

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

DSS Technology Management, Inc.,
Patent Owner

Case No. IPR2016-00288
U.S. Patent 6,784,552

**PATENT OWNER PRELIMINARY RESPONSE TO PETITION
PURSUANT TO 37 C.F.R. § 42.107**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	2
A. Grounds in Petition	3
II. THE '552 PATENT	3
A. Overview	3
B. Prosecution History Summary	9
III. PETITION PROCEDURAL DEFICIENCIES	10
IV. CLAIM CONSTRUCTION AND ORDINARY SKILL IN THE ART.....	14
A. Person Having Ordinary Skill In The Art.....	14
B. Claim Construction	15
1. “a side of the electrically insulative spacer has an angle relative to the substrate surface that is either a right angle or an acute angle of more than 85°”	15
V. THE CHALLENGED CLAIMS ARE PATENTABLE OVER HEATH.....	19
A. Summary of Heath	20
B. Heath Does Not Anticipate Independent Claim 8.....	24
1. Anticipation By Heath Premised On Petitioner’s Construction Must Be Denied	24
2. Heath Does Not Disclose Using A Low Selectivity Etch To Avoid The Sloped Spacer Problems Of The Prior Art	26
C. Obviousness Grounds Based On Heath Must Be Denied.....	30
VI. THE CHALLENGED CLAIMS ARE PATENTABLE OVER HEATH IN VIEW OF DENNISON	30
VII. CONCLUSION.....	35

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Cisco Systems, Inc. v. AIP Acquisition, LLC</i> , Case No. IPR2014-00247	13
<i>Enzo Biochem, Inc. v. Applera Corp.</i> , 599 F.3d 1325 (Fed. Cir. 2010)	24
<i>Kinetic Techs., Inc. v. Skywork Solutions, Inc.</i> , Case No. IPR2014-00530	11
<i>Kinetic Techs., Inc. v. Skywork Solutions, Inc.</i> , Case No. IPR2014-00529	11, 12
<i>LG Display, Ltd. v. Innovative Display Technologies LLC</i> , Case No. IPR2014-01094	10, 12
<i>Microsoft Corp. v. Proxyconn, Inc.</i> , Case No. IPR2012-00026	24
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (<i>en banc</i>)	13, 18, 24
<i>In re Rambus, Inc.</i> , 694 F.3d 42 (Fed. Cir. 2012)	13
<i>Wowza Media Sys, LLC and Coffee Cup Partners, Inc. v. Adobe Sys. Inc.</i> , Case No. IPR2013-00054	11
<i>ZTE Corporation v. ContenGuard Holdings, Inc.</i> , Case No. IPR2013-00139	24
STATUTES	
35 U.S.C. § 312	9, 13, 14
35 U.S.C. § 313	1
OTHER AUTHORITIES	
37 C.F.R. § 42.22	9, 13
37 C.F.R. § 42.104	9, 14
37 C.F.R. § 42.107	1
77 Fed. Reg. 48,756 (proposed Aug. 14, 2012)	10

**PATENT OWNER PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107**

Pursuant to 37 C.F.R. § 42.107, DSS Technology Management, Inc., (“Patent Owner”) hereby submits the following Preliminary Response to the Petition (Paper 2) seeking *inter partes* review of U.S. Patent No. 6,784,552 (the “552 Patent”) filed by Intel Corporation (“Petitioner”). This filing is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is filed within three months of the mailing date of the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response (Paper 4), mailed December 14, 2015.

I. INTRODUCTION

The Patent Trial and Appeal Board (the “Board”) should deny the Petition’s request to institute an *inter partes* review of U.S. Patent No. 6,784,552 (the “552 Patent”) because the grounds in the petition do not demonstrate a reasonable likelihood that the Petitioner would prevail with respect to any of the claims challenged in the Petition. None of the prior art cited in this Petition suggests the solution to lateral spacer erosion invented and claimed by the inventors of the ‘552 patent. Petitioner attempts to rely upon simplified and misleading figures in the cited references which are at best, merely cumulative of the prior-art figures included in the Background of the Invention portion of the ‘552 patent specification.

In consideration of the evidence and arguments below, Patent Owner submits that Petitioner has failed to demonstrate a reasonable likelihood of success with respect to any of the challenged claims. A trial should not be instituted. Patent Owner has limited its identification of deficiencies in Petitioner's argument in this Preliminary Response, but does not waive any additional arguments by not addressing them herein.

A. Grounds in Petition

Petitioner challenges claims 8-12 of the '552 Patent on the following grounds:

1. Claims 8-12 and 4-7 are allegedly anticipated by U.S. Patent No. 4,686,000 ("Heath") (Ex. 1103);
2. Claims 8-12 are allegedly obvious over Heath in view of U.S. Patent No. 5,338,700 ("Dennison") (Ex. 1104).

II. THE '552 PATENT

A. Overview

The '552 Patent, entitled "Structure Having Reduced Lateral Spacer Erosion" issued to James E. Nulty *et al.* on August 31, 2004. The '552 Patent issued from U.S. App. No. 09/540,610 ("the '610 Application"), which was filed on March 31, 2000, and was a division of application No. 08/577,751, filed on December 22, 1995, which is now U.S. Patent No. 6,066,555 (the "'555 patent").

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.