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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CURRENT LIGHTING SOLUTIONS, LLC,

and

HLI SOLUTIONS, INC.,

Petitioners,

v.

ALSI HOLDINGS, LLC

Patent Owner.

U.S. Patent No. 9,699,854

IPR Case No.: IPR2023-00125

and

U.S. Patent No. 8,721,114

IPR Case No.: IPR2023-00198

and

U.S. Patent No. 8,322,881

IPR Case No.: IPR2023-00145

The Telephonic Hearing regarding IPR2023-00125,
IPR2023-00145 and IPR2023-00198,

Taken telephonically, Commencing at 2:38 p.m.,

Tuesday, March 14, 2023,

Before Medina J. Balderas, CSR-6213, Notary Public.

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EXHIBIT:

PAGE NO.

(Exhibits not offered.)

1 Tuesday, March 14, 2023

2 2:38 p.m.

3
4 JUDGE OBERMANN: On the record, please.

5 Good afternoon. This is Judge Obermann, and
6 this is a teleconference in connection with Petitioner's
7 request for additional briefing in three case
8 proceedings. They are IPR 2023-00125, IPR 2023-00145,
9 and IPR 2023-00198. Again, I'm Grace Obermann, and with
10 me on the call are Judge Hubert Lorin and Judge Donna
11 Praiss.

12 We've already established that the court
13 reporter will prepare a single transcript with a heading
14 that identifies all three case numbers, but I want to
15 make clear for everyone that the cases themselves are
16 not consolidated or joined.

17 And, Petitioner, because you retained the
18 court reporter, I'll ask that you please enter a copy of
19 the transcript as an exhibit in each proceeding as soon
20 as practical.

21 So let's start with a roll call.

22 Who is present on the call today for
23 Petitioner?

24 MR. KONZ: Kyle Konz and John Rondini for
25 Petitioner.

1 JUDGE OBERMANN: And thank you, Mr. Konz.

2 Will both of you be speaking today or is one
3 of you going to be presenting argument?

4 MR. KONZ: I'll be taking the lead and John
5 will be speaking as well, most likely.

6 JUDGE OBERMANN: Okay.

7 And everyone please identify yourself when
8 you're speaking for the court reporter since this is a
9 teleconference.

10 And who do we have today for the patent
11 owner?

12 MR. GREGORY: For the patent owner, we have
13 Shaun Gregory and Eric Gaum, and I should be doing most
14 of the speaking.

15 JUDGE OBERMANN: Okay. And are you Mr. Gaum
16 or Mr. Gregory?

17 MR. GREGORY: I'm sorry, Mr. Gregory.

18 JUDGE OBERMANN: Mr. Gregory, you'll be
19 doing most of the speaking?

20 MR. GREGORY: Yes.

21 JUDGE OBERMANN: Okay. Thank you very much.

22 So we understand the basic issues here.
23 Petitioner has averred that the issues are the same
24 across the proceedings. The Panel has actually read the
25 papers, and we have decided that the facts across the

1 three cases are different enough that we want to break
2 the hearing up into three parts. We're going to address
3 each case in turn.

4 So for each case, we will hear from
5 Petitioner first; then we'll turn it over to Patent
6 Owner for a response. And then we will resolve the
7 issues, most likely. And, at which point, we will turn
8 to the next case in turn.

9 Does everyone understand this?

10 I'll ask Petitioner's counsel first.

11 MR. KONZ: Yes, Your Honor.

12 JUDGE OBERMANN: Patent Owner.

13 MR. GREGORY: Yes, Your Honor.

14 JUDGE OBERMANN: Very good.

15 So we're going to start with IPR 125, and
16 I'll ask Petitioner, since it's your request for relief,
17 to please present your argument first limited to IPR
18 125.

19 When you're ready.

20 MR. KONZ: Thanks, Your Honor.

21
22 UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. Patent No. 9,699,854

IPR Case No.: IPR2023-00125

MR. KONZ: For the 125 IPR, we would like to request additional briefing on three main points.

The first point would relate to the alleged priority date of the patent owner's patent in this case, which is the '854 patent. Their allegation that some of the references we applied in the grounds are not prior art.

And then we'd like to also address the argument of 325(d) and the -- Fintiv. There was an intervening precedential decision that came out -- Commscope -- between when we filed our petition and now, and we are going to ask the Board if they would like us to provide any additional briefing to the intervening case. Which we obviously didn't address in our petition.

So we'll start with the priority date.

1 We're somewhat confused by the patent owner's
2 preliminary response with regards to the priority date.
3 They made some statements regarding that we didn't
4 allege an earlier priority date.

5 First of all, we relied on the priority date
6 that they provided in their final infringement
7 contention in the related district court litigation,
8 which was the provisional date of December 21st, 2007,
9 and that is the date that we used for choosing our prior
10 art in the grounds.

11 JUDGE OBERMANN: I understand that, Counsel,
12 and you've just stated on the record, so I don't think
13 we need briefing on that.

14 What good cause exists for briefing here?

15 MR. KONZ: Well, the patent owner made some
16 statements to the effect that we needed to know or guess
17 at what the priority date was, and we weren't sure if
18 they were alleging that they had an earlier date. They
19 didn't specifically come out and state that. So we were
20 somewhat confused as to what their argument was.

21 JUDGE OBERMANN: Okay. We can let them
22 speak to that.

23 But do you have anything else to say in your
24 case in chief here?

25 MR. RONDINI: This is Mr. Rondini.

1 I guess the only other thing is in terms of
2 how they're arguing this prior priority date argument,
3 one of the things they're arguing is that the references
4 aren't prior art under certain sections of 102, which is
5 kind of an odd statement.

