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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DEVICES FOR IMPROVING
UNIFORMITY USED IN A BACKLIGHT
MODULE AND COMPONENTS
THEREOF AND PRODUCTS
CONTAINING SAME**

**Inv. No. 337-TA-805
REMAND**

**INITIAL DETERMINATION ON REMAND REGARDING
VALIDITY AND ENFORCEABILITY**

Administrative Law Judge Theodore R. Essex

(February 28, 2013)

Appearances:

For the Complainants Industrial Technology Research Institute and ITRI International:

Michael W. Shore, Esq.; Alfonso Garcia Chan, Esq.; Patrick Conroy, Esq.; Justin B. Kimble, Esq.; and Ari Rafilson, Esq. of Shore Chang Bragalone DePumpo LLP of Dallas, Texas

Tom M. Schaumberg, Esq.; Paul M. Bartowski, Esq.; and Thomas R. Burns, Jr., Esq. of Adduci, Mastriani & Schaumberg LLP of Washington, D.C.

For the Respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Display Co., Ltd., and LG Display America, Inc.:

Charles F. Schill, Esq.; John M. Caracappa, Esq.; Jamie B. Beaber, Esq.; Paul A. Gennari, Esq.; Gretchen P. Miller, Esq.; Tiffany A. Miller, Esq.; Stanley C.T. Kuo, Esq.; and Rose C. Acoraci, Esq. of Steptoe & Johnson LLP of Washington, D.C.

For the Commission Investigative Staff:

Anne Goalwin, Esq., Acting Director; David O. Lloyd, Esq., Supervising Attorney; Vu Q. Bui, Esq., Investigative Attorney of the Office of Unfair Import Investigations, U.S. International Trade Commission of Washington, D.C.

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This is the administrative law judge's Final Initial Determination On Remand on the Issues of Validity and Enforceability under Commission Rules 210.42(a) and 210.43-.46 pursuant to a Commission Order of December 21, 2012, for the investigation of the in the matter of *Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing the Same*, United States International Trade Commission Investigation No. 337-TA-805. *See* 19 C.F.R. § 210.42(a).

It is held that U.S. Patent No. 6,883,932 is invalid under 35 U.S.C. § 102 and that no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing the same that infringe one or more of claims 6, 9 and 10 of U.S. Patent No. 6,883,932.

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The following abbreviations may be used in this Initial Determination:

CDX	Complainants' demonstrative exhibit
CIB	Complainants' initial post-hearing brief
CPX	Complainants' physical exhibit
CRB	Complainants' reply post-hearing brief
CX	Complainants' exhibit
Dep.	Deposition
JX	Joint Exhibit
RDX	Respondents' demonstrative exhibit
RIB	Respondents' initial post-hearing brief
RPX	Respondents' physical exhibit
RRB	Respondents' reply post-hearing brief
RRX	Respondents' rebuttal exhibit
RX	Respondents' exhibit
SIB	Staff's initial post-hearing brief
SRB	Staff's reply post-hearing brief
Tr.	Transcript
ITRI	Complainants Industrial Technology Research Institute and ITRI International
LG	Respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Display Co., Ltd., and LG Display America, Inc.
Staff	Commission Investigative Staff

I. BACKGROUND

The ALJ issued a Final Initial Determination (ID) in this investigation on October 22, 2012. On December 21, 2012, the Commission gave notice of its decision and order to remand part of this investigation to the ALJ for further proceedings to “consider the parties’ invalidity and unenforceability arguments and make appropriate findings.”¹

Because the Commission has not yet opined on the proper claim construction, the ALJ applies the claim construction he set forth the October 22, 2012 Final Initial Determination.² Furthermore, because the parties fully briefed the issues already, the ALJ determined that no further briefing or hearings were necessary.

II. INVALIDITY

A. Anticipation

1. Legal Standard

A patent may be found invalid as anticipated under 35 U.S.C. § 102(a) if “the invention was known or used by others in this country, or patented or described in a printed publication in this country, or patented or described in a printed publication in a foreign country, before the

¹ See Notice of Commission Decision to Review a Final Initial Determination Finding No Violation of Section 337; Remand-In-Part of the Investigation to the Administrative Law Judge (December 21, 2012).

² The ALJ notes that the Commission’s decision to remand these issues for decision is somewhat puzzling because this investigation almost entirely turns on the proper construction of a single claim term — “structured arc sheet.” The few issues that do not — inequitable conduct and Section 112 defenses — are meritless, as set forth *infra*. However, the Commission does not provide any guidance on the construction of that term in its remand order. Indeed, the Notice stated that the Commission intends to review that construction once it receives this remand ID. Thus, this remand ID finally resolves only a few immaterial issues, especially in light of the ALJ’s findings on infringement and domestic industry. The other issues in this remand ID will have to be re-decided if the Commission determines to alter the construction of “structured arc sheet,” which the Commission could have easily decided upon the issuance of the Final ID in October 2012. Moreover, as the ALJ has already determined that there is no violation of Section 337 based on non-infringement and failure to establish a domestic industry, this remand ID largely amounts to a “moot court” exercise especially in light of the ALJ’s finding of invalidity as set forth *infra*.

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invention thereof by the applicant for patent.” 35 U.S.C. § 102(a).³ A patent may be found invalid as anticipated under 35 U.S.C. § 102(b) if “the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.” 35 U.S.C. § 102(b). Under 35 U.S.C. § 102(e), a patent is invalid as anticipated if “the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent.” 35 U.S.C. § 102(e). Anticipation is a question of fact. *Texas Instruments, Inc. v. U.S. Int’l Trade Comm’n*, 988 F.2d 1165, 1177 (Fed. Cir. 1993) (“*Texas Instruments II*”). Anticipation is a two-step inquiry: first, the claims of the asserted patent must be properly construed, and then the construed claims must be compared to the alleged prior art reference. *See, e.g., Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003). It is axiomatic that claims are construed the same way for both invalidity and infringement. *W.L. Gore v. Garlock, Inc.*, 842 F.2d 1275, 1279 (Fed. Cir. 2008.)

“Claimed subject matter is ‘anticipated’ when it is not new; that is, when it was previously known. Invalidation on this ground requires that *every element and limitation* of the claim was *previously described in a single prior art reference*, either *expressly or inherently*, so as to place a person of ordinary skill in possession of the invention.” *Sanofi-Synthelabo v. Apotex, Inc.*, 550 F.3d 1075, 1082 (Fed. Cir. 2008) (emphasis added) (citing *Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373, 1379 (Fed. Cir. 2003) and *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1267-69 (Fed. Cir. 1991)).

³ The ALJ notes that a number of the provisions (and the numbering) of Title 35 have changed with the passage the Leahy-Smith America Invents Act. Because this action was filed before the passage of that act and deals the ALJ cites only to the relevant provisions as they were before the AIA.

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To anticipate, a single prior art reference must be enabling and it must describe the claimed invention, *i.e.*, a person of ordinary skill in the field of the invention must be able to practice the subject matter of the patent based on the prior art reference without undue experimentation. *Sanofi*, 550 F.3d at 1082. The presence in said reference of *both* a specific description and enablement of the subject matter at issue are required. *Id.* at 1083.

To anticipate, a prior art reference also must disclose all elements of the claim within the four corners of said reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *see also Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1345 (Fed. Cir. 2007) (stating, “Anticipation is established by documentary evidence, and requires that every claim element and limitation is set forth in a single prior art reference, in the same form and order as in the claim.”). Further, “[b]ecause the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Id.* (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). The Federal Circuit explained this requirement as follows:

The meaning of the expression ‘arranged as in the claim’ is readily understood in relation to claims drawn to things such as ingredients mixed in some claimed order. In such instances, a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate, because the reference would be missing any disclosure of the limitations of the claimed invention ‘arranged as in the claim.’ But the ‘arranged as in the claim’ requirement is not limited to such a narrow set of ‘order of limitations’ claims. Rather, *our precedent informs that the ‘arranged as in the claim’ requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order.* The test is thus more accurately understood to mean ‘arranged or combined in the same way as in the claim.’

Id. at 1370 (emphasis added). Therefore, it is not enough for anticipation that a prior art reference simply contains all of the separate elements of the claimed invention. *Id.* at 1370-71 (stating that “it is not enough [for anticipation] that the prior art reference discloses part of the claimed invention, which an ordinary artisan might supplement to make the whole, or that it includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention.” (emphasis added)). Those elements must be arranged or combined in said reference in the same way as they are in the patent claim.

If a prior art reference does not expressly set forth a particular claim element, it still may anticipate the claim if the missing element is inherently disclosed by said reference. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002); *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Inherent anticipation occurs when “the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Id.* In other words, inherency may not be established by probabilities or possibilities. *See Continental Can*, 948 F.2d at 1268. Thus, “[t]he mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Id.*

The critical question for inherent anticipation here is whether, as a matter of fact, practicing an alleged prior art reference necessarily features or results in each and every limitation of the asserted claim at issue. *See, e.g., Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1320 (Fed. Cir. 2004).

