

PROCEEDINGS 9/19/2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RAYVIO CORPORATION,

Petitioner,

v.

NITRIDE SEMICONDUCTORS CO., LTD.,

Patent Owner.

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Case IPR2018-01141

Patent No. 6,861,270

and

Case IPR2018-01139

Patent No. 6,861,270

PROCEEDINGS

TELEPHONIC CONFERENCE

September 19, 2018

Reported by:

Randi J. Garcia, RPR

Job No: 148176

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September 19, 2018

2:00 p.m.

Telephonic Conference held before
the Honorable PTAB Administrative Judges
Frances L. Ippolito, Barbara A. Benoit and
John Hamann, on September 19, 2018, held
before Randi J. Garcia, RPR and Notary
Public.

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A P P E A R A N C E S:

FOR THE PETITIONER.:

By: Kevin Greenleaf, Esq.

Russell Tonkovich, Esq.

DENTONS

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FOR THE PATENT OWNER.:

By: Jonathan Strang, Esq.

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2 ADMINISTRATIVE JUDGE IPPOLITO: Good 02:00:01

3 afternoon. This is Judge Ippolito. And I 02:00:01

4 have on the line with me Judges Benoit and 02:00:04

5 Hamann for IPRs 2018-01139 and 2018-01141. 02:00:07

6 I'd like to start with appearances 02:00:18

7 starting with Petitioner. 02:00:20

8 Petition, are you there? 02:00:22

9 MR. GREENLEAF: Good afternoon, your 02:00:25

10 Honor. This is Kevin Greenleaf. Joining 02:00:25

11 me is Russell Tonkovich. 02:00:28

12 MR. TONKOVICH: Hello. 02:00:32

13 ADMINISTRATIVE JUDGE IPPOLITO: Mr. 02:00:34

14 Greenleaf, will you be speaking on behalf 02:00:34

15 of the Petitioner today? 02:00:36

16 MR. GREENLEAF: Yes, your Honor. 02:00:38

17 ADMINISTRATIVE JUDGE IPPOLITO: Patent 02:00:41

18 Owner? 02:00:41

19 MR. STRANG: Good afternoon, your 02:00:43

20 Honor. This is Jonathan Strang for Patent 02:00:44

21 Owner of Latham, and with me today I have 02:00:47

22 Charles Sanders also of Latham. 02:00:50

23 And we do have a court reporter with 02:00:53

24 us today, your Honor. 02:00:55

25 Would you like to us to file the 02:00:57

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transcript under our own exhibit numbers 02:00:59

or the Board's 3000 series? 02:01:01

ADMINISTRATIVE JUDGE IPPOLITO: You 02:01:05

can file it under yours. We can change it 02:01:06

if we need to. 02:01:08

I believe that Petitioner requested 02:01:29

the call, so I will let Petitioner start. 02:01:30

Go ahead. 02:01:33

MR. GREENLEAF: Thank you, your Honor. 02:01:34

So Petitioner became aware when we received 02:01:36

the POPR that we had unintentionally and 02:01:41

inadvertently forgotten to include the 02:01:46

original foreign publication of certain 02:01:50

exhibits, and would like to request the 02:01:54

motion to correct under 42104(c) to add the 02:02:00

substitute exhibits to append the foreign 02:02:06

translations, which are publicly available 02:02:11

to those exhibits. 02:02:13

So it would be a wholesale 02:02:16

replacement -- if the Board would prefer 02:02:17

it's an alternative method, such as new 02:02:19

exhibit number, that's fine too. But I 02:02:21

think commonly the Board just accepts 02:02:23

replacement exhibits in situations like 02:02:26

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these. 02:02:29

So in addition to that request, it 02:02:30

became clear after the preliminary 02:02:36

response, also, that the copyright was not 02:02:39

included with the Stringfellow reference. 02:02:44

There was, for some reason, some mention 02:02:46

of a 2018 copyright, which is incorrect. 02:02:48

I believe it's 1997. 02:02:53

So we would also like to file a 02:02:55

corrected exhibit for Stringfellow to 02:02:57

include the copyright from the 02:03:01

Stringfellow textbook. 02:03:06

And then, finally, Petitioner would 02:03:08

request authorization to file a two-page 02:03:11

sur-reply in each IPR to address Patent 02:03:13

Owner's contention that there was no 02:03:18

evidence of publication for the 02:03:21

Stringfellow and Solymar textbooks, which 02:03:22

is not correct. Because the declarant, 02:03:26

who provided testimony in Exhibits 1002 in 02:03:29

both cases, testified that Stringfellow 02:03:35

and Solymar are both widely available 02:03:37

textbooks commonly used in universities. 02:03:41

So we would like to address that issue in 02:03:44

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this short sur-reply. 02:03:46