6 We allege in our petition that all the
7 references are prior art of 102. We're not relying on
8 any nonpatent literature. We're relying only solely on
9 published patent applications or issued patents, which,
10 on their face, are authenticated by the dates that are
11 on the face of patent. So they're quasi making an
12 argument about the date and alleging that the date
13 doesn't establish its prior art --

14 JUDGE OBERMANN: Right.

15 MR. RONDINI: -- which they're not really
16 stating it's not prior art. They are alleging we
17 haven't proved it's prior art.

18 JUDGE OBERMANN: Right.

19 MR. RONDINI: Which, again, patents are
20 authenticated based on the fact that they're a
21 government-issued document. This argument would apply
22 to an NPL, mainly; or, with a patent, it could apply, I
23 could see, if it was a continuation-in-part, that the
24 original parent case may have different disclosure.
25 Therefore, the priority date of the continuation-in-part

1 parent might not be afforded to the child case. That's
2 not the case here.

3 The case here, we have issued patents and
4 published patent applications that, again, on their
5 face, are prior art, and that's what we stated in our
6 petition.

7 JUDGE OBERMANN: Okay. I just have one
8 question on that particular point --

9 MR. RONDINI: Sure.

10 JUDGE OBERMANN: -- and maybe I'm wrong, but
11 when I look at Medendorp, it looks like the publication
12 date is after the filing date of the patent that we're
13 going on here. I see a publication date of April 17th,
14 2008. The patent was filed, if we accept the date
15 that's not contested here, December 21st, 2007. What's
16 going on there?

17 MR. RONDINI: I'd have to pull it up, but I
18 would assume that the earliest filing date would make it
19 prior art under, you know, 102(e), but I would have to,
20 you know, pull up the patent and see what the earliest
21 prior art date is.

22 JUDGE OBERMANN: Well, I think you'd better
23 because, at this point, we're not seeing any argument in
24 the petition that goes to this. And I'm wondering why
25 we should allow you to do it in a reply brief if you

1 haven't taken up any space to devote in your petition.

2 MR. RONDINI: So Medendorp has a filing date
3 of October 11th, 2006. So --

4 JUDGE OBERMANN: Yeah.

5 MR. RONDINI: -- so October 11 -- so that
6 would make it 102(e).

7 JUDGE OBERMANN: Well, you didn't argue
8 that --

9 MR. RONDINI: We said it was prior art under
10 102.

11 JUDGE OBERMANN: Okay. Well, let's
12 continue. And did you want to say anything -- you said
13 you wanted briefing on Section 325(d); what's your good
14 cause for that?

15 MR. KONZ: This is Kyle Konz speaking for
16 the record.

17 The patent owner alleged that several
18 references -- which were not cited on the previous
19 patent -- let me back up.

20 The only reference that was previously cited
21 in the patent was the Medendorp reference that we were
22 just discussing. And it wasn't used by the examiner,
23 and it's been combined here with a new combination --

24 JUDGE OBERMANN: Wait a minute, hold on,
25 please, Counsel. What I'm hearing is argument on the

1 merit, and this was not in your petition.

2 What I really want to know is what's the
3 good cause for allowing you to come forward now with
4 these arguments?

5 MR. KONZ: I'm sorry, Your Honor. The
6 patent owner's priority source argued that several prior
7 art references that were not part of the previous
8 prosecution, such as Stovva & Barr, are cumulative with
9 references that were used by the examiner, such as
10 Smith. And we would like additional briefing to point
11 out that these are not cumulative references.

12 JUDGE OBERMANN: Why did you wait so long to
13 make this request? Because if I authorize briefing on
14 this broad issue, we're going to have about six weeks
15 left before the CIs in the first two cases are due.

16 MR. RONDINI: Your Honor, this is Counsel
17 Rondini.

18 And the reason that there was a delay in the
19 request was that I was at trial in another matter, and I
20 was gone for about two and a half weeks for trial. And
21 this came in just before trial, and I wasn't able to
22 address it until just after I asked Mr. Konz to start
23 reviewing it right after I got done with trial, and
24 that's when we made the request.

25 JUDGE OBERMANN: Okay. Do we have anything

1 else from Petitioner on either Section 325, Fintiv
2 discretionary denial, or prior art status of these
3 references before I turn it over to Patent Owner?

4 MR. RONDINI: This is Mr. Rondini again.

5 I guess I'm just a little confused with Your
6 Honor's comments about Medendorp. I guess I'm confused
7 on -- you know, we relied on the published application
8 which, on its face, has two dates, which is April 17th,
9 2008, and October 11th, 2006. And so I guess I'm just
10 curious if Your Honor can explain, when we said it was
11 102, and those are the only two dates on there --

12 JUDGE OBERMANN: You didn't tell us which
13 date you're relying on. You didn't give us anything.
14 That's the problem. But we will decide whether or not
15 we're going to let you do a reply brief on that
16 particular issue.

17 MR. RONDINI: Okay. Thank you, Your Honor.

18 JUDGE OBERMANN: Do you have anything else,
19 Petitioner Counsel, before I turn it over to Patent
20 Owner?

21 MR. RONDINI: No, not right now.

22 JUDGE OBERMANN: All right. Thank you so
23 much.

24 Let's hear from Patent Owner.

25 MR. GREGORY: Your Honor, this is Shaun

1 Gregory on behalf of Patent Owner.

2 And Your Honor has identified the issue
3 precisely. It's not a question of whether or not the
4 references are prior art. It's simply a question that
5 Petitioner has not established what the boundaries are
6 for us to be able to respond to whether or not they're
7 prior art. And that's a burden that the petitioner has
8 to cure in the petition.

9 As I understand it, good cause is an
10 opportunity to provide additional evidence, not new
11 arguments and new evidence. And the petitioner's lack
12 of key elements to a prima facie case can only be cured
13 with new evidence at this point.

