Trials@uspto.gov
571-272-7822

Paper 43
Entered: October 19, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINETIC TECHNOLOGIES, INC.,
Petitioner,

v.

SKYWORKS SOLUTIONS, Inc.,
Patent Owner.

Case IPR2014-00690
Patent 8,539,275 B2

Before GLENN J. PERRY, SCOTT A. DANIELS, and BARRY L. GROSSMAN, *Administrative Patent Judges.*

DANIELS, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
37 C.F.R. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Kinetic Technologies, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") to institute an *inter partes* review of claims 1–29 of U.S. Patent No. 8,539,275 B2 ("the '275 patent" (Ex. 1001)). Pet. 1. We instituted trial for claims 4–6, 8–20, and 23–29 of the '275 patent on certain grounds of unpatentability alleged in the Petition. Paper 8 ("Decision to Institute" or "Inst. Dec.").

After institution of trial, Skyworks Solutions, Inc. ("Patent Owner") timely filed the Patent Owner's Response (Paper 18, "PO Resp.") along with Declarations by Kevin P. D'Angelo, John Sung K. So, Richard K. Williams, David Alan Brown, Kenneth K. Lee, and Nader Bagherzadeh, Ph.D., the first four declarants being named inventors of the '275 patent. Exs. 2028–2033. Petitioner filed a Reply. Paper 30 ("Pet. Reply").

Patent Owner also filed a Motion to Exclude Evidence (Paper 33, "Mot."), particularly the main prior art reference (Ex. 1004) relied upon by Petitioner for each ground of obviousness. Petitioner timely filed an Opposition (Paper 34, "Pet. Opp. Mot.") thereto and Patent Owner filed a Reply (Paper 36, "Reply Opp. Mot."). An oral hearing for IPR2014-00690 was held on June 4, 2015. The transcript of the hearing has been entered into the record. Paper 41 ("Tr.").

Subsequent to the hearing, the parties filed on June 12, 2015 a Renewed Joint Motion to Terminate Proceedings (Paper 39, "Mot. Term.").[1]

[1] On May 27, 2015, prior to the hearing, the parties filed a Joint Motion to Terminate Proceedings stating that "[t]he parties are in the process of finalizing an agreement to settle their dispute." Paper 37, 1. Because the

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is issued pursuant to 35 U.S.C. § 318(a).

B. Additional Proceedings

Petitioner stated that the '275 patent was asserted against Petitioner in *Skyworks Solutions, Inc. v. Kinetic Technologies, Inc*., Case No. 3:14-cv-00010 in the Northern District of California.[2] Pet. 2; Paper 5. Petitioner also states that the '275 patent claims priority to U.S. Patent Application No. 10/144,333, now U.S. Patent No. 7,127,631("'631 patent"), which is the subject of Reexamination Control No. 95/000,501.[3] Pet. 2.

C. The '275 Patent

The '275 patent, titled "Single Wire Serial Interface," describes a single wire serial interface for managing functions such as power level and on and off switching for power integrated circuits and other devices. Ex. 1001, Abstract, 1:22–24. The '275 patent explains that stand-alone power systems for power integrated circuits are often constrained by package size and cost, and where most of the available pins in such stand-alone power applications are used for power load, there are few pins in the interface left to accommodate power control functions. *Id.* at 1:34–43. The '275 patent states that ideally in such applications, minimal pins, or a single pin

---

agreement was not finalized, we did not terminate the proceedings and conducted the hearing. Following the hearing the parties filed the Renewed Joint Motion to Terminate Proceedings (Paper 39) indicating the agreement had been finalized, and pursuant to 37 C.F.R. § 42.74(b), filed a true copy of the Confidential Patent Settlement Agreement (Ex. 2040).

[2] A Notice of Voluntary Dismissal of the lawsuit was filed by Patent Owner on June 12, 2015.

[3] An *Inter Partes* Reexamination Certificate issued September 23, 2015 confirming claims 3, 7, 13, 16, 19–21, and 25 of the '631 patent.