And, you know, other avenues for 02:03:50

correcting this could include filing of 02:03:52

supplemental evidence or supplemental 02:03:56

information post institution. It may be 02:03:58

premature at this stage to be talking 02:04:00

about that but I have been on panels both 02:04:01

for petitioner and patent owners in 02:04:05

situations like this and the Board 02:04:05

sometimes views complaints or arguments in 02:04:09

preliminary responses such as these as 02:04:12

objections, even though technically 02:04:14

speaking, under the rules, they are not. 02:04:17

If the Board so decides that 02:04:19

institution to institute and wants to 02:04:20

treat Patent Owner's argument as 02:04:23

objections, Petitioner would not object to 02:04:25

that. And would just serve supplemental 02:04:27

evidence and perhaps seek authorization to 02:04:30

file a motion to submit supplemental 02:04:33

information post institution. 02:04:35

So I hope that was clear, your Honor. 02:04:39

Let me know if you have any questions, 02:04:43

please. 02:04:44

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2 ADMINISTRATIVE JUDGE IPPOLITO: Okay. 02:04:47

3 Patent Owner, do you have a response? 02:04:47

4 MR. STRANG: Yes, your Honor. First, 02:04:50
5 let's start with the first issue here. 02:04:52

6 THE REPORTER: Is this Mr. Strang? 02:05:00

7 MR. STRANG: Yes. I will clear up any 02:05:01
8 name questions you have after the call 02:05:01
9 court reporter. 02:05:05

10 Your Honor, I apologize that for. 02:05:05

11 The translation issue, the issue 02:05:08
12 isn't that the translations were not 02:05:10
13 filed. The issue is that the actual 02:05:12
14 original language patents, assuming they 02:05:14
15 exist, were not filed. 02:05:16

16 We asked -- we asked Petitioner for 02:05:20
17 the facts supporting their allegation that 02:05:23
18 this is -- was inadvertent and we kind of 02:05:27
19 got a nonresponse on that. So we would 02:05:30
20 appreciate an opportunity to oppose, once 02:05:34
21 we see what their reasoning is of why it 02:05:38
22 was inadvertent. 02:05:40

23 Now, for the other issue. Well, let 02:05:43
24 me continue on that issue. We have a new 02:05:46
25 question. The first time we heard about 02:05:48

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it is that they also have, apparently, a
clerical error with Stringfellow and they
want to add more to that and potentially
want to add a copyright date page to
Stringfellow, which is, apparently, a
book.

This is the first we've heard of
that. And we would also oppose that and
appreciate briefing on an opposition brief
to explain why. Once these -- especially
once we see what the reasoning is.

The second issue we have is that
Stringfellow and Solymar, two English
language exhibits, in the petition, the
petition just had a unsupported statement
that they were prior art on a publication
date of "X". They are very similar in
both cases and I think it is pretty well
briefed in the Patent Owner preliminary
response.

To the extent that there is any
additional argument beyond what is already
in the petition, and citing to more
evidence, whether it's in the record or

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not, would be additional argument. We
don't see how that is a clerical error or
something that can be fixed without losing
their filing date.

And I think that really gets to the
real problem here, your Honor, is that
they waited till the last minute to file a
petition and it's ripe with a bunch of
administrative and substantive defects.

And as to the point that Petitioner
raised regarding these being objections.
They are not objections, your Honor. They
go to the merits of whether or not these
are prior art printed publications
required by the statute.

So for that reason, we would
appreciate an opportunity to brief our
opposition to their requested relief.

ADMINISTRATIVE JUDGE IPPOLITO: So
Petitioner, do you have a response?

MR. GREENLEAF: Yes. Thank you, your
Honor.