14 So our position is that there is not good
15 cause for additional briefing. It would be a similar
16 argument related to 325(d). They had an opportunity.
17 They completely failed to provide any analysis under
18 325(d) in the petition. We simply identified the issues
19 and concerns related to 325(d). And now it's too late,
20 sorry, for them to try to recover and present evidence
21 that should have been presented in the --

22 (Court Reporter's Conference Link

23 Disconnected 2:51 p.m. to 3:04 p.m.)

24 MR. GREGORY: I think just the finishing was
25 they had the opportunity and they did not provide the

1 analysis.

2 JUDGE OBERMANN: Yeah, I think that's right.
3 That about sums it up.

4 And then we took probably like a three- or
5 four-minute pause while the panel conferred. And then
6 Judge Obermann came back on and we identified that
7 everyone was still on the call, and then we issued our
8 ruling, and I will repeat that.

9 The Board has taken account all the
10 arguments that were made today. We've read the papers.
11 And we've decided that we are going to grant Petitioner
12 a two-page reply brief on the sole targeted issue of
13 whether Medendorp qualifies as prior art. That two-page
14 reply brief is due on March 21st.

15 And Patent Owner has an opportunity to file
16 their reply brief on that same issue, and that has to be
17 filed no later than March 28th.

18 We are denying the request for additional
19 briefing for all other issues, and we're denying it
20 based on the guidance provided in the Trial Practice
21 Guide. And, in particular, we're concerned about the
22 timing of Petitioner's request because one of the things
23 that the Trial Practice Guide tells us to look for is
24 whether or not it's going to impede the ability of the
25 Board to get the decisions out in a -- by the statutory

1 deadline. Briefing here won't be complete until six
2 weeks before two of the CIs are due, so I take account
3 that the fact that Petitioner's counsel was out of the
4 office, but I don't really understand why someone else
5 couldn't have looked at these earlier.

6 Also, and more importantly, we don't think
7 there's really good cause for additional briefing on any
8 other issue because it wouldn't really be helpful to the
9 Board. It's pretty clear from the papers what's going
10 on. And, also, there's no declaration evidence that's
11 supporting the preliminary response here.

12 Where there is a declaration filed with the
13 preliminary response as the circumstance, that the Trial
14 Practice Guide on Page 51, you know, acknowledges may
15 justify the submission of a reply, but, generally, the
16 Board does not expect that a reply will be granted in
17 many cases due to the short time period the Board has to
18 reach a decision on institution; that's from the Trial
19 Practice Guide on Page 52.

20 So in a nutshell, we are allowing the
21 briefing to go forward, but only on the very narrow
22 targeted issue of whether Medendorp qualifies as prior
23 art.

24 And we are also inviting the petitioner to
25 file a Sotera-type stipulation. They did attempt to

1 embed a Sotera stipulation within their petition, but
2 the patent owner has argued that that's not effective,
3 and we will give them the opportunity to file a Sotera
4 stipulation as an exhibit in IPR 125, with no additional
5 briefing about its import.

6 So the briefing must be contained and
7 limited to the prior art status of Medendorp, but we
8 will consider a Sotera stipulation, and we will allow
9 that to be filed.

10 We see no reason to allow --

11 MR. GREGORY: Your Honor, this is Shaun
12 Gregory for Patent Owner.

13 JUDGE OBERMANN: Yes.

14 MR. GREGORY: Just to clarify, is the
15 expectation for them to file the Sotera stipulation in
16 the district court with an exhibit to the PTAB
17 indicating as such?

18 JUDGE OBERMANN: I've seen it done both
19 ways. That's at their discretion. They can prepare it
20 as an exhibit in the district court and then give us a
21 copy or they can prepare it as an exhibit to this
22 proceeding and then do what they want. You know, you
23 can do what you want with it in the district court. But
24 that's completely up to the petitioner.

25 MR. GREGORY: Okay. Thank you, Your Honor.

1 JUDGE OBERMANN: But if they do file one,
2 generally, that's up in the other forum as well because,
3 obviously, Patent Owner would want to take it to the
4 district court if they agreed to forego anything in the
5 district court.

6 MR. RONDINI: Right.

7 And, Your Honor, this is Mr. Rondini on
8 behalf of Petitioner.

9 My apologies, for -- I guess we didn't
10 understand. We were trying to follow it. It was
11 relatively new. We followed what had happened before.
12 So I just want to make sure that we get it correct.

13 So file an exhibit with the two-pager or it
14 can be separate from the two-pager, just basically the
15 Sotera stipulation that can be embedded within the
16 petition itself, as a separate stand-alone exhibit and
17 it's basically restating the stipulation we provided in
18 the petition, just attached as an exhibit. Is that --

19 JUDGE OBERMANN: I will allow you to craft
20 your Sotera declaration however you wish to do it, if
21 you want to file one. You're not going to get any
22 additional briefing on it, but I think it would be
23 helpful -- it may be helpful if you decide that you'd
24 like to have a stand-alone stipulation, because that's
25 what we're used to dealing with at the Board. If you

1 decide not to file one, we'll still consider what you've
2 done in the petition, but, you know, we will analyze
3 that and see if it's sufficient in view of Patent
4 Owner's counter-argument.

5 But we are going to give you an opportunity
6 because this, again, can be a dispositive issue for you,
7 Petitioner. We're going to, you know, out of fairness,
8 give you an opportunity to enter as an exhibit an actual
9 stipulation. And if you have any questions about what
10 those stipulations look like, you can look at the Sotera
11 case and you can look up cases that have been -- you
12 know, many, many cases since then where Sotera-type
13 stipulations have been entered in IPR proceedings to get
14 a look at what they look like.

15 But we are giving you an opportunity to file
16 an actual stipulation. You can take it or leave it, and
17 we would like it to be filed on the same day as your
18 reply brief. The reply brief is completely separate.
19 You don't have to refer to that Sotera stipulation in
20 your brief -- I don't see why you would, actually, since
21 you're not actually given an opportunity to argue your
22 Fintiv issues in this reply brief.