"interface would be able to accommodate a wide variety of control needs and be scal[]able to many levels of complexity." *Id.* at 1:54–56. Figure 2 of the '275 patent illustrates, diagrammatically, integrated circuit 200 of the invention having a single wire serial interface. Ex. 1001, 3:59–60. Figure 2 is reproduced below:

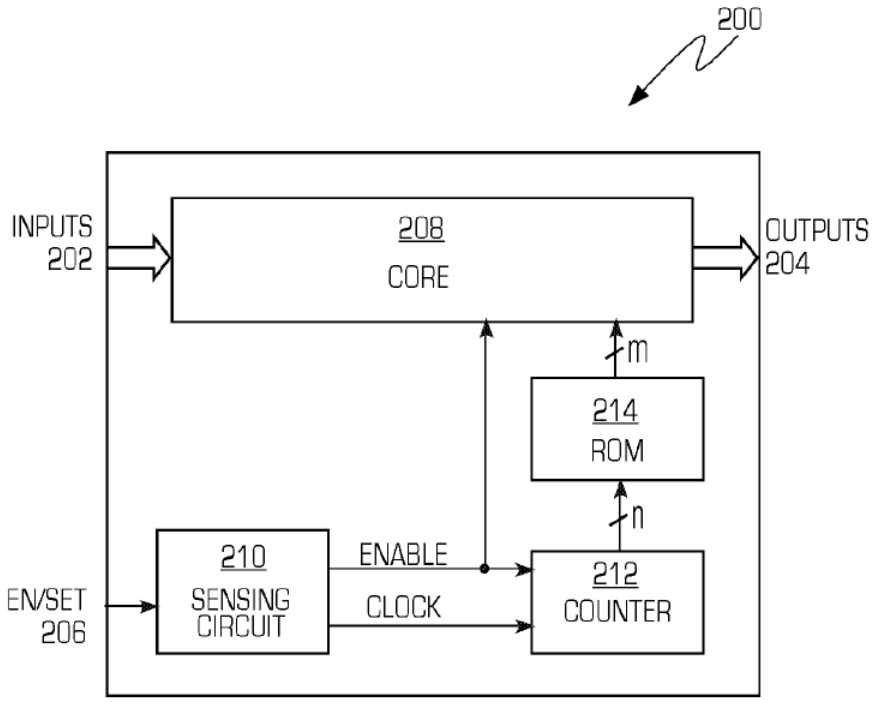


FIG. 2

Figure 2 of the '275 patent depicts integrated circuit 200 having one or more inputs 202, and one or more outputs 204, as well as EN/SET signal input 206. EN/SET input 206 is connected to sensing circuit 210 which, as discussed further below, determines the voltage state, i.e., high, low, or toggling, of the EN/SET signal. *Id.* at 1:65–66. Figure 1 of the '275 patent illustrates three waveform types defining EN/SET signal: (a) toggling

waveform 1, 2, 3, 4…n–1; (b) constantly high waveform n; and (c) constantly low waveform 0. *Id.* at 3:29–34.

Figure 1 is reproduced below:

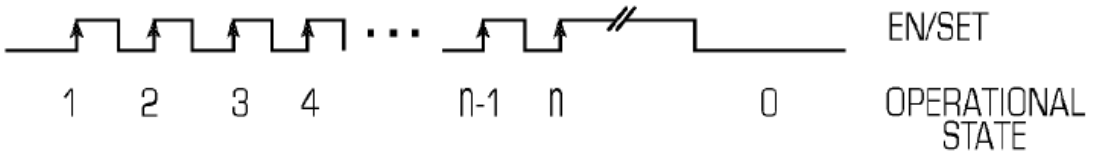


FIG. 1

As shown by Figure 1 of the ’275 patent, above, the number of clock pulses of the toggling waveform determines a particular operational state of the integrated circuit. *Id.* at 3:35–36. Constantly high waveform n instructs the circuit to maintain a selected operational status, and constantly low waveform 0 causes the circuit to turn off, or attain some other predetermined state, after a predetermined timeout period has elapsed. *Id.* at 3:43–49. Referring to Figure 2, above, sensing circuit 210 determines the waveform type of the EN/SET signal and produces two output signals, Clock signal and Enable signal to send to counter 212. *Id.* at 4:1–4. The ’275 patent states that:

> a rising transition of the EN/SET signal causes sensing circuit 210 to assert the Enable signal. Sensing circuit 210 holds the Enable signal high until the EN/SET signal transitions to a logical low state and remains in the low state until the predetermined timeout period has elapsed.