Regarding the Patent Owner's
contention this is some sort of statutory

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2 defect to the petition, I think it's well 02:07:42
3 settled right now in PTAB precedent that 02:07:44
4 technical mistakes like this are 02:07:48
5 correctable. 02:07:52

6 It's both the statute and the rule 02:07:53
7 contemplate these sort of clerical errors 02:07:55
8 being made, and I know routinely corrected 02:07:59
9 by the board. So I'm not sure whether 02:08:01
10 Petitioner is just -- or Patent Owner is 02:08:04
11 unfamiliar with the cases. 02:08:07

12 I cited one IPR2013-00631, paper 15, 02:08:08
13 which addresses this issue specifically, 02:08:16
14 which is adding the foreign publications 02:08:18
15 to the English translations. And it also 02:08:21
16 cites other cases. There are many cases 02:08:25
17 dealing with this. 02:08:28

18 I have been on the other side and 02:08:29
19 have seen the same issue, and I'm sure 02:08:32
20 your Honors have been in similar 02:08:35
21 situations where petitioners routinely 02:08:37
22 correct these sorts of mistakes. 02:08:41

23 So this isn't an unusual situation 02:08:42
24 that there is some statutory defect and we 02:08:46
25 are treading new ground. This is a 02:08:49

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2 well-worn path that Petitioner is asking 02:08:50
3 to use. But I think that is all we have, 02:08:54
4 your Honor. 02:09:01

5 ADMINISTRATIVE JUDGE IPPOLITO: So are 02:09:02
6 you requesting to include in your motion to 02:09:02
7 correct the clerical errors, I think the 02:09:07
8 request that you're making now for the 02:09:10
9 Stringfellow exhibit; is that -- is that 02:09:13
10 correct? 02:09:15

11 MR. GREENLEAF: Yeah. So there is a, 02:09:17
12 I think, five or six corrections in total, 02:09:19
13 so there's two Japanese patents referenced 02:09:21
14 in both cases that do not have the original 02:09:26
15 Japanese publications. 02:09:30

16 So in addition to that, we would like 02:09:31
17 to add the single page for the copyright 02:09:34
18 of Stringfellow, and that would be for the 02:09:38
19 motion to correct. 02:09:40

20 And then the sur-replies would deal 02:09:41
21 with Petitioner's -- Patent Owner's 02:09:44
22 contention, which they reiterated today, 02:09:47
23 that there was no evidence of publication, 02:09:49
24 which is, again, inaccurate because the 02:09:53
25 declarant testified that these are 02:09:56

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2 commonly-used textbooks. And Petitioner 02:10:02
3 is willing to submit additional evidence 02:10:05
4 as supplemental information, supplemental 02:10:07
5 evidence or any other avenue the Board 02:10:10
6 would prefer at the appropriate time 02:10:12
7 regarding the publication of Stringfellow 02:10:15
8 and Solymar. 02:10:19

9 ADMINISTRATIVE JUDGE IPPOLITO: Okay. 02:10:21
10 I think I have a pretty good understanding 02:10:21
11 of each side's position. 02:10:23

12 I'm going to go on mute and confer 02:10:26
13 with the panel and I will be right back. 02:10:27
14 (Off the record) 02:11:34

15 ADMINISTRATIVE JUDGE IPPOLITO: I 02:20:55
16 conferred with the panel. I think that in 02:20:55
17 the interest of having a complete record, 02:20:56
18 we would like to have the Petitioner file a 02:20:57
19 motion to correct, together with a motion 02:21:03
20 for authorization to file reply. So in one 02:21:06
21 briefing address all those issues together. 02:21:09
22 And the page limit is going to be five 02:21:13
23 pages. 02:21:17

24 And we are thinking of a deadline of 02:21:18
25 about a week from now, so September 26. 02:21:19

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Petitioner, does that date work for
you?

MR. GREENLEAF: Yes, your Honor.
Thank you.

I have a question, though, about the
content. It would be a motion to correct,
as we discussed, and then it would also be
a sur-reply, not an authorization for a
sur-reply; right?

ADMINISTRATIVE JUDGE IPPOLITO: We
will be -- we will be requesting
authorization for sur-reply. So explaining
in there, in the brief, sort of a little
bit of what you said today, but also in
more detail why a reply is needed or reply
to the preliminary response is needed in
one brief together.

MR. GREENLEAF: Okay. And then your
Honors would decide whether to authorize
the sur-reply, and then I would file the
sur-reply, assuming it was authorized?