If there are “slight differences” between separate elements disclosed in a prior art reference and the claimed invention, those differences “invoke the question of obviousness, not anticipation.” *NetMoneyIN*, 545 F.3d at 1071; *see also Trintec*, 295 F.3d at 1296 (finding no anticipation and stating that “the difference between a printer and a photocopier may be minimal

and obvious to those of skill in this art. Nevertheless, obviousness is not inherent anticipation.”). Statements such as “one of ordinary skill may, in reliance on the prior art, complete the work required for the invention,” and that “it is sufficient for an anticipation if the general aspects are the same and the differences in minor matters is only such as would suggest itself to one of ordinary skill in the art,” *actually relate to obviousness*, not anticipation. *Connell*, 722 F.2d at 1548.

2. Katoh '331 Patent

U.S. Patent No. 5,101,331 to Katoh (JX-0031) (“Katoh '331 Patent”) issued on March 31, 1992. (JX-0031; RX-0162C at Q&A 119-122.) The ALJ finds that the Katoh '331 Patent is prior art under 35 U.S.C. § 102(b), because it published as a patent more than one year prior to the priority date of July 17, 2003. (RX-0162C at Q&A 119-122.)

LG contends that the Katoh '331 Patent anticipates claim 6 and 10 of the '932 Patent under both ITRI's and LG's construction for the term “structured arc sheet.” (RIB at 41-43.)

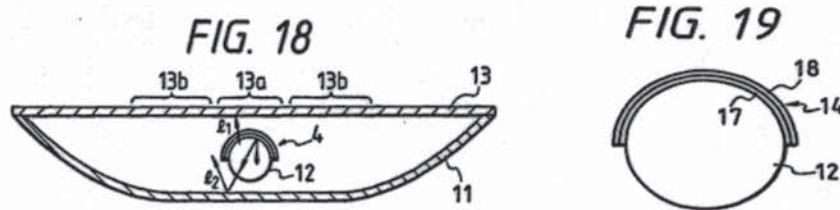
ITRI contends that the Katoh '331 Patent does not anticipate because it does not disclose “a plurality of light sources...” and “two structured arc sheets....” (CIB at 42-43; CRB at 20-22.)

Staff submits that the Katoh '331 Patent anticipates claims 6 and 10 of the '932 Patent under ITRI's claim construction. (SIB at 47.)

LG has not argued that the Katoh '331 Patent anticipates claim 9 of the '932 Patent. Accordingly, the ALJ finds that LG has not proven that the Katoh '331 Patent anticipates claim 9.

The ALJ further finds that LG has failed to prove by clear and convincing evidence that the Katoh '331 Patent anticipates claims 6 and 10 of the '932 Patent. Claim 6 requires “a plurality of light sources for providing an illuminating light.” The parties dispute whether the Katoh '331 Patent discloses a “plurality of light sources.” Specifically, ITRI argues that LG and

Staff improperly attempt to piece together different embodiments disclosed in the Katoh '331 Patent to create an anticipating device. ITRI argues that LG relies on Figures 18 and 19 (reproduced below) as disclosure of the claimed requirement that the device have “two structured arc sheets....” However, ITRI notes that these figures only disclose a single light source. ITRI asserts that LG and Staff instead rely on a different embodiment disclosed in the Katoh '331 Patent (that does not show the asserted “structured arc sheets”) for the “plurality of light sources....” ITRI argues that anticipation does not allow this mixing and matching of different embodiments, even if disclosed in the same reference, to prove anticipation.



JX-0031 (Katoh '331) at Figures 18 and 19.

The ALJ finds that ITRI is correct that to anticipate, a reference must *identically* disclose the claimed invention. See *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008); *In re Arkley*, 455 F.2d 586, 587 (C.C.P.A. 1972) (“[R]jections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art.” (emphasis and internal quotation marks omitted)). The ALJ agrees that the Katoh '331 Patent clearly discloses embodiments with a plurality of light sources. However, the embodiment that LG relies upon appears to only disclose a single light source, or at the very least, it is ambiguous whether it can be used with multiple light sources. LG failed to present evidence establishing clearly and convincingly that this embodiment and this “light altering means” (the Katoh '331 Patent’s name for the alleged “structured arc sheets”) can be used with multiple light sources. The Federal Circuit has

instructed that “it is not enough that the prior art reference discloses part of the claimed invention, which an ordinary artisan might supplement to make the whole, or that it includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention.” *NetMoneyIN*, 545 F.3d at 1371. Instead, for anticipation, “the [prior art] reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *See Arkley*, 455 F.2d at 587. The ALJ further agrees that a case could be made that the Katoh ’331 Patent’s “Embodiment 3” (the specification’s name for the embodiment shown in Figures 18 and 19) can be used with multiple light sources, but LG presented no evidence that would establish that fact by clear and convincing evidence. At best, LG presented evidence that the Katoh ’331 Patent discloses the use of multiple light sources with other embodiments that could be combined with “Embodiment 3.” However, “differences between the prior art reference and a claimed invention, however slight, invoke the question of obviousness, not anticipation.” *NetMoneyIN*, 545 F.3d at 1371. Accordingly, the ALJ finds that LG has failed to prove by clear and convincing evidence that the Katoh ’331 Patent anticipates claims 6 and 10.

3. Yao ’892 Publication

U.S. Patent Application Publication No. 2003/0107892 to Yao (“Yao ’892 Publication”) was filed on April 17, 2002 and published on June 12, 2003, which is before the July 17, 2003 priority date for the ’932 Patent. (RX-0162C at Q&A 135; JX-0029.) Accordingly, the Yao ’892 Publication constitutes prior art under 35 U.S.C. § 102(a).

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LG contends that the Yao '892 Publication anticipates all of the asserted claims of the '932 Patent under both ITRI's and LG's constructions for "structured arc sheet." (RIB at 43-46.)

ITRI argues that the Yao '892 Publication does not disclose the "two structured arc sheets..." limitation and therefore, does not anticipate. (CRB at 22.)

Staff submits that there is clear and convincing evidence demonstrates that, under ITRI's construction, all of the asserted claims are anticipated by the Yao '892 Publication. (SIB at 49-50.)

The ALJ finds that, as set forth below, LG has shown by clear and convincing evidence that Yao anticipates the asserted claims of the '932 Patent.

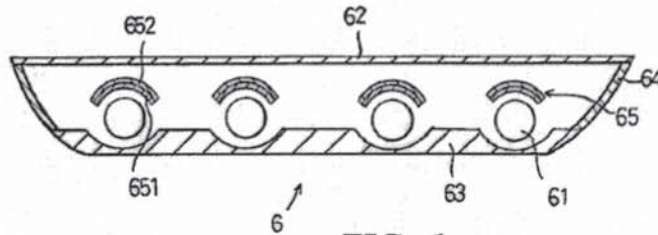
Claim 6 — Preamble

The preamble of claim 6 recites "an apparatus for improving uniformity used in a backlight module." While the preamble is not necessarily a limitation, if the Commission does consider it a limitation, the ALJ finds that LG has shown that the Yao '892 Publication discloses this limitation, teaching that the "present invention relates to ... a lamp reflecting apparatus used in a direct under type backlight module of liquid crystal display device" that "increases[s] light uniformity." (JX-0029 at ¶ [0002]; RX-0162C at Q&A 135.) Moreover, ITRI does not dispute that this claim limitation is met.

Claim 6 — Plurality of Light Sources

Claim 6 then requires "a plurality of light sources for providing an illuminating light." The ALJ finds that clear and convincing evidence that the Yao '892 Publication teaches this limitation. For example, this limitation is disclosed by Figure 6 of Yao '892 and its associated

description, which shows and describes light sources 61 for providing illuminating light. (JX-0029; RX-0162C at Q&A 136.) Moreover, ITRI does not dispute that this limitation is met.



(JX-0029 at Figure 6.)

FIG. 6

Claim 6 — Reflective Housing

Claim 6 further requires “a reflective housing adjacent to the light sources for receiving the light sources and reflecting the illuminating light.” The ALJ finds that LG has proven by clear and convincing evidence that this limitation is shown as items 63 and 64 in Figure 6, above, referred to as a “reflecting plate” and “lateral reflecting plates,” respectively. (RX-0162C at Q&A 137.) As explained in the Yao ’892 Publication at paragraph [0029], these reflecting plates, adjacent to the light sources, receive and reflect the illuminating light. (JX-0029 at ¶ [0029].) Moreover, ITRI does not dispute that this limitation is met.

Claim 6 — “Two Structured Arc Sheets . . .”

Claim 6 also requires “two structured arc sheets mounted at the periphery of the light source for making the illuminating light uniform, wherein said structured arc sheets have different thickness or curvature.” There is no dispute that as shown Figure 6, each light source 61 has mounted at its periphery, a component called by the Yao ’892 Patent the “lamp reflecting cover.” There is also no dispute that the lamp reflecting cover consists of two separate layers, each formed in the shape of an arc – layer 651 called the “reflecting layer” and layer 652 called the “light impassable layer” (shown in yellow below). (JX-0029 at ¶ [0029]; RX-0162C at Q&A 138.)

