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571-272-7822

IPR2015-01764, Paper No. 25

IPR2015-01768, Paper No. 23

December 1, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LAM RESEARCH CORP.,
Petitioner,

v.

DANIEL L. FLAMM,
Patent Owner.

Cases IPR2015-01764, IPR2015-01768
Patent RE40,264 E

Held: October 4, 2016

BEFORE: CHRISTOPHER L. CRUMBLY, JO-ANNE M.
KOKOSKI, and KIMBERLY McGRAW, Administrative Patent
Judges.

The above-entitled matter came on for hearing on Tuesday,
October 11, 2016, commencing at 1:00 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Cases IPR2015-01764, IPR2015-01768
Patent RE40,264 E

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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and

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1 PROCEEDINGS

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3 JUDGE CRUMBLEY: Good afternoon, everyone. So
4 today we have the oral hearing in three related inter partes review
5 trials. IPR2015-1764, 1767 and 1768 between Lam Research
6 Corporation as the petitioner and Daniel Flamm as the patent
7 owner. I'm Judge Crumbley. To my right is Judge Kokoski and
8 to my left is Judge McGraw. I will get the parties' appearances
9 starting with the petitioner, please.

10 MR. CHU: Good afternoon, Your Honors. On behalf
11 of petitioner, Lam Research, Morgan Chu, Michael Fleming,
12 Samuel Lu and also our colleague Talin Gordnia.

13 JUDGE CRUMBLEY: And who do we have from the
14 patent owner?

15 MR. FRERKING: From patent owner, Christopher
16 Frerking and George Summerfield.

17 JUDGE CRUMBLEY: Welcome. So we set forward
18 our procedure for today in our hearing order, but I want to go
19 over it just to make sure we are all on the same page and we're
20 operating on the same rules. So because the subject matter in the
21 1764 and 1767 cases are so related, we are going to do those
22 together today. Each side will have 45 minutes of total argument
23 time. You can allocate the time between the two cases as you
24 wish. We are not going to break up the transcript between the

1 two cases. So we'll just the submit is same transcript in both
2 cases and it will be part of the record of both. The petitioner, of
3 course, has the burden of proving unpatentability, so will argue
4 first. You may reserve however much time you wish for your
5 rebuttal, followed by patent owner's argument. And then the
6 petitioner's argument on the 1764 and 1767 cases. And then --
7 did I say is it wrong? 1768. I think we know. I'm sorry if I
8 screwed up. Sorry, 1764 and 1768 will be argued together.
9 That's my fault. And then we'll take a short recess, let everybody
10 stretch their legs, come back in and we'll undertake the 1767
11 argument. We allocated 30 minutes to both sides in that case. So
12 we'll follow the same procedure with petitioner arguing first
13 followed by the patent owner.

14 I note that the petitioner submitted demonstrative slides.
15 I don't have anything for the patent owner; is that correct?

16 MR. SUMMERFIELD: We'll be using theirs, Your
17 Honor.

18 JUDGE CRUMBLEY: That's fine. Just wanted to
19 make sure we have everything we need up here. I also didn't
20 receive any objections to the petitioner's demonstratives. So I
21 assume there were none. Any questions before we begin? So we
22 will get underway, starting with petitioners. Do you wish to
23 reserve any time?

24 MR. CHU: Yes. I'm going to try and reserve at least
25 15 minutes. And with Your Honor's permission, may I distribute

1 to you and the court reporter a copy of the slides in case you want
2 a hard copy?

3 JUDGE CRUMBLEY: Please.

4 MR. CHU: Good afternoon. Again, it's Morgan Chu
5 on behalf of the petitioner, Lam Research. We are going to
6 address the '264 patent. What is the invention? The invention is
7 doing etching in a single chamber with two important
8 qualifications that are directly at issue today. First, that it be done
9 at two temperatures and second that the change between the two
10 temperatures be at a preselected time. The key pieces of prior art
11 are Tegal and Matsumura. Tegal discloses etching in a single
12 chamber at two temperatures. No question about that.
13 Matsumura is a patent directed to controlling the temperature in
14 connection with semiconductor processes, and it teaches using a
15 single chamber, having two temperatures and having a
16 preselected time in changing from temperature 1 to temperature
17 2.

18 And here is the central question before us this afternoon
19 that is hotly disputed: Is there, as a factual matter, a motivation to
20 combine? It is a factual question. Not a legal question. The case
21 law demonstrates that.

22 And here is what the factual record is. Dean Joseph
23 Cecchi, dean of the University of New Mexico School of
24 Engineering submitted declarations. These declarations stated
25 plainly that a person of skill in the art would combine and would

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