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The Precedent: Federal Circuit Clarifies Timing Issues Associated with Pre-AIA Patent Applications in *Lynk Labs, Inc. v. Samsung Elecs. Co.*

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In this edition of *The Precedent*, we outline the recent federal circuit decision in *Lynk Labs, Inc. v. Samsung Elecs. Co.*

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Overview

This case addresses the date on which a pre-AIA published patent application obtains its status as prior art.

Issue

Whether a published patent application that is prior art under 35 U.S.C. §102(e)(1) (pre-AIA) is prior art as of its filing date or as of its date of publication.

Holding

A prior art published patent application is prior art under §102(e)(1) as of its filing date.

Background and Reasoning

In November 2021, Samsung Electronics Co., Ltd. (Samsung) filed an IPR petition against certain claims of U.S. Patent No. 10,687,400 (the '400 Patent). The '400 Patent relates to LED-based lighting systems and, specifically, to alternating current (AC)-driven LEDs and LED circuits. The '400 Patent's specification states that the "LED based lighting may be used for general lighting, specialty lighting, signs[,] and decoration such as for Christmas tree lighting."

The Patent Trial and Appeal Board (PTAB or Board) held that the challenged claims of the '400 Patent were obvious in light of U.S. Patent Application Publication No. 2004/0206970 (Martin) in combination with other references. Martin was filed before the '400 Patent was filed, but was published after the '400 Patent was filed. As a

result, the '400 Patent sits between Martin's filing date and its publication date. Lynk Labs appealed the Board's holding and argued that Martin was not prior art. The Federal Circuit disagreed.

For IPR proceedings, a petition to cancel one or more claims may be filed "on the basis of prior art consisting of patents or printed publications." 35 U.S.C. § 311(b). For a reference to be a printed publication, it must be publicly accessible.

During oral argument, Lynk Labs admitted that Martin was a printed publication. However, Lynk Labs argued that Martin was not a *prior art* printed publication for the '400 Patent because it was not publicly accessible. In other words, Martin was filed with the Patent Office, but no one could see it until the Patent Office published it, so it wasn't prior art until after it was published. Lynk Labs argued that it was not prior art under § 102(a) because it was not "described in a printed publication … before the invention thereof." Lynk Labs argued that §102(b) did not apply because Martin was not "described in a printed publication … more than one year prior to the [application date of the '400 Patent]."

However, the court held that Martin was prior art under § 102(e)(1), which provides that "[a] person shall be entitled to a patent unless —… (e) the invention was described in — (1) an application for patent, published under section 122(b), by another *filed* in the United States *before* the invention by the applicant for patent." The court pointed out that the date that matters under §102(e)(1) is the reference's filing date, not its publication date. Lynk Labs admitted that Martin was a printed publication, and under § 102(e)(1) Martin was deemed prior art as of its filing date. Martin's filing date was before the '400 Patent's filing date. Martin was filed before the invention date of the '400 patent. Therefore, the Federal Circuit held that Martin was a prior art printed publication as of its filing date.

The Federal Circuit summed up the case's rule as follows: "because a published patent application is a 'printed publication,' § 102(e)(1) treats this type of printed publication as prior art as of a time before it became publicly accessible—i.e., as of its filing date."