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

TABLE OF CONTENTS

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

DOCKET ALARM

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.