23 So what we'll be looking for is a paper --
24 you know that when you go into our filing system, you
25 can file papers and exhibits? We would expect you to

1 file as a paper your reply brief on the question of
2 whether Medendorp qualifies as prior art, and then you
3 have the option of filing an exhibit, which would be the
4 next numbered exhibit in the series for Petitioner, and
5 that would just simply be the Sotera stipulation with no
6 further argument on it.

7 Is that clear?

8 MR. RONDINI: That is very clear, Your
9 Honor. And my apologies, I wasn't suggesting we weren't
10 going to do it, I just wanted to make sure we got it
11 correct for Your Honor.

12 JUDGE OBERMANN: No, absolutely. I
13 appreciate that. I'm always happy that you have
14 questions now rather than being unclear or not -- you
15 know, I want to give you as much guidance as possible,
16 so that's great.

17 MR. RONDINI: I appreciate that. Thank you,
18 Your Honor.

19 JUDGE OBERMANN: Sure.

20 So on IPR 125, that, I think, concludes the
21 issues unless there's anything that Petitioner would
22 like to ask me about or any questions or further
23 discussion.

24 I'll ask Petitioner first.

25 MR. KONZ: We have nothing further, Your

1 Honor.

2 JUDGE OBERMANN: Thank you.

3 Patent Owner.

4 MR. GREGORY: Nothing further, Your Honor.

5 JUDGE OBERMANN: Thank you very much.

6 In that case, I'm going to hand the helm
7 over to Judge Donna Praiss, and she will be discussing
8 with you the issues that are before us in IPR 145.

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10 U.S. Patent No. 8,322,881

11 IPR Case No.: IPR2023-00145

12 JUDGE PRAISS: Thank you, Judge Obermann.

13 This is Judge Praiss. And this begins the
14 portion of our transcript when we discuss IPR
15 2023-00145.

16 So following the same format, we ask
17 Petitioner to present their reasons why they are seeking
18 a reply brief in this proceeding.

19 Petitioner.

20 MR. KONZ: Yes, thank you, Your Honor.

21 Since we're treating these separately, would Your Honors
22 like us to go through it all again so that it's on the
23 record for this one as well or would you like us to kind
24
25

1 of build off what we've previously discussed?

2 JUDGE PRAISS: Since the transcript will be
3 one transcript filed in each case, you can refer back as
4 you see fit.

5 MR. KONZ: Thank you, Your Honor.

6 In this case, we also have the Medendorp
7 issue again with regards to its status as 102(e) prior
8 art, the filing date. And in light of the Board's
9 previous decision regarding additional briefing on
10 Medendorp alone, our only request for additional
11 briefing in this IPR, 00145, would be to address
12 Medendorp again in a two-page brief.

13 JUDGE PRAISS: Counsel, can you confirm
14 whether it's the petitioner's position that the claims
15 in the U.S. Patent 8,322,881 are entitled to the
16 priority date of December 21, 2007.

17 MR. KONZ: It is our understanding from the
18 final infringement contentions provided by the patent
19 owner in the related district court litigation that they
20 are entitled to the December 21st, 2007, date.

21 JUDGE PRAISS: And that is not an issue in
22 this proceeding?

23 MR. KONZ: No.

24 MR. RONDINI: That is not an issue in this
25 proceeding.

1 JUDGE PRAISS: Okay. Thank you.

2 So the basis for prior art status is off of
3 the priority date of the December 21, 2007, for the '881
4 patent, correct?

5 MR. KONZ: Correct, Your Honor.

6 JUDGE PRAISS: Okay.

7 MR. RONDINI: And, Your Honor, this is
8 Mr. Rondini.

9 So, you know, on this one, maybe it's not
10 quite the same issue. I think Your Honor, you know,
11 addressed the fact that this has a December 2008
12 priority date, at least that's what the patent owner has
13 alleged for this one. The Medendorp reference we cited
14 has a filing date of October 2006 and a publication date
15 of April 2008, making it prior art under either/or
16 102(e) or 102(a). So, again, this raises the issue --
17 we're a little confused what was being argued and which
18 is why we raised this issue with the Board.

19 JUDGE PRAISS: Excuse me, is the priority
20 date for the '881 patent the earliest provisional date
21 of December 21, 2007, or --

22 MR. RONDINI: I think it's -- let me pull up
23 the patent. It was a slightly different one. Oh, it
24 is. It does have a December 2007. My mistake.

25 So it would be -- Medendorp would be 102(e)

1 is our position.

2 JUDGE PRAISS: Okay. But Petitioner's
3 position is the claims in the '881 patent are entitled
4 to a priority date of December 21, 2007, correct?

5 (Mr. Konz and Mr. Rondini's Conference Link
6 Disconnected 3:14 p.m. to 3:15 p.m.)

7 MR. KONZ: I'm sorry, Your Honor. This is
8 Kyle Konz for Petitioner. The call dropped on us.

9 JUDGE PRAISS: I was looking to confirm on
10 this record, for IPR 2023-00145, that Petitioner's
11 position is that the claim challenged to the patent --
12 U.S. Patent 8,322,881 are entitled to the earliest
13 filing date of December 21, 2007.

14 MR. RONDINI: Sorry, Your Honor. I broke --
15 this is Mr. Rondini. Our call dropped off.

16 So what I was saying right before our call
17 dropped was while we're not, on the record, going to
18 admit that it's entitled because there's three
19 provisional filings here and that's an issue that is
20 kind of being briefed in the court whether or not
21 they're entitled to every claim on that.