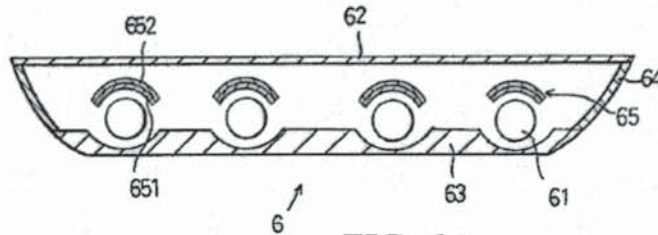


FIG. 6

(JX-0029 at Figure 6; ¶ [0029].)

There is also no dispute that Yao '892 Publication explains that the "lamp reflecting cover 65" focuses or reflects light emitted upwards from the lamp 61 to the reflecting plate 63. (JX-0029 at ¶ [0029].) Finally, there is no dispute that as shown in Figure 6 of the Yao '892 Publication, the light impassable layer 652 is layered over the reflecting layer 651. (JX-0029 at ¶ [0029].)

ITRI's arguments are somewhat muddled, but the ALJ finds that the principal dispute between the parties is whether the two layers 651 and 652 in Figure 6 of the Yao '892 Publication each constitute a separate structured arc sheet or whether they can only be considered together as one unit. (CIB at 43.) Specifically, ITRI asserts that the Yao '892 Publication "discloses a single member, called a 'lamp reflecting cover,' that is not structured and is comprised of two layers." (CIB at 43.) ITRI argues that "[t]he light impassable layer 652 supports and creates one unified structure 65 with the reflective layer 651 and has no separate optical function." (CIB at 43.) In other words, ITRI argues that the layers that make up, one component, the "lamp reflecting cover" and they cannot be considered separate "structured arc sheets."

The ALJ finds this argument unpersuasive. As Staff notes, ITRI's expert admitted that "structured arc sheets, when mounted one on top of the other, may be bonded or adhesively attached." (SIB at 49 (quoting Tr. at 571:23-573:23).) ITRI cannot treat the claims as a "nose of

wax” arguing that particular configurations infringe, but then arguing that the same configuration cannot anticipate. Thus, as ITRI’s own expert admits that two structured arc sheets may be attached together into one unit, the ALJ rejects ITRI’s argument and finds that layers 651 and 652 are not a single structure and can be separate “structured arc sheets.”

ITRI appears to raise a second argument that regardless of whether the two layers can be considered separately, the “light impassable layer 652” cannot be a structured arc sheet. Specifically, ITRI contends that the “light impassable layer 652” is not “for making the illuminating light more uniform,” but rather it is for blocking light, “which is the opposite of what Claim 6 seeks to achieve.” (CIB at 44.) ITRI also relies on the testimony of Dr. Silzars where he states that “a light impassable layer is not a structured arc sheet by the definition of the ’932 Patent. The ’932 Patent describes four possible conditions. It’s either reflective, it’s transmissive, it’s semi-reflective or semi-transmissive. A light-blocking layer does not qualify to any of those, so it is not a structured arc sheet.” (CRB at 22 (quoting Tr. 566:14-567:1.) ITRI argues that “such a layer is not for ‘altering the pathway of illuminating light in multiple directions’ as required by ITRI’s proposed construction...” (CRB at 22.)

As an initial matter, the ALJ notes that this argument appears to rest, at least in part, on ITRI’s construction of the term “structured arc sheets,” which was rejected by the ALJ. Even assuming that this argument still applies, the ALJ finds that it is simply another attempt by ITRI to read additional limitations into the claim to avoid anticipation. As the Staff correctly notes, LG’s expert noted that neither construction imposes any express restriction regarding reflection, refraction, or absorption of light. (Tr. 532:15-533:7.) The ALJ agrees with Staff and LG that the claims have no such restriction. Not only is there no such limitation in the claims, the specification does not support such a limitation either. The ALJ finds that Dr. Silzars is incorrect

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that the '932 Patent describes only four possible conditions for making light uniform. Instead, the ALJ agrees with Staff that this is only a preferred embodiment of the invention and not a requirement. (See JX-0003 at 2:2-5 (“The structured arc sheet of the present invention is *preferably made* of total reflection, transparent, or semi-reflection and semi-transparent materials.) In addition, the ALJ notes that the “light impassible layer 652” is intended to make the illuminating light more uniform. As the specification of the Yao '892 Publication makes clear, the entire purpose of the “lamp reflecting cover” is to make the illuminating light uniform. (See JX-0003 at ¶¶ [0008], [0027], [0032].) Accordingly, the ALJ finds that this argument also does not prevent the “light impassible layer 652” from being a structured arc sheet.

ITRI also raises several minor arguments that can be easily dismissed. First, ITRI argues that “the layers 651 and 652 do not have meaningfully different curvatures.” (CIB at 43.) The ALJ finds this argument is merely an attempt to read a minimum curvature limitation into the claims that does not exist in the claims, or for that matter, the specification or prosecution history. As the Federal Circuit instructed, “[n]o principle of law ... authorize [s] ... read[ing] into a claim an element which is not present, for the purpose of making out a case of novelty” *E.I. DuPont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988) (quoting *McCarty v. Lehigh Valley R. Co.*, 160 U.S. 110, 116 (1895)). Moreover, this contention is directly contradicted by Dr. Silzars’s own testimony. Dr. Silzars repeatedly testified that there is no restriction regarding size of the arc. (Tr. 286:22-287:2; 571:25-572:11.) Indeed, in his infringement analysis, Dr. Silzars used a microscope to measure the thickness of the alleged “structured arc sheets” in the accused products and determined that a difference as small as 0.0015 inches in thickness of the sheets was sufficient to satisfy the claim. (CX-0350C at Q&A 142.) If ITRI believes that such tiny differences in thickness are sufficient for infringement, the

ALJ declines read a “meaningfully different” curvature or thickness requirement into the claims. The ALJ finds that there is no dispute that layers 651 and 652 have different radii and that they have different curvatures, even if these differences are very small. (RX-0162C at Q&A 138.) This is sufficient to satisfy the claims.

Second, ITRI repeatedly argues, without much explanation, that the sheets are not “structured” or lack “structure” and cannot be “structured arc sheets.” In particular, ITRI asserts “[t]he embodiments of Figures 3 and 4 show that the reflecting layer in those embodiments is formed directly on the lamp bulb itself and needs no supporting structure as do the embodiments of Figures 5-7.” (CIB at 43.) ITRI also asserts that “there is no disclosure that layers 651 or 652 are both structured as required by claim 6.” (CRB at 22.) ITRI provides no details as to the parameters of its “structure” requirement, so we are left to guess as to exactly what that means. While the term “structured” certainly appears in the claim, it is not clear that it imposes the limitation that ITRI seeks to read into the claim.

The ALJ certainly does not see a “structure” requirement in either construction proposed by the parties. ITRI’s definition only requires that the sheet “contain arc-like structures” and LG’s definition only requires that the sheet be “constructed in the shape of arc.” The embodiment in Figure 6 easily meets those definitions. The ALJ declines ITRI’s attempt to read an additional limitation into the claims to preserve their validity.

The ALJ can only guess at the exact contours of this argument because ITRI did not provide much explanation and Dr. Silzars’s testimony on this point was not particularly illuminating (Tr. 167:4-170:9). Nevertheless, the ALJ finds this argument fails when examining Figure 6 of the Yao ’892 Publication, which is what LG points to as invalidating. As Figure 6 (and related Figures 5, 7, and 8) shows, the lamp reflecting cover 65 is a separate

structure. Figure 6 further shows that the structure is physically divided into two-layers, each comprising half the thickness of the structure. If this does not constitute structure, the ALJ is uncertain what would. The ALJ believes that ITRI's efforts to point to Figures 3 and 4 and attempt to obscure the disclosure in Figure 5-8 is disingenuous because ITRI criticized LG for doing a similar thing with respect to the Katoh '331 Patent. Thus, the ALJ rejects all of ITRI's arguments that the Yao '892 Publication discloses structured arc sheets within the meaning of the claim.

Thus, the ALJ finds that ITRI offers no credible argument that Yao fails to disclose "structured arc sheets" and the Yao '892 Publication meets this limitation claim 6 of the '932 Patent. (RX-0162C at Q&A 138.)

Because the Yao '892 Publication discloses all of the elements of claim 6 of the '932 Patent, the ALJ finds that Yao '892 Publication anticipates

Yao '892 Publication Anticipates claim 9

Claim 9 of the '932 Patent depends from claim 6 and requires the additional limitation that "the apparatus is used in a liquid crystal display." There is no dispute that Yao '892 teaches in paragraph [0002] that its disclosure can be used in a "backlight module of a liquid crystal display device." (JX-0029 at ¶ [0002]; RX-0162C at Q&A 139.) Thus, the ALJ finds that claim 9 of the '932 Patent is also anticipated by the Yao '892 Publication.

