

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SILICON LABORATORIES, INC.
Petitioner

v.

CRESTA TECHNOLOGY CORPORATION
Patent Owner

CASE: IPR2015-00626
Patent No. 7,265,792

Title: Television Receiver for Digital and Analog Television Signals

**PETITIONER'S RESPONSE TO PATENT OWNER'S
MOTION TO EXCLUDE (PAPER NO. 31)**

I. INTRODUCTION

On February 22, 2016, Patent Owner requested authorization to file a motion to strike certain evidence and arguments submitted in connection with Petitioner's reply. *See* Paper No. 25 at 4–5. During that call, this Board made clear “that, in general, we are for a complete record.” *Id.* at 3. Accordingly, the Board denied Patent Owner's request to file a motion to strike and instead permitted Patent Owner to “submit a paper in the form of a list providing the location and a concise description” of the allegedly improper evidence and argument. Paper No. 27 at 4. Patent Owner took advantage of that ruling and submitted its list, which was replete with argument, despite the Board's admonition that the list “may not contain argument.” *Id.* Patent Owner now seeks the same relief based on the same grounds as it did in its previously denied request for authorization. *Compare* Paper No. 25 at 4–5 *with* Paper No. 31 at 1. As a result, the only paper that should be stricken from the record is Patent Owner's present motion for flouting the Board's previous order.

II. CRESTA'S MOTION TO EXCLUDE SHOULD BE DENIED.

As demonstrated below, Patent Owner's motion is not well founded. Patent Owner couches its arguments in the form of evidentiary objections, but are really just the same procedural objections that formed the basis for its previously denied

motion to strike. Petitioner addresses each of the three categories of objections below.

A. Balaban (Ex. 1053) was timely presented and is relevant.

1. Balaban is Certainly Relevant.

Patent Owner argues that the Balaban reference (Ex. 1053) should be excluded because it is irrelevant. Contrary to Patent Owner's argument, Balaban is directly relevant to Patent Owner's argument Zenith's SYNC DET does not detect a "carrier signal." *See* Paper No. 17 at 43–44. This argument turns on whether a POSITA would consider a synchronization signal a "carrier signal." Patent Owner's expert, Dr. Opris, contends that he would not. Ex. 2032 at 38 ("Zenith's SYNC DET 20 does not detect any carrier signal.") Petitioner's expert, Dr. Holberg, opines that he would. Ex. 1061 at ¶89 ("Dr. Opris's argument is premised on an implicit construction of 'carrier signal' that is limited to transmission carrier."). As evidence to support his opinion, Dr. Holberg relies on the Balaban reference, which was submitted by the applicant during prosecution and is part of the intrinsic record.

The prior art of record Balaban directly contradicts Patent Owner's argument and Dr. Opris's opinion that a POSITA would not consider a television synchronization signal a "carrier signal" under a plain and ordinary meaning. The Balaban reference is directed to a "Receiver for Analog and Digital Television

Signals,” i.e., a multi-format television receiver, just like the patents at issue. *Compare* Ex. 1053 at 1 *with* Ex. 1001 at 1. Like Zenith, Balaban discloses a sync detector for identifying the format of the incoming television signal. Ex. 1053 at 10:32–34. Balaban later makes clear that this step of detecting a synchronization signal is a form of “detecting a carrier signal.” Ex. 1053 at 19:17–20. Because Balaban directly refutes Patent Owner’s argument that a sync signal is not a carrier signal, it is relevant.

2. Balaban was Timely Submitted.

Patent Owner argues that Petitioner submitted Balaban too late. Petitioner came forward with Balaban in direct response to an argument made by Patent Owner in its Patent Owner Response. *See* Paper No. 17 at 43–44. Balaban was not relevant until Patent Owner argued that a sync signal would not be considered a “carrier signal” to a POSITA. Once it did, Petitioner came forward with Balaban in its reply to rebut Patent Owner’s argument.

Contrary to Patent Owner’s argument, Petitioner’s invalidity grounds have never varied. It still relies on Zenith for its teaching of a standard selection circuit that generates a select signal by detecting a carrier signal. Balaban is simply relied upon to rebut Patent Owner’s argument that Zenith’s SYNC DET does not detect a carrier signal because it detects a synchronization signal. Patent Owner’s

argument that Petitioner is proffering a new combination of references therefore misses its mark.

B. Paragraphs 33-34 of Holberg’s Reply Declaration (Ex. 1061) and paragraph 9 of Supplemental Holberg Declaration (Ex. 1063) was timely present and relevant.

Patent Owner argues that this evidence on the meaning of “carrier signal” should be excluded because this construction was not presented in its Petition. Paper No. 31 at 4 (citing 37 C.F.R. 42.104(b)). First, this is the precise relief that Patent Owner previously sought and was denied by the Board. For good reason, the Board made clear that it prefers a “complete record.” Paper No. 25 at 3. Turning a blind eye to relevant evidence does not lead to reasoned decisions.