Id. at 4:10–15. The Enable signal is a gate signal for the Clock signal, as long as the Enable signal is high, the Clock signal is forwarded by sensing circuit 210 to counter 212. *Id.* at 4:15–17. In this case, counter 212 counts the transitions, i.e., waveform pulses, forwarded by sensing circuit 210, e.g.,

1, 2, 3, 4. . . n, to determine a counter n-bit output. *Id.* at 4:22–23. Counter 212 resets to 0 "when sensing circuit 210 transitions the Enable signal to a low value." *Id.* at 4:24–25. ROM 214 receives the n-bit output which corresponds to an m-bit word stored in the ROM defining a selected control state. *Id.* at 4:26–28. ROM 214 passes the selected control state to Core portion 208 producing a desired output 204, by way of example, for controlling the specific brightness of light emitting diodes [LEDs] in a backlight for a display. *Id.* at 4:30–32, 6:59–7:3.

D. Illustrative Claim

Of the challenged claims we instituted on claims 4–6, 8–20, and 23–29. Claims 4 and 20 are independent. Claim 4 illustrates the claimed subject matter and is reproduced below:

> 4. A backlight driver, comprising:
> an input pin configured to be able to receive power from a power source;
> a light emitting diode (LED) driver circuit in communication with the input pin and configured to drive a plurality of LEDs, the LED driver circuit including a first circuit configured to generate a count value by counting clock pulses, a second circuit configured to generate a control state in response to the count value, and a boost converter configured to generate a boosted-output in response to the control state, the boosted-output configured to control brightness of the plurality of LEDs; and
> an output pin in communication with the LED driver circuit and configured to output the boosted-output for the plurality of LEDs.

Ex. 1001, 7:56–8:3.

E. The Pending Grounds of Unpatentability

References	Basis	Claims Challenged
LT1932[4], Legates[5], and Kato[6]	§ 103	4–6, 8, 12–20, and 23–29
Renner[7], McIntyre[8], and LT1932	§ 103	4–6 and 8–19

II. CLAIM CONSTRUCTION

A. Legal Standard

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Technologies LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015) ("Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA," and "the standard was properly adopted by PTO regulation"). Claim terms are given their "ordinary and customary

[4] Ex. 1004, Linear Tech. Corp., *LT1932, Constant-Current DC/DC LED Driver in ThinSOT* 1–16 (2001).
[5] Ex. 1010, Bryan Legates, *Constant-Current DC/DC Converter Drives White LEDs with 80% Efficiency*, LINEAR TECH. MAG. 21 (May 2001).
[6] Ex. 1005, Japanese Unexamined Patent Application Publication No. H06-62468, published Mar. 4, 1994. Our citations to Kato are to Ex. 1006, the English translation provided by Petitioner.
[7] Ex. 1003, U.S. Patent No. 4,114,366 (iss. Sept. 19, 1978).
[8] Ex. 1002, Steve McIntyre, Fred Phail, & Steve Thomas, *Automotive Electronics: The Future?* Automotive Engineering 26 (Aug. 1989).

meaning" as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc)). If the specification "reveal[s] a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess[,] . . . the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316.

In our Institution Decision, we provided claim constructions for certain terms in Response to Petitioner's asserted interpretations. *See* Inst. Dec. 7–12. Patent Owner did not, in their Patent Owner's Response, provide its own claim constructions or object to our claim constructions. *See* PO Resp. 1–59. We determined in our Institution Decision, and confirm for purposes of this Decision, that the term "backlight driver" in the preamble of claim 4, as well as "backlight circuit" in the preamble of claim 20, were not limitations because the body of each claim defines a complete circuit structure and "[n]othing in the bodies of these independent claims depends on use of the circuit as a 'backlight driver,' or as a 'backlight circuit,' as recited in the preambles." Inst. Dec. 8–10. We also confirm that "a received signal" as recited in claim 12 for example "does not refer to any specific signal, and is not limited to the 'clock pulse' signal, or any other signal recited in the claim." *Id.* at 11 (citation omitted). Additionally, we construe the term "boost converter" to mean "a power converter with an output voltage greater than its input voltage," and "boosted-output" to mean "an output of a power converter greater than the input voltage to the power converter." *Id.* at 11–12.