Yao '892 Publication Anticipates claim 10

Claim 10 of the '932 Patent depends from claim 6 and requires the additional limitation that "the two structured arc sheets are not in the same plane." ITRI argues that the Yao '892 Publication does not teach this limitation for two reasons. First, ITRI reiterates its argument with respect to claim 6 that "Yao teaches a single structure and therefore cannot be

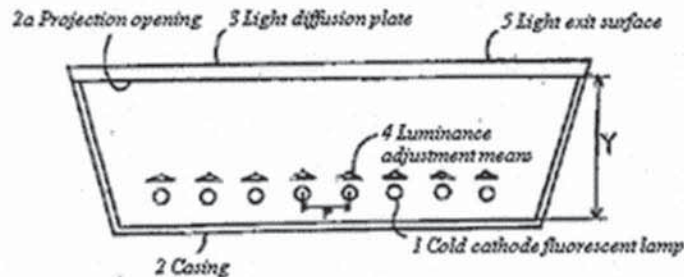
taken as two layers in different planes.” (CIB at 44.) As discussed above, the ALJ has rejected that Yao only teaches a single structure and not two structured arc sheets with respect to claim 6 and for the same reasons rejects it with respect to claim 10. ITRI further argues that with respect to claim 10 that “the difference in position between the two layers is so insignificant that they cannot be regarded as in different planes.” (CIB at 44.) This appears merely to be a rehashing of its argument that the difference in curvature must be substantial. However, the ALJ finds that as shown in Figure 6 above of the Yao ’892 Publication, the light impassable layer 652 is layered over the reflecting layer 651. Accordingly, the Yao ’892 Publication discloses that two structured arc sheets are not in the same plane. (JX-0029 at Figure 6; RX-0162C at Q&A 140.)

Thus, the ALJ finds that claim 10 of the ’932 Patent is also anticipated by the Yao ’892 Publication.

4. Azuma

Japanese Patent Publication 2000-338895 to Azuma (“Azuma”) was published on December 8, 2000, which is more than one year prior to the July 17, 2003 priority date of the ’932 Patent. (JX-0047.) Thus, Azuma is prior art under 35 U.S.C. § 102(b).

LG contends that Azuma anticipates claim 6 of under both LG’s construction for “structured arc sheets” as well as ITRI’s proposal. (RIB at 46-47.) The backlight module from Azuma is shown below:



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(JX-0047, Figure 1.) LG contends that the “luminance adjustment means 4” is shown in Figure 5(c) as being constructed in the shape of an arc. (RIB at 46.)

ITRI argues that Azuma does not disclose “two structured arc sheets mounted at the periphery of the light source.” (CIB at 47.) ITRI contends that Azuma instead discloses “one sheet over each light source, and that it may be curved or not. (CIB at 47.)

Staff submits that the evidence fails to show that independent claim 6 and dependent claim 9 are anticipated by Azuma. (SIB at 55.) Staff argues that the evidence shows that Azuma only discloses one “structured arc sheet,” not “two structured arc sheets” as required by the claims. (SIB at 55.)

As an initial matter, the ALJ finds that LG failed to preserve its arguments that Azuma anticipates claims 9 and 10 of the '932 Patent. Those arguments were not raised in its pre-hearing brief. (RPHB at 152-156.) Accordingly, the ALJ finds that under Ground Rule 8, LG has waived its arguments that Azuma anticipates claims 9 and 10 of the '932 Patent.

The ALJ further finds that LG has failed to show by clear and convincing evidence that Azuma discloses each and every limitation of claim 6 of the '932 Patent. The ALJ finds that LG's analysis fails to address each and every limitation of the '932 Patent in its initial post-hearing brief. Rather, LG cites to its expert's testimony for a detailed claim by claim analysis. This is, quite simply, nothing more than an improper attempt to circumvent the page limitations set by the ALJ for post-hearing briefs. *See Certain Mobile Devices, Associated Software and Components Thereof*, Inv. No. 337-TA-744, Final Initial Determination, at 117 (December 20, 2011) (unreviewed in relevant part). In the ALJ's view, merely referencing the testimony of a party's expert and incorporating that testimony or analysis by reference not only fails to constitute “a discussion” of the issue in the post-hearing brief as required by the Ground Rules,

but is insufficient to carry a party's burden of proof. The ALJ therefore finds that LG has failed to show by clear and convincing evidence that Azuma practice each and every limitation of any of the asserted claims, and therefore, Azuma does not anticipate claim 6 of the '932 Patent.

5. Nishio '332 Patent

U.S. Patent No. 5,592,332 to Nishio ("Nishio '332 Patent") issued on January 7, 1997, which is more than one year before the July 17, 2003 priority date of the '932 Patent. (JX-0034; RX-0162C at Q&A 179-182.) Thus, the Nishio '332 Patent is prior art under 35 U.S.C. § 102(b).

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the Nishio '332 Patent renders the '932 Patent invalid as anticipated. (RIB at 47-50.)

ITRI argues that the Nishio '332 Patent does not disclose "two structured arc sheets." (CIB at 46.)

Staff argues that the Nishio '332 Patent discloses "two structured arc sheets" as required by the asserted claims under ITRI's construction of "structured arc sheets" and thus anticipates the asserted claims under ITRI's construction. (SIB at 54.) Staff does not contend that the Nishio '332 Patent anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for structured arc sheet and no party contends that the Nishio '332 Patent anticipates under the construction the ALJ adopted, the Nishio '332 Patent does not anticipate the asserted claims of the '932 Patent.

6. Yokota '907 Patent

U.S. Patent No. 5,552,907 to Yokota ("Yokota '907 Patent") issued on September 3, 1996, which is more than one year before the July 17, 2003 priority date of the '932 Patent. (JX-

0033; RX-0162C at Q&A 150-158.) Thus, the Yokota '907 Patent is prior art under 35 U.S.C. § 102(b).

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the Yokota '907 Patent renders the '932 Patent invalid as anticipated. (RIB at 50-53.)

ITRI argues that Yokota '907 Patent does not disclose "two structured arc sheets" and a "reflective housing." (CIB at 45.)

Staff argues that the Yokota '907 Patent discloses "two structured arc sheets" as required by the asserted claims under ITRI's construction of "structured arc sheets" and thus anticipates the asserted claims under ITRI's construction. (SIB at 52-53.) Staff does not contend that the Yokota '907 Patent anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for structured arc sheet and no party contends that the Yokota '907 Patent anticipates under the construction the ALJ adopted, the Yokota '907 Patent does not anticipate the asserted claims of the '932 Patent.

7. McCartney '371 Patent

U.S. Patent No. 5,280,371 to McCartney ("McCartney '371 Patent") issued on January 18, 1994, which is more than one year before the July 17, 2003 priority date of the '932 Patent. (JX-0032.) Thus, the McCartney '371 Patent is prior art under 35 U.S.C. § 102(b).

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the McCartney '371 Patent renders the '932 Patent invalid as anticipated. (RIB at 53-54.)

ITRI argues that LG improperly raises the McCartney '371 Patent for the first time in its post-hearing brief and that McCartney '371 Patent does not disclose a "reflective housing adjacent to the light sources." (CRB at 26.)

Staff argues that LG failed to raise the McCartney '371 Patent in its pre-hearing brief and thus, waived the argument. (SRB at 24 n.17.) Staff further argues LG has failed to provide any evidence (in the form of expert testimony) that the McCartney '371 Patent anticipates the asserted claims. (SIB at 24 n.17.)

The ALJ finds that LG failed to raise the argument that the McCartney '371 Patent anticipates the asserted claims of the '932 Patent in its pre-hearing brief. Thus, the ALJ deems these arguments waived. (*See* Ground Rule 8.)

8. Zimmerman '281 Patent

U.S. Patent No. 5,598,281 to Zimmerman ("Zimmerman '281 Patent") issued on January 28, 1997, which is more than one year before the July 17, 2003 priority date of the '932 Patent. (JX-0035; RX-0162C at Q&A 141-143.) Thus, the Zimmerman '281 Patent is prior art under 35 U.S.C. § 102(b).

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the Zimmerman '281 Patent renders the '932 Patent invalid as anticipated. (RIB at 56-57.)

ITRI argues that Zimmerman'281 Patent does not disclose "two structured arc sheets" and a "reflective housing." (CIB at 44.)

Staff argues that the Zimmerman '281 Patent discloses "two structured arc sheets" as required by the asserted claims under ITRI's construction of "structured arc sheets" and thus anticipates the asserted claims under ITRI's construction. (SIB at 50-52.) Staff does not contend that the Zimmerman '281 Patent anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for structured arc sheet and no party contends that the Zimmerman '281 Patent anticipates under the construction the

ALJ adopted, the Zimmerman '281 Patent does not anticipate the asserted claims of the '932 Patent.

9. Hua-Nan '873 Patent

U.S. Patent No. 6,989,873 to Hua-Nan ("Hua-Nan '873 Patent") was filed March 18, 2004, published on September 23, 2004, issued on January 24, 2006, and claims priority to a Taiwanese patent application filed March 19, 2003.⁴ (JX-0041; RX-0162C at Q&A 159-162.)

