

Filed on behalf of: NVIDIA Corp.

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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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NVIDIA CORPORATION,  
*Petitioner,*

v.

SAMSUNG ELECTRONICS COMPANY, LTD.,  
*Patent Owner.*

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Case IPR2015-01318  
U.S. Patent No. 8,252,675 B2

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Before JAMESON LEE, PATRICK R. SCANLON, and  
JUSTIN BUSCH, *Administrative Patent Judges.*

**PETITIONER'S REQUEST FOR REHEARING  
UNDER 37 C.F.R. § 42.71**

## **I. INTRODUCTION**

Pursuant to 37 C.F.R. § 42.71(d), NVIDIA Corp. (“Petitioner”) hereby requests rehearing of the Board’s Decision denying institution of *Inter Partes* Review of U.S. Patent No. 8,252,675 (’675 patent). Paper No. 8, Dec. 7, 2015 (“Bd. Dec.”). The Board reviews a request for rehearing for abuse of discretion. For the reasons set forth below, that standard is met and accordingly rehearing is respectfully requested.

## **II. LEGAL STANDARD**

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Bernard v. Dep’t of Agric.*, 788 F.3d 1365, 1367 (Fed. Cir. 2015) (citing *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005)). “A decision based on an erroneous view of the law, however, invariably constitutes an abuse of discretion.” *Atl. Research Mktg. Sys., Inc. v. Troy*, 659 F.3d 1345, 1359 (Fed. Cir. 2011) (internal citations omitted).

## **III. THE BOARD ERRED IN DECIDING WHETHER YAMAKAWA IS ANTICIPATING**

The sole basis for the Board’s Decision not to institute an *inter partes* review

on all grounds and claims of the '675 patent was the Board's view that Petitioner's reliance on Yamakawa's Figure 18 for limitation 1(i) and Yamakawa's Figures 16 and 17 for limitations 1(a), 1(b), 1(c), 1(d), 1(e), and 1(h) is improper for an anticipation analysis. The Board did not find that Figure 18 fails to meet the limitation 1(i)—rather it found that Figure 18 is a different embodiment than Figures 16 and 17. The Board found “Yamakawa itself does not appear to make clear what process steps are common between its embodiment of Figure 18 and its embodiment of Figures 16–17, and Petitioner has not provided an adequate explanation.” Bd. Dec. at 17. Petitioner respectfully requests the Board to reconsider its Institution Decision in light of substantial intrinsic evidence which clearly shows that Yamakawa discloses what semiconductor process steps of Figures 16 and 17 are in common and that they are directly related to the process steps of Figure 18.

“A reference anticipates a claim if it discloses the claimed invention such that *a skilled artisan could take its teachings in combination with his own knowledge of the particular art* and be in possession of the invention.” *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (emphasis added) (internal quotation marks and citation omitted). The Board's Decision relies on *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1370 (Fed. Cir. 2008), stating that “to establish anticipation, each and every element in a claim, arranged as recited in the claim,

must be found in a single prior art reference.” Bd. Dec. at 9. In *Net MoneyIN*, the Court held that an “Internet payment system” was not anticipated by a prior art reference that disclosed all components of the invention in two separate payment protocols, each of which contained only a subset of the claimed components. 545 F.3d at 1371. But, the PTAB has distinguished *Net MoneyIN* where a POSITA would understand that two separately disclosed methods could be used in the same program, even without express disclosure of their combination. *Groupon, Inc. v. Blue Calypso, LLC*, No. CBM2013-00033, 2014 WL 7273561, at \*21-22 (P.T.A.B. Dec. 17, 2014); *see also In re Preda*, 401 F.2d 825, 826 (C.C.P.A. 1968) (“[I]t is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”). In this instance, Yamakawa provides an expressed explanation that would allow a POSITA to readily see how the process steps of Figures 16 and 17 are related to the process steps of Figure 18.

The Board further cites *In re Arkley*, 455 F.2d 586, 587 (C.C.P.A. 1972) that “for a proper anticipation analysis, one may not pick and choose selectively from different embodiments to satisfy the claimed invention.” Bd. Dec. at 10. But *In re Arkley* clarifies that for anticipation, one may not pick and choose from “various disclosures *not directly related to each other by the teachings of the cited reference.*” 455 F.2d at 587 (emphasis added). However, here, Yamakawa does

provide such an express disclosure of relatedness.

The Board focuses on Petitioner's reliance on Figure 17(2) to meet limitation 1(h) and Figure 18(4) to meet limitation 1(i). Bd. Dec. at 16. Specifically, the Board notes that Figure 17(2) shows "removal of cap film or buffer electrode layer 50," while "there is no such removal in the pMOS region of the device shown in Figure 18(2)." *Id.* For this reason, the Board found "Yamakawa's Figure 18 embodiment is not the same as the embodiment illustrated in and discussed in connection with Yamakawa's Figures 16-17." *Id.* at 15 (citing Prelim. Resp. at 6-7). However, the Decision failed to take into account that Yamakawa expressly disclosed that the embodiments in Figure 18 and Figures 16-17 are in fact related and that a POSITA would have readily recognized the same.

Yamakawa describes a method of manufacturing a single transistor as a so-called "fourth example" in Figures 16 and 17. *See* Ex. 1003, Yamakawa at [0133]. The Board failed to recognize that Yamakawa expressly states that in the fourth example shown in Figures 16-17, the cap film 50 may *optionally remain* in the gate electrode:

Incidentally, while it is constituted that the cap film 50 is removed in the fourth example described above, *the cap film 50 may be left as it is as a part of the gate electrode*. In this case, *the cap film 50 may be left as a work function controlling layer* described in the structure of the device, and it suffices to select a material properly and use the

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