III. ANALYSIS

A. Asserted Grounds of Unpatentability

1. Obviousness over LT1932, Legates, and Kato

Petitioner asserts that claims 4–6, 8, 12–20, and 23–29 are obvious over the combination of LT1932, Legates, and Kato. Pet. 10. Patent Owner raises the threshold issue of whether LT1932 is a "printed publication" under § 102. PO Resp. 13. According to Patent Owner, "Petitioner has failed to satisfy its burden that LT1932 is a prior art printed publication." *Id.* at 16. Patent Owner asserts specifically that Petitioner failed to properly show that LT1932 was "'sufficiently accessible to the public interested in the art' before the critical date." *Id.* at 14 (citing *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). Patent Owner further argues in its Patent Owner Response that any further evidence presented by Petitioner that LT1932 is a printed publication should be disregarded as untimely. *Id.* at 15. Subsequently, with its Reply, Petitioner filed a declaration by Todd E. Reimund (Ex. 1012) which purports to provide additional evidence that LT1932 is a printed publication. Pet. Reply 5–6. We address first the threshold issue of whether the LT1932 reference is a printed publication.

a. Printed Publication

Petitioner asserts that LT1932 is prior art to the '275 patent under 35 U.S.C. §§ 102(a) and 103. Pet. 5. Under 35 U.S.C. § 102(a), a person is entitled to a patent unless "the invention was . . . patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent." "Whether a . . . document qualifies as a 'printed publication' under § 102 is a legal conclusion based on underlying factual determinations." *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186,

1192 (Fed. Cir. 2008) (citation omitted). "'Public accessibility' has been called the *touchstone* in determining whether a reference constitutes a 'printed publication' bar under 35 U.S.C. § 102." *Id.* at 1194 (citation omitted). A reference is publicly accessible upon a satisfactory showing that it has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it. *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006); *see also In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989) ("The statutory phrase 'printed publication' has been interpreted to mean that before the critical date the reference must have been sufficiently accessible to the public interested in the art; dissemination and public accessibility are the keys to the legal determination whether a prior art reference was 'published.'") (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1568 (Fed. Cir. 1988)).

In *In re Klopfenstein*, 380 F.3d 1345 (Fed. Cir. 2004), the Federal Circuit rejected an argument that "'distribution and/or indexing' are the key components to a 'printed publication' inquiry" because that argument "fails to properly reflect what our [Federal Circuit] precedent stands for," explaining that "printed publication" means reasonably accessible through generally available media that serve to disseminate information. *Id.* at 1348. "A printed publication need not be easily searchable after publication if it was sufficiently disseminated at the time of its publication." *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014).

The "printed publication" analysis under § 102 "involves a case-by-case inquiry into the facts and circumstances surrounding the reference's

disclosure to members of the public." *Klopfenstein*, 380 F.2d at 1350 (citations omitted).

Against this general background, we consider the evidence and arguments on which the parties rely.

Petitioner takes the position that LT1932 is a "printed publication" within the meaning of § 102, and in view of a date printed on the document, because it was "published at least as early as 2001," and therefore was accessible prior to March 28, 2002, the date from which the '275 patent claims priority.[9] Pet. 5. Petitioner supports its position with the declaration of Todd E. Reimund, the Director of Corporate Marketing at Linear, the company that purportedly printed the data sheet. Mr. Reimund asserts that "[s]ince prior to 2001, it has been Linear's standard practice to make publicly available datasheets for, and articles related to, devices that Linear was marketing, selling, and offering for sale." Ex. 1012 ¶ 4. Patent Owner disagrees, and via its Motion to Exclude Evidence contends that Petitioner failed to establish that LT 1932 was published or publicly accessible before the invention of the subject matter of '275 patent and also that we should disregard any new evidence, such as Dr. Reimund's declaration testimony, that was submitted with Petitioner's Reply. PO Resp. 14–15.

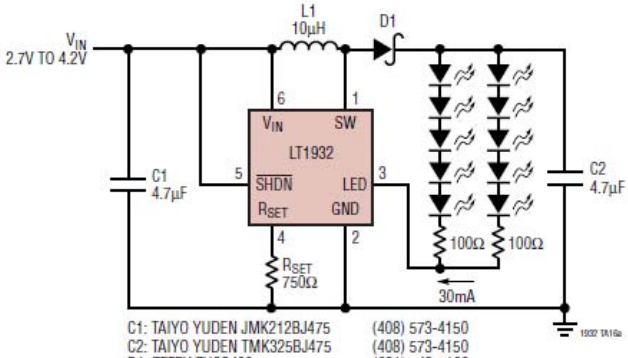
[9] The '275 patent is a continuation of application No. 11/582,927, now U.S. Patent No. 7,921,320, filed October 17, 2006, which is in turn a continuation of application No. 10/144,333, now U.S. Patent No. 7,127,631, filed May 13, 2002 (*see supra* note 3), each of which claims priority to Provisional application No. 60/368,474, filed March 28, 2002. Ex. 1001, 1.

