

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FAVORED TECH CORPORATION,

Petitioner,

v.

P2I LTD.,

Patent Owner.

CASE: IPR2020-01198
Patent No. 10,421,876

**PETITIONER'S REPLY
TO PATENT OWNER'S PRELIMINARY RESPONSE**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
P.O. Box 1450
Alexandria, VA 22313-1450

December 1, 2020

Petitioner disagrees with all proposed bases to decline institution in P2i's preliminary response (Paper 6) but recognizes that "evaluating statements or misstatements of the facts and law are well within the purview" of the panel. *Xactware Solutions, Inc. v. Pictometry Int'l Corp.*, IPR2016-00593, Paper 11 (PTAB July 1, 2016). Petitioner thus limited its requested reply to two issues: analogous art and redundancy. The Board authorized this reply by email on November 19, 2020.

Petitioner targeted those issues to address recent precedent on analogous art and to assist in parsing the '876 patent's labyrinthine claims against the non-redundant grounds in the petition. The Board should reject P2i's ill-founded assertions.

I. P2i misapplies the analogous art test in a way that contradicts recently issued Federal Circuit precedent and its own patent

P2i contends that four references are non-analogous art. Paper 6 at 41-48. That cannot be squared with *Donner Technology, LLC v. Pro Stage Gear, LLC*, 2020 WL 6554058 (Fed. Cir. Nov. 9, 2020), which issued after the preliminary response and refutes P2i's narrow approach, or with the '876 patent itself.

A reference is analogous art if (1) within the field of endeavor, or (2) reasonably pertinent to the problem with which the inventor is involved. *Donner*, 2020 WL 6554058, at *3; *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). The references P2i disputes—Cohen, Holliday, Francesch, and Tropsch—are analogous art.

1. *Field of endeavor.* P2i's arguments here depend on limiting the field of endeavor to "plasma polymerized protective coatings," or even more narrowly to

“plasma polymerized coatings for electronic devices.” Paper 6 at 42, 45-47. But that framing runs contrary to the express teachings of the '876 patent.

Under “Field of the Invention,” the '876 patent broadly states: “This invention relates to protective coatings.” Ex. 1001 1:5. That section does not mention plasma polymerization, much less limit the relevant field solely to plasma polymerized coatings. *Id.* at 1:5-13. Similarly, the specification teaches that the invention may “advantageously” apply to electronics but “is of benefit in the context of a wide variety of substrates.” Ex. 1001 14:30-32. And the “Background of the Invention” cites two sources, neither of which fits the restrictions P2i seeks to impose: (i) WO 98/58117 described plasma polymers applied to many substrates other than electronics, Ex. 1001 1:19; Ex. 1022 at 8:6-12; and (ii) a cited 2005 article described polymer films for generic substrates applied without plasma polymerization, Ex. 1001 1:39-41.¹

“The field of endeavor of a patent is not limited to the specific point of novelty, the narrowest possible conception of the field, or the particular focus within a given field.” *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1001 (Fed. Cir. 2016). P2i's efforts to limit the field solely to plasma polymerized coatings for electronics “contradict statements made in [its] own specification” and should not be credited.

¹ The Board directed that no evidence should accompany this reply; if permitted, Petitioner will submit the 2005 article as an exhibit for the Board's review.

In re Wood, 599 F.2d 1032, 1036 (CCPA 1979); *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1238 (Fed. Cir. 2010). Cohen, Holliday, Francesch, and Tropsch are within the field—polymer coatings—of the '876 patent. Cohen described insulating polymers that could be applied as films and used to protect substrates like cables and electrical coils. Ex. 1006 2:60-63, 5:13-25. Holliday taught polymer coatings with mechanical, electrical, and chemical resistance properties. Ex. 1007 1:10-30, 2:39-50. Francesch described polymer coatings that provided improved solvent resistance. Ex. 1009 at 609-10. And Tropsch described methods and materials for polymer production, necessary aspects of any polymer-coating endeavor. Ex. 1011 2:13-6:25.