22 In terms of prior art, they are -- in terms
23 of priority, they asserted in the district court that
24 they are entitled to that date. We relied on that date
25 for all the art we cited to the patent office in our IPR

1 petition. So in terms of, you know, giving the patent
2 owner the benefit of the doubt of that earliest date for
3 the provisional application, at this point, we're not
4 challenging that based on the references. We weren't
5 putting a priority reference in play.

6 JUDGE PRAISS: Okay. Thank you.

7 Is there other art that you're relying on a
8 102(e) basis besides Medendorp in this proceeding?

9 MR. KONZ: We don't believe so, Your Honor.

10 JUDGE PRAISS: There's the Exhibit 1057, so
11 Russell, has an issue date of February 2010; is that also
12 being relied on for 102(e)?

13 MR. RONDINI: Hold on one second. We'll
14 pull that one up, Your Honor.

15 This is Mr. Rondini, Your Honor.

16 So this one was filed February 19th, 2007,
17 and, on the face of the patent, it shows the publication
18 date of August 23rd, 2007. So this one, I guess, we
19 can -- you know, the patent owner would argue that it
20 wasn't published. I know we didn't specifically rely on
21 the publication date, but it's stated on the face of the
22 patent.

23 We're fine with providing a 102(e) argument
24 for this one as well, though. Again, we think it's
25 prior art under either one of those dates that are on

1 the face of the patent.

2 JUDGE PRAISS: Okay. Thank you, Counsel.

3 And then do you want to also tell us your --
4 just on this portion of the record -- the other things
5 that you wanted to file a reply about in this
6 proceeding, the 325(d) and the Fintiv?

7 MR. KONZ: Your Honor, this is Kyle Konz for
8 Petitioner. In light of the previous decision by the
9 Board, we're not going to request any briefing on either
10 Fintiv or 325(d) for this IPR.

11 JUDGE PRAISS: Okay. Thank you, Counsel.

12 Patent Owner, would you like to address what
13 Petitioner --

14 MR. GREGORY: Yes, Your Honor. This is
15 Shaun Gregory for Patent Owner.

16 And it's Patent Owner's position that we
17 are -- we are in a -- we are extremely prejudiced with
18 this process. The petitioner had the opportunity,
19 should have and could have identified their particular
20 basis for prior art for each of the references that they
21 rely on. And they should have and could have done that
22 in the petition. They did not. We were left guessing
23 as to which argument or arguments they may or may not be
24 raising, which limited how we could respond.

25 At this point, if we're now presented with

1 an opportunity where we might have to explore antedating
2 a reference, that's really impossible for us at this
3 point, given the level to establish that.

4 So Patent Owner's position is that they had
5 the opportunity in their petition to establish the goal
6 post and now they're asking to move that goal post as
7 opposed to simply buttressing the goal post.

8 JUDGE PRAISS: All right. I think I
9 understand Patent Owner's position.

10 Petitioner, would you like to respond before
11 the Panel confers?

12 MR. KONZ: Sure. I just -- I mean, we're
13 not moving the goal post, we're not changing the goal
14 post. I guess -- and this gets to a little bit of our
15 confusion on, you know, some of the arguments that were
16 made within the petitioner's preliminary response.

17 Again, we're not changing any dates. The
18 dates are what they are on the face of the patent. We
19 alleged a 102 -- we stated all the references were prior
20 art under 102, and they are. I have heard nothing from
21 Patent Owner's stipulating they're not. He's just
22 saying, essentially, they're not sure what they are.
23 But their preliminary response, they even lay out each
24 of the dates that are on the face of the patent.

25 And it's well known to practitioners whether

1 or not it's prior art. If it wasn't prior art, they
2 would be arguing it's not prior art and they'd argue why
3 it's not prior art. So none of those arguments were
4 raised because every reference that was cited is prior
5 art under 102, which was exactly what we stated in our
6 petition.

7 JUDGE PRAISS: Thank you, Counsel.

8 The Panel is going to confer for a moment
9 and we'll be back.

10 (Off the record at 3:22 p.m.)

11 (Back on the record at 3:25 p.m.)

12 JUDGE PRAISS: Hello. We are back on. This
13 is Judge Praiss.

14 I have conferred with the Panel, and we have
15 decided that in IPR 2023-00145, we, again, invite the
16 petitioner to file a Sotera stipulation, as discussed in
17 connection with the IPR 2023-00125. And similar to our
18 ruling in that proceeding, we will give Petitioner a
19 very limited opportunity to reply, of two pages, as to
20 why Medendorp is prior art to the '881 patent. And we
21 will give the same limited opportunity to brief --
22 again, two pages -- why Russell, which is Exhibit 1057 in
23 the record, is prior art to the '881 patent being
24 challenged.

25 And we note that in response to Patent

1 Owner's concern about fairness, that Patent Owner will
2 have an opportunity to antedate the references in their
3 full response should we institute a trial in this
4 proceeding. And, also, we note that it is the patent
5 owner who bears the burden of production on the issue of
6 antedating the references, and they can do that, if they
7 want, in the full response.

8 And those papers, we will give a due date of
9 on or before March 21 for Petitioner's reply. So,
10 again, that would be a four-page reply, two pages for
11 Medendorp and two for Russell, why they are prior art to
12 the '881 patent. And Patent Owner will have an
13 opportunity to file a reply on or before March 28, 2023.

14 And do you have any questions before we turn
15 to the third proceeding, counsel?

16 MR. KONZ: Your Honor, Petitioner has no
17 further questions.

18 JUDGE PRAISS: And no further questions from
19 you, Patent Owner?

20 MR. GREGORY: Correct, yes, Your Honor.

21 JUDGE PRAISS: Thank you.

22 Now we will turn to Judge Lorin, and the
23 next proceeding.

24 JUDGE LORIN: Thank you, Judge Praiss.
25

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 CURRENT LIGHTING SOLUTIONS, LLC,
4 and

5 HLI SOLUTIONS, INC.,

6 Petitioners,

7 v.

