

PATENT CLAIM CONSTRUCTION/INTERPRETATION CHALLENGES: PROCEDURE AND SUBSTANCE

By: **Darren Crew**

In *Collabo Innovations, Inc. v. Sony Corporation*, decided on February 25, 2020, Collabo Innovations, Inc. (“Collabo”) owns U.S. Patent No. 7,023,034 (“USP ‘034”). Sony Corporation (“Sony”) filed petitions for *inter partes* review of USP ‘034, alleging that claims 1-18 were obvious and unpatentable based on Japanese Pat. App. Pub. No. H11-087674 (“Abe”) in combination with other prior art. The U.S. PTO Patent Trial and Appeal Board (“PTAB”) concluded that claims 1-18 of USP ‘034 were obvious and unpatentable. Collabo appealed to the U.S. Court of Appeals for the Federal Circuit (“CAFC”). In this case, the CAFC affirmed the *inter partes* review final written decisions of the PTAB.

I. Facts USP ‘034 is directed to a solid-state imaging device having light-sensitive elements arranged in a matrix form. USP ‘034 claims a pair of “reflecting walls” that exist over each light-sensitive element, separating each element from adjacent light-sensitive elements. The reflecting walls are intended to help light enter the aperture of a desired photo-diode and prevent color mixing.

II. Procedure

(a) Arguments: Collabo argued that the PTAB erred by adopting an unreasonably broad construction of “reflecting walls” and thus the decision regarding claims 1-18 must be reversed. More particularly, Collabo argued that the PTAB should have given the claim term “reflecting wall” its plain and ordinary meaning, and the plain and ordinary meaning of “reflecting wall” was “a wall that reflects oblique light from a micro lens onto a corresponding light-sensitive element.”

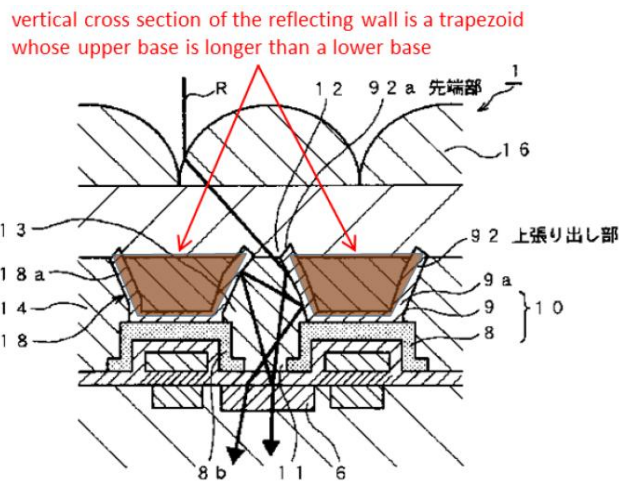
Sony responded by arguing that Collabo waived its claim construction argument by failing to raise it before the PTAB in a timely manner and also that the PTAB’s claim construction was correct.

(b) Decision: The CAFC noted that Collabo did not contest the PTAB’s claim construction in its patent owner preliminary response or in its patent owner response. Collabo attempted to challenge the PTAB’s claim construction at the hearing before the PTAB. However, the PTAB noted that Collabo had ample opportunity to argue for an alternative construction in its patent owner response but did not do so. Collabo admitted at the hearing that it had not previously raised the argument. The CAFC found that the PTAB did not abuse its discretion when declining to consider Collabo’s claim construction argument. Because Collabo did not raise its claim construction argument in a timely manner, it was waived and the merits of the claim construction argument did not need to be addressed by the CAFC.

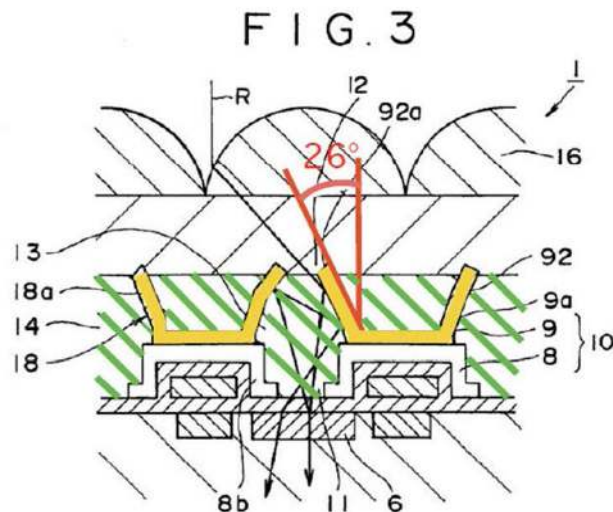
III. Substance

(a) Arguments: Collabo argued that the decision on claims 3 and 12 must be reversed since the finding that the Abe reference discloses a trapezoidal reflecting wall is not supported by substantial evidence. Claims 3 and 12 each recites “wherein a vertical cross section of the reflecting wall is a trapezoid whose upper base is longer than a lower base.” Collabo argued that substantial evidence did not support the conclusion that the cross-section in the Abe reference is a “trapezoid.”

Sony argued that FIG. 3 of the Abe reference teaches the “trapezoid” limitation in claims 3 and 12 for a trapezoidal reflecting wall. Sony supplied the following drawing (Sony’s annotations of Abe’s FIG. 3):



Collabo supplied the following drawing (Collabo’s annotations of Abe’s FIG. 3), showing the absence of a top and being in a cup-shaped structure, and therefore, not a trapezoid structure for the claimed reflecting wall:



(b) **Decision:** The CAFC affirmed the PTAB’s claim construction of a reflecting wall that is “trapezoid.”

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