

Patent No. 8,075,338
IPR2015-01573

Filed on behalf of Patent Owner, PPC Broadband, Inc.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORNING OPTICAL COMMUNICATIONS RF LLC, CORNING
INCORPORATED, AND CORNING OPTICAL COMMUNICATIONS LLC,
Petitioners,

v.

PPC BROADBAND, INC.,
Patent Owner.

Case IPR2016-01573
Patent 8,075,338

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

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I. INTRODUCTION

Patent Owner, PPC Broadband, Inc. (“PPC”), respectfully submits this Preliminary Patent Owner Response to the Petition for *Inter Partes* Review (“IPR”) of claims 5, 6, and 8 of U.S. Patent No. 8,075,338 (the “‘338 Patent”)(EX1001) filed by Petitioner, Corning Optical Communications RF, LLC et al. (“Petitioner”).

Petitioner alleges that the challenged claims are obvious based on U.S. Patent Application Publication No. 2006/0110977 (“Matthews”)(EX1019) in view of U.S. Patent No. 4,156,554 (“Aujla”)(EX1029) and U.S. Patent No. 7,114,990 (“Bence”)(EX1002).

The petition should be denied for several reasons. First, Petitioner invites the Board to commit legal error by centering its petition on made-up claim construction theories that are unreasonable in light of what the ‘338 Patent clearly teaches. For instance, Petitioner proposes to construe the claimed ‘338 Patent “engagement fingers” to cover “engagement fingers,” which are not integral with the post – even though the only “engagement fingers” taught by the ‘338 Patent must be integral with the post. Furthermore, Petitioner has admitted in parallel claim construction proceedings that the claimed “engagement fingers” must be “portions of the post.”

Second, Petitioner invites the Board to commit legal error by proposing made-up obviousness theories that cannot satisfy its burden of establishing *prima facie* obviousness under longstanding Supreme Court and Federal Circuit precedent.

Petitioner did not even attempt to satisfy the analysis required by *Graham* regarding the level of ordinary skill at the time of the '338 Patent invention. In fact, a wealth of objective and contemporaneous evidence demonstrates how one of ordinary skill at that time would have readily recognized how the prior art teaches away from the claimed invention of having the post interfere with the nut. In other words, the claimed '338 Patent invention went against conventional wisdom and was contrary to how those of ordinary skill at that time tried to solve the same loose connector problem. It is clear that Petitioner's imagined modification of Matthews is a hindsight-driven exercise, simply using the '338 Patent as a blueprint to create the claimed invention.

Moreover, one skilled in the art at the time of the '338 Patent invention would not have considered making Petitioner's imagined modifications of Matthews because it would impermissibly render Matthews inoperable for its intended purposes (*e.g.*, connecting a cable to an equipment port by rotating the nut onto the port) and substantially change its principles of operation. It is only through hindsight afforded by the '338 Patent's own disclosure that Petitioner could imagine such modifications.

Finally, Petitioner has asserted three different grounds of unpatentability based on Bence against the same challenged claims, one in this IPR and another in IPR2016-01569. But since Petitioner failed to explain why any alternative ground is

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