8 ALSI HOLDINGS, LLC

9 Patent Owner.

10 U.S. Patent No. 8,721,114

11 IPR Case No.: IPR2023-00198
12

13 JUDGE LORIN: Okay. Counsel, we're here
14 talking about IPR 2023-00198.

15 Are you online, Court Reporter?

16 COURT REPORTER: Yes.

17 JUDGE LORIN: Great. This is Judge Lorin.

18 Okay. So I just mentioned 198. Let's get
19 these two issues that we seem to have agreed upon in the
20 two prior cases, let's see if we can pass those, the two
21 are the 325(d) issue and Fintiv issue.

22 Petitioner, are you okay with the decision
23 in the prior case applying to this one on those two
24 issues?

25 MR. KONZ: Kyle Konz for Petitioner.

1 Yes, Your Honor.

2 MR. RONDINI: Your Honor, real quick. This
3 is Mr. Rondini.

4 I guess one slight thing with this one that
5 is slightly different is there is some concern about the
6 priority date. There's two provisional applications.

7 JUDGE LORIN: No, no, we'll get to that,
8 Counsel. I just want to get these two issues out the
9 way first. The Fintiv and the 325(d). We'll get back
10 to that, because I know the prior arts are different
11 from the other cases.

12 MR. RONDINI: Okay. Sure.

13 JUDGE LORIN: Patent Owner, are there any
14 comments on those two issues?

15 MR. GREGORY: No, Your Honor.

16 JUDGE LORIN: Okay. So in this case as
17 well, we'll have the Sotera stipulation as an exhibit
18 filed, actual one, as you agreed to in the other two
19 cases, so that will apply in this case as well.

20 All right. So those two issues are out of
21 the way.

22 So let's talk about this question about
23 whether the prior art that's been applied by Petitioner
24 qualifies.

25 Yes, I know there are different references

1 here.

2 Petitioner, do you want to talk to that?

3 MR. KONZ: Sure.

4 I think the only two references, you know,
5 based on -- it's a lot of the same arguments where it's,
6 you know, questions are raised about a lot of the
7 references, and I think it boils down to probably two
8 references. One is the Burton reference, and the other
9 one, I believe, is the Hashimoto reference.

10 And in terms of this application, there's
11 two provisionals, and one has a 2007 priority date and
12 one has a 2008 priority date. And, in this one, you
13 know, I believe we would be saying we're challenging --
14 the Burton reference would be challenging the priority
15 of the January 2008 publication. We are challenging it.

16 Even if Burton, you know, doesn't -- you
17 know, the priority -- if they are able to establish all
18 the claims are prior art based on the provisional of
19 2007, we think Burton is still prior art based on its
20 filing date of June 2007. So we could brief it in the
21 same manner, Your Honor, you know, brief it as a 102(e),
22 but, you know, also argue that, you know, very shortly
23 that we're challenging the priority and we believe the
24 publication date of January 2008, you know, also
25 satisfied as prior art of 102.

1 JUDGE LORIN: Yeah, I know the dates are a
2 little different, but that's analogous -- Burke's
3 (phonetic) analogous to Medendorp, Hashimoto similar to
4 Russell, I believe that's what you're saying.

5 Okay. I've got it.

6 Patent Owner, what do you have to say about
7 these two references?

8 MR. GREGORY: Your Honor, the one concern I
9 would have, based on what Petitioner just noted, it
10 would be completely inappropriate for them to raise a
11 new argument challenging the critical data of the
12 challenged claims at this point. At this point, they've
13 adopted or otherwise assumed that the -- and, in fact,
14 in this petition, they don't even reference a critical
15 date or any date, right, and so it would not be
16 appropriate for them to, at this point, raise a new
17 argument that the claims are not afforded the priority
18 date of the earliest provisional.

19 I can certainly understand the ability for
20 them to challenge -- to add additional the briefing as
21 to Medendorp and Russell as to 102(e) status. I don't
22 agree, but I can understand where the Board is coming
23 from. But it would not be appropriate for them, at this
24 point, to challenge the critical data of the challenged
25 claims.

1 JUDGE LORIN: Okay. So tell me again,
2 what's the difference between Burton, Hashimoto and
3 Medendorp and Russell upon the question of priority.

4 I'm talking to Patent Owner.

5 Patent Owner, is it based upon what's in the
6 petition, what they have stated in the petition, is
7 that -- is that where you see the difference?

8 MR. GREGORY: That is correct, Your Honor.
9 The issue is the petition does not discuss any date.
10 We -- the patent owner was not apprised of what dates --
11 what critical data the petitioner was referencing and
12 what priority dates, you know, references the petition
13 was referencing; as such, we were not given the
14 opportunity to appropriately argue whether or not one of
15 these references is prior art or not.

16 So the question is not whether or not
17 they're prior art. The question is, did Petitioner do
18 enough to establish that they were prior art such that
19 we should respond to their position?

20 JUDGE LORIN: So are you saying -- I haven't
21 looked at the other cases very closely. Did they
22 present dates in the other two cases?

23 MR. GREGORY: No, Your Honor. They -- in
24 one of -- I apologize. At this point, I'm going off the
25 top of my head. I'm not certain.

1 In one of the petitions, they do state, and
2 it would have been either the '881 or the '854, the
3 December 21, 2007, date. But in none of the other
4 petitions do they provide any other dates.

5 JUDGE OBERMANN: This is Judge Obermann.

6 In IPR 125, there is one statement,
7 basically, that they're not contesting that date and
8 they do call out the December date.

