

Paper No. _____
Filed: March 16, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
Petitioner

v.

DANIEL L. FLAMM
Patent Owner

Case IPR016-01510
Patent No. RE 40,264 E

Petitioner's Request for Rehearing

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioner Samsung Electronics Co. Ltd. requests rehearing of the Patent Trial and Appeal Board's Decision entered February 14, 2017 (Paper 6, "Decision") denying institution of *inter partes* review for claims 13-26, 64, and 65 ("challenged claims") of U.S. Patent No. RE 40,264 E ("the '264 patent"). Petitioner respectfully submits that the Board overlooked and misapprehended evidence of record when it denied institution for the challenged claims. For the reasons set forth below, Petitioner requests rehearing of the Board's decision not to institute *inter partes* review of claims challenged claims.

II. LEGAL STANDARD

"A party dissatisfied with a decision may file a request for rehearing." 37 C.F.R. § 42.71(d). "The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id.*

Institution decisions are reviewed on rehearing for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a "decision [i]s based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *Apple Inc. v. DSS Technology Management, Inc.*, IPR2015-00369, Paper No. 14 at 3 (August 12, 2015) (citing *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988)).

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

Petitioner respectfully requests rehearing of the Board's decision to deny institution of the challenged claims. (Decision at 21.) The Board's sole reason for denying institution was that a feature recited in claim 13-the only independent claim at issue-was not taught by the combination of *Okada I* (Ex. 1006), *Incropera* (Ex. 1007), and *Anderson* (Ex. 1008). Specifically, the Decision found that *Okada I* in combination with *Incropera* and *Anderson* does not teach that "the thermal mass of the substrate holder is selected for a predetermined temperature change within a specific interval of time during processing," as recited in independent claim 13. (Decision at 19-20.) However, as explained below, the Decision overlooked and misapprehended evidence of record that demonstrates that when the teachings of all three references are combined, the *combination* teaches the above feature recited in claim 13. Therefore, Petitioner respectfully requests that the Board reconsider its decision denying institution of the challenged claims.

A. The Decision Overlooked or Misapprehended the Teachings of *Incropera*

The Decision equated the combination set forth in the Petition here to the petitions filed by Lam, stating that "the proffered combination does not properly account" for the feature of "selecting" a thermal mass of the substrate holder for a specific rate of temperature change. (Decision at 19.) But the Decision erred in putting the teachings of *Incropera* in the same bucket as the references cited in

Lam's petitions. (*Id.*, "*Incropera* . . . stand[s] for essentially the same proposition—namely, whether a solid object is of low or high thermal mass impacts the rate at which it changes temperature.")

Specifically, the Decision overlooked or misapprehended *Incropera*'s disclosure that equation 5.6 can be used to "*select*" *the thermal mass* by filling in the temperature (T = desired temperature, T_i = initial temperature) and time (t = time to change from T_i to T) values in equation 5.6. (Pet. at 28; Ex. 1002 at ¶ 62.) Therefore, *Incropera* does not simply stand for the proposition that the thermal mass affects a change in temperature. Rather, an ordinary skilled artisan would have known based on *Incropera* that for a certain desired temperature change (T = desired temperature, T_i = initial temperature) and time (t = time to change from T_i to T)), the precise "thermal mass" would have to be selected using equation 5.6. (Pet. at 30, "*Incropera* would have suggested to one of ordinary skill in the art that if a predetermined temperature change in a predetermined amount of time is required for an object, the thermal mass of the object must be *selected* by the designer of the object so that the object is able to achieve the predetermined temperature change in a predetermined amount of time."; *see also* Ex. 1002 at ¶ 63.) Because the Decision overlooked or misapprehended the above specific teachings of *Incropera*, the Decision appears to have overlooked how the

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