

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Intel Corporation
Petitioner

v.

Qualcomm Incorporated
Patent Owner

Case IPR2018-01240
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 10 limitation of "a P-channel metal oxide semiconductor (PMOS) transistor [having]...a source 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, Choi 2010, and Hanington (Ground I) and Chu, Choi 2010, Hanington, and Myers (Ground II). First, as detailed in the Patent Owner's Response ("POR") (Paper 16 at 31-37), the Petition failed to explain how a person of ordinary skill in the art ("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 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 Inc.*, 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 so 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 10-11 of the ’558 Patent.

II. GROUND I SHOULD BE DISMISSED BECAUSE CLAIM 10 REQUIRES A SELECTIVE BOOST

As Patent Owner explained in its Patent Owner Response, the claim 10 limitation of “a P-channel metal oxide semiconductor (PMOS) transistor [having]...a source that receives the boosted supply voltage or the first supply voltage” is properly interpreted to require a selective boost. In its Reply, Petitioner ignores Patent Owner’s arguments and instead focuses on claim 6, a different claim with different limitations. As explained below, the District Court’s Order with

respect to claims 6-7 has no bearing on claim 10, and Petitioner’s proposed constructions for claim 6 and claim 10 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 10 limitation quoted above requires a selective boost.

A. Petitioner’s Reliance On Judge Sabraw’s Order Is Misguided

Petitioner relies on Judge Sabraw’s Markman Order to support its proposed construction that claim 10 does not require a selective boost. Petitioner’s reliance on Judge Sabraw’s Order is misguided. The Court was presented with proposed constructions for the term “based on,” as it appears in claim 7, which depends from claim 6. Claims 6 and 7 contain numerous claim limitations relevant to Judge Sabraw’s Order that are not present in claim 10. Moreover, footnote 2 of the Order makes clear that the Court’s opinion applied only to the context of claim 7, and therefore does not apply to any other claims.

Furthermore, Petitioner mischaracterizes Judge Sabraw’s Order 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 Order says nothing of the sort. Instead, Judge Sabraw incorrectly concluded that claim 7 was indefinite based on a misunderstanding that

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