demonstrate a reasonable likelihood of any claims being invalid.

Moreover, The PTAB should deny the Petition’s request to institute IPR2015-00359 because it is 100% duplicative of IPR2014-01362 (the “LGD Petition”) (Ex. 2001) filed on August 22, 2014 against the ’177 patent by LG Display Co. Ltd. (“LGD”).

Patent Owner has limited its identification of the deficiencies in Petitioner’s argument in this Preliminary Response; Patent Owner does not intend to waive any arguments by not addressing them in this Preliminary Response.

This Preliminary Response is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is filed within of the deadline set in the March 17, 2015, date of the New Filing Date accorded to Petition and the Extended Due Date for filing Patent

Owner's Preliminary Response in accordance with the Conduct of the Proceeding Order of March 16, 2015. Paper No. 19.

**A. *Grounds in Petition***

The Petition includes seven grounds of alleged invalidity – all 103(a) obviousness combinations with the exception of one 102(e) ground – for claims 1-3, 5-7, 9-10, 13-15, 19, 21, and 23-27 of the '177 patent.

*Ground 1: 103(a) - Melby (Claims 1-3, 5-7, 9-10, 13- 15, 19, 21, 23-25, 27)*

*Ground 2: 102(e) - Nakamura (Claims 1, 2, 6, 7, 9, 10, 13-15, 19, 21, 23-24, 26)*

*Ground 3: 103(a) - Baur (Claims 1, 2, 13, 14)*

*Ground 4: 103(a) - Baur and Nakamura (Claims 6, 9, 10, 15, 19, 21, 23)*

*Ground 5: 103(a) - Sasuga and Farchmin (Claims 1, 2, 6, 7, 9, 10, 13, 15, 21)*

*Ground 6: 103(a) Sasuga, Farchmin, and Nakamura (Claims 14 and 19)*

*Ground 7: 103(a) Sasuga, Farchmin, and Pristash Claims 23, 25, and 26)*

For the reasons discussed below, none of the grounds demonstrate a reasonable likelihood of any claims being invalid.

**B. *Claim Construction***

The arguments in this Response stand despite Petitioner's proposed construction and despite the broadest reasonable construction of the terms. This Preliminary Response does not take a position on claim construction at this point.

Patent Owner reserves the right to propose its own construction of any and all claim terms for which an issue arises in the event the PTAB institutes this IPR.

Patent Owner notifies the Board that the district court in *Innovative Display Technologies v. Acer, Inc. et al.*, No. 2:13-cv-522 (E.D. Tex. 2013) (Dkt. No. 101) (“Claim Construction Order”) (Ex. 2002) has ruled on constructions of terms in this patent, including entering an agreed construction of “deformities” that Petitioner adopts in its Petition.

**II. The Board Should Decline to Institute the Instant Petition Because the Grounds and Their References Asserted Are Cumulative and Redundant**

In the Instant Petition, Mercedes-Benz relies on arguments that the Board considered and rejected in the Petition filed by LG Display in August 2014. Additionally, Mercedes-Benz has provided no meaningful distinction between the grounds asserted in the LGD Petition and the instant petition. The Board should decline to consider the cumulative and redundant grounds.

The authority to manage co-pending proceedings and to deny an AIA trial because of duplicative arguments in other proceedings allows the PTAB to prevent the inefficiency, waste, and inequity that naturally result when patent challengers file needlessly duplicative proceedings against the same patent. *See* 35 U.S.C. § 325(d).

Duplicative USPTO proceedings thwart the goal of reducing the expense of validity disputes by multiplying the time and expense that both the USPTO and the parties must expend to resolve validity disputes. By filing duplicative IPRs, the Petitioner merely seeks to increase the enormous burden on Patent Owners who face multiple and concurrent AIA trials as well as litigation in district court, and the Board should not allow it.

***A. The Instant Petition Is Cumulative of a Current Office Proceeding***

The Instant Petition relies on the very same arguments that LGD presented to the Board in its Petition in IPR2014-01362. Indeed, the arguments presented by Petitioner are identical to the LGD Petition and reference identical testimony from the same Expert. Under Section 325(d), the Board should deny petitions that challenge a patent based on previously presented grounds and cumulative and duplicative art, otherwise petitioners may be given an unwarranted and unfair procedural advantage in pending infringement litigation. *See* 35 U.S.C. § 325(d); *See also, Unified Patents*, IPR2014-00702, Paper 13 at 2, 7-8 (denying third party IPR petition in view of previous IPR petition citing the same prior art reference).

“In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office” thus utilizing judicial resources to their best

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