

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

SCRAMOGE TECHNOLOGY LTD.,
Patent Owner

IPR2022-00573
Patent 7,825,537

PATENT OWNER'S SUR-REPLY

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Table of Contents

I. INTRODUCTION	1
II. The Petition Fails to Establish that Baarman is Prior Art.....	1
III. Ground 1A Further Fails with Respect to Claims 5 and 16.....	5
A. Claim 5	5
B. Claim 16.....	11
IV. Ground 2B Fails with Respect to Claims 4, 5, 15, and 16.....	15
A. Claims 4 and 15.....	15
B. Claims 5 and 16.....	18
V. Conclusion	20

Table of Authorities

Cases

<i>Air Liquide Large Indus. U.S. LP v. Praxair Tech., Inc.</i> , IPR2015-01075, Paper 11 (PTAB Oct. 26, 2015).....	16
<i>AK Steel Corp. v. Sollac and Ugine</i> , 344 F.3d 1234 (Fed. Cir. 2003).....	3
<i>Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.</i> , 800 F.3d 1375 (Fed. Cir. 2015).....	1, 2, 3, 4, 8
<i>Grain Processing Corp. v. Am.–Maize Prods. Co.</i> , 840 F.2d 902 (Fed. Cir. 1988).....	20
<i>In re NTP, Inc.</i> , 654 F.3d 1279 (Fed. Cir. 2011).....	20
<i>In re Wands</i> , 858 F.2d 731 (Fed. Cir. 1988).....	3, 9
<i>Rexnord Corp. v. Laitram Corp.</i> , 274 F.3d 1336 (Fed. Cir. 2001).....	17
<i>Sanofi- Synthelabo v. Apotex, Inc.</i> , 550 F.3d 1075 (Fed. Cir. 2008).....	19-20
<i>Univ. of Rochester v. G.D. Searle & Co., Inc.</i> , 358 F.3d 916 (Fed. Cir. 2004).....	3-4

Statutes

35 U.S.C. § 112.....	2, 3
35 U.S.C. § 119(e)(1)	2

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Notice of IPR Petitions, <i>Scramoge Technology Ltd. v. Apple Inc.</i> , Case No. 6:21-cv-01071-ADA, Dkt. No. 30 (W.D. Tex. Feb. 16, 2022)
2002	Scheduling Order, <i>Scramoge Technology Ltd. v. Apple Inc.</i> , Case No. 6:21-cv-01071-ADA, Dkt. No. 36 (W.D. Tex. Apr. 27, 2022)
2003	Law360 Article: <i>West Texas Judge Says He Can Move Faster Than PTAB</i>
2004	Text Order Denying Motion to Stay Pending IPR, <i>Solas OLED Ltd. v. Google, Inc.</i> , Case No. 6:19-cv-00515-ADA (W.D. Tex. June 23, 2020)
2005	Order Denying Motion to Stay Pending IPR, <i>Multimedia Content Management LLC v. DISH Network L.L.C.</i> , Case No. 6:18-cv-00207-ADA, Dkt. No. 73 (W.D. Tex. May 30, 2019)
2006	Standing Order Governing Proceedings in Patent Cases, Judge Alan D. Albright
2007	Claim Construction Order, <i>Solas OLED Ltd. v. Apple Inc.</i> , Case No. 6:19-cv-00537-ADA, Dkt. No. 61 (W.D. Tex. Aug. 30, 2020)
2008	Plaintiff Scramoge Technology Ltd.'s Preliminary Disclosure of Asserted Claims and Infringement Contentions to Apple Inc. in <i>Scramoge Technology Ltd. v. Apple Inc.</i> , Case No. 6:21-cv-01071-ADA (W.D. Tex.)
2009	Defendant Apple Inc.'s Preliminary Invalidity Contentions in <i>Scramoge Technology Ltd. v. Apple Inc.</i> , Case No. 6:21-cv-01071-ADA (W.D. Tex.)
2010	Webster's II New College Dictionary

I. INTRODUCTION

Patent Owner hereby responds to the arguments raised in Petitioner's Reply to Patent Owner's Response,¹ Paper No. 19 ("Reply") to address the following points:

- For Grounds 1A and 1B, Petitioner has not shown that Baarman is entitled to the filing date of the Baarman Provisional Application because it has not shown that that the Baarman Provisional Application satisfies the distinct enablement requirement for any claims of Baarman.
- For Ground 1A, Petitioner has not shown that Baarman satisfies the limitations of claims 5 and 16 of the '537 patent.
- For Ground 2B, Petitioner has not shown that Flowerdew satisfies the limitations of claims 4, 5, 15 and 16 of the '537 patent.

II. The Petition Fails to Establish that Baarman is Prior Art

The Petition fails to show how the provisional application enables at least one claim of Baarman, as required by *Dynamic Drinkware*. Petitioner concedes that it has not offered any analysis regarding the enablement of, including the amount of

¹ Although this Sur-Reply does not address all arguments raised by Petitioner in Reply, Patent Owner does not concede any argument raised in the Patent Owner Response or that any ground renders any challenged claim invalid.

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.