

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALLSTEEL, INC.,
Petitioner,

v.

DIRTT ENVIRONMENTAL SOLUTIONS, LTD.,
Patent Owner.

Case IPR2015-01691
Patent 8,024,901 B2

Held: October 13, 2016

BEFORE: SALLY C. MEDLEY, SCOTT A. DANIELS, and
JACQUELINE T. HARLOW, Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday,
October 13, 2016, commencing at 1:00 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2015-01691
Patent 8,024,901 B2

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1 MR. NYDEGGER: Good afternoon. My name is Chad
2 Nydegger from Workman Nydegger, representing the patent
3 owner, DIRTT Environmental Solutions, Limited. With me I
4 have my partner, David Todd, my partner, Michael Frodsham,
5 and we have with us a client representative today, Dale Sawyer.

6 JUDGE MEDLEY: Mr. Nydegger, you will be
7 presenting?

8 MR. NYDEGGER: I will.

9 JUDGE MEDLEY: So Mr. Carter, would you like to
10 reserve rebuttal time?

11 MR. CARTER: Yes. I would like to reserve
12 approximately 30 minutes with the understanding that my
13 primary role here is to answer whatever questions you have
14 today. So if we need to go beyond that to answer your questions,
15 that's fine with me.

16 JUDGE MEDLEY: Unfortunately, we don't have a
17 display of the time remaining like we do in some of the other
18 hearing rooms. So I'll just alert to you when you get close to that
19 30 minutes.

20 MR. CARTER: Thank you very much.

21 JUDGE MEDLEY: You may begin.

22 MR. CARTER: Thank you. So as a starting point, we
23 are here to talk about the instituted grounds. There are several
24 grounds all involving the Raith reference in combination with

1 what we refer to as the EVH reference, the Yu reference, the
2 MacGregor reference and MacGregor and Rozier.

3 Since the institution decision, the only claims that have
4 been at issue during the trial phase have been the only
5 independent claim, claim 1, and one dependent claim, claim 5.
6 So where we are today, we think that, as we set out in our reply
7 paper, that the dispute between the parties now is very narrow.
8 There is no dispute that the prior art is analogous. There's no
9 dispute that all of the elements in the prior -- that the prior art
10 teaches all of the elements in the claims. And there is no dispute
11 that a person of ordinary skill in the art would combine the
12 references. The issue is down to what combinations would a
13 person of ordinary skill in the art come to looking at the overall
14 teachings of the references.

15 So first, looking at whether the prior art is analogous,
16 this is in our reply paper at 3. I'm on slide 5, testimony from
17 Dr. Dix where he is agreeing to the underlying elements that
18 indeed Raith, EVH, Yu and MacGregor are analogous art.

19 Second, undisputed that for the elements at issue here,
20 the prior art teaches all of them. And it was not disputed by the
21 patent owner at any time during the trial phase. And as this panel
22 set out in the institution decision, the patent owner was cautioned
23 that any arguments for patentability not raised in the response
24 will be deemed waived, as we have here in slide 7.

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