2. *Reasonable pertinence.* Even if P2i could limit the field of endeavor to plasma-polymer coatings for electronics, the cited art would be reasonably pertinent.

P2i collapses reasonable pertinence into the *same* narrow frame it presented to define the field of endeavor, limiting the asserted problems to creating “plasma polymerized protective coatings for electronic devices.” Paper 6 at 43-48. The Federal Circuit recently rejected that very approach. The correct analysis looks to the perspective of a POSA “resigned to considering art *outside her field of endeavor*.” *Donner*, 2020 WL 6554058, at *4 (emphasis added). P2i violates that premise by stating a purpose “so intertwined” with its asserted field of endeavor “that it would effectively exclude consideration of any references outside that field.” *Id.*

Moreover, P2i cites problems with tackiness, smearing, and contact angle

(Paper 6 at 42-43) that mismatch the claims and were already solved by known coatings. The '876 patent explains that such problems arose when using monomers with fewer than eight fluorinated carbons, like PFAC6. Ex. 1001 1:36-41, 1:47-2:4. But its claims are not so limited. *See, e.g.*, Claims 12-15 (reciting monomers with 8+ fluorinated carbons, including PFAC8). The '876 patent acknowledges that using PFAC8 at low power was known to yield stable, non-stick coatings with high contact angles. Ex. 1001 1:28-46. Those properties thus “could not possibly be a relevant purpose of the invention.” *Donner*, 2020 WL 6554058, at *4. Rather, the stated purpose related to achieving highly crosslinked coatings at low power. Ex. 1001 2:49-55. From the perspective of a POSA seeking to promote crosslinking, references describing known crosslinking agents, like Cohen, Holliday, Francesch, and Tropsch, “logically would have commended [themselves] to an inventor’s attention in considering his problem.” *In re ICON Health*, 496 F.3d 1374, 1380 (Fed. Cir. 2007).

II. The petition does not contain “excessive redundant grounds”

P2i briefly contends that institution should be denied due to redundant grounds. Paper 6 at 29. That assertion is both meritless and belied by the scattershot nature of its claims. Claim 1 alone spans approximately two columns of text, and as explained in the petition, recites crosslinkers of several different generic types. *See, e.g.*, Ex. 1001 18:54-19:57; Paper 1 at 32-33 (Formulas A, B1, B2). And various dependent claims separately limit each genus: claim 4 recites a subset of Formula B,

claims 5-8 limit Formula A, claim 9 requires B1 crosslinkers, and claim 10 recites a subset of type B2. Claim 11 lists a handful of particular species.

Multiple grounds were thus required to address all claimed crosslinkers, and there is not “significant overlap[]” as to the many dependent claims. Paper 6 at 29.

5 For example, Cohen taught DVTMDS, the only B1-type crosslinker in the asserted grounds. Paper 1 at 32-33, 40. Only Holliday and Padiyath described B2-type crosslinkers that could satisfy claim 10, and of those only Holliday's DCHD monomer also appeared in claim 11. *Id.* at 43-44, 51, 53-54. Francesch and Holliday described a Formula A crosslinker that also fits claim 11, *id.* at 43-44, 57-58, 63; only Tropesch
10 *expressly* described a Formula A crosslinker as in claim 8. *Id.* at 68, 50, 62-63.

Nor is this case comparable to *Adaptics*. The petition there asserted “and/or” grounds totaling anywhere from 17 to “hundreds of possible combinations” for just nine claims. The petition here challenges 15 claims with only five grounds, which is not unreasonable or burdensome, especially given the variety of crosslinkers in the
15 claims and the similar roles of Coulson-122 and Badyal in each ground. Moreover, references' relative strengths can depend “on the rebuttal arguments Patent Owner presents over the course of the proceedings.” *Niantic, Inc. v. Blackbird*, IPR2019-00489, Paper 8 at 9. For example, Holliday and Padiyath described B2-type crosslinkers, but only Padiyath was not challenged here on analogous art grounds. The
20 asserted grounds are not redundant, and the Board should institute IPR.

Dated: December 1, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this reply has been electronically served on counsel for patent owner as follows:

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