

Case IPR2015-00755

Patent 7,434,974

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

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SONY ELECTRONICS, INC., SONY MOBILE COMMUNICATIONS
(USA) INC., SONY MOBILE COMMUNICATIONS AB, and
SONY MOBILE COMMUNICATIONS INC.,
Petitioners,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2015-00755
U.S. Patent No. 7,434,974

**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 7,434,974**

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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. 7,434,974 (the “Petition”) in IPR2015-00755 filed by Sony Corporation et al. (“Sony” or “Petitioner”)

The PTAB should deny the Petition’s request to institute an *inter partes* review (“IPR”) of U.S. Patent No. 7,434,974 (the “’974 patent”) because the grounds in the Petition do not demonstrate a reasonable likelihood of any claims being invalid.

This Preliminary 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 February 27, 2015, date of the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response. (Paper No. 4.) Patent Owner has limited its identification of 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.

A. Grounds in Petition

The Petition includes two grounds of alleged invalidity – both obviousness arguments – obviousness of claims 1, 3, 7, 8, 13, and 17 by Kisoo under 35 U.S.C. § 103(a) and obviousness of claims 1, 3-5, 7-11, and 13 by Yoshikawa under 35 U.S.C. § 103(a). Claims 1, 7, 13, and 17 of the ’974 patent are independent claims.

For the following reasons, which are discussed in more detail below, none of the grounds demonstrate a reasonable likelihood of any claims being invalid:

B. History of the Parties

Petitioner is one of a number of parties that the '974 was asserted against in litigation. See Paper 6 (related matters). Petitioner, however, waited to file the instant petition after appraising the results of an early filed petition by LG Display (“LGD”). See IPR2014-01092 (institution denied). Petitioner now uses the denial order as a template to file a new petition to allegedly cure the defects in the LG Display petition. Pet. at 1. In particular, Petitioner seeks to tailor claim construction to read on the new references cited. “Kisoo discloses a backlight apparatus that employs an LED light source, and thus addresses the main shortcoming of the primary Funamoto reference relied upon in IPR2014-01092” Pet. at 11.

This is indicative of impermissible hindsight analysis. However as shown below, Petitioner still fails to show a reasonable likelihood that any of the claims of the '974 Patent are invalid.

C. 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) (Ex. 2001) and *Innovative Display Technologies v. Hyundai Motor Co., et al.*, No. 2:14-cv-201 (E.D. Tex. 2014) (Dkt. No. 244) (Ex. 2002) has ruled on constructions of terms in this patent, including entering an agreed construction of “deformities” that Petitioner adopts in its Petition. Pet. at 8; Ex. 2001 at 58. Ex. 2002 at 9.

D. Alleged Prior Art References

Petitioner cites what appears to be two Japanese patent application publications Kisoo and Yoshikawa as alleged prior art against the '974 patent. At this stage, Patent Owner does not concede that the Kisoo and Yoshikawa documents are prior art. Patent Owner also relies on but does not necessarily adopt Petitioner's translation. Patent Owner notes that Petitioner offers no proof of their authenticity and does not attest to the authenticity of the document, but only the translation.

II. GROUND 1 - Kisoo (Claims 1, 3, 7, 8, 13, and 17)

A. The Petition Fails to Establish a Prima Facie Case of Obviousness Based on Kisoo.

The Petition alleges that claims 1, 3, 7, 8, 13, and 17 are rendered obvious by Kisoo but fails to establish the prerequisites for demonstrating prima facie obviousness.

As confirmed by the Supreme Court in *KSR*, an obviousness analysis begins with a consideration of the Graham factors. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 406-407 (2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1 (1966)).

The Graham factors are as follows:

- (A) Determining the scope and content of the prior art;
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art.

Graham at 17-18.

In considering the Graham factors, both the claimed invention and the scope and content of the prior art must be considered **as a whole**, including disclosures in the references that diverge from and teach away from the invention at hand. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, (Fed. Cir. 1983). It is improper to limit the obviousness inquiry to a difference from the prior art and then to show that that difference alone would have been obvious. *Schenck v. Nortron Corp.*, 713 F.2d 782 (Fed. Cir. 1983). But this is exactly the approach used in the Petition.

The Petition fails to consider Kisoo as whole and account for the potential negative impacts to Kisoo's device if the proposed substitution were implemented.

Because the Petition fails to demonstrate a prima facie case that Kisoo as a whole would render the claimed subject matter obvious, Ground 1 fails for all claims.

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