

Filed on behalf of: LG Electronics, Inc. and
LG Electronics U.S.A., Inc.

Paper _____

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC., and
LG ELECTRONICS U.S.A., INC.,
Petitioner

v.

TOSHIBA SAMSUNG STORAGE TECHNOLOGY KOREA CORPORATION,
Patent Owner

Case IPR2015-01653
Patent RE43,106

PETITIONER REPLY TO PATENT OWNER RESPONSE

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I. INTRODUCTION

The only theory for patentability advanced by Patent Owner, TSST-K in its Patent Owner's Response (POR) relies on an improper claim construction – applying *Phillips* and not the broadest reasonable interpretation (BRI) – that unduly narrows the claim scope beyond BRI and reads out the preferred embodiment. TSST-K contends that the feature of “a diffractive region ... to selectively diffract the first and second light beams as a function of wavelength,” recited in claim 7, requires diffraction of both the first and second beams such that both beams have less than 100% light transmitted in a zeroth order beam. (POR at 3). TSST-K's construction reads the word “hardly” from the specification into the claims and is only supported by *cherry-picked* data which excludes the preferred embodiment. TSST-K's claim construction must be rejected because it is not based on the BRI standard but rather on one expressly disavowed by the U.S. Supreme Court. *See In re Cuozzo Speed Technologies v. Lee*, 2016 U.S. Lexis 3927 (U.S. June, 20, 2016). TSST-K's arguments rely upon its faulty construction and should also be rejected for this reason, and for the additional reasons set forth below.

Patent Owner's Response, and the testimony of its expert, Dr. Lebby, fail to rebut Petitioners' arguments and evidence supporting the invalidity of claims 7-19 over the Admitted Prior Art (APA) and Katayama (U.S. Pat. No. 5,696,750)(Ex.

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