

LG ELECTRONICS INC. v. IMMERSION, INC., Appeal Nos. 2021-2037, 2021-2038 (Fed. Cir. July 11, 2022). Before Stoll, Newman, and Cunningham. Appealed from PTAB.

Background:

LG filed *inter partes* reviews (IPRs) challenging claims of Immervision's patent directed to digital panoramic images. The patent purported to improve resolution of particular sectors of the panoramic images and required a claim limitation of an objective lens with a non-linear image point distribution. LG relied on a prior art reference, Tada, which disclosed four embodiments with different lens parameters (e.g., thickness, shapes, etc.). Although none of the embodiments explicitly disclosed the non-linear image point distribution, LG's expert reconstructed a model based on feature values of Table 5 corresponding to the third embodiment of Tada and showed that its lens had the non-linear image point distribution.

Yet Immervision's expert found that something was incorrect about the reconstructed model. The physical surface of the reconstructed model did not match the lens shown in a figure corresponding to the third embodiment of Tada, nor did it match other information in Tada purporting to describe the third embodiment. Ultimately, comparing Tada to its underlying Japanese priority application, it was found that while other data and other tables had been carried over, the aspheric coefficient values in Table 5 were different between Tada and the Japanese application and had been inadvertently copied and pasted from the values in Table 3 corresponding to the second embodiment. The Board issued final decisions stating that the aspheric coefficient values in Table 5 of Tada is an obvious error that a person of ordinary skill in the art would have recognized and corrected, and using the correct values, the lens of the third embodiment does not satisfy the claimed non-linear image point distribution, and thus the patent is not obvious. LG appealed.

Issue/Holding:

Did the Board err in holding that the alleged prior art teaching of the aspheric coefficient values in Table 5 of Tada is an obvious error of a typographical or similar nature that a person of ordinary skill in the art would have disregarded and corrected? No, affirmed.

Discussion:

The Federal Circuit applied and affirmed a precedent that held that, where a prior art reference includes an obvious error of a typographical or similar nature that would be apparent to one of ordinary skill in the art who would mentally disregard the errant information as a misprint or mentally substitute it for the correct information, the errant information cannot be said to disclose the subject matter. The Federal Circuit reasoned that not treating the error as an actual prior art teaching ensures that an obviously errant disclosure of a typographical or similar nature would not prevent a true inventor of such subject matter from later obtaining patent protection.

Judge Newman dissented. She opined that, while the majority applied the correct legal standard, the incorrect aspheric coefficient values in Table 5 of Tada are not an obvious error of a typographical or similar nature that would be apparent to a person of ordinary skill in the art, given the extensive analysis and calculations that had to be performed by the expert before discovering the error.