

CISCO SYSTEMS, INC., v. CIRREX SYSTEMS, LLC, Appeal Nos. 2016-1143 & 2016-1144 (Fed. Cir. May 10, 2017). Before Prost, Wallach and Chen. Appealed from PTAB.

Background:

Cisco requested *inter partes* reexamination of Cirrex's patent directed to an optical network assembly that uses a planar lightguide circuit (PLC). Cirrex's patent has one group of claims reciting that "the [PLC] is operative to equalize the intensities of light energy traveling in the plurality of optical paths of the [PLC]," and another group of claims reciting that "the [PLC] further comprises a gain flattening element to discretely attenuate light energy traveling in the [PLC]," (emphasis added).

Cirrex's patent specification lacks any disclosure or suggestion of how placing attenuation material in the PLC would result in: (i) equalizing the intensities of different wavelengths traveling in the PLC, or (ii) discretely attenuating a particular wavelength in the PLC. However, Cirrex argued before the Board that the intensities of the wavelengths inside the PLC could be equalized with the intensity of a wavelength outside the PLC, rather than requiring that the equalization apply only to wavelengths inside the PLC. Cirrex also relied on the same out-of-the-box theory to support its proposed construction of the claimed discrete attenuation function. Based on this construction, the Board ruled that Cirrex's equalization claims and discrete attenuation claims have written description support in Fig. 10, which illustrates different wavelengths inside the PLC and a wavelength coming from outside the PLC. Cisco appealed.

Issue/Holding:

Do Cirrex's equalization claims and discrete attenuation claims have written description support? No, reversed.

Discussion:

The Federal Circuit found that the Board improperly altered the construction of the equalization claims and the discrete attenuation claims because the Board's construction was contrary to the plain language of the claims. The Federal Circuit ruled that the correct construction of the equalization claims requires that the individual wavelengths of light energy be equalized to other wavelengths of light energy that travel inside the PLC. Similarly, the Federal Circuit ruled that the correct construction of the discrete attenuation claims requires that discrete attenuation does not encompass using the same attenuation element inside the PLC to attenuate all wavelengths of light in the same way. That is, under the correct claim construction, the claimed functionality of equalization and discrete attenuation must occur inside the PLC with respect to wavelengths traveling inside the PLC, and not to wavelengths outside the PLC.

The Federal Circuit found that there is no written description in Cirrex's patent of a mechanism for acting on individual channels of light inside the PLC to: (i) make their intensities equal, or (ii) discretely attenuate one of several channels. Accordingly, the Federal Circuit reversed the Board's finding of patentability for Cirrex's equalization claims and discrete attenuation claims.