b. LT1932

The LT1932 reference is a product data sheet for a constant current DC/DC LED driver that directly regulates output current as opposed to voltage. Ex. 1004, 1. According to its manufacturer, Linear Technology, this feature makes the driver "ideal for driving light emitting diodes" that provide illumination levels directly proportional to the supplied current. *Id.* LT1932 details various parameters of the LT1932 product such as electrical characteristics, efficiencies and ratings, product applications and performance characteristics, and package descriptions and order information. *Id.* at 1–16. Page 16 of LT1932, reproduced below, is the last page of the reference. Printed in the bottom right corner of the page is "LT/TP 1201 2K · PRINTED IN USA." *Id.* at 16. The page also bears a copyright notice stating "©LINEAR TECHNOLOGY CORPORATION 2001." *Id.*

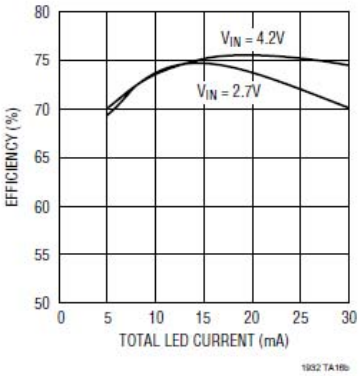
TYPICAL APPLICATION

Li-Ion Driver for Ten White LEDs

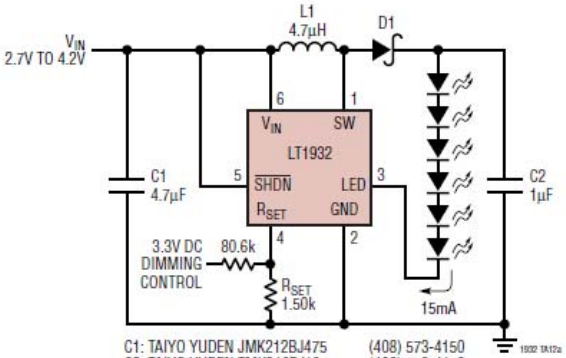


C1: TAIYO YUDEN JMK212BJ475 (408) 573-4150
C2: TAIYO YUDEN TMK325BJ475 (408) 573-4150
D1: ZETEX ZHCS400 (631) 543-7100
L1: MURATA LQH3C100M24 (814) 237-1431

Efficiency

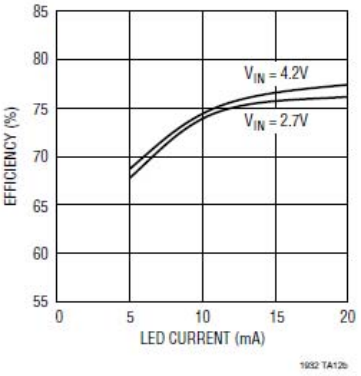


Li-Ion Driver for Six White LEDs



C1: TAIYO YUDEN JMK212BJ475 (408) 573-4150
C2: TAIYO YUDEN TMK316BJ105 (408) 573-4150
D1: ZETEX ZHCS400 (631) 543-7100
L1: MURATA LQH3C4R7M24 (814) 237-1431

Efficiency



RELATED PARTS

PART NUMBER	DESCRIPTION	COMMENTS
LT1615	Micropower DC/DC Converter in 5-Lead ThinSOT	20V at 12mA from 2.5V Input, ThinSOT Package
LT1617	Micropower Inverting DC/DC Converter in 5-Lead ThinSOT	–15V at 12mA from 2.5V Input, ThinSOT Package
LT1618	Constant-Current/Constant-Voltage DC/DC Converter	Drives 20 White LEDs from Li-Ion, MS10 Package
LTC1682	Doubler Charge Pump with Low Noise Linear Regulator	3.3V and 5V Outputs with 60µV_{RMS} Noise, Up to 80mA Output
LT1930	1.4MHz Switching Regulator in 5-Lead ThinSOT	5V at 480mA from 3.3V Input, ThinSOT Package
LT1931	Inverting 1.2MHz Switching Regulator in 5-Lead ThinSOT	–5V at 350mA from 5V Input, ThinSOT Package
LTC3200	Low Noise Regulated Charge Pump	5V Output with Up to 100mA Output
LTC3201	Ultralow Noise, Charge Pump	100mA, Integrated LP Filter, MSOP8
LTC3202	High Efficiency, Fractional Charge Pump	125mA, Integrated 2-Bit DAC