ADMINISTRATIVE JUDGE IPPOLITO: Yes,
sur-reply. It's a reply to the preliminary
response.

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2 MR. GREENLEAF: Okay, so it is a 02:22:14
3 reply, and not an authorization for a 02:22:14
4 reply? 02:22:15

5 ADMINISTRATIVE JUDGE IPPOLITO: No, 02:22:17
6 what I'm saying is that when you caption it 02:22:17
7 and request it, it's a reply to the 02:22:20
8 preliminary response, not a sur-reply. 02:22:23

9 MR. GREENLEAF: Yes, okay. 02:22:26

10 ADMINISTRATIVE JUDGE IPPOLITO: So it 02:22:27
11 is going to be early requesting 02:22:27
12 authorization to file a reply. 02:22:30

13 And for the Patent Owner, you will 02:22:33
14 have also five pages for an opposition, 02:22:34
15 and that would be one week after, so 02:22:37
16 October 3rd. 02:22:42

17 Patent Owner, does that date work for 02:22:43
18 you? 02:22:45

19 MR. STRANG: Your Honor, I hate to ask 02:22:47
20 this, but could I have a couple more days, 02:22:48
21 as I'm prepping and having depositions over 02:22:50
22 the weekend and beginning of that week? 02:22:53

23 ADMINISTRATIVE JUDGE IPPOLITO: Sure. 02:22:58
24 What day would work? The 5th, that Friday? 02:22:58

25 MR. STRANG: Yes, your Honor, that 02:23:04

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2 would be great. Thank you. 02:23:05

3 ADMINISTRATIVE JUDGE IPPOLITO: And 02:23:07

4 for Petitioner, we can move the deadline to 02:23:07

5 September 28th. Does that work for you? 02:23:10

6 MR. GREENLEAF: Yes, thank you, your 02:23:13

7 Honor. 02:23:14

8 ADMINISTRATIVE JUDGE IPPOLITO: Any 02:23:18

9 additional issues or questions from 02:23:18

10 Petitioner? 02:23:20

11 MR. GREENLEAF: No, your Honor. Thank 02:23:23

12 you. 02:23:24

13 ADMINISTRATIVE JUDGE IPPOLITO: Patent 02:23:25

14 Owner? 02:23:25

15 MR. STRANG: No, your Honor. Thank 02:23:26

16 you. 02:23:26

17 ADMINISTRATIVE JUDGE IPPOLITO: And 02:23:28

18 also, for Petitioner, when you -- when you 02:23:28

19 file your motion to correct, and if you are 02:23:31

20 to be provide any corrected exhibits or 02:23:34

21 anything along those lines, make sure to 02:23:38

22 have the caption indicated it's a corrected 02:23:40

23 exhibit, and the exhibit number can stay 02:23:43

24 the same. But put in that it's correct, 02:23:45

25 just so that we know which is which. 02:23:48

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2 MR. GREENLEAF: Yes, your Honor. 02:23:54

3 ADMINISTRATIVE JUDGE IPPOLITO: Okay. 02:23:55

4 An order will go out shortly, but I believe 02:23:55

5 both parties are aware of the dates and the 02:23:58

6 page limits. 02:24:00

7 And with that, we are adjourned. 02:24:02

8 Thank you. 02:24:04

9 02:24:04

10 (The proceedings were adjourned at 2:24 p.m.) 02:24:04

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CERTIFICATE OF COURT REPORTER AND NOTARY 02:24:04

PUBLIC 02:24:04

I, RANDI J. GARCIA, a court Reporter and 02:24:04

Notary Public, hereby certify that the 02:24:04

foregoing proceedings were recorded by me 02:24:04

stenographically and thereafter reduced to 02:24:04

typewriting under my direction; that the 02:24:04

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record of the proceedings to the best of my 02:24:04

knowledge, ability, and belief; that I am 02:24:04

neither counsel for, related to, nor employed 02:24:04

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proceeding; and further that I am not a 02:24:04

relative or employee of any attorney or 02:24:04

counsel employed by the parties hereto nor 02:24:04

financially or otherwise interested in the 02:24:04

outcome of the action. 02:24:04

Dated: October 2nd, 2018 02:24:04

Randi J. Garcia, RPR