

Case IPR2015-00489

Patent 7,384,177

Filed on behalf of Innovative Display Technologies LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LG ELECTRONICS, INC.

Petitioner

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC

Patent Owner

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Case IPR2014-00489

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 (“Response”) to the Petition for *Inter Partes* Review of U.S. Patent No. 7,384,177 (the “Petition”) in IPR2014-00489 filed by LG Electronics, Inc. (“LGE” or “Petitioner”).

The PTAB should deny the Petition’s request to institute an *inter partes* review (“IPR”) of U.S. Patent No. 7,384,177 (the “’177 patent”) because the grounds in the Petition do not demonstrate a reasonable likelihood of any claims being invalid.

The PTAB should deny this Petition because it is 100% duplicative of IPR2014-01362 filed by LD Display Co. Ltd., a privy company to Petitioner LG Electronics, Inc.

Moreover, the PTAB should deny this Petition or at least revoke its filing date because the Petitioner has failed to comply with 35 U.S.C. 312(a)(2) by failing to name clear real parties-in-interest.

And as further explained at the end of this Response, Patent Owner needs to seek discovery that shows that Petitioner is barred from filing this IPR under 35 U.S.C. 315(b) because its privies were served with a complaint alleging infringement of the ’177 patent more than one year prior to the filing date of the Petition. Patent Owner has outlined its current publicly available evidence on this issue, and if the

Board finds that evidence alone sufficient, Patent Owner requests that the Board refuse to institute this IPR due to the Section 315(b) bar.

This Response is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is filed within three months of the January 20, 2015, date of the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response. (Paper No. 6.).

Patent Owner does not intend to waive any arguments by not addressing them in this Preliminary Response, and Patent Owner intends to raise additional arguments in the event this IPR is instituted.

To introduce its discussion of why the grounds in the Petition are insufficient, the Preliminary Response first provides an outline of the (1) the Grounds themselves; and (2) the claim construction issues.

### ***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. Grounds 3-7 were determined to not have a reasonable likelihood of prevailing in IPR2014-01362, the remaining grounds 1-2 were granted institution. IPR2014-01362 Paper 12 at 20.

*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. 2001) has ruled on constructions of terms in this patent, including entering an agreed construction of "deformities" that Petitioner adopts in its Petition. (Petition at 8) (Ex. 2001 at 58).

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

***A. Claim 1, limitation [1.a] – “a tray having a back wall and continuous side walls that form a hollow cavity or recess completely surrounded by the side walls”***

The Petition alleges that Melby discloses “a housing 30 with continuous side walls 32, 34, 36, and 38 defin[ing] and an optical cavity having an optical window’ as well as rear wall.” Petition at 12; *see also id.* at 13, 15 (claim chart identifying the same elements). The Petition argues that Melby’s wall 38 is the claimed “back wall” and that walls 32, 34, and 36 are the claimed “continuous side walls.” *Id.* at 13. But these three side walls do not completely surround the cavity as expressly required in the claim. Indeed, none of the figures or text in Melby show a tray having a back wall and **continuous side walls that form a hollow cavity or recess completely surrounded by the side walls.**

Although **not argued in the Petition**, Petitioner’s expert makes two assumptions about Melby to try to match up the claim requirements with what is not shown in Melby. First, Escuti assumes that all of the figures in Melby are cross-sectional views, and second, that “housing 30 includes a fourth wall adjoining walls 32 and 36 to form the optical cavity that opens up with the optical window covered with the transparent cover 40.” Escuti Decl. at 30 ¶ 71.

However, there is no support in Melby that supports either of these assumptions. None of the figures have cross-section markings. None of the

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