c. Reimund Declaration

Pursuant to 37 C.F.R. § 42.64(b), the Declaration of Todd E. Reimund was timely served by Petitioner in response to Patent Owner's Objections to Admissibility of Evidence. *See* Exs. 1015–16. Mr. Reimund's Declaration was also presented as Exhibit 1012 with Petitioner's Reply. Pet. Reply 5–6. Mr. Reimund states in his Declaration that he has been employed at Linear Technology for twenty-two years and currently holds the position of Director of Corporate Marketing there. Ex. 1012 ¶¶ 1–2. Mr. Reimund states that his "principal job responsibilities include MARCOM and other Marketing functions." *Id.* He also states that he is "familiar with the standard practices of Linear concerning the availability and publication of datasheets." *Id.* Mr. Reimund also avers that

> [s]ince prior to 2001, it has been Linear's standard practice to make publicly available datasheets for and articles related to devices that Linear was marketing, selling, and offering for sale. Such documents were made available to interested participants of the electronics industry and to the public through various means such as the Internet, product packaging, and marketing materials, including a publication known as Linear Technology Magazine[.]

Id. ¶ 4. Mr. Reimund testifies that the four-digit code "1201" on the final page of the reference "indicates a date of December 2001." *Id.* ¶ 5. Mr. Reimund further states that "[t]he documents were made publicly available shortly after the footer dates were applied. Linear maintains and I have reviewed a database reflecting the dates that such documents were made publicly available." *Id.*

d. Motion to Exclude

By way of background, we determined for purposes of institution that the LT1932 product datasheet bearing a 2001 copyright notice suffices as a threshold showing of public availability sufficient to institute trial. *See Apple, Inc. v. DSS Tech. Mgmt., Inc.*, Case IPR2015-00369, Paper 14, 5 (PTAB Aug. 12, 2015), *see also LG Elecs., Inc. v. Advanced Micro Devices, Inc.*, Case IPR2015-00329, Paper 13, 11–12 (PTAB July 10, 2015) ("the presence of a copyright notice, together with the listing of the reference in an IDS, may be taken as some evidence of public accessibility as of a particular date"). Based on its timely filed objections under 37 C.F.R. § 42.64(b) (Ex. 1015) to Petitioner's evidence filed with the Petition, Patent Owner filed a Motion to Exclude Evidence (Paper 33, "Mot."), particularly the LT1932 datasheet arguing that Petitioner's evidence of public accessibility, i.e., the 2001 copyright date, is insufficient, and that the supplemental evidence served by Petitioner, specifically, Mr. Reimund's Declaration (Ex. 1012) filed with Petitioner's Reply, is untimely and should have been presented properly with the Petition. Mot. 1–6.

As the Patent Trial and Appeal Board has noted previously, a motion to exclude is properly related to the *admissibility* of evidence (e.g., authenticity or hearsay). *See Bloomberg Inc. v. Markets-Alert Pty Ltd.*, CBM2013-00005, slip op. at 5 (PTAB Nov. 15, 2013) (Paper 56). Patent Owner's Motion to Exclude Evidence is directed, however, to the *sufficiency* of evidence concerning whether or not LT1932 is prior art to the claimed subject matter in the '275 patent. Patent Owner argues in its Motion that "[t]he Petition asserted, without evidentiary support, that Exhibit 1004 'was published at least as early as 2001.'" Mot. 2 (citing Pet. 5). Although Patent

Owner states that Petitioner does not establish the necessary "foundation," the arguments presented by Patent Owner are directed specifically to the sufficiency of the copyright date of 2001 as evidence of a publication date, and hence public accessibility, of LT1932. *See id.* at 2–4. Arguments related to whether a copyright date is sufficient evidence of public accessibility so that LT1932 is, or is not, a "printed publication" under 35 U.S.C. § 102 are properly presented in a reply rather than in a motion to exclude.

