

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REACTIVE SURFACES LTD,
Petitioner,

v.

TOYOTA MOTOR CORPORATION,
Patent Owner.

Case IPR2016-01914
Patent 8,394,618

Record of Oral Hearing
Held: January 9, 2018

Before CHRISTOPHER M. KAISER, JEFFREY W. ABRAHAM, and
MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.

Case IPR2016 01914
Patent 8,394,618

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Tuesday, January 9, 2018, commencing at 1:30 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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JUDGE ANKENBRAND: Good afternoon, everyone. Today we have our final hearing in IPR2016-01914 between Petitioner, Reactive Surfaces Ltd., LLP and Patent Owner, Toyota Motor Corporation.

I'm Judge Ankenbrand. I'm joined by Judge Abraham and Judge Kaiser, who is appearing remotely from our Denver hearing room.

Counsel, can you identify yourselves and let us know who will be presenting today. Start with Petitioner.

MR. SIMMONS: Yes, Your Honor. David Simmons, here on behalf of Petitioner, Reactive Surfaces. And I have with me Mark Fasold.

JUDGE ANKENBRAND: Thank you. And counsel for Patent Owner.

MR. LUKEN: Good afternoon, John Luken from Dinsmore Shohl in Cincinnati. I'll be arguing for Patent Owner, with me is Oleg Khariton, from our Cincinnati office and also present is Brian Walker, a member of the patent bar from our D.C. office.

JUDGE ANKENBRAND: Thank you. Welcome everyone. Good to have you here today. I'm glad everyone made the effort to be here and got here safely, with the weather we've been having lately.

We set forth the procedure for today's hearing in our trial order, but just to remind everyone of the way it will work. Each party will have 45 minutes of total time to present arguments. Petitioner has the burden of proof and will go first.

Please keep in mind that Judge Kaiser will not be able to view anything that you project onto the screen in this room. Accordingly, when

1 you refer to an exhibit on the screen, please state for the record the exhibit
2 and page number, or if you're referring to a demonstrative, the slide number
3 to which you are referring. It's also important to do so for the accuracy and
4 clarity of the transcript.

5 Also, just remember that because our microphones have limitations,
6 Judge Kaiser won't be able to hear you if you stray too far from the podium,
7 so try to stay close to the microphone.

8 I will try to give each counsel warning when you're reaching the end
9 of your argument time. Does counsel have any questions or concerns?

10 MR. SIMMONS: No, Your Honor.

11 MR. LUKEN: No, Your Honor.

12 JUDGE ANKENBRAND: I think we're ready to begin. You can
13 start, Mr. Simmons. How much time did you want to reserve for --

14 MR. SIMMONS: I'd like to reserve 15 minutes for rebuttal.

15 Good afternoon Judges. David Simmons here for Petitioner, Reactive
16 Surfaces, to present arguments today. And to get started, moving to slide
17 number 2, just want to set out the points of oral argument that I'll be
18 presenting today.

19 The first is that Buchanan was a publicly accessible printed
20 publication. And I note here Buchanan is not a prior art reference upon
21 which the ground of unpatentability was presented. It's actually a prior art
22 reference that's relied upon by Petitioner's expert in forming his opinion.

23 JUDGE ANKENBRAND: I'm going to stop you for just a moment.
24 I'm getting a word from Judge Kaiser that he can't hear anything.

25 (Off the Record)

26 MR. SIMMONS: Slide number 2, Judge Kaiser. Pointing out the

1 Petitioner's points of oral argument that I'll be presenting today.

2 The first is that Buchanan was a publicly accessible printed
3 publication, and make note that Buchanan is actually a prior art reference,
4 solely that the Petitioner's expert relied upon in forming his opinion. And
5 second oral argument, grounds of unpatentability do not rest upon
6 Buchanan. Third, the facilitating limitation which is the limitation in claim
7 number 1 of the '618 patent is not patentably distinguishing. The fourth
8 point is the prior art relied upon catalytic activity and evaporation. And the
9 fifth point is prior devices anticipate the claimed invention.

10 So, moving on to slide number 3, starting off with respect to
11 Buchanan was a publicly accessible printed publication.

12 The Patent Owner has made the assertion that the record lacks any
13 evidence that a copy of the proceeding publications in which Buchanan
14 allegedly appeared was received and cataloged by any library, and I have it
15 highlighted here, any library or online databases prior to the relevant date.

16 And moving on to slide number 4, part of the evidence presented by
17 Petitioner is a declaration of Mr. Eric Pepper, who is the publications
18 director for the organization that published the Buchanan reference. And he
19 was asked to provide this declaration in support of certain dates, including
20 publication date, publication facts, and public accessibility.

21 And moving on to slide number 5, we see here that contrary to Patent
22 Owner's assertion, Petitioner believes that it did present a sufficient showing
23 of evidence that this printed publication of the Buchanan reference actually
24 was cataloged and submitted to a library, which was the Library of
25 Congress, as supported by the printed publication, including the Library of
26 Congress card catalog number.

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