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the Hua-Nan '873 Patent renders the '932 Patent invalid as anticipated. (RIB at 56-57.)

ITRI argues that Hua-Nan '873 Patent does not disclose "two structured arc sheets" and a "reflective housing." (CIB at 45.)

Staff argues that LG has failed to prove that the Hua-Nan '873 Patent discloses "two structured arc sheets" as required by the asserted claims. (SIB at 53.)

The ALJ finds that because the ALJ rejected ITRI's construction for "structured arc sheet" and no party contends that the Hua-Nan '873 Patent anticipates under the construction the ALJ adopted, the Hua-Nan '873 Patent does not anticipate the asserted claims of the '932 Patent.

10. Cho '633 Patent

U.S. Patent No. 6,700,633 to Cho ("Cho '633 Patent") was filed December 31, 2001 and published July 3, 2003. (JX-0040; RX-0162C at Q&A 169-172.) This is before the July 17,

⁴ It does not appear that this reference is prior art. Because the date of publication is after the priority date, the only categories of prior art that the Hua-Nan '873 Patent could possibly fall into are 102(e) or 102(g)(2). Moreover, even under these categories, the Hua-Nan '873 Patent can be prior art only if the effective date for this reference for prior art purposes is the foreign filing date. However, the law is clear that the effective date for prior art purposes of a U.S. application claiming priority to a foreign application for 102(e) and 102(g) purposes is the U.S. filing date. See *In re Hilmer*, 359 F.2d 859 (C.C.P.A. 1966) (holding U.S. filing date applies for 102(e) purposes for applications claiming priority to a foreign application under § 119); *In re Hilmer*, 424 F.2d 1108 (C.C.P.A. 1970) (holding U.S. filing date applies for 102(g)(2) purposes). There is an exception in § 102(e) for applications filed under the Patent Cooperation Treaty, but that exception does not apply here. None of the parties raised this issue and because the ALJ finds that in any event, it does not anticipate the asserted claims, the ALJ declines to decide the issue *sua sponte*.

2003 priority date of the '932 Patent. (RX-0169C at Q&A 169-172.) Thus, the Cho '633 Patent is prior art under 35 U.S.C. § 102(a).

LG contends that if ITRI's construction for "structured arc sheets" is adopted then the Cho '633 Patent renders the '932 Patent invalid as anticipated. (RIB at 57-58.)

ITRI argues that Cho '633 Patent does not disclose "two structured arc sheets" because the "light control members 230" and "light guiding plate 220" do not contain arc-like structures. (CIB at 46.)

Staff argues that LG has failed to prove that the Cho '633 Patent discloses "two structured arc sheets" as required by the asserted claims. (SIB at 46.) Staff does not contend that the Cho '633 Patent anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for structured arc sheet and no party contends that the Cho '633 Patent anticipates under the construction the ALJ adopted, the Cho '633 Patent does not anticipate the asserted claims of the '932 Patent.

11. Tachibana

Japanese patent publication H06-250023 to Tachibana ("Tachibana") published on September 9, 1994, which is more than one year prior to the July 17, 2003 priority date of the '932 Patent. (JX-0048; RX-0162C at Q&A 208-210.) The ALJ finds that Tachibana is prior art to the '932 Patent under 35 U.S.C. § 102(b).

LG contends that Tachibana anticipates the asserted claims of the '932 Patent under the claim construction that ITRI offered for "structured arc sheet," but not under LG's and Staff's construction for "structured arc sheet." (CIB at 58-59.)

ITRI argues that Tachibana does not disclose "two structured arc sheets." (CIB at 47; CRB at 29.)

Staff submits that under ITRI's claim construction, all of the asserted claims of the '932 Patent are anticipated by Tachibana. (SIB at 56.) Staff does not contend that the Tachibana anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for "structured arc sheet" and no party contends that Tachibana anticipates under the construction the ALJ adopted, Tachibana does not anticipate the asserted claims of the '932 Patent.

12. Nakamura Japanese Patent

Japanese Patent H08-160418 to Nakamura ("Nakamura Japanese Patent") published on June 21, 1996, which is more than one year prior to the July 17, 2003 foreign application priority date of the '932 Patent. (JX-0043; RX-0162C at Q&A 189-191.) Accordingly, it is prior art under 35 U.S.C. § 102(b).

LG contends that the Nakamura Japanese Patent anticipates the asserted claims of the '932 Patent, but only under ITRI's construction of structured arc sheet. (RIB at 59-60.)

ITRI contends that the Nakamura Japanese Patent does not disclose "two structured arc sheets" even under its construction and that this reference also does not disclose a "reflective housing." (CIB at 46.)

Staff agrees with LG that Nakamura anticipates the asserted claims under ITRI's proposed construction. (SIB at 54-55; SRB at 22-23.) Staff does not contend that the Nakamura Japanese Patent anticipates under LG's and Staff's construction of the term "structured arc sheets."

The ALJ finds that because the ALJ rejected ITRI's construction for "structured arc sheet" and no party contends that the Nakamura Japanese Patent anticipates under the construction the ALJ adopted, Nakamura Japanese Patent does not anticipate the asserted claims of the '932 Patent.

B. Obviousness

Included within the presumption of validity is a presumption of non-obviousness.

Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 714 (Fed. Cir. 1984).

Obviousness is grounded in 35 U.S.C. § 103, which provide, *inter alia*, that:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negative by the manner in which the invention was made.

35 U.S.C. § 103(a). Under 35 U.S.C. § 103(a), a patent is valid unless “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). The ultimate question of obviousness is a question of law, but “it is well understood that there are factual issues underlying the ultimate obviousness decision.” *Richardson-Vicks Inc.*, 122 F.3d at 1479; *Wang Lab., Inc. v. Toshiba Corp.*, 993 F.2d 858, 863 (Fed. Cir. 1993).

Obviousness is a question of law based on underlying facts, as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). “The Graham factors are (1) the scope and content of the prior art, (2) the difference between the prior art and the claimed invention, (3) the level of ordinary skill in the field of the invention, and (4) any relevant objective considerations.” *Soverain Software LLC v. NewEgg, Inc.*, --- F.3d ----, 2013 WL 216406, at *2 (Fed. Cir. January 22, 2013). “The Graham Court explained that ‘the ultimate question of patent validity is one of law.’” *Id.* (citing *Graham*, 383 U.S. at at 17).

“Generally, a party seeking to invalidate a patent as obvious must demonstrate ‘by clear and convincing evidence that a skilled artisan would have been motivated to combine the

teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.” *OSRAM Sylvania, Inc. v. Am. Induction Techs., Inc.*, 701 F.3d 698, 706-707 (Fed. Cir. 2012) (quoting *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1361 (Fed. Cir. 2007)); *see also Amgen, Inc. v. F. Hoffman–LA Roche Ltd.*, 580 F.3d 1340, 1362 (Fed. Cir. 2009) (“An obviousness determination requires that a skilled artisan would have perceived a reasonable expectation of success in making the invention in light of the prior art.” (citations omitted)). “The Supreme Court has warned, however, that, while an analysis of any teaching, suggestion, or motivation to combine known elements is useful to an obviousness analysis, the overall obviousness inquiry must be expansive and flexible.” *OSRAM*, 701 F.3d at 707.

Obviousness may be based on any of the alleged prior art references or a combination of the same, and what a person of ordinary skill in the art would understand based on his knowledge and said references. If all of the elements of an invention are found, then:

a proper analysis under § 103 requires, inter alia, consideration of two factors: (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success. *Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the applicant's disclosure.*

Velander v. Garner, 348 F.3d 1359, 1363 (Fed. Cir. 2003) (emphasis added) (internal citations omitted).

The critical inquiry in determining the differences between the claimed invention and the prior art is whether there is a reason to combine the prior art references. *See C.R. Bard v. M3 Sys.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998). For example:

[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 418-19 (2007) (emphasis added). The Federal Circuit case law previously required that, in order to prove obviousness, the patent challenger must demonstrate, by clear and convincing evidence, that there is a “teaching, suggestion, or motivation to combine. The Supreme Court has rejected this “rigid approach” employed by the Federal Circuit in *KSR Int'l Co. v. Teleflex Inc.*, 500 U.S. 398, 415 (2007). The Supreme Court stated:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* and *Anderson's-Black Rock* are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established function.

Following these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicitly. See *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere

conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusions of obviousness”). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

[. . .]

The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents. The diversity of inventive pursuits and of modern technology counsels against limiting the analysis in this way. In many fields it may be that there is little discussion of obvious techniques or combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends. Granting patent protection to advance that would occur in the ordinary course without real innovation retards progress and may, in the case of patents combining previously known elements, deprive prior inventions of their value or utility.