With respect to Patent Owner's argument that Mr. Reimund's Declaration should be excluded as irrelevant under Fed. R. Evid. 402, this admissibility objection is based on Patent Owner's assertion that Petitioner's evidence is insufficient to establish LT1932 as prior art where Patent Owner has provided evidence of conception prior to December 31, 2001. Mot. 5. For example, Patent Owner argues in its Motion that "Petitioner cannot carry its burden to show that the claims of the patent are invalid *unless it presents sufficient evidence* in the Petition itself that a relied upon reference is prior art to the '275 Patent." *Id.* (emphasis added) (original emphasis omitted). Such an argument addressing the sufficiency of Petitioner's temporal evidence is misplaced in a motion to exclude. Accordingly, Patent Owner's Motion to Exclude Evidence is *denied*.

e. Whether LT1932 is a Printed Publication

We turn now to the question of whether Petitioner has demonstrated, by a preponderance of the evidence, that the LT1932 reference was described in a printed publication prior to the invention date of the subject matter described and claimed in the '275 patent.

As discussed above, Patent Owner contends in its Patent Owner Response that the copyright date of 2001 is insufficient to show that LT1932 was accessible to the public. PO Resp. 14. Patent Owner also contends that the supplemental evidence of Mr. Reimund's Declaration provided in Petitioner's Reply should be disregarded as untimely. *Id.* at 15.

Turning to Petitioner's Reply, with which the supplemental evidence of Mr. Reimund's Declaration was filed, we note that a petitioner's reply to a patent owner's response may address only issues raised in the corresponding opposition. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767. Petitioner was entitled to rebut Patent Owner's arguments concerning the public accessibility of LT1932 in its Reply with Mr. Reimund's Declaration because the Declaration was filed in response to Patent Owner's objective criteria of public accessibility asserted in Patent Owner's Response. We agree with Petitioner that the testimony in Mr. Reimund's Declaration, submitted initially as supplemental evidence under 37 C.F.R. § 42.64(b)(2), is also directed essentially to issues raised in the Patent Owner Response, namely the sufficiency and facts pertaining to the 2001 copyright date and purported publication date printed on LT1932. Pet. Reply. 5–6, Pet. Opp. Mot. 2–4.

We determine that the priority date, for purposes of this Decision, is March 28, 2002, the filing date of the '474 provisional application that became the '275 patent.[10] Patent Owner provides persuasive evidence that

[10] Patent Owner provides evidence of conception and reduction to practice of the invention claimed in the '275 patent prior to December 31, 2001, and also evidence of diligence leading to the filing of the '474 provisional application on March 28, 2002. *See* PO Resp. 35–57. Based on this

the 60/368,474 ("'474") provisional application contains essentially identical disclosure to that of the '275 patent and that each of the claims at issue is supported by disclosure in the '474 provisional application. PO Resp. 54–57, *compare* Ex. 2016, *with* Ex. 1001; Ex. 2030 ¶¶ 54–55; Ex. 2028 ¶ 90.

Petitioner presents two pieces of evidence that LT1932 is prior art: (1) the four-digit date code of "1201" and 2001 copyright notice in the footer on the last page of the LT1932 data sheet, and (2) Mr. Reimund's Declaration. Mr. Reimund testifies that the date code "'1201' indicates that the datasheet was made public, and Linear customers and members of the public were able to access the datasheet no later than December 2001." Ex. 1012 ¶ 6. Therefore, Petitioner contends, "Exhibit 1004 is a printed publication that was made public in 2001." Pet. Opp. Mot. 3. As the Director of Corporate Marketing and a long term, twenty-two year employee of Linear, we are persuaded that Mr. Reimund is familiar with the company's business practice of producing datasheets, such as the LT1932 datasheet, for "marketing, selling, and offering for sale" certain products, as stated in his Declaration. Ex. 1012 ¶ 4. We are also persuaded by Mr. Reimund's testimony that it has been the common business practice of Linear to date code documents such as LT1932 "to reflect the printing date," in this case December 2001. *Id.* ¶ 5. Specifically, Mr. Reimund states that "[b]efore Linear published a datasheet, it would date code the document to reflect the printing date . . . '1201' on the final page in the footer of a Linear data sheet indicates a date of December 2001." *Id.* According to Mr.

---

evidence, Patent Owner contends that the critical date is actually December 19, 2001. *Id.* at 40. We need not reach this issue here for the reasons explained in the Decision.

