

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

SOLAS OLED LTD.,
Patent Owner.

Case No. IPR2020-00320
U.S. Patent No. 7,446,338

PATENT OWNER'S RESPONSE TO
SUPPLEMENTAL PRE-INSTITUTION BRIEF

Pursuant to the Board's authorization of April 27, 2020, Patent Owner submits this response to Petitioner's Supplemental Pre-Institution Brief Addressing District Court Claim Construction Order (Paper 7). For the reasons set forth in this responsive brief and in Patent Owner's Preliminary Response (Paper 6), institution of this IPR should be denied.

A. The Petition Fails to Establish Obviousness under the Court's Construction of "Write Current" or under Any Other Construction of That Term

In its Supplemental Brief, Petitioner relies solely on the Shirasaki prior art reference to allegedly satisfy the "write current" limitation. Paper 7 at 1–5. But as explained in the Patent Owner's Preliminary Response, the petition does not point to Shirasaki as containing a "write current" at all. Rather, the petition points to Kobayashi and Childs as purportedly satisfying the "switching transistor which makes a write current flow between the drain and the source of the driving transistor" limitation and thus as satisfying the "write current" element. Paper 1 at 50, 77. The petition points to Shirasaki as satisfying a different limitation, the "holding transistor which holds a voltage between the gate and source of the driving transistor in a light emission period." Paper 1 at 51–52, 78.

The Patent Owner’s Preliminary Response explained how Kobayashi and Childs do not satisfy the “write current” limitation under the arguments that Petitioner advanced concerning “voltage control” during claim construction in the district court. Paper 6 at 7, 8, 16–18, 25–26. These arguments were directed to a Kobayashi and Childs “write current” theory that Petitioner no longer appears to be advancing and to a term that the district court had not yet construed. To be clear, the claims of the ’338 patent do not exclude “voltage control,” so long as a “write current” is present. But any “write current” that may or may not be present in Kobayashi or Childs is irrelevant to the question of obviousness, as the Supplemental Brief makes clear that Petitioner’s obviousness combination replaces the pixel circuit of Kobayashi or Childs with that of Shirasaki, meaning that any “write current” present in those two references is not present in the proposed combinations with Shirasaki.

To remedy the petition’s failure to identify any “write current” present in the obviousness combinations, the Supplemental Brief attempts to show that there is a “write current” in Shirasaki. But notably, the Supplemental Brief does not point to any place in the petition that identifies any current in Shirasaki as a “write current.” Indeed, the only portion of the petition that mentions any “current” in Shirasaki is a verbatim quote from Shirasaki, which mentions

four different types of current in Shirasaki: a “store[d]” current, a “memory current,” a “display current,” and the current in a “voltage-current characteristic.” Paper 1 at 54–55. The petition does not identify any one of these four currents as a “write current,” let alone explain how it satisfies the limitation.

The Supplemental Brief argues for the first time that it is the “memory current α ” in Shirasaki that is a “write current.” But tellingly, the original petition never mentioned the “ α ” current or annotated a figure from Shirasaki to describe it. This is a new argument, not present in the petition. The petition is required to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim” and to “specify where each element of the claim is found in the prior art.” 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b)(5). Adhering to this requirement in petitions is “of the utmost importance.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016). These late arguments should be disregarded, and the petition should be denied for failure to identify a “write current” in the proposed combinations.

Petitioner seems to argue the late disclosure of this theory can be justified by the district court’s recent construction of the term “write current” as “pull-out current.” Paper 7 at 3. But as Petitioner concedes, it was Petitioner that

proposed that the term be construed (Solas argued no construction was required) and proposed the construction “pull-out current.” Paper 7 at 3; Ex. 1020 at 18, 23. Even if Petitioner had not contemplated construing the term when the IPR petition was filed, the fact that the district court adopted a construction proposed by Petitioner cannot justify introducing new obviousness arguments in a Supplemental Brief.

B. Even If the Board Were to Adopt the District Court’s Construction of “Transistor Array Substrate,” Institution Should Be Denied

The Patent Owner’s Preliminary Response explains how the combination of Childs with Shirasaki fails to satisfy the construction of “transistor array substrate” advanced by Petitioner in district court. Paper 6 at 27–28. The Board should find that Petitioner has failed to establish a reasonable likelihood of prevailing on the Childs–Shirasaki combination for that reason.

However, even if the Board were to adopt the construction for “transistor array substrate” that the district court ultimately adopted, institution should be denied because the petition fails to show that either the Kobayashi–Shirasaki combination or the Childs–Shirasaki combination satisfies the “write current” limitation, for the reasons explained above, or the other limitations discussed in the Patent Owner’s Preliminary Response.

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