KSR, 550 U.S. at 417-419. The Federal Circuit has harmonized the *KSR* opinion with many prior circuit court opinions by holding that when a patent challenger contends that a patent is invalid for obviousness based on a combination of prior art references, “the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so.” *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1360 (Fed. Cir. 2007)(citing *Medichem S.A. v. Rolabo S.L.*, 437 F.3d 1175, 1164 (Fed. Cir. 2006)); *Noelle v. Lederman*, 355 F.3d 1343, 1351-52 (Fed. Cir. 2004); *Brown & Williamson Tobacco Corp. v. Philip Morris, Inc.*, 229 F.3d 1120, 1121 (Fed. Cir. 2000) and *KSR*, 550 U.S. at 416 (“a combination of elements ‘must do more than yield a predictable result’; combining elements that work together ‘in an unexpected and fruitful manner’ would not have been obvious”). Further, a suggestion to combine need not be express

and may come from the prior art, as filtered through the knowledge of one skilled in the art. *See Certain Lens-Fitted Film Pkgs.*, Inv. No. 337-TA-406, Order No. 141 at 6 (May 24, 2005).

“Secondary considerations,” also referred to as “objective evidence of non-obviousness,” must be considered in evaluating the obviousness of a claimed invention, but the existence of such evidence does not control the obviousness determination. *Graham*, 383 U.S. at 17-18. A court must consider all of the evidence under the *Graham* factors before reaching a decision on obviousness. *Richardson-Vicks Inc.*, 122 F.3d at 1483-84. Objective evidence of non-obviousness may include evidence of the commercial success of the invention, long felt but unsolved needs, failure of others, copying by others, teaching away, and professional acclaim. *See Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 857 (1984); *Avia Group Int'l, Inc. v. L.A. Gear California*, 853 F.2d 1557, 1564 (Fed. Cir. 1988); *In re Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987). The burden of showing secondary considerations is on the patentee and, in order to accord objective evidence substantial weight, a patentee must establish a nexus between the evidence and the merits of the claimed invention; a *prima facie* case is generally set forth “when the patentee shows both that there is commercial success, and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent.” *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995); *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 956 (1988); *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Comm’n Op. (March 15, 1990). Once a patentee establishes nexus, the burden shifts back to the challenger to show that, *e.g.*,

commercial success was caused by “extraneous factors other than the patented invention, such as advertising, superior workmanship, etc.” (*Id.*) at 1393.

Generally, a prior art reference that teaches away from the claimed invention does not create *prima facie* case of obviousness. *In re Gurley*, 27 551, 553 (Fed. Cir. 1994; *Certain Rubber Antidegradants*, Inv. No. 337-TA-533 (Remand), Final ID (Dec. 3, 2008) (stating, “KSR reaffirms that obviousness is negated when the prior art teaches away from the invention.”)). However, the nature of the teaching is highly relevant. *Id.* “A reference may be said to *teach away* when a person of ordinary skill, upon reading the reference, would be *discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.*” *Id.* (emphasis added). For example, “a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.” *Id.*

The Federal Circuit has recently explained, moreover, that the obviousness inquiry requires examination of all four Graham factors. *E.g., Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1375 (Fed. Cir. 2012). Indeed, courts must consider all of the Graham factors prior to reaching a conclusion with respect to obviousness. *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1076–77 (Fed. Cir. 2012) (collecting cases). At all times, the burden is on the defendant to establish by clear and convincing evidence that the patent is obvious. *Id.* at 1077–78.

LG argues that “[i]n the event that the ALJ should find any of the limitations from claims 6, 9, and 10 missing from the [*sic.*] any of the anticipatory references discussed above, then any combination of those references renders obvious the asserted claims of the '932 Patent.” (RIB at 61.) LG builds on this catch-all argument with a reference to the Supreme Court's decision in

KSR and the assertion that the “motivation to combine various prior art references discussed above can be found in at least (1) the problem known in the field of backlight modules of improving light uniformity[;] (2) common sense that in improving uniformity, one would look to prior art references that accomplished the same goal, and (3) essentially all the prior art references were directed to backlight modules—which are the exact modules at issue in the case.” (RIB at 61.)

This contention is insufficient to prove obviousness by clear and convincing evidence and does not meet the Ground Rules requirement that the post-hearing briefs set for the parties’ arguments fully. The ALJ has previously rejected attempts to argue obviousness by merely referring back to the anticipatory references and saying any of them could be combined to render the invention obvious. *See Certain Mobile Devices, Associated Software and Components Thereof*, Inv. No. 337-TA-744, Final Initial Determination, at 166 (December 20, 2011) (unreviewed in relevant part) (rejecting Motorola’s obviousness analysis that consisted of the assertion that the asserted patent was “obvious in light of the prior art calendar applications for desktop and laptop computers, which were readily adapted for use on mobile devices, such as the Newton MessagePad and Motorola Envoy.”). The ALJ finds LG’s analysis similarly lacking. LG has failed to provide an element-by-element analysis of the relevant combinations, has failed to provide any analysis of the *Graham* factors, and has not even identified what combinations would provide what missing elements from the references. Moreover, the ALJ finds LG’s proffered motivations to combine also lacking. Merely saying that the references are in a similar field and “common sense” would lead a person of ordinary skill to combine them is insufficient. *See Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1377 (Fed. Cir. 2012) (“The mere recitation of the words ‘common sense’ without any support adds nothing to the obviousness equation.

Within the statutory test to determine if a claimed invention has advanced its technical art field enough to warrant an exclusive right, ‘common sense’ is a shorthand label for knowledge so basic that it certainly lies within the skill set of an ordinary artisan. With little more than an invocation of the words ‘common sense’ (without any record support showing that this knowledge would reside in the ordinarily skilled artisan), the district court overreached in its determination of obviousness.” *TriMed, Inc. v. Stryker, Inc.*, 608 F.3d 1333, 1343 (Fed. Cir. 2010) (“Merely saying that an invention is a logical, commonsense solution to a known problem does not make it so.”).

LG also contends that “to the extent the ALJ should find any of the limitations from claims 6, 9, and 10 missing from the [*sic.*] any of the anticipatory references discussed above, then, for the same reasons discussed above regarding motivation to combine, such reference can be combined with any one of the obviousness references identified above [below?] to render obvious the asserted claims of the ’932 Patent.” (RIB at 61-62.) LG then goes on to list twelve combinations of references, some of those combinations including three references, which LG contends render the claims obvious. LG does include some cursory discussion of the elements that LG contends are the only ones that ITRI argues are missing from some of the combinations. (RIB at 63-65.) However, the ALJ finds that this cursory discussion fails to meet LG’s burden of proving obviousness by clear and convincing evidence. While the ALJ notes that LG improved on its analysis for these references as compared to its contentions regarding the anticipatory references by at least listing the particular combinations it contends render the asserted claim obvious, these combinations suffer from a different flaw. For a number of references in these combinations, there is no discussion of the content of these references in LG’s post-hearing brief. Even for the references where there is some discussion (somewhere in LG’s post-hearing brief)

of the content of the references, the ALJ finds that there is no coherent, non-conclusory discussion of what elements the particular references supply and how the combination renders the asserted claims obvious. Moreover, LG's discussion of particular allegedly missing elements that LG contends are present is insufficient to meet the clear and convincing burden of proof. Finally, the ALJ further finds that LG offered no motivation to combine these references besides the three "motivations" it provided (discussed above) for why the anticipatory references could be combined. As the ALJ noted previously, those motivations are inadequate and fail to demonstrate why the asserted claims are obvious. Accordingly, the ALJ finds that LG has failed to prove by clear and convincing evidence that the asserted claims of the '932 Patent are obvious.

C. Lack of Written Description and Indefiniteness

LG also contends that the asserted claims of the '932 Patent are also invalid under 35 U.S.C. § 112 ¶ 1, for failure to comply with the written description requirement. Specifically, LG argues that, with respect to the claim term "uniform," one of ordinary skill in the art would not know, based on the specification, that the inventor actually invented a display containing a backlight module that makes the "illuminating light more uniform." (RIB at 65-66.) LG also argues, in the alternative, that the claim term "uniform" is indefinite. LG asserts that ITRI attempts to save its claims by asserting that the specification discloses how to "enhance uniformity" or make the light "more uniform" as demonstrated in Figure 4 of the '932 Patent. (RRB at 21.) However, LG argues that this is improper because the claims require that the light be "uniform," not "more uniform." (RRB at 21.) LG asserts that Dr. Escuti testified that Figure 4 does not demonstrate that the illuminating light is "uniform" because it indicates variance which it characterizes as "non-uniformity." (RRB at 21-22.) LG contends, in other words, that

Figure 4 of the '932 Patent demonstrate “improved uniformity,” but not light that is “uniform” as required by claim 6. (RRB at 22.)

ITRI argues that not only is LG’s reasoning faulty, it falls short of reaching LG’s burden of establishing invalidity by clear and convincing evidence. (CIB at 54.) ITRI contends that the patent discusses throughout the description that the aspirational goal of the invention to improve uniformity in addition to the disclosure in Figure 4. (CIB at 54.) ITRI also argues that Figure 4 does not purport to show a perfectly uniform illuminating light, but simply that the light is more uniform than without the invention which is shown in Figure 5. (CIB at 54.) ITRI notes that the patent explicitly says that Figure 4 shows “an enhanced uniformity of illuminating light.” (CIB at 54.) In addition, ITRI argues that its expert testified that the term “uniform” was understandable and supported by the specification. (CIB at 54.) ITRI also argues that the patent claims are not indefinite because they are susceptible to interpretation. (CIB at 54-55.)