9 MR. GREGORY: Yes, Your Honor, that is
10 correct.

11 JUDGE LORIN: Okay. Let me ask Petitioner.

12 Petitioner, how do you respond to that, that
13 there are no dates mentioned in your petition?

14 MR. KONZ: Well, we have a date of -- I
15 guess the reason, Your Honor -- and maybe this is
16 premature. Maybe this would be something better suited,
17 you know, if Your Honors decided -- if the reason this
18 is coming up -- and this is getting slightly off the
19 petition, is the -- for this particular patent, Patent
20 Owner, in district court, has just, within the last two
21 and a half weeks, you know, provided thousands of
22 documents and are alleging a slightly earlier date for
23 this patent, priority date.

24 So I'm not sure if they're going to respond
25 to that or if Your Honors are going to allow them to

1 respond to that right now since they did not provide
2 that in their preliminary response. We couldn't have
3 known that back when we filed the petition, which is the
4 only reason why I'm raising this issue, but I'm fine
5 with sticking with 102(e) for Burton. Our concern was
6 whether or not they're going to try to -- they didn't do
7 in the preliminary response -- I don't know, maybe
8 they'll do it in the formal patent owner response if
9 they get past the institution stage, in which case, I
10 guess we'll handle it there. And that's the only reason
11 I brought it up.

12 You know, we're fine with following the same
13 type of procedure that the previous two cases -- which
14 are a different family, but the other two are related
15 cases, this one is kind of off on its own. It's not
16 related to the other two. Which is why this issue kind
17 of just crept up in the last couple weeks.

18 JUDGE LORIN: Well, it sounds to me like
19 you're trying to brief an issue that hasn't been raised
20 in the preliminary response at all.

21 MR. KONZ: That's --

22 JUDGE LORIN: Go ahead.

23 (Multiple Voices.)

24 MR. KONZ: I was going to say, Your Honor,
25 you're absolutely right. It wasn't raised. It's

1 probably premature, and it's probably improper to be
2 addressing that right now. So I completely agree, we'd
3 be fine with just addressing it as a 102(e) like we did
4 in the previous two, as we did with Medendorp, if that's
5 what Your Honors would like to do.

6 JUDGE LORIN: Well, I mean, I think Patent
7 Owner is raising the question, why do you need briefing
8 at all in this case. Why should we be doing to Burton
9 and Hashimoto what you're doing in the other cases of
10 Medendorp and Russell.

11 MR. KONZ: I guess, Your Honor, again, on
12 their face, it has a date. Unlike an NPL where you see
13 typical challenges of an NPL or it has a date on there,
14 but you have to prove out that date, here, we're not
15 trying to prove out the date. They don't dispute it.
16 They actually, in their preliminary response, they say
17 it has this date and this date, but we're unsure under
18 what section of 102. It's not that they're not saying
19 it's not prior art. They're just basically saying we
20 didn't specify the exact subparagraph of 102. We said
21 it's prior art under 102, and we were, you know,
22 obligated to specify its prior art in 102(e), 102(b),
23 102(a). Which I've seen many petitions, and, typically,
24 you put the date down or say 102 or one or more sections
25 of 102.

1 So I feel like we've met our burden. We've
2 put forth prior art that it's prior art on its face.
3 There's no objection to the date on it. There's no
4 evidentiary objection to that. I mean, it's --

5 JUDGE LORIN: Yeah, but, Petitioner, I'm
6 looking at your petition here, and all you say is the
7 grounds is prior art under 102, that's all you say in
8 the entire petition. And you're leaving it to the
9 patent owner to figure out what exactly -- you know,
10 what exactly subparagraph you're relying on. It makes
11 it very hard on them to make a case. I think that's
12 what Patent Owner is arguing.

13 In the other cases, there's somewhat more,
14 and I think that's the distinction they're making. But,
15 here, that's all you say. There's no dates mentioned;
16 there's no subparagraph mentioned. It just says 102.

17 MR. KONZ: Well, I guess, again, it's
18 because we're citing to publish patent applications and
19 patents, which, on their face, have a date, and so the
20 date tells you what the 102, if it's prior art. If it's
21 not prior art, they would be able to say there's two
22 dates here, neither of these dates are prior art and
23 here's why, it doesn't qualify as prior art under 102
24 and it would be in their response.

25 JUDGE LORIN: Yeah, they actually did say

1 that. They said they don't qualify.

2 Okay. Let me talk to the Panel on how we
3 should approach this particular case and whether we need
4 further briefing on these two references.

5 Patent Owner, do you have any further
6 comments to make?

7 MR. GREGORY: No, Your Honor.

8 JUDGE LORIN: All right. Let me put you
9 both on hold.

10 And, Court Reporter, I'll be back
11 momentarily.

12 (Off the record at 3:41 p.m.)

13 (Back on the record at 3:52 p.m.)

14 JUDGE LORIN: All right. Yeah, so sorry for
15 the delay. Like I said, it's a tough case.

16 So we have a question for you, Patent Owner
17 Counsel.

18 I know you reluctantly agreed to the
19 additional briefing in the other two cases.

20 Do you feel more strongly in this case not
21 to have additional briefing or is your opposition of
22 similar strength to the other two cases?

23 MR. GREGORY: Your Honor, I would say it is
24 stronger in this case. Because there is absolutely no
25 discussion of any date in the petition unlike in the

1 other two petitions.

2 JUDGE LORIN: So, Counsel, tell me precisely
3 what the other two petitions have that this one does not
4 have. Are there actual dates in the other ones?

5 MR. GREGORY: In the 125 petition, there is
6 an acknowledgment, there is a date of December 21, 2007.
7 They acknowledge or they note that there's a priority
8 date of the challenged claims.

9 JUDGE LORIN: Okay. And what's the other
10 case? 145, I think.

11 MR. GREGORY: 145. And I apologize, bear
12 with me, only because I don't have it, I'm trying to
13 pull up the other --

14 JUDGE LORIN: Yeah, that's fine.

15 While you're doing that, can you explain why
16 you feel more prejudiced -- you mentioned that you were
17 prejudiced in the first case when you talked to Judge
18 Obermann.

