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Page 1 1 UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD 2 APPLE INC., 3 Petitioner, 4 vs. No. IPR2020-00204 5 Patent 6,928,306 B2 MAXELL, LTD, Patent 0wner. 7 TELEPHONIC HEARING 9 BEFORE ADMINISTRATIVE PATENT JUDGES 10 LYNNE PETTIGREW, MINN CHUNG, JASON MELVIN 11 JOHN HUDALLA, FREDERICK LANEY 12 July 17, 2020 13 Saundra Tippins, CCR 14 (The conference began at 1:00 p.m.) 16 17 17 18 19 20 21 23 23 24	1 2 A P P E A R A N C E S 3 For the Petitioner: 4 MR. ADAM P. SEITZ MR. PAUL R. HART 5 ERISE IP, P.A. 7015 College Boulevard, Suite 700 6 Overland Park, Kansas 66211 adam.seitz@eriseip.com 7 8 For the Patent Owner: 9 MR. ROBERT G. PLUTA MAYER BROWN LLP 10 71 South Wacker Drive Chicago, Illinois 60606 11 rpluta@mayerbrown.com 12 The Court Reporter: 13 Ms. Saundra Tippins 14 Alaris Litigation Services 1608 Locust Street 15 15 Kansas City, Missouri 64108 16 17 18 19 20 21 21 22 23 24
Page 2 Page 2 1 UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD 2 APPLE INC., 3 Petitioner, 4 vs. No. IPR2020-00204 5 Patent 6,928,306 B2 MAXELL, LTD, Patent Owner. 7 Patent Owner. 8 TELEPHONIC HEARING, taken on the 17th 9 day of July, 2020, between the hours of nine 0 o'clock in the forenoon and five o'clock in the 11 afternoon of that day, via telephone, before 12 SAUNDRA TIPPINS, a Notary Public, and Certified 13 Court Reporter within and for the States of 14 Missouri and Kansas, in a certain cause now pending 15 before the U.S. Patent and Trademark Office, Before 16 the Patent Trial and Appeal Board, wherein APPLE 17 INC, is the Petitioner and MAXELL, LTD. is the 18 Patent Owner. 19 20 21 22 23 24	Page 4 1 JUDGE PETTIGREW: This is Judge 2 Pettigrew. Also on the call with me are Judges 3 Chung, Hudalla, Melvin and Laney. Who do we have 4 on the call for Petitioner? 5 MR. SEITZ: This is Adam Seitz for 6 Petitioner Apple. Also joining me is my partner 7 Paul Hart. 8 JUDGE PETTIGREW: Thank you. And 9 who do we have on the call for Patent Owner? 10 MR. PLUTA: Good afternoon, your 11 Honor. This is Robert Pluta on behalf of Patent 12 Owner Maxell. And also on the call with me is my 13 colleague Saqib Siddiqui. 14 JUDGE PETTIGREW: Which party 15 arranged for the court reporter? 16 MR. SEITZ: That was Petitioner's 17 coursel. This is Adam Seitz. We arranged for the 18 reporter. 19 JUDGE PETTIGREW: All right, thank 20 you. So we ask you to file a transcript as soon 21 as possible as an exhibit after the call. 22 So we scheduled this call to address an 23 email we received from

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25things I want to point out here, your Honor.25Very specifically, your Honor, in this	11 12 13 14 15 16 17 18 19 20 21 22 23	and that under Fintiv that was an independent grounds for denial, raising the questions of whether there would be inconsistent rulings, et cetera. The summary judgment motion itself that Maxell has filed challenges the reference Abowd, A-b-o-w-d, and its public availability. That is one of the issues that the parties have briefed here as well. The question of Abowd and its public availability was the subject of additional briefing in the reply and the sur-reply in these petitions or in these matters as well.	12 13 14 15 16 17 18 19 20 21 22 23	also was subject of additional briefing and the introduction of additional evidence by Petitioner in the reply and sur-reply. Maxell argues to the District Court that the "do not circulate" stamp means that the reference Abowd was not available to the public. This is on page seven of its summary judgment brief. They further argue that the "do not circulate" warning indicates that the reference was not meant to be disseminated to the public, and the Court, if it makes a ruling, will do so based on that false premise and an incomplete
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	Page 9		Page 11
1	proceeding Apple submitted, along with its reply,	1	Yeah, we responded to the board with an email.
2	a supplemental declaration from Mr. Mumford, our	2	Hopefully the board received that email.
3	librarian expert, showing the arguments made	3	JUDGE PETTIGREW: Apparently we
4	regarding the "do not circulate" are incorrect;	4	did not get that email. I'm sorry for that.