Staff argues that the evidence shows that the '932 Patent is not invalid for failure to satisfy the written description requirement. (SIB at 57.) Staff argues that the term “uniform” is discussed throughout the '932 Patent. (SIB at 57.) Staff asserts that in particular, the '932 Patent discloses that the patentees used TracePro simulation software to carry out a simulation of the dispersion of light and that the results were presented in the patent specification. (SIB at 57.) Staff also argues that the term “uniform” is susceptible to construction and is, therefore, not indefinite. (SIB at 58.)

35 U.S.C. § 112, paragraph 1, requires “a written description of the invention.” *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1344 (Fed. Cir. 2010) (en banc). “[I]f the claimed invention does not appear in the specification . . . the claim . . . fails regardless whether one of skill in the art could make or use the claimed invention.” *Id.* at 1348. “A claim will not

be invalidated on section 112 grounds because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language.” *LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005). The definiteness requirement seeks to “ensure that the claims delineate the scope of the invention using language that adequately notifies the public of the patentee's right to exclude.” *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). To do so does not require “absolute clarity” or precision in claim language; this court has ruled that claims are not invalid for indefiniteness unless they are “not amenable to construction” or ‘insolubly ambiguous.’” *Id.* (quotation marks omitted). Overcoming the presumption of patent validity, therefore, demands clear and convincing evidence that “a skilled artisan could not discern the boundaries of the claim.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008).

LG’s § 112 arguments appear to largely be a rehashing of its claim construction arguments regarding “uniform.” The ALJ finds that these fail for several reasons. First, the ALJ has found in his October 22, 2012 Final ID that “uniform” could be construed and gave the term its plain and ordinary meaning. Because the claim term has been found susceptible to construction, the ALJ finds that LG has failed to show by clear and convincing evidence that the claims are invalid as indefinite. *Halliburton Energy*, 514 F.3d at 1249. Second, LG’s written description arguments appear to be predicated on “uniform” requiring some absolute level of “uniformity” in order to be met. However, as the ALJ held in the October 22, 2012 ID, “the use of ‘uniform’ throughout the specification and the claims has a more qualitative use in the art.” (ID at 33-36.) With this understanding, the ALJ finds the disclosure in the specification to be more than adequate to demonstrate that the patentee had possession of the claimed invention.

Accordingly, the ALJ finds that LG's written description and indefiniteness are without merit and the patents are not invalid under Section 112.

III. UNENFORCEABILITY

A. Applicable Law

"Inequitable conduct is an equitable defense to patent infringement that, if proved, bars enforcement of a patent." *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1285 (Fed. Cir. 2011) (en banc). "To prove inequitable conduct, the challenger must show by clear and convincing evidence that the patent applicant (1) misrepresented or omitted information material to patentability, and (2) did so with specific intent to mislead or deceive the PTO." *In re Rosuvastatin Calcium Patent Litig.*, 703 F.3d 511, 519 (Fed. Cir. 2012) (citing *Therasense*, 649 F.3d at 1287). "Intent and materiality are separate requirements." *Therasense*, 694 F.3d at 1290 (citing *Hoffmann-La Roche, Inc. v. Promega Corp.*, 323 F.3d 1354, 1359 (Fed. Cir. 2003)). "[T]he materiality required to establish inequitable conduct is, in general, but-for materiality." *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 651 F.3d 1318, 1334 (Fed. Cir. 2011) (citing *Therasense*, 649 F.3d at 1291). "When an applicant fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art." *Am. Calcar*, 651 F.3d at 1334 (citing *Therasense*, 649 F.3d at 1291).

"The court in *Therasense* sought to impart objectivity to the law of inequitable conduct by requiring that the 'the accused infringer must prove the patentee acted with the specific intent to deceive the PTO....'" *Rosuvastatin Calcium Patent Litig.*, 703 F.3d at 522 (quoting *Therasense*, 649 F.3d at 1290). "A finding that the misrepresentation or omission amount to gross negligence or negligence under a 'should have known' standard does not satisfy this intent requirement." *Therasense*, 649 F.3d at 1290 (citations omitted). "*Therasense* explained that in order to show that the patentee acted with the specific intent to deceive the PTO, a defendant

must prove ‘that the applicant knew of the reference, knew that it was material, and *made a deliberate decision to withhold it.*’ *1st Media, LLC v. Electronic Arts, Inc.*, 694 F.3d 1367, 1372 (Fed. Cir. 2012) (emphasis in original) (quoting *Therasense*, 649 F.3d at 1290); *see also Therasense*, 649 F.3d at 1290 (“In a case involving nondisclosure of information, clear and convincing evidence must show that the applicant *made a deliberate decision* to withhold a *known* material reference.” (emphasis in original) (quotation marks omitted)).

“While deceptive intent can be inferred from indirect and circumstantial evidence, that ‘inference must not only be based on sufficient evidence, but it must also be the single most reasonable inference able to be drawn from the evidence to meet the clear and convincing evidence standard.’” *Am. Calcar*, 651 F.3d at 1334 (quoting *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1366 (Fed. Cir. 2008)). “Indeed, the evidence must be sufficient to *require* a finding of deceitful intent in the light of all the circumstances.” *Therasense*, 649 F.3d at 1290 (emphasis in original) (quotations omitted). “Hence, when there are multiple reasonable inferences that may be drawn, intent to deceive cannot be found.” *Id.* at 1290-91.

The ALJ “should not use a ‘sliding scale,’ where a weak showing of intent may be found sufficient based on a strong showing of materiality, and vice versa.” *Therasense*, 649 F.3d at 1290. “Instead, a court must weigh the evidence of intent to deceive independent of its analysis of materiality.” *Id.* “Proving that the applicant knew of a reference, should have known of its materiality, and decided not to submit it to the PTO does not prove specific intent to deceive.” *Id.*

B. The Parties’ Arguments

LG argues that the ’932 Patent is unenforceable due to inequitable conduct because ITRI’s employees, outside patent counsel, and the inventors of the ’932 Patent knew of the Katoh ’331 Patent, it was material, and failed to disclose this reference to the USPTO. (RIB at

66.) LG asserts that because the Taiwanese Intellectual Property Office rejected the foreign counterpart of the '932 Patent based on the Katoh '331 Patent, it is "by definition" material prior art. (RIB at 66-67 (citing MPEP § 2001.06(a) (2003).) LG also argues that, as demonstrated in its invalidity analysis, the Katoh '331 Patent also meets the "but for" materiality standard. (RIB at 67.) LG argues that Jian Tai Su, a patent agent with the Taiwanese law firm of Wood & Wu Patent and Trademark Office ("Wood & Wu"), the law firm that prosecuted the Taiwanese Application, and at least three of the named inventors of the '932 Patent knew about the rejection of the Taiwanese Application based on the Katoh '331 Patent. (JX-0077C; JX-0188C; JX-0090C at 62:18-63:24.) LG argues that Mr. Su, the three inventors, and another ITRI employee, Mr. Chen, were all aware that the Katoh '331 Patent was material and that they had a duty to disclose material prior art to the USPTO. (RIB at 68-69.) LG asserts that in spite of this knowledge, the Katoh '331 Patent was not disclosed to the USPTO. (RIB at 69.) LG argues that "[g]iven these circumstances, the only reasonable inference that can be drawn from this non-disclosure is that the inventors, Mr. Chen, and Mr. Su from Wood & Wu intentionally withheld the information in order to gain issuance of the '932 Patent." (RIB at 69.) LG also contends that "ITRI's foregoing actions reveal a pattern of conduct and are highlighted by their failure to make available for depositions Jian-Tai Su and other attorneys from Wood & Wu who prosecuted the '932 Patent application, and who ITRI appears to blame for non-disclosure of the relevant prior art."⁵ (RIB at 69 (footnotes omitted); RRB at 23.)

LG argues that ITRI's suggestion that [REDACTED]

[REDACTED] is untenable. (RIB at

⁵ LG raises other conduct it claims fall within this "pattern of conduct." LG originally attempted to allege this conduct was an independent basis for inequitable conduct. However, the ALJ granted ITRI's motion in *limine* to preclude LG from raising this allegations because they were disclosed late. Thus, the ALJ will not allow this conduct in through the backdoor of an attempt to boot strap the existing allegations of inequitable conduct.

69 n.35; RRB at 22.) Specifically, LG asserts that the correspondence ITRI relies on to substantiate this argument “does not establish that Mr. Chen requested Mr. Su disclose the ’331 Patent.” (RIB at 69 n.35.) LG argues that the correspondence is ambiguous and “raises more questions than it answers.” (RRB at 22.)

