Filed on behalf of Innovative Display Technologies LLC.
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC and
MERCEDES-BENZ U.S. INTERNATIONAL, INC.,
Petitioner,

v.

INNOVATIVE DISPLAY TECHNOLOGIES LLC,
Patent Owner.

Case IPR2015-00361
U.S. Patent No. 6,755,547

PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 6,755,547

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P.O. Box 1450

I. INTRODUCTION

Patent Owner Innovative Display Technologies LLC ("IDT" or "Patent Owner") hereby files this preliminary response ("Preliminary Response") to the Petition (the "Petition" or "Instant Petition") for *Inter Partes* Review ("IPR") of U.S. Patent No. 6,755,547 (the "'547 patent") in IPR2015-00361 filed by Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc. ("Mercedes-Benz" or "Petitioner").

This Preliminary Response is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is filed within deadline set by Paper 16 (New Filing Date accorded to Petition and the Extended Due Date for filing Patent Owner's Preliminary Response in accordance with the Conduct of the Proceeding Order, March 16, 2015).

The PTAB should deny the Petition's request to institute IPR2015-00361 because it is 100% duplicative of IPR2014-01357 (the "LGD Petition") filed against the '547 patent by LG Display Co. Ltd. ("LGD") on December 4, 2014.

Patent Owner has limited its identification of the deficiencies in Petitioner's argument in this Preliminary Response; Patent Owner does not intend to waive any arguments by not addressing them in this Preliminary Response.

A. Grounds in Petition

The Petition includes five grounds of alleged invalidity – two for anticipation and three for obviousness combinations – for claims 1-4, 16, and 26 of the '547 patent:

Ground 1: § 102(b) – Ohe *(claims 1-4, and 26)*

Ground 2: § 102(e) – Nishio *(claims 1, 3, 4, and 16)*

Ground 3: § 103(a) – Pristash *(claims 1-4, 16, and 26)*

Ground 4: § 103(a) – Kobayashi in view of Ohe *(claims 1-4, 16, and 26)*

Ground 5: § 103(a) – Pristash in view of Matsumoto *(claims 1-4 and 26)*

Grounds 2, 4, and 5 were determined to not have a reasonable likelihood of prevailing for identical arguments and support in the LGD Petition of IPR2014-01357. Additionally, under the remaining Grounds, the PTAB determined that claims 3 and 26 under Ground 1 and claim 4 under Ground 3 did not have a reasonable likelihood of prevailing. Thus the following were granted institution: claims 1, 2, and 4 under Ground 1 (anticipation by Ohe) and claims 1-3, 16, and 26 under Ground 3 (obviousness in view of Pristash). Ex. 2001, IPR2014-01357 Paper No. 11 at 19-20.

B. Claim Construction

Patent Owner notifies the Board that the district court in Innovative Display Technologies v. Acer, Inc. et al., No. 2:13-cv-522 (E.D. Tex. 2013) (Dkt. No. 101)

("Claim Construction Order") (Ex. 2002) has ruled on constructions of terms that appear in this patent (but the ruling was only on related patents, not the patent-at-issue), including entering an agreed construction of "deformities," which Petitioner adopts in its Petition. This Preliminary Response does not take a position on any remaining claim construction issues at this point. Patent Owner reserves the right to propose its own construction of any and all claim terms for which an issue arises in the event the PTAB institutes this IPR.

II. The Board Should Decline to Consider at Least Grounds 2, 4, and 5 and Their References in the Instant Petition Because They Are Cumulative and Redundant

In the Instant Petition, Mercedes-Benz relies on arguments that the Board considered and rejected in the Petition filed by LG Display in December 2014. Additionally, Mercedes-Benz has provided no meaningful distinction between the grounds asserted in the LGD Petition and the instant petition. The Board should decline to consider the cumulative and redundant grounds.

A. The Instant Petition Is Cumulative of a Current Office Proceeding

The Instant Petition relies on the very same arguments that LGD presented to the Board in its Petition in IPR2014-01357. Indeed, the arguments presented by Petitioner are identical to the LGD Petition. Under Section 325(d), the Board should deny petitions that challenge a patent based on previously presented grounds and cumulative and duplicative art, otherwise petitioners may be given an

unwarranted and unfair procedural advantage in pending infringement litigation. *See* 35 U.S.C. § 325(d); *See also, Unified Patents*, IPR2014-00702, Paper 13 at 2, 7-8 (denying third party IPR petition in view of previous IPR petition citing the same prior art reference).

"In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office" thus utilizing judicial resources to their best advantage. 35 U.S.C. § 325(d). The legislative history of Section 325(d) confirms that this is also what Congress intended: Section 325(d) "allows the Patent Office to reject any request for a proceeding, including a request for ex parte reexamination, if the same or substantially the same prior art or arguments previously were presented to the Office with respect to that patent." 157 Cong. Rec. S1042 (daily ed. Mar. 1, 2011) (Statement of Sen. Kyl).

B. The Board has Already Declined to Institute Review Based on the Same Art in the Instant Petition

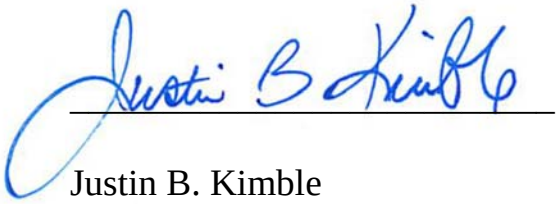
In IPR2014-01357, the Petitioner raised the same arguments as the Petitioner is raising in the Instant Petition with respect to all Grounds of alleged invalidity. Most of the Grounds raised were denied institution. In particular, Grounds 2, 4, and 5 were determined to not have a reasonable likelihood of prevailing in the LGD Petition. Additionally, the Board found that claims 3 and 26

under Ground 1 and claim 4 under Ground 3 did not have a reasonable likelihood of prevailing.

Here, Petitioner makes identical arguments to the arguments presented in IPR2014-01357. Petitioner makes no argument or explanation why the art cited or arguments presented are not "the same or substantially the same" as the LGD Petition. Accordingly, the Board should exercise its discretion to deny *Inter Partes* Review.

Dated: April 30, 2015

Respectfully submitted,



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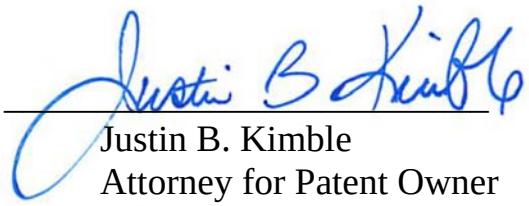
CERTIFICATE OF SERVICE

The undersigned hereby certifies that document has been served via electronic mail on April 30, 2015, to Petitioner at following email addresses pursuant to its consent in its Updated Mandatory Notice: Scott.Doyle@Shearman.com and Jonathan.DeFosse@Shearman.com. Patent Owner's attorneys are aware that Mr. Doyle and Mr. DeFosse have changed firms to Fried Frank since they last filed Mandatory Notices. As a courtesy, Patent Owner is also serving them at their new firm's email addresses.



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