19 Why do you feel more prejudiced here?

20 MR. GREGORY: Your Honor -- sorry, I
21 apologize for speaking over you.

22 Your Honor, to be honest, it's only
23 marginal. It's not -- perhaps it is and I am equally
24 prejudiced against all three. I just -- in concern that
25 the petitioner had the opportunity to establish the

1 prima facie case that these references are prior art,
2 and they didn't do so, and now they're given the -- and
3 part of the -- sorry, Your Honor, if I'm going too long
4 with it, I apologize.

5 But, for example, some of these references
6 may rely on provisional references themselves, and we
7 get into -- you know, even though they are patents or
8 printed publications, there is an argument -- a
9 potential argument, right, for the petitioner to make
10 that their priority goes all the way back, but without
11 any guidepost, without any indication of which dates
12 Petitioner is relying on, the patent owner has no idea
13 of how far -- of what -- what argument we should
14 actually be making.

15 JUDGE LORIN: Yeah, but we're only briefing
16 two pages, and we're asking them why -- you know, why
17 they believe that the patents are qualifying as prior
18 art. That's the point you made in your preliminary
19 response and they're asking briefing on that point only.
20 So it's only two pages. We're not asking, you know,
21 anything more precise than that.

22 MR. KONZ: Your Honor.

23 MR. GREGORY: I appreciate that, Your Honor.

24 JUDGE LORIN: No, I want to hear from Patent
25 Owner Counsel.

1 MR. KONZ: Okay.

2 MR. GREGORY: I appreciate that, Your Honor.

3 And it is -- if that's the decision, it's
4 what we will address and how we'll proceed. I just --
5 based on the case law, based on my understanding of the
6 IPR process, those are things that they should have
7 accomplished in the petition. They had the opportunity
8 to brief it in the petition. They shouldn't have the
9 opportunity to come back and raise new arguments or new
10 evidence that they could have presented earlier.

11 JUDGE LORIN: My question to you is, I mean,
12 you had this, you saw the patents are being applied, you
13 don't seem to have briefed at all which dates does
14 apply. You haven't made any argument about the dates
15 that are on the face of the patent. All you said is the
16 petitioner hasn't made that case.

17 MR. GREGORY: You're right, Your Honor,
18 because I didn't want to concede -- again, I apologize
19 for speaking over you.

20 You know, there's a fine line between
21 guessing and guessing wrong and actually conceding a
22 point when you shouldn't have conceded, right, then
23 arguing and guessing right. So that's my concern.

24 You're right, we did not discuss -- we did
25 not brief dates ourselves, but that's why, because we

1 didn't want to give up any more than we needed to.

2 JUDGE LORIN: Yeah, we have two sides that
3 gave us very little; both sides did very little.

4 Okay. I think I can see your position, and
5 I gather that's the position you have across all three
6 cases. All right. Let me give the last word to
7 Petitioner and then I want to take a short break with
8 the Panel again.

9 Petitioner, any last words?

10 MR. KONZ: I guess the only other thing,
11 Your Honor, and two points, one is we haven't argued
12 anything about any provisional application, that would
13 require us to go to provisional and then map it to the
14 claims, and we didn't do that, so we can't do that. We
15 wouldn't be able to go back to those dates. So it's the
16 date on the face of the patent.

17 I guess a second point, this applies equally
18 to all three, is I know we said in the petition it's
19 prior art under 102, and the patent owner said they
20 didn't know, you know, what date -- I mean, but our
21 declaration and our declarant, our expert declarant, in
22 each of the cases does go through a thorough analysis at
23 the beginning of each of the references, and he always
24 stipulates either it was filed, it was published, or it
25 was issued on a certain date; and, therefore, it's prior

1 art under 102.

2 So, you know, I'm not trying to say we're
3 incorporating by reference, but to the fact of notice of
4 what date and in what date they should be attacking, I
5 mean, they were notified, it's in our declaration, it's
6 part of our package that we submitted to the patent
7 office as part of the process, and that was one last
8 point I wanted to raise.

9 JUDGE LORIN: All right. Thank you very
10 much. Let me speak to the Panel one last time, and I'll
11 be right back.

12 (Off the record at 4:01 p.m.)

13 (Back on the record at 4:02 p.m.)

14 JUDGE LORIN: I'm back.

15 We've talked among ourselves and we've
16 listened to both sides, and I think we're going to do
17 the same in this case as we've done in the other two.

18 So, again, limited briefing by Petitioner on
19 Burton and Hashimoto; same questions, the same subject
20 matters in the other cases involving the priority dates,
21 these two patents, again, limited to two pages.

22 Patent Owner, you come back and your
23 response, same; and, don't forget, no new evidence at
24 this point.

25 And, yep, any final thoughts from counsel?

1 Petitioner.

2 MR. KONZ: No, Your Honor.

3 JUDGE LORIN: Patent Owner.

4 MR. GREGORY: No, Your Honor.

5 JUDGE LORIN: By the way, in case I -- I
6 think I did say this already, but earlier on, don't
7 forget to file, you know, a Sotera stipulation -- if you
8 want -- Petitioner, as an exhibit in this case as well.
9 Okay? A separate one for this case.

10 MR. KONZ: Thank you, Your Honor.

11 Thank you so much, counsel, and have a good
12 afternoon, and the meeting is adjourned.

13 Thank you, Court Reporter.

14 (Proceedings concluded at 4:03 p.m.)

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, MEDINA J. BALDERAS, certify that this hearing was taken before me on the date hereinbefore set forth; that the foregoing hearing was recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.

Medina Balderas

Medina J. Balderas, CSR-6213

Notary Public

Wayne County, Michigan

My Commission expires June 11, 2027

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