

For the Patent Owner
Richard Neifeld, Reg. No. 35,299
Robert Mihail, Reg. No. 66,021
Neifeld IP Law, PC

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVX CORPORATION
Petitioner

v.

GREATBATCH, LTD
Patent Owner

Case IPR2015-00710
Patent 7,327,553

Patent Owner Response

The patent owner is no longer asserting the subject patent in related infringement litigation and therefore has no urgency to resolve patentability issues raised by institution of this trial.

Given the high cost of *inter partes* pleadings and the low rate of success on motions to amend, the patentee elects to address the patentability issues *ex parte*, via a reissue application. The patentee has just filed a reissue application 15/131,535, filed April 18, 2016, for that purpose.

In its decision on patent owner's request for rehearing, the panel clarified the basis for its conclusion that claim 1 read on Fraley, stating:

Although we considered the record as a whole, to further clarify the basis for our decision, we briefly highlight certain portions of the evidence and argument upon which we relied. In short, the Petition cites to a discussion in Fraley that disclosed gaps 142, 144, 146, and 148 “can be minute in cross-section and not visible to the eye.” Pet. 37 (citing Ex. 1003, 7:31–32). The broader paragraph of Fraley in which this statement is found indicates that these minute gaps “define a gas flow passage that extends from the upper, inner surface of insulator 122 to the upper exterior of the feedthrough 100,” i.e., the minute gaps define a gas flow passage that traverses at least a portion of the space between insulator 122 and washer 124. Ex. 1003, 7:22–28; *see* Pet. 35 (citing Ex. 1003, 7:18–21, 7:27–29). Dr. Irazoqui testifies that, given the discussion in Fraley that the gaps “can be minute in cross-section and not visible to the eye,” one of ordinary skill in the art would understand that the space between the insulator and the washer in Fraley is a “very thin space.” Ex. 1002 ¶ 52, p. 43 (asserting that the space between washer 124 and insulator 122 of Fraley constitutes a “laminar delamination gap”), p. 45 (asserting that, even if the term “laminar delamination gap” is construed to require a “very thin space between layers of material,” Fraley discloses such a “laminar delamination gap”).

1 In view of the foregoing, the patent owner requests entry of adverse
2 judgement, pursuant to 37 CFR 42.73(b), against the claims for which trial was
3 instituted, which are claims 1, 2, 5–7, 10, 11, 16, 17, and 20.

4 Truly
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20 Greatbatch\Drafts\IPR2015-00710_7327553_Patent Owner Response.wpd
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1
2 **42.6(e) CERTIFICATE OF SERVICE FOR IPR2015-00710**

3
4 42.6(e)(1) Agreements on Service: "Petitioner consents to electronic service", per
5 Petition.
6

7 I certify that this document was served or simultaneously is being served on
8 each opposing party with the filing of this document.
9

10 42.6(e)(4) (iii)(A) The date and manner of service:

11
12 Manner of service: **Email to:**
13 **phunter@foley.com**
14 **nlagerwall@foley.com**
15 **mhouston@foley.com**
16

17 Date of Service: **4/18/2016**
18

19 42.6(e)(4)(iii)(B) The name and address of every person served are:

20
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