Reimund "[t]he documents were made publicly available shortly after the footer dates were applied." *Id.* A "printing date" is not, however, without more, sufficient evidence of public accessibility as of that particularly date. *See e.g., LG Elecs.*, Case IPR2015-00329 (Paper 13, 13) (Declarant's "unsupported opinion that EIFUFAL501 'was more than likely published on or about March 24, 1998' (*id.*) is insufficient to demonstrate a reasonable likelihood that EIFUFAL501 was published before June 1, 1998.")

The bare testimony of Mr. Reimund that the printing date "'1201' indicates that the datasheet was made public, and Linear customers and members of the public were able to access the datasheet no later than December 2001" (Ex. 1012 ¶ 6) is not persuasive evidence that the "printing date" can be equated to the publication date. In his Declaration, Mr. Reimund stated that such documents "were made publicly available *shortly after* the footer dates were applied." Ex. 1012 ¶ 5 (emphasis added). Mr. Reimund's testimony, however, provides no further explanation as to what time period, hours, days or months etc., is encompassed by the term "shortly after." Giving some weight to Mr. Reimund's testimony that it was common business practice for documents to bear a printing date such as "1201" indicative of a printing date of December 2001, his opinion that LT1932 was publicly available "shortly after" that date is vague and insufficient by itself to demonstrate that LT1932 was accessible to the public prior to the filing of the '474 provisional application on March 28, 2002. Mr. Reimund further states that "Linear maintains and I have reviewed a database reflecting the dates that such documents were made publicly available." *Id.* ¶ 5. The database referred to by Mr. Reimund is not part of the record in these proceedings and this explicit reference to purported important corroborating

evidence is ambiguous without the specific database and dates he reviewed. Overall, Mr. Reimund's testimony does not state any facts or circumstances relating to specific dates, or even a general time frame, after December 2001 that LT1932 was in fact publicly accessible. Mr. Reimund's testimony alleging that LT1932 was publicly available "shortly after" December 2001, does not sufficiently temporally link the December 2001 printing date to the alleged public availability of the reference prior to March 28, 2002. Consequently, on this record we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that LT1932 is a printed publication available before the priority date.

2. Obviousness over LT1932, Renner, and McIntyre

Petitioner asserts that claims 4–6 and 8–19 are obvious over the combination of LT1932, Renner, and McIntyre. Pet. 47–59. Because we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that LT1932 is a printed publication available before the priority date, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that claims 4–6 and 8–19 are unpatentable under 35 U.S.C. § 103(a) over LT1932, Legates, Renner, and McIntyre.

3. Renewed Joint Motion to Terminate Proceedings

Following the oral hearing on June 4, 2014, the parties filed a Renewed Joint Motion to Terminate Proceedings under 35 U.S.C. § 317(a) on June 12, 2015. Accompanying the Motion, the parties filed a true copy of a settlement agreement (Ex. 2040) along with a joint request to treat the settlement agreement as business confidential (Paper 40), to be kept separate from the patent file pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Based on the facts of this case and because the settlement was not concluded

until after the oral hearing and we had substantially decided the merits of the proceeding, we exercise our discretion not to terminate this proceeding. The Renewed Joint Motion to Terminate Proceedings is *denied*.

IV. CONCLUSION

A. Petitioner has not shown by a preponderance of the evidence that claims 4–6, 8, 12–20, and 23–29 are unpatentable in view of LT1932, Legates, and Kato.

B. Petitioner has not shown by a preponderance of the evidence that claims 4–6 and 8–19 are unpatentable in view of LT1932, Renner, and McIntyre.

V. ORDER

For the reasons given, it is

ORDERED that claims 4–6, 8–20, and 23–29 have not been shown by a preponderance of the evidence to be unpatentable;

FURTHER ORDERED that Patent Owner's Motion to Exclude is *denied*;

FURTHER ORDERED that the parties Renewed Joint Motion to Terminate Proceedings is *denied*; and

FURTHER ORDERED that this is a final written decision and that parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

llw

For Petitioner:

Joshua Goldberg
Weiguo Chen
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
joshua.goldberg@finnegan.com
will.chen@finnegan.com

For Patent Owner:

Brenton R. Babcock
Ted M. Cannon
Michelle E. Armond
KNOBBE, MARTENS, OLSON & BEAR, LLP
2brb@knobbe.com
2tmc@knobbe.com
2mea@knobbe.com