

Paper No. _____
Filed: October 17, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
Petitioner

v.

UUSI, LLC d/b/a NARTRON
Patent Owner

Case IPR2016-00908
Patent No. 5,796,183

Petitioner's Response Brief on Remand

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT.....	1
A. UUSI’s Attorney Arguments Cannot Remedy Its Declarant’s Failure to Address Reasonable Expectation of Success Under the Proper Test.....	1
B. “Supply Voltage” in Claim 37 Should Not Be Limited To the Oscillator Supply Voltage	4
III. CONCLUSION.....	5

I. INTRODUCTION

Petitioner Samsung submits the following reply to UUSI's Opening Brief on Remand (Paper No. 44¹). UUSI argues that there would not have been a reasonable expectation of success in combining the teachings of Gerpheide with the Ingraham I-Caldwell combination and that the Board correctly construed "supply voltage" in claim 37. Both those arguments fail, as explained below.

II. ARGUMENT

A. UUSI's Attorney Arguments Cannot Remedy Its Declarant's Failure to Address Reasonable Expectation of Success Under the Proper Test

With respect to reasonable expectation of success, the question is whether a POSITA would have been able to modify the Ingraham I-Caldwell combination such that the the combination selects a frequency from multiple frequencies and provides the selected "frequency" to the entire touch pad. (Paper 43 at 2-6.) While Dr. Subramanian (Samsung's expert) testified that a POSITA would have been able to do so, UUSI's declarant (Dr. Cairns) simply did not opine on this issue. (*Id.*; Ex. 2010 at ¶¶ 115-118.) Unsurprisingly then, UUSI's entire argument on this issue includes one citation to its declarant. (Paper 44 at 11 (citing Ex. 2010 at ¶117).)

¹ UUSI's brief fails to comply with the 15 page limit set by the Board's September 15, 2019 Order (Paper 41) as it includes two single spaced footnotes in violation of 37 C.F.R. § 42.6(a)(iii). (*See* Paper 44 at 4, 12.)

And even that testimony only alleges that Gerpheide's algorithm "would not work" in the Ingraham I-Caldwell combination, which is irrelevant to the issue at hand because, per the test set forth by the Federal Circuit, Samsung need not prove that Gerpheide's algorithm would work in the Ingraham I-Caldwell combination.

Lacking any supporting testimony, UUSI turns to entirely new *attorney* arguments to support its position. (Paper 44 at 10-13.) But "attorney argument is not evidence' and cannot rebut other admitted evidence" (e.g., Dr. Subramanian's undisputed testimony). *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018). Regardless, even if these attorney arguments are considered, they lack merit. For instance, UUSI argues that Ingraham's touch terminals only output an on/off signal in response to user touch and thus do not output "X, Y, and Z-axis position values" like in Gerpheide. (Paper 44 at 11-12.) Therefore, per UUSI, a POSITA could not have modified "Gerpheide's X-, Y-, Z-position-based interference algorithm to work with the Ingraham I-Caldwell discrete touch pad array." (*Id.* at 12.) This argument fails for two reasons.

First, like its arguments for motivation to combine, which the Federal Circuit rejected, *Samsung Elecs.*, 775 F. App'x at 695-96, UUSI attacks the references individually, focusing on their *physical* distinctions. UUSI ignores that Samsung need not show that Gerpheide's interference algorithm works in an identical manner as Ingraham I or that Gerpheide's interference algorithm can be bodily incorporated

into the Ingraham I-Caldwell combination. *Allied Erecting & Dismantling Co., v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016).

Second, this argument is untethered from the proper test for reasonable expectation of success because it focuses on *the touch terminals* in these references *as opposed to the capability of the microcontroller*; thus, the argument does not address a POSITA's ability to modify the Ingraham I-Caldwell combination such that the microcontroller selects a frequency from multiple frequencies and provides the selected frequency to the touch pad array. Indeed, such a modification only requires changing the oscillator frequency, which a microcontroller was capable of doing at the time of the alleged invention, as confirmed by Gerpheide's teachings. (Ex. 1012, Figs. 4 7, 6:5-8, 6:19-26, 8:22-9:33; Ex. 1002, ¶¶69-72.)

UUSI next contends that Gerpheide's frequency-changing method requires a "frequency-selective detector" while Caldwell and Ingraham I utilize "frequency-agnostic detector." (Paper 44 at 12-13.) First, this is new attorney argument that has no evidentiary basis in UUSI's testimonial evidence, and hence, must be rejected. Second, UUSI attacks the references individually and presumes that reasonable expectation of success requires "Gerpheide's frequency selection technique" to "work in the proposed Ingraham-Caldwell system." (*Id.* at 12.) But obviousness does not require bodily incorporation of the teachings of one reference into another. UUSI's argument further fails because the claims do not recite a

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