

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

v.

LBT IP I LLC,

Patent Owner

Case No. IPR2020-01189
U.S. Patent No. 8,497,774

**PETITIONER APPLE INC.'S OPPOSITION
TO PATENT OWNER'S MOTION TO AMEND**

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I. INTRODUCTION

Petitioner, Apple Inc. submits this opposition to Patent Owner's, LBT's Motion to Amend. LBT's Motion (Paper 16, "MTA") should be denied because the amended claims improperly use claim construction to import limitations into the claims, lack written description support, and are unpatentable under § 103.

II. CLAIM CONSTRUCTION

LBT's amendments should be rejected as excluding the only disclosed embodiment. *GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1311 (Fed. Cir. 2014) ("We normally do not construe claims in a manner that would exclude the preferred embodiment, *especially where it is the only disclosed embodiment*. In particular, 'where claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary.'") (internal citations omitted) (emphasis added). In particular, the amended claims recite a "timing schedule," and the '774 Patent Specification's only description of a "schedule" is a refresh rate expressed as either a time interval between updates or an update frequency. LBT, however, improperly uses claim construction to limit the claims to *when* an event will occur, rather than a frequency of the event or a time interval between events.

Rather than providing an explicit construction for the amendments, LBT characterizes the amended claims as a whole:

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