

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLIED MATERIALS, INC.,
Petitioner,

v.

DEMARAY LLC,
Patent Owner.

IPR2021-00103
Patent 7,544,276

**PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CLAIM CONSTRUCTION	1
III.	PO FAILS TO ANTEDATE HIROSE.....	2
	A. Insufficient Evidence to Establish Prior Invention	3
	1. Testimony.....	3
	2. Documents	8
	3. Claim Chart.....	10
	B. PO Fails to Establish Prior RTP/Conception	12
	1. 6/13/2001	12
	2. 6/13/2001-6/26/2001.....	16
	3. 7/2/2001-7/6/2001	18
	4. 7/13/2001-7/16/2001	20
	5. 7/18/2001	21
IV.	PO FAILS TO OVERCOME OBVIOUSNESS	24
	A. <i>Barber-Hirose's</i> NBRF	24
	B. Motivation to Use NBRF in <i>Barber</i>	26
	1. Glew's Unreliable Analysis/Opinions	26
	2. Glew Confirms POSITA's Knowledge	30
	3. PO Attacks of State-of-Art Literature Are Inapposite.....	32
	C. <i>Barber's</i> RF-Coupling.....	34

D. Printed Publication37

V. CONCLUSION.....38

I. INTRODUCTION

Patent Owner (“PO”) attempts (Paper 29, “POR”) to antedate *Hirose* through a shotgun of *present-day* testimony and interpretation of evidence that collectively fail to demonstrate both prior conception and reduction-to-practice (“RTP”). And PO’s witnesses’ cross-examination testimony exposed that the named inventors may not have even conceived the claimed invention, and certainly did not RTP before *Hirose*. PO’s narrative relies on the uncorroborated leap that a faxed circuit drawing of a band-reject filter confirms its use in prior “runs”—and thus, RTP—but fails to evidence that any of those runs actually RTP’d the claimed invention. Likewise, PO’s obviousness arguments are based on faulty expert analysis and misunderstandings of the record and evidence.

The challenged claims are unpatentable.

II. CLAIM CONSTRUCTION

Petitioner disputes PO’s suggestion of “agree[ment]” (EX2022, 10), but nevertheless, PO’s positions are not dispositive because they do not distinguish the prior art.

III. PO FAILS TO ANTEDATE HIROSE

To antedate, PO “must show either an earlier reduction to practice [RTP], or an earlier conception followed by a diligent RTP.” *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1365 (Fed. Cir. 2001). PO alleges the former, contending conception/RTP “no later than July 18, 2001¹, but likely as of June 13, 2001.” (POR, 29.)²

To establish RTP, PO must show: (1) construction of an embodiment meeting all limitations of the claimed invention; (2) a determination that the invention would work for its intended purpose; and (3) the existence of sufficient evidence to corroborate inventor testimony regarding these events. *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1169 (Fed. Cir. 2006). PO shows none.

To establish conception, PO must “prove possession of the complete mental picture of the invention.” *Burroughs Wellcome Co. v. Barr Laboratories, Inc.*, 40 F.3d 1223, 1228 (Fed. Cir. 1994). PO cannot do so.

¹ PO’s assertions that RTP “on” *Hirose*’s date antedates (POR, 12-13) misreads *Tomecek*, which found the prevailing party “show[ed] an actual [RTP] on or before” ***the RTP date alleged by that party—not the reference date.*** (*Tomecek v. Stimpson*, 513 F.2d 614, 614-16 (C.C.P.A. 1975).)

² PO waived any argument of diligent RTP after July 18, 2001. (POR, 12-15.)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.