

## LG Says AMD Misreading Prior Art In Video Patent Fight

By Jimmy Hoover

*Law360, Washington (March 21, 2016, 5:36 PM ET)* -- LG Electronics Inc. told a Patent Trial and Appeal Board panel Monday that a subsidiary of chipmaker Advanced Micro Devices Inc. is misrepresenting prior art to evade the fact that technology covered by a challenged patent claim was obvious when the video playback patent was filed.

LG told the board that ATI Technologies ULC has levied “unfounded criticism” at its prior art references by claiming those existing technologies do not include the features of the challenged patent.

LG has challenged claim 18 of U.S. Patent Number 7,095,945, which covers a method for displaying video programs in real time, such as a live broadcast, and storing them for subsequent display, or video playback. The patent claims a system for “time-shifting” recording technology using two hardware circuits known as demultiplexers, to allow viewers to pause a program and then continue watching.

In June, the board instituted review on LG’s assertions that claim 18 is obvious in light of two prior art references known as Hatanaka and O’Connor.

“It’s clear from the record that Hatanaka discloses the same first demultiplexer,” Robert G. Pluta of Mayer Brown LLP told the board Monday.

“O’Connor discloses the same level of details of the structure as the ‘945 patent,” he added. “In fact, O’Connor goes even further.”

For its part, ATI told the panel that Hatanaka relates only to VCR systems, which it said cannot perform simultaneous recording and playback like the challenged invention.

“Hatanaka is incapable of having this functionality,” said Michael B. Ray of Sterne Kessler Goldstein & Fox PLLC. “The circuit simply cannot do it. To argue otherwise, I think, is incredible.”

“It’s simple engineering to understand that you can’t record one portion of the tape and read from another,” Ray added. “They had the burden of showing [unpatentability] by a preponderance of the evidence and they did not do that.”

But Pluta shot back, saying it was “simply not true” that Hatanaka was limited only to VCR devices and that ATI’s own expert admitted as much.

“A person of ordinary skill in the art would know how to replace a VCR with any other storage device,” Pluta said.

But ATI also defended the patent by saying it improved the efficiency of time-shifting technology. “DVR technology is ubiquitous today,” Ray said. “We use it and take it for granted. But it was not 16 years ago when the patent was filed.”

On rebuttal, Pluta attacked that defense as well, saying if efficiency was an aspect of the invention, it wasn’t with respect to the claim at issue. “Nothing in the ‘945 patent ties any concept of efficiency to the demultiplexers,” he said.

In its original petition, LG had also challenged claim 21 as anticipated by prior art. The electronics giant later petitioned to lodge an additional obviousness challenge to the claim. The board ultimately declined both attempts, instituting review only on claim 18.

In denying the later obviousness challenge to claim 21, the board sided with ATI's argument that LG should not be allowed to use the PTAB’s findings in the initial petition as a “road map” for a “second bite at the apple,” saying LG was asserting arguments that it could have made during the first petition.

AMD and ATI launched a complaint against LG in March 2014, alleging that it infringed nine patents that enable “immersive graphics, high-definition video and innovative features that power millions of electronic devices,” according to the filing.

The allegedly infringing products include LG televisions, smartphones, tablets, Blu-ray players, projectors and appliances that embody or practice the patented inventions, according to the complaint.

The case, in the Northern District of California, has been stayed pending the resolution of the inter partes reviews, according to a Jan. 18 joint status report.

LG is represented by Robert G. Pluta and Amanda K. Streff of Mayer Brown LLP.

ATI is represented by Michael B. Ray, Lestin L. Kenton Jr. and Michael D. Specht of Sterne Kessler Goldstein & Fox PLLC.

The case is LG Electronics Inc. v. ATI Technologies ULC, case number IPR2015-00321, before the Patent Trial and Appeal Board.

--Additional reporting by Kevin Penton. Editing by Mark Lebetkin.

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