Additionally, Patent Owner is simply wrong on the facts. Petitioner’s claim construction position has remained consistent throughout this proceeding. In its Petition, Petitioner argued that all of the claims should be given their plain and ordinary meaning including “carrier signals.” Paper No. 2 at 18 (“Petitioner contends that all of the terms in the challenged claims should be given their plain and ordinary meaning.”). It was not until Patent Owner argued that a sync signal, as described in Zenith, is not a “carrier signal,” that Petitioner was forced to articulate the precise boundaries of that term. Frankly, Petitioner had no reason to expect Patent Owner to challenge the meaning of this term in light of the intrinsic evidence—namely Balaban. When it did, Petitioner came forward with Dr.

Holberg's opinion, supported by an IEEE dictionary and Balaban. The fact that Patent Owner's expert did not even consider Balaban in forming his opinion, speaks volumes about the credibility of his testimony.

It is also hard to take Patent Owner's cries of prejudice seriously when Balaban forms the basis for one of the grounds in a pending *inter partes* review. As the Board well knows, trial was instituted on "claims 6, 7, and 21 [of the '585 patent] under 35 U.S.C. § 103(a) over Van De Plassche, Ishikawa, and Balaban." IPR2015-00592, Paper No. 9 at 19 (Aug. 14, 2015). As a result, Patent Owner is well aware of Balaban. That is why Patent Owner made the strategic decision not to articulate a claim construction for "carrier signals" and, instead, decided to play this game of cat and mouse, hoping to exclude relevant evidence rather than address it head on.

Patent Owner also seeks to exclude all of Dr. Holberg's testimony regarding the plain and ordinary meaning of "carrier signals" because all of these same arguments were not made in the reply brief, arguing that this was an attempt to side-step the page limits. First, Petitioner used only 15 of its allotted 25 pages for its reply brief, so it was clearly not an attempt by Petitioner to avoid the page limits. Second, given the overlap in the issues between the two patents in suit, Petitioner tried to avoid repeating the same arguments in both cases. Unlike the cases relied on by Patent Owner, this is not a case in which Petitioner has buried

the relevant facts deep in Dr. Holberg's declaration and forced the Board to "play archeologist with the record." Paper No. 31 at 6–7. Instead, Petitioner presented its argument and evidence in a streamlined and non-duplicative manner. Such efficiencies should be encouraged, not discouraged. What should be discouraged is filing unnecessary, unauthorized, and duplicative motions such as this one.

C. Paragraphs 14-32 of Holberg Declaration (Ex. 1061) is relevant and discussed.

Finally, Patent Owner argues that the entirety of Dr. Holberg's testimony on the meaning of "select signal" should be excluded because all of the same arguments are not presented in the reply brief. Paper No. 31 at 7–8. As with the meaning of "carrier signal," the plain and ordinary meaning of "select signal" did not become an issue until Patent Owner argued that Zenith's uP 22 did not generate a select signal because it did not contain sufficient "information" about the format of the signal. Paper No. 17 at 35–38. Unlike "carrier signal," however, Patent Owner decided to advance an explicit construction. *Id.* at 6–10.

Petitioner responded to Patent Owner's argument by articulating its own plain and ordinary meaning of that term supported by Patent Owner's own dictionary definition of "indicative of" as well as the intrinsic evidence. Petitioner spends three pages of its reply brief in connection with the '585 patent laying out its argument, citing to Dr. Holberg's declaration where relevant. *See* IPR2015-00615, Paper No. 20 at 1–4. While Petitioner does cite to multiple paragraphs of

Dr. Holberg's declaration initially, *id.* at 2, it then provides pin point cites to several specific paragraphs of his declaration in support of individual propositions. *Id.* at 3–4. In IPR2015-00626, as noted above, Petitioner does not repeat the same argument it made in connection -00615. This is not “hid[ing]-the-ball,” as characterized by Patent Owner. Instead, the better analogy is Patent Owner burying its head in the sand.

III. CONCLUSION

Patent Owner's motion to exclude should be denied. It is procedurally improper because the Board denied Patent Owner's request to file this motion. It is also duplicative of the “list” that it submitted in response to its previous request. Finally, it fails on the merits because it mischaracterizes the record. Petitioner's arguments and evidence are proper rebuttal evidence proffered to respond directly to arguments made, either explicitly or implicitly, in Patent Owner's Response. Patent Owner knows that this is damning evidence and would rather deprive the Board of it than permit it to consider the patentability of the challenged claims on “a complete record.” Patent Owner's motion should be denied.

Dated: March 23, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2016, the foregoing **PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION TO EXCLUDE (PAPER NO. 31)** was served upon Patent Owner's attorney of record by emailing to the following addresses:

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