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 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").

Insulator 122 and washer 124 appear in Fraley Fig. 2. The decision instituting trial, page 3, contains the following text and copy of Fraley Fig. 2.

C. Analysis

The Petition identifies Figure 2 of Fraley¹, reproduced below, as disclosing a "laminar delamination gap" and Figure 4 of Fraley, reproduced below, as disclosing that the passage of helium gas is to the outside edge of the capacitor (*see*, *e.g.*, Pet. 35–36):

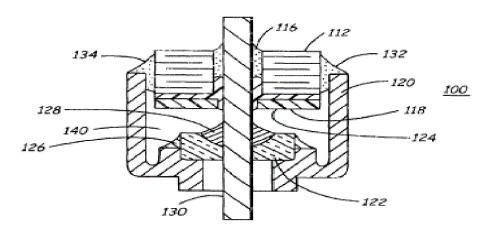


FIG. 2

This Fraley Fig. 2 shows the thing the Board held to anticipate claim 1. The patent

- owner intends to patentably distinguish, within the meaning of 37 CFR
- 21 42.73(d)(3), over a claim reading on this thing, in the noted reissue application.

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.
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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@folev.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 21 Lead Counsel for petitioner, telephone and email: 22 Paul S. Hunter (Reg. No. 44,787) **Tel:** 608.258.4292; Email at phunter@foley.com 23 Changed Postal Address for lead and backup counsel for petitioner: 24 Foley & Lardner, LLP; 150 E. Gilman Street; Madison, Wisconsin 53703. 25 Backup Counsels for petitioner, telephone and email: 26 Nicholas M. Lagerwall (Reg. No. 63,272); **Tel:** 608.258.4466; Email 27 nlagerwall@foley.com 28 Michael R. Houston (Registration No. 58,486); Telephone: (312) 832-4500 29 Email: mhouston@foley.com 30 31 /RichardNeifeld/ 32 Richard Neifeld, Reg. No. 35,299 33 Lead Counsel for the Patent Owner 34 Neifeld IP Law, PC 35 4813-B Eisenhower Avenue Alexandria, VA 22304 36 37 Tel: 1-703-415-0012 Ext. 100 38 Fax: 1-703-415-0013

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