ITRI argues that LG has failed to prove ITRI acted with a specific intent to deceive the PTO by clear and convincing evidence. (CIB at 56-57.) ITRI asserts that LG is improperly substituting evidence of materiality for evidence of specific intent. (CIB at 57.) ITRI also argues that the Katoh ’331 Patent does not meet the requirements of “but for” materiality. (CIB at 58.) ITRI further contends that while LG bears the burden of demonstrating intent to deceive, ITRI offered substantial evidence demonstrating its innocence and good faith during prosecution. (CIB at 59.) Specifically, ITRI argues that it presented evidence that [REDACTED] in connection with the prosecution of the ’932 Patent. (CIB at 59.) ITRI asserts that this is consistent with [REDACTED]. (CIB at 59.)

Staff takes the view that the evidence does not demonstrate clearly and convincingly that the ’932 Patent is unenforceable for the failure to disclose the Katoh ’331 Patent. (SIB at 58; SRB at 26-27.) Staff believes the dispute focuses on the intent requirement of *Therasense*. (*Id.*) Staff contends that LG has failed to meet its burden of proving specific intent to deceive. (*Id.*) Staff argues that where there are multiple reasonable inferences that can be drawn as reasons for withholding the information, including negligence, deceptive intent cannot be found. (*Id.*; SRB at 26-27.) Staff asserts that this is the case with respect to the failure to disclose the Katoh ’331 Patent because [REDACTED]

[REDACTED]

(*Id.*)

C. Analysis

The parties appear to largely agree on the essential circumstances of this claim. On July 17, 2003, ITRI filed application number 92119538 (“Taiwanese Application”) with the Taiwanese Intellectual Property Office. (JX-0027.0081.) On September 24, 2003, ITRI filed application number 10/668,169 with the USPTO, which issued on April 26, 2005 as the ’932 Patent. (JX-0003.0002.) The ’932 Patent claims priority to the Taiwanese Application. (JX-0026.) ITRI asserts that there are differences between the two applications. (CIB at 55.) However, the ALJ agrees with LG and finds that these differences are insubstantial. Indeed, the claims of the application that became the ’932 Patent and the Taiwanese Application are largely identical. (JX-0027.0056; JX-0026.0010.) On June 1, 2004, ITRI filed a request for reexamination of the Taiwanese Application. (JX-0189.0007-10.) A final rejection of the Taiwanese Application issued on April 13, 2009. (JX-0027.0081-82.)

On July 28, 2004, Wood & Wu, the Taiwanese patent law firm handling the prosecution of both applications, sent a letter to ITRI regarding the U.S. application. (JX-0077C.) The letter contained a list of five action items. (*Id.*) The third item stated: [REDACTED]

[REDACTED] (JX-0077C.0004.) In response to this request, Mr. Chen, an employee of ITRI, replied [REDACTED]

[REDACTED] (JX-0077C.)

On June 29, 2004, the USPTO issued an office action including a non-final rejection of all of the original claims. (JX-0026.0042-49.) ITRI’s response was filed on September 29, 2004,

but did not include an IDS disclosing the Katoh '331 Patent. (*Id.*) On November 29, 2004, the USPTO issue a notice of allowance for the '932 Patent and the patent issued without ever receiving the Katoh '331 Patent. (JX-0026.0065; JX-0003.0002, 003.)

Even if we assume for the sake of argument that the Katoh '331 Patent is “but for” material to the '932 Patent, the ALJ finds that LG’s accusation of inequitable conduct fails because LG has failed to show by clear and convincing evidence that ITRI withheld the Katoh '331 Patent from the USPTO with specific intent to deceive the USPTO. The ALJ finds that LG bases its arguments on circumstantial evidence, none of which leads to the single best inference that ITRI acted with an intent to deceive. LG’s arguments, even if they do not acknowledge it explicitly, appear to rely on the high materiality of the Katoh '331 Patent and actions the Taiwanese Intellectual Property Office to establish ITRI possessed the requisite intent to deceive. However, the Federal Circuit in *Therasense* forbade such an approach to finding intent to deceive. *See Therasense*, 649 F.3d at 1290. The mere fact that ITRI, the inventors, and its attorneys knew of the reference and that it was material is insufficient to establish intent to deceive. *See Ist Media*, 694 F.3d at 1372-73. LG also attempts to support its contention that ITRI acted with a specific intent to deceive based on ITRI’s alleged withholding of the attorneys from Wood & Wu from testifying. However, LG made no efforts to obtain the testimony from Wood & Wu using The Hague Convention or Letters Rogatory. In such a circumstance where LG has failed to exhaust the possible avenues for obtaining the evidence, the ALJ refuses to draw any inferences that LG requests from the lack of testimony from the attorneys at Wood & Wu. Thus, LG has come forward with no competent evidence that establishes at all, let alone by clear and convincing evidence that ITRI acted with a specific intent to deceive the USPTO.

PUBLIC VERSION

As for the correspondence between Wood & Wu and ITRI regarding the Katoh '331 Patent (CX-077C), the ALJ finds that it further supports a finding that LG has failed to prove intent to deceive. As LG admits in its reply brief, this letter “raises more questions than it answers.” At the very least, this letter raises the possibility that the reason the Katoh '331 Patent was not disclosed was due to negligence (likely gross negligence) by Wood & Wu. However, gross negligence cannot satisfy the intent requirement. *See Therasense*, 649 F.3d at 1290. In such a situation, the ALJ cannot say that the evidence requires a finding of intent to deceive because this evidence is susceptible to multiple inferences. *See Therasense*, 649 F.3d at 1290-91 (“Hence, where there are multiple reasonable inferences that may be drawn, intent to deceive cannot be found.”); *Scanner Techs. Corp. v. ICOS Vision Sys. Corp.*, 528 F.3d 1365, 1376 (Fed. Cir. 2008) (“Whenever evidence proffered to show either materiality or intent is susceptible to multiple reasonable inferences, a district court clearly errs in overlooking one inferences in favor of another equally reasonable inference.”).

Thus, the ALJ finds that there is absolutely no evidence that would establish that ITRI “made a deliberate decision to withhold” the Katoh '331 Patent—let alone support such a finding by clear and convincing evidence. Accordingly, LG’s defense of inequitable conduct fails.

IV. OTHER DEFENSES

The parties also discussed the “defense” of prosecution history estoppel. However, the ALJ has already rejected ITRI’s doctrine of equivalents argument because ITRI’s expert utterly failed to present any meaningful evidence to support its doctrine of equivalent contention. Thus, the ALJ finds it unnecessary to consider whether the contention would be barred by prosecution history estoppel.

V. CONCLUSIONS OF LAW

1. Claims 6, 9, and 10 of the '932 Patent are invalid under 35 U.S.C. § 102 for anticipation by the Yao '892 Publication, but are not anticipated by any of the other asserted references.
2. Claims 6, 9, and 10 of the '932 Patent are not invalid under 35 U.S.C. § 103 for obviousness.
3. Claims 6, 9, and 10 of the '932 Patent are not invalid for failure to satisfy the written description requirement under 35 U.S.C. § 112.
4. Claims 6, 9, and 10 of the '932 Patent are not invalid for failure to satisfy the definiteness requirement under 35 U.S.C. § 112.
5. The '932 Patent is not unenforceable due to inequitable conduct.
6. It has not been established that a violation exists of section 337 for the asserted claims of the '932 Patent.

VI. INITIAL DETERMINATION AND ORDER

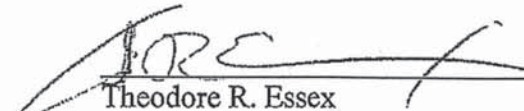
Based on the foregoing, it is the REMAND INITIAL DETERMINATION of this ALJ that a no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing the same that infringe one or all of claims 6, 9 and 10 of U.S. Patent No. 6,883,932.

The Secretary shall serve a public version of this ID upon all parties of record and the confidential version upon counsel who are signatories to the Protective Order (Order No. 1.) issued in this investigation, and upon the Commission investigative attorney.

Within seven days of the date of this document, each party shall submit to the office of the Administrative Law Judge a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions must be made by hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office (1) a copy of this document with red brackets indicating any portion asserted to contain confidential business information by the aforementioned date and (2) a list specifying where said redactions are located. The parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.


Theodore R. Essex
Administrative Law Judge

**CERTAIN DEVICES FOR IMPROVING UNIFORMITY
USED IN A BACKLIGHT MODULE AND PRODUCTS
CONTAINING THE SAME**

Inv. No. 337-TA-805

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION (PUBLIC VERSION)** has been served by hand upon the Commission Investigative Attorney, Vu Q. Bui, Esq., and the following parties as indicated on **March 11, 2013**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants Industrial Technology Research
Institute and ITRI International Inc.:**

Tom M. Schaumberg, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, 12th Floor
Washington, DC 20036

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

**On Behalf of Respondents LG Electronics, Inc., LG
Electronics U.S.A., Inc., LG Display Co., Ltd. and LG Display
America, Inc.:**

Charles F. Schill, Esq.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

() Via Hand Delivery
(☒) Via Overnight Delivery
() Via First Class Mail
() Other: _____

Public:

Angela Ruby
LEXIS-NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____

Kenneth Clair
THOMSON WEST
1100 13th Street, NW, Suite 200
Washington, DC 20005

() Via Hand Delivery
() Via Overnight Delivery
(☒) Via First Class Mail
() Other: _____