

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORNING INCORPORATED
Petitioner,

v.

DSM IP ASSETS B.V.
Patent Owner.

Case No. IPR2013-00048
Patent 6,298,189

Held: February 11, 2014

Before: JENNIFER S. BISK, FRED E. McKELVEY, GRACE
KARAFFA OBERMANN, SCOTT E. KAMHOLZ and ZHENYU
YANG, Administrative Patent Judges.

APPEARANCES:

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17
18 The above-entitled matter came on for hearing on Thursday,
19 February 11, 2014, commencing at 2:12 p.m., at the U.S. Patent and
20 Trademark Office, 600 Dulany Street, Alexandria, Virginia.
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22
23
24 P R O C E E D I N G S

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26 JUDGE BISK: Okay, I believe we're ready to go
27 on to IPR2013-00048.

28 MR. MERKEL: Good afternoon, Your Honors,
29 Edwin Merkel again for Petitioner Corning.

30 In IPR 48, we've got a number of grounds here,
31 and I'm going to focus pretty much on the first three, the
32 Shustack grounds 1 and 2 rely on the respective claims that
33 are directed to an inner primary coating that Corning is

1 relying on its formulation and testing of the Shustack I
2 formulation.

3 With respect to claims corresponding to those
4 grounds that identify the presence of both an inner and an
5 outer coating, we're relying on the combination of Shustack
6 1 formulation with either Shustack X or XI.

7 The third ground --

8 JUDGE KAMHOLZ: Counsel, are you conceding
9 Shustack Example IX?

10 MR. MERKEL: Yes, we are.

11 The third ground relies on the Szum '928
12 reference, and that's Example 5(b). At this point, we've
13 dealt with a number of issues that overlap with the IPR 45, I
14 don't plan to address those again. I'm going to focus on two
15 issues that we haven't addressed thus far. The first deals
16 with in exemplary Claim 1 here, it's element (a), the fiber
17 pull-out friction of less than 20 grams a millimeter at
18 stripping temperature. A similar limitation, I'll go to Claim
19 14, you'll see element (a) that's a fiber pull-out friction of
20 less than 40 grams per millimeter at 90 degrees C.

21 So, there are some differences here in terms of
22 the actual value, 20 versus 40, and the stripping temperature.
23 There's no dispute as to the stripping temperature element.

24 The issue here is what does that claim call for in
25 terms of the construction, and the test that is used to

1 calculate this fiber pull-out friction value? And Corning
2 believes that its test was sufficient and valid and the results
3 demonstrate that the values fall within the claim range.

4 JUDGE KAMHOLZ: DSM takes the position that
5 your pull-out friction curves have no linear region.

6 MR. MERKEL: That is their assertion, yes.

7 JUDGE KAMHOLZ: What is your answer?

8 MR. MERKEL: Our answer is it does have a
9 negative sloping linear region.

10 JUDGE KAMHOLZ: Where?

11 MR. MERKEL: Where? It's the downward
12 sloping portion.

13 JUDGE KAMHOLZ: I mean what millimeter
14 measurements?

15 MR. MERKEL: At what millimeter
16 measurements? I don't have the exhibits in front of me right
17 now.

18 JUDGE KAMHOLZ: Is it two to six?

19 MR. MERKEL: It's the portion of the curve, I'm
20 going to try to do it backwards, it's in the upwards slope and
21 then in the downwards slope you'll see a region that goes
22 downwards like this. It's not necessarily the same two to six
23 millimeter, that's what you said, Your Honor, it's not
24 necessarily the same two to six at every single slide. We
25 actually had our --

1 JUDGE KAMHOLZ: Is that the range as Dr. Ju
2 calculates on?

3 MR. MERKEL: Yeah, so if you look at the
4 exhibits that Dr. Ju utilized, he actually calculated in the
5 same negative slope region, and he was able to identify that
6 there is, in fact, a negative slope that's linear.

7 JUDGE KAMHOLZ: Well, he can calculate a
8 slope. You can calculate a slope from any set of points. On
9 what basis does he conclude it's linear?

10 MR. MERKEL: On the basis of the fact that you
11 can look at this region, and while there are data points above
12 and below the region, it is, in fact, a linear disposition of the
13 curve.

14 JUDGE KAMHOLZ: That's awfully jittery.

15 MR. MERKEL: Yes, there is noise in that, and
16 that is a result of, one, the equipment used, there was no
17 dampening software in the equipment that Corning used.
18 Despite the noise, Dr. Ju testified that that noise is, in fact,
19 expected with some equipment, and does not in any way
20 negate the results of the test.

21 JUDGE KAMHOLZ: So, with what confidence
22 does he have -- with what confidence does he state that those
23 data are best fit to the linear curve? Or I should say a linear
24 plot?

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