5	that it was accessible to the public. Thus the	5	MR. PLUTA: Okay, well, if the
6	board has different evidence in front of it than	6	board will indulge me, I'll summarize it in my
7	the District Court and a different standard,	7	response.
8	reasonable likelihood, rather than clear and	8	JUDGE PETTIGREW: Thank you.
9	convincing, than those being examined by the	9	MR. PLUTA: So we do oppose their
10	District Court.	10	request. We think there has been enough briefing
11	But if Maxell is successful in its	11	on the Fintiv issue for the board to make an
12	arguments to the board that the same issues will	12	informed decision. However, to the extent the
13	be decided, the board will deny institution. If	13	board is considering Apple's request, we'd like to
14	it's successful convincing the jury or the Judge	14	put some things into context.
15	to prevent this issue from going to the jury,	15	Apple's request actually highlights why
16	then Maxell will have its cake and eat it, too.	16	the board should utilize its discretion under
17	No tribunal or trier of fact in that	17	Section 314 and Fintiv to deny institution in
18	situation will look at the key evidence on why	18	these proceedings.
19	Abowd was publicly available under the standards	19	On June 30th, the parties in the
20	before your Honors, and no tribunal will examine	20	underlying District Court action filed 16 motions
21	the merits of whether the patents are invalid	21	across the ten patents at issue there. At least
22	under the teachings of Hayashida and Abowd as	22	three of those motions filed were directed to the
23	we've put forward in our petition.	23	validity of the patents at issue here in these
24	So, your Honor, I thought those were	24	proceedings. Maxell filed two motions and Apple
25	significantly important as they impact the Fintiv	25	filed a motion directed to these patents as well.
	Page 10		Page 12
1	analysis such that we would like to bring that	1	These motions were filed long after
2	analysis such that we would like to bring that before you.	2	These motions were filed long after completion of fact discovery and after completion
2 3	analysis such that we would like to bring that before you. JUDGE PETTIGREW: Let me	2 3	These motions were filed long after completion of fact discovery and after completion of expert discovery where both Apple's and
2 3 4	analysis such that we would like to bring that before you. JUDGE PETTIGREW: Let me understand that last part of your argument,	2 3 4	These motions were filed long after completion of fact discovery and after completion of expert discovery where both Apple's and Maxell's experts were deposed on the patents at
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	Fage IS		Fage 15
1	the same. In fact, Apple has set forth a nearly	1	The District Court's ruling on summary
2	identical declaration from the librarian,	2	judgment will not be whether the reference Abowd
3	Mr. Mumford, in the District Court as it has in	3	is prior art. The summary judgment challenges
4	these proceedings. And Mr. Maxell has already	4	whether Apple has submitted sufficient evidence
5	taken Mr. Mumford's deposition.	5	to meet the clear and convincing standard.
6	To Mr. Seitz's points or arguments that	6	So the ruling that would come out of the
7	there's a supplemental declaration here from	7	District Court would be a question of whether the
8	Mr. Mumford whereas that supplemental declaration	8	evidence before the District Court is sufficient
9	doesn't exist in the District Court, that	9	to meet the clear and convincing standard. The
10	argument should have no merit because Apple could	10	reason I want to clarify that is because you the
11	certainly have, A, gotten that information in	11	board have a different standard, reasonable
12	during the deposition of Mr. Mumford, or simply	12	likelihood, and you the board have different
13	filed a supplemental declaration from Mr. Mumford	13	evidence.
14	in the District Court. You may even still have	14	Now, Mr. Pluta seemed to brush that under
15	the opportunity to do so.	15	the table, and perhaps Apple does I'm not
16	So the fact that there's different	16	litigation counsel perhaps they do clarify the
17	evidence here is kind of a misnomer. In Apple's	17	record. Maxell did not make any reference to the
18	Motion for Summary Judgment, it seeks invalidity	18	additional evidence from the IPR and inform the
19	of the patents based on Section 101, but	19	District Court about that. Perhaps Apple will.
