

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

K.J. PRETECH CO., LTD.,
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2015-01868
U.S. Patent No. 7,434,974

**PATENT OWNER'S FIRST MOTION FOR ADDITIONAL DISCOVERY
ON PRIVILEGE FROM K.J. PRETECH**

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I. INTRODUCTION

The supplier arrangement and the surrounding circumstances strongly suggest that this petition for *inter partes* review was filed at the behest of LG Display or LG Electronics (collectively, “LG”), for which KJ Pretech Co., Ltd. (“KJ Pretech”), supplies the key backlighting units contained in the products that are at issue in litigation between LG and Patent Owner, Innovative Display Technologies LLC (“IDT”). Patent Owner believes that LG, which is time-barred from filing petitions itself, has used this petition to circumvent the time bar under 35 USC § 315(b). Evidence confirming LG’s control over this petition lies with KJ Pretech and its counsel (which, notably, also represents LG in both the underlying litigation and other *inter partes* review proceedings relating to the same patent. The common counsel used by LG and KJ Pretech is no coincidence, and further indicates the extent to which these proceedings are being conducted at the behest of LG. IDT therefore asks the Board to compel KJ Pretech to produce the information set forth in this motion for limited additional discovery. IDT further contends that communications, including emails, between LG and KJ Pretech regarding the decision to file and substance of this petition will be instrumental in showing the nature of the relationship between KJ Pretech and LG. Such written communications are part of and complete the intercompany agreements. To the

extent not allowed in response to this Motion, IDT intends to seek discovery of these email communications once the Board has seen the supplier agreements.

II. FACTUAL BACKGROUND

IDT accuses LG of infringing the patent that is the subject of the petition in the District of Delaware. *See Delaware Display Group LLC et al. v. LG Electronics Inc. et al.*, No. 1:13-cv-02109 (D. Del., filed Dec. 31, 2013) (the “Delaware Litigation”). LGE and LGD were served with the complaint on January 2, 2014. In response to that litigation, LG filed 19 IPR petitions against the patent-at-issue and other patents asserted in the Delaware Litigation. *See* IPR2014 - 01092; -01094; -01095; -01096; -01097; -01357; -01359; -01362; IPR2015 - 00487; -00489; -00490; -00492; -00493; -00495; -00496; -00497; -00506; -01666; and -01717. LG then moved to stay the litigation pending the outcome of the IPR proceedings. *See* Delaware Litigation, Dkt. 81, Joint Status Report on IPR Petitions, Ex. 2001 at 2-3.

However, while the motion to stay was pending, and after over one year since LG was served with the complaint, the Board denied institution of four of the IPRs against two of the asserted patents and denied institution of six out of the eight claims challenged against a third asserted patent. *See* IPR2014-01095 & IPR2015-00496 (U.S. Patent No. 8,215,816 (the “816 Patent”) institution denied); IPR2014-01092 & IPR2015-00497 (U.S. Patent No. 7,434,974 (the “974 Patent”))

institution denied); and IPR2014-01096 & IPR2015-00493 (U.S. Patent No. US 7,537,370 (the “370 Patent”) denying institution of six out of eight challenged claims). Thus, LG is now **time-barred from filing further IPRs** under 35 USC § 315(b).

Following denial of institution of the foregoing IPRs, and just a month from the hearing on LG’s motion to stay, KJ Pretech (a major LG supplier) filed three IPR petitions coinciding with the patent claims denied institution by LG. *See* IPR2015-01866 (’816 Patent), IPR2015-01867 (’974 Patent), IPR2015-01868 (’370 Patent) (collectively “Pretech IPRs”).¹ Again, the timing was no coincidence, and was clearly done so that LG could represent to the district court that all of the asserted claims in the litigation were subject to a pending IPR petition. *See* Defendant’s Stay Hearing Presentation (“LG Stay Presentation”), Exhibit 2002 at 2 (representing to the district court that asserted claims, including those of KJ Pretech “**will** be canceled”) (emphasis in original)). In fact, LG highlighted the KJ Pretech filings in its presentation. *See id.* at 5 (showing how the KJ Pretech filings fit into LG’s overall IPR strategy). And it no coincidence that the KJ Pretech filings neatly “fill the gaps” of the claims asserted in the Delaware Litigation that were not covered by LG’s denied IPRs. These representations were made by LG counsel, the same attorneys who represent KJ Pretech in this IPR.

¹ *See* Ex. 2001 (Joint Status Report on IPR Petitions, Filed 10/12/15).

Additionally, LG has produced a supplier agreement under a protective order in the Delaware Litigation that supports the Patent Owner's contention that there is a business relationship between KJ Pretech and LG such that LG is in privity to Petitioner or itself a real party in interest. Patent Owner requests that KJ Pretech produce all supplier agreements and related documents in this proceeding.

III. REASONS FOR THE RELIEF REQUESTED

The Patent Trial Practice Guide ("Trial Practice Guide") explains that whether an unnamed party constitutes a RPI is a "highly fact-dependent question." 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012). An important consideration is "whether the non-party exercised or **could have exercised control** over a party's participation in a proceeding." *Id.* (emphasis added). Other factors are the unnamed party's relationship to the petitioner. *Id.* Determination of whether a petition identifies all RPIs is a "threshold issue," on which Petitioner bears the burden of persuasion. *Reflectix Inc. v. Promethean Insulation Technology LLC*, IPR2015-00047, Paper 18 at 8 (PTAB Apr. 24, 2015) (denying institution); *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 88 at 7-8 (PTAB Jan. 6, 2015). Central to the Board's determination is whether a party other than the named petitioner is "controlling, or capable of controlling" the proceeding before the Board. *Reflectix* at 9-10. Further, complete control is not required, "if a nonparty can influence a petitioner's actions in a proceeding before the Board, to

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