

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 IPR2016-01512
Patent RE40,264 E

Record of Oral Hearing
Held: October 12, 2017

Before MICHAEL R. ZECHER, CHRISTOPHER L. CRUMBLY, and
JO-ANNE M. KOKOSKI, *Administrative Patent Judges*.

Case IPR2016-01512
Patent RE40,264 E

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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CHETAN BANSAL, ESQ.
JOSEPH E. PALYS, ESQ.
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ON BEHALF OF PATENT OWNER:

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and

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The above-entitled matter came on for hearing on Thursday, October 12, 2017, commencing at 9:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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3 JUDGE ZECHER: Please be seated. Good morning. This is a
4 hearing for IPR2016-01512. The patent at issue is reissued patent
5 number 40,264 E. We have a number of challenged claims at issue, 27,
6 31, 32, 34, 37, 40, 41, 44, 47, 48 and 50.

7 So, in our oral argument order, I believe we allotted each party
8 30 minutes of oral argument time in total, so we're going to stick with
9 that today. Petitioner is going to present their case first. They can
10 reserve rebuttal time, at which point Patent Owner will go and then
11 Petitioner can use their remaining rebuttal time at the end.

12 So, let's start by having the parties introduce themselves. Let's
13 start with Petitioner, please.

14 MR. MODI: Good morning, Your Honors. Naveen Modi from
15 Paul Hastings. With me I have my colleagues Chetan Bansal and Joe
16 Palys on behalf of Samsung.

17 JUDGE ZECHER: Thank you. And for Patent Owner?

18 MR. FRERKING: Christopher Frerking for Patent Owner, and
19 my colleague, Rolf Stadheim.

20 JUDGE ZECHER: Thank you. So, we will turn the floor over
21 to Petitioner and would you like to reserve some rebuttal time up front?

22 MR. MODI: Yes, Your Honor, I would like to save 10 minutes
23 for rebuttal.

24 JUDGE ZECHER: Okay.

1 MR. MODI: Your Honor, before I begin, I do have hard copies
2 of the demonstratives, if you would like, I can give you copies.

3 JUDGE ZECHER: Yes, you can approach. Thank you.

4 MR. MODI: Thank you. Good morning, Your Honors, may it
5 please the Board. Based on the petition and supporting evidence, the
6 Board instituted review of certain claims of the '264 patent. The record
7 now includes even more evidence than before, and that supports the
8 Board's institution decision. The Board should now issue a final decision
9 cancelling the claims at issue. Let me explain why.

10 So, if you can go to slide 2, please. So, as the Board is aware,
11 there are four grounds at issue in this proceeding. For purposes of my
12 opening presentation, I plan to focus on Patent Owner's argument, main
13 argument, that one of ordinary skill would not have combined Kadomura
14 and Matsumura.

15 I'm happy to answer any other questions the Board has on any
16 of the claims, the dependent claims, but that's what I was going to focus
17 on today, for purposes of my opening presentation.

18 So, if you go to slide 3, again, as the Board is aware, there are
19 two independent claims at issue here, claims 27 and 37. I believe the
20 parties' disputes really don't matter with respect to the claims, whether it's
21 27 or 37, so again, for purposes of today, I will focus on independent
22 claim 27. Again, I'm happy to address any questions the Board may have
23 on claim 37 or any of the other claims.

24 So, if you look at claim 27, I just want to put this claim in
25 context for purposes of the discussion today. It's a method of etching a

1 substrate, and the method includes various steps: Heating a substrate
2 holder to a first substrate holder temperature; placing a substrate having a
3 film thereon, on the substrate holder; etching a first portion of the film at
4 a preselected first substrate temperature; etching a second portion of the
5 film at a preselected second substrate temperature, wherein substrate
6 temperature is changed within a preselected time interval for processing.

7 Obviously I skipped some of the claim language, but for
8 purposes of today, I'm going to focus on the "preselecting" language, as
9 you know, that's where the dispute centers around. And I will note for
10 the record, we don't believe there is a dispute terms of whether the prior
11 art really discloses the features, I think the dispute centers around
12 whether one of ordinary skill would have combined the references.

13 So, let's turn to the references, and let's start with Kadomura.
14 So, we are now on slide 4. Again, I think it's undisputed that Kadomura
15 discloses controlling the temperature of specimen W, which is the
16 substrate, by controlling the temperature of stage 12, a substrate holder.

17 So, if you go to slide 5, again, I think it's undisputed that
18 Kadomura discloses at least three embodiments, which are shown here.
19 The figure 1 embodiment, the figure 2 embodiment and then the figure 3
20 embodiment. And in each of these embodiments, Kadomura applies its
21 dry etching method, of course in a different manner, but in each
22 embodiment, there are three things that happen.

23 There is an etching at a first temperature in the presence of gas;
24 then the temperatures changed to a second temperature while the gas is

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