

M & K HOLDINGS INC. v. SAMSUNG ELECTRONICS CO., LTD., Appeal No. 2020-1160 (Fed. Cir. February 1, 2021). Before Moore, Bryson, and Chen. Appealed from Patent Trial and Appeal Board.

Background:

In a petition for *inter partes* review, Samsung argued that the claims of M&K's patent were unpatentable over one or more references known as WD4-v3, Park, and Zhou. All three references relied upon in Samsung's petition were created in conjunction with the work of a joint task force known as the Joint Collaborative Team on Video Coding (JCT-VC) for establishing industry standards for high-efficiency video coding. The JCT-VC holds quarterly meetings at which tech companies, universities, and other members submit and discuss input documents that propose changes to the industry standards, such as Park and Zhou. The changes agreed upon by the members are then incorporated into a working-draft document, such as WD4-v3.

During *inter partes* review, M&K argued that each of the three references was not publicly accessible and thus did not constitute a printed publication under 35 U.S.C. §102. The PTAB disagreed and found the claims unpatentable over the references. On appeal, M&K only disputed the public accessibility of the input documents, Park and Zhou.

Issue/Holding:

Did the PTAB err in holding that the Park and Zhou references were publicly accessible?
No, affirmed.

Discussion:

The Federal Circuit agreed with the PTAB that the references were publicly accessible. They were presented and discussed without any expectation of confidentiality at JCT-VC meetings, which were attended by between 200 and 300 people. The meeting reports also summarized the discussions of Park and Zhou and directed readers to the JCT-VC website, which hosted downloadable copies of the references. Further, the JCT-VC was prominent among those skilled in the art, who would have monitored the website for changes to industry standards.

M&K argued that the references were not publicly accessible because it was difficult to find the references on the JCT-VC website. However, the panel rejected each of the issues raised by M&K—the website home page does not describe a document repository, explain which link provides access to the input documents, or provide search functionality—as not dispositive. Instead, the dispositive question is whether interested users of the website could have located the references through reasonable diligence. Here, substantial evidence supported the PTAB's finding that a skilled person browsing the website would have known to navigate to meetings page, select a particular meeting, and search documents on that page.

It was also not dispositive that a user could only search documents by date, title, and number, and not document content. Although one factor relevant to public accessibility is whether a repository indexes its documents by subject matter, the panel agreed with the PTAB that the documents were effectively indexed by subject matter in view of the title-search functionality, and the fact that Park and Zhou had descriptive titles.

M&K separately argued that the references were not accessible because the oral presentations at the meeting did not disclose substantive material relevant to the obviousness issues in this case. The panel disagreed, finding that the presentations were sufficiently relevant, and even if they were not entirely comprehensive, it would not be fatal because the oral presentations were supplemented by the publications of Park and Zhou on the website.