

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Intel Corporation
Petitioner

v.

Qualcomm Incorporated
Patent Owner

Case IPR2018-01153
Patent 8,698,558

PATENT OWNER'S SUR-REPLY

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I. INTRODUCTION

Petitioner's Reply introduces unpersuasive arguments that cannot salvage the shortcomings of its Petition. To support its flawed claim construction for the claim 6 and 8 limitation of "a P-channel metal oxide semiconductor (PMOS) transistor [having]...a source [receiving/that receives] the boosted supply voltage or the first supply voltage," Petitioner mischaracterizes the opinion of District Court Judge Sabraw, twists the testimony of its own expert, Dr. Apsel, and ignores fundamental Federal Circuit case law. The broadest reasonable interpretation of this claim limitation, when properly read in the context of the respective claim as a whole, requires a selective boost. Because Ground I is based only on Petitioner's incorrect construction, the Board should dismiss Ground I.

The Board should also dismiss Grounds I and II because Petitioner fails to establish a sufficient motivation to combine Chu and Choi 2010 (Ground I) and Chu, Choi 2010, and Myers (Ground II). First, as detailed in the Patent Owner's Response ("POR") (Paper 16 at 29-36), the Petition failed to explain how a POSA would combine Chu and Choi 2010 without destroying the benefits of one or the other. Petitioner's Reply, for the first time, relies on examples and testimony relating to switching between power sources as support for how a person of ordinary skill in the art ("POSA") would allegedly combine Chu and Choi 2010. But no such argument was included in the Petition, and the Board should therefore disregard

Petitioner's attempt to belatedly back-fill its Petition with a new motivation to combine argument. *See Ariosa Diagnostics v. Verinata Health*, 805 F.3d 1359, 1367 (Fed. Cir. 2015) ("challenger obliged to make an adequate case in its Petition and the Reply limited to a true rebuttal role").

Second, Petitioner is unable to articulate any legitimate reason why a POSA would modify the constant boosted supply voltage of Choi 2010 based on Myers. Instead, Petitioner improperly relies on teachings from the '558 Patent itself as a roadmap for arriving at the claimed invention, and in doing ignores Choi 2010's disclosure that it *must* always operate using a constant boosted voltage. This is a classic instance of impermissible hindsight reconstruction and cannot give rise to a motivation to combine.

For at least these reasons, the Board should confirm the patentability of claims 1-9 of the '558 Patent.

II. GROUND I SHOULD BE DISMISSED BECAUSE CLAIMS 6 AND 8 REQUIRE A SELECTIVE BOOST

As Patent Owner explained in its POR, the claim 6 and 8 limitation of "a P-channel metal oxide semiconductor (PMOS) transistor having... a source [receiving/that receives] the boosted supply voltage or the first supply voltage" is properly interpreted as requiring a selective boost. In its Reply, Petitioner ignores Patent Owner's arguments and instead focuses claim 6, without discussion of claim 8. As explained below, the District Court's Order with respect to claims 6-7 has no

bearing on claim 8, and Petitioner’s proposed constructions for claim 6 and claim 8 suffer from the same legal error – they improperly render other claim limitations meaningless. Accordingly, the Board should find that the broadest reasonable interpretation of the claim 6 and 8 limitation quoted above requires a selective boost.

A. Judge Sabraw Did Not Construe The Word “Or”

Petitioner relies on Judge Sabraw’s *Markman* Order to support its proposed construction that claims 6 and 8 do not require a selective boost. In doing so, Petitioner mischaracterizes Judge Sabraw’s opinion as reaching a conclusion that it plainly does not reach. Contrary to Petitioner’s assertion, Judge Sabraw did not “hold[] the limitation ‘a source receiving the boosted supply voltage *or* the first supply voltage’ in claim 6 does not require ‘selective boost.’” Paper 19 at 4. Judge Sabraw’s opinion says nothing of the sort. The Court was presented with proposed constructions for the term “based on,” as it appears in claim 7. Judge Sabraw incorrectly concluded that claim 7 was indefinite based on a misunderstanding that claim 7 expanded the scope of claim 6, rather than limiting it.¹ Tellingly, Petitioner does not cite to any particular passage in support of its characterization of Judge Sabraw’s opinion, and instead cites only generally to the entire discussion. But the

¹ Petitioner apparently agrees that claim 7 is more limiting than claim 6. Paper 19 at 6 (“It is therefore that additional language appearing in claim 7 (which does not appear in claim 6) that *adds a requirement* for the amplifier to be able to select between “either” the boosted voltage “or” the first supply voltage.”) (emphasis added).

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