20	importantly it support its motion arguing that	20	But the point is you have different
21	Hayashida, the same reference as used in the	21	evidence and a different standard available to
22	petition, is known art. And to illustrate this	22	you to find whether on a reasonable likelihood
23	Apple relies on many of the same references from	23	standard Abowd is publicly available. The
24	Hayashida as it does in the petition.	24	Court's ruling will not be inconsistent with
25	So Apple's concern and that's putting	25	yours because it's one of whether Apple has met

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aside even the 103 arguments that overlap between 1 1 its evidentiary standard under the clear and 2 2 the two proceedings. So Apple's concern that the convincing standard. 3 summary judgment motions present a risk of Maxell 3 JUDGE PETTIGREW: All right, thank 4 convincing both forums to forego looking at 4 you, counsel. Patent Owner, I'll give you one 5 invalidity is incorrect. The District Court will 5 last word if there's anything else you want to 6 6 look at invalidity and look at it first prior to say. 7 7 the board, nearly a year prior to the board, We can't hear you. 8 8 which goes to the very heart of why the board MR. PLUTA: I'm sorry, your Honor, 9 found Fintiv precedential. 9 I was on mute. The perils of doing this call from 10 10 The substantial overlap of issues favors my cell phone in the work-at-home environment. I 11 denial here. Well before the final written 11 apologize. 12 decision, the Court will either grant summary 12 JUDGE PETTIGREW: Understood. 13 13 MR. PLUTA: I will keep it very judgment in Maxell's or Apple's favor or a jury 14 will decide the issues surrounding the validity 14 brief then. 15 15 of the patent. It's not incumbent upon Maxell to 16 JUDGE PETTIGREW: Thank you, 16 supplement the District Court record to match the 17 counsel. Petitioner, I'll give you a brief 17 evidence that Apple submitted in this proceeding. 18 rebuttal 18 That's Apple's job. 19 MR. SEITZ: Thank you, your Honor. 19 But as you pointed out, your Honor, in 20 I want to start with responding to Mr. Pluta. 20 response to Mr. Seitz's arguments, I mean the 21 21 This is Mr. Seitz responding by clarifying one burden is on us and in the District Court. So if 22 thing Mr. Pluta said and also going back to your 22 we meet that burden and summary judgment is 23 question, Judge Pettigrew, because I think there's 23 granted, the judge in the District Court will 24 24 a fundamental point that I don't want to get lost address the invalidity issues of the patents. 25 in a mess here. 25 And if we do not meet that burden and the case

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	Page 17		Page 19
1	goes to trial, the jury will.	1	JUDGE PETTIGREW: Mr. Pluta, can
2	JUDGE PETTIGREW: All right.	2	you clarify? Is it the 101 summary judgment
3	Thank you, counsel. I'm going to put everybody on	3	motion?
4	hold for a short period of time while I confer	4	MR. PLUTA: Yes, your Honor, that
5	with my colleagues.	5	is the motion. However, I disagree with
6	(Off the record.)	6	Mr. Seitz's characterization of the passing
7	JUDGE PETTIGREW: The panel is	7	reference.
8	back on the call. We're going to take this matter	8	There are six or seven references to the
9	under advisement.	9	Hayashida reference including about seven
10	Petitioner, you arranged for the court	10	paragraphs of Apple's expert that discuss and are
11	reporter. We would like to have the transcript	11	cited in the motion that discuss the Hayashida
12	of this call filed as soon as possible.	12	reference and its alleged applicability to the
13	MR. SEITZ: Yes. Will do, your	13	validity of the patents at issue here.
14	Honor. I'll file there was a similar	14	JUDGE PETTIGREW: Thank you. If
15	proceeding between the parties where we had a	15	there's nothing else from the parties, then this
16	discussion like this on Monday, and they asked me,	16	call is adjourned. Thank you.
17	IPR 2020-202, they asked me to submit the rough	17	(The hearing concluded at 1:21
18	transcript immediate after the call and then the	18	p.m.)
19	final when it was done. Would you like me to	19	
20	proceed the same here?	20	
21	JUDGE PETTIGREW: Yes, we would	21	
22	like that, thank you.	22	
23	MR. PLUTA: This is Robert. Could	23	
24	you make one point? I just want wanted to clarify	24	
25	to the extent the board does allow further	25	
5	Page 18		Page 20
1	submissions in addition to what Apple requested to	1	CERTIFICATE OF REPORTER
2	be submitted, we would also then request to	2	I, Saundra Tippins, Certified Court Reporter
3	complete the record and submit the other motions,	3	(Missouri) and Certified Shorthand Reporter
4	the relevant motions.	4	
5		1 7	(Kansas), do hereby certify that the foregoing
5	JUDGE PETTIGREW: And what are the	5	hearing was taken by me to the best of my ability
5 6	JUDGE PETTIGREW: And what are the relevant motions?		
		5	hearing was taken by me to the best of my ability
6	relevant motions?	5 6	hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my
6 7	relevant motions? MR. PLUTA: Apple's Motion for	5 6 7	hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related
6 7 8	relevant motions? MR. PLUTA: Apple's Motion for Summary Judgment as well that further highlights	5 6 7 8	hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the
6 7 8 9 10 11	relevant motions? MR. PLUTA: Apple's Motion for Summary Judgment as well that further highlights the substantial overlap of the Hayashida	5 6 7 8 9 10 11	hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further
6 7 8 9 10 11 12	relevant motions? MR. PLUTA: Apple's Motion for Summary Judgment as well that further highlights the substantial overlap of the Hayashida reference.	5 6 7 8 9 10 11 12	hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in
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