NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

COLLABO INNOVATIONS, INC.,
Appellant

v.

SONY CORPORATION,
Appellee

ANDREI IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE,
Intervenor

2018-1311

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2016-00941.

Decided: August 5, 2019

DANIEL FLETCHER OLEJKO, Bragalone Conroy PC, Dallas, TX, argued for appellant. Also represented by PATRICK J. CONROY, MONTE BOND, TERRY SAAD.

MATTHEW A. SMITH, Smith Baluch LLP, Menlo Park, CA, argued for appellee. Also represented by ANDREW BALUCH, Washington, DC; ZHUANJIA GU, JACOB ZWEIG, Turner Boyd LLP, Redwood City, CA.

KATHERINE TWOMEY ALLEN, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for intervenor. Also represented by MARK R. FREEMAN, SCOTT R. MCINTOSH, JOSEPH H. HUNT; THOMAS W. KRAUSE, JOSEPH MATAL, FARHEENA YASMEEN RASHEED, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

Before TARANTO, BRYSON, and STOLL, *Circuit Judges.*

STOLL, *Circuit Judge.*

After construing the phrases "secured . . . via an adhesive" and "wider area," the Patent Trial and Appeal Board held all challenged claims of Collabo Innovations, Inc.'s U.S. Patent No. 5,952,714 unpatentable in an inter partes review. We agree with the Board's constructions, determine substantial evidence supports its findings regarding the prior art, and hold Collabo's other arguments unpersuasive. Accordingly, we affirm.

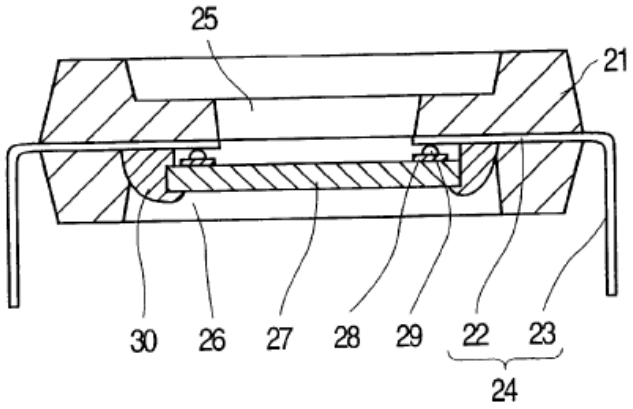
BACKGROUND

I

The '714 patent "aims to provide a solid-state image sensing apparatus mountable to a video camera of high quality picture, which not only can reproduce vivid colors and fine pictures but also can be manufactured at a low cost." '714 patent col. 2 ll. 19–22. As shown in Figure 2, below, the disclosed chip package (21) for use in that apparatus has two openings (25 and 26). *Id.* at col. 4 ll. 53–59. Opening 25, through which light reaches the image-

sensing CCD chip 27, is smaller than the chip, and opening 26 is larger than the chip. *Id.*

FIG. 2



The patent explains that the larger size of opening 26 allows chip 27 to be inserted into the package 21 through opening 26, positioned, and then fixed in place. *See id.* at col. 5 ll. 9–22.

The patent claims both an apparatus and a method of manufacture. On appeal, Collabo focuses its arguments on claim 1, which reads:

> 1. A solid-state image sensing apparatus comprising:
>
> a package having a through hole therein, openings on both end faces thereof, and different opening areas of said openings,
>
> a lead frame comprising inner leads and outer leads, said lead frame being sealed in said package, and
>
> a solid-state image sensing device mounted in said package by being inserted from an inlet of said

> opening which has a *wider area*, and thereby sealing said through hole, said solid-state image sensing device being *secured to said package via an adhesive*.

Id. at col. 9 ll. 20–30 (emphases added to indicate disputed claim terms).

II

Sony Corp. petitioned for IPR of the '714 patent. Each of its proposed grounds of unpatentability relied on either Yoshino[1] or Wakabayashi[2] for disclosing the limitations recited in claim 1. Collabo responded to these grounds by urging the Board to construe "secured . . . via an adhesive" as limited to gluing, which Collabo contended distinguished both references. J.A. 494. Collabo further argued that neither reference disclosed the claimed "wider area." J.A. 500, 527.

Following a hearing, the Board issued a final written decision. It disagreed with Collabo's proposed construction of "secured . . . via an adhesive," finding that the term was plainly broader than "gluing." *Sony Corp. v. Collabo Innovations, Inc.*, No. IPR2016-00941, 2017 WL 4418283, at *4–7 (P.T.A.B. Oct. 3, 2017). And though no party had expressly proposed a construction of "wider area," the Board recognized that the parties debated the meaning of that phrase. The Board construed it according to its plain and ordinary meaning, holding that "the opening 'area' is

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[1] JP Pat. App. Pub. No. S61-131690, T. Yoshino et al. (June 19, 1986). We cite the English translation provided at J.A. 281–83.

[2] JP Pat. App. Pub. No. H07-45803, T. Wakabayashi et al. (Feb. 14, 1995). We cite the English translation provided at J.A. 284–86. Though Collabo refers to this reference as Takashi, *see, e.g.*, Appellant's Br. 19 & n.2, we maintain the Board's naming convention here.

'wider' where the image sensor is inserted." *Id.* at *12. The Board then analyzed each of Sony's grounds of unpatentability and determined Sony had shown the claims unpatentable by a preponderance of the evidence. Collabo appeals. We have jurisdiction. 28 U.S.C. § 1295(a)(4)(A); *see also* 35 U.S.C. § 319.

DISCUSSION

On appeal, Collabo challenges the Board's constructions of "secured . . . via an adhesive" and "wider area." It further argues that even under the Board's constructions, substantial evidence does not support the finding that Yoshino and Wakabayashi disclose the claimed "wider area." And it disputes the constitutionality of IPR as applied to patents issued prior to the Leahy-Smith America Invents Act, Pub. L. 112-29, 125 Stat. 284 (2011). We address each argument in turn.

I

We first address Collabo's argument that the Board erred in construing the phrases "secured . . . via an adhesive" and "wider area." We review the Board's ultimate claim constructions de novo, *In re Man Mach. Interface Techs. LLC*, 822 F.3d 1282, 1285 (Fed. Cir. 2016), and we review any subsidiary factual findings involving extrinsic evidence for substantial evidence, *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). Because the '714 patent has expired, the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc) applies. *See In re Rambus Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2012) ("[T]he Board's review of the claims of an expired patent is similar to that of a district court's review.").

A

The Board rejected Collabo's argument that the phrase "secured . . . via an adhesive" is limited to gluing and concluded that the plain meaning of the phrase includes other

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