

No. 2023-1715

IN THE
United States Court of Appeals
FOR THE FEDERAL CIRCUIT

JIAXING SUPER LIGHTING ELECTRIC APPLIANCE, CO., LTD.,
OBERT, INC.,

Plaintiffs-Appellees,

v.

CH LIGHTING TECHNOLOGY CO., LTD., ELLIOTT ELECTRIC
SUPPLY, INC., SHAOXING RUISING LIGHTING CO., LTD.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas
No. 6:20-cv-00018, Hon. Alan D. Albright

**BRIEF OF *AMICUS CURIAE* ZHEJIANG PROVINCE
ASSOCIATION OF LIGHTING INDUSTRY IN
SUPPORT OF DEFENDANTS-APPELLANTS
SEEKING REVERSAL**

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2023-1715

Short Case Caption Jiaxing Super Lighting Electric Appliance, Co., Ltd. v. CH Lighting Technology Co., Ltd.

Filing Party/Entity Zhejiang Province Association of Lighting

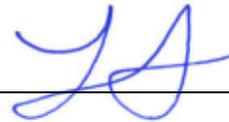
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1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 8/1/2023

Signature: _____



Name: _____

Laura Scileppi

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input checked="" type="checkbox"/> None/Not Applicable
Zhejiang Province Association of Lighting Industry		

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes (file separate notice; see below) No N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

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Statement of Identity, Interest, and Authority to File

Zhejiang Province Association of Lighting Industry (the “Association”) is a professional association of about 300 businesses involved in the lighting and electrical industry in Zhejiang Province, People’s Republic of China (“China”).

The position of the Association in this case is somewhat unique: **Both Plaintiff-Appellee Jiaxing Super Lighting Electric Appliance, Co., Ltd., and Defendant-Appellant CH Lighting Technology Co., Ltd. are members of the Association.**

The Association is a leading organization in its field. It is approved by the former Zhejiang Provincial Reform Office (1989) No. 13 and the Civil Affairs Department of Zhejiang Province (1990) No. 13. Among other honors, in 2020, the Association received a 5A grade social organization award from the Civil Affairs Department of Zhejiang. And, in 2019, the China Lighting and Electrical Appliance Association identified the Association as one of China’s lighting and electrical appliance industry’s outstanding social organizations.

The Association exists to protect the legitimate interests of its members. These interests include promoting fair competition in the industry by conducting studies on relevant patents, to assess their validity and to discourage improper monopolies over technology that should be in the public domain.

As part of its efforts to encourage fair competition, the Association in early 2022, convened a technology assessment panel consisting of six members,

including an attorney from a patent law firm, professors from leading universities, and experts from scientific research institutes: (i) Zhang Shanduan, Professor, Fudan University, (ii) Chen Zhegen, Researcher, Zhejiang Institute of Energy Research, (iii) Hou Minxian, Associate Professor, Zhejiang University, (iv) Qin Huibin, Professor, Hangzhou Dianzi University, (v) Pan Peicong, Consultant, Fudan University, and (vi) Xue Xiaofei, Patent Attorney, JZMC Patent and Trademark Law Office [a private law firm] (the “Panel”). The Panel’s purpose was to, in essence, “sort[] out the historical facts of the development of LED straight tube lamps (double-ended LED lamps)” and “conduct[] an independent and objective review” of the patents at issue in this action “in terms of their technical novelty based on the technology and product development process” (the “Report”). The Panel issued its Report on April 30, 2022, in simplified Chinese, which a certified translator translated into English.

The Association is submitting this *amicus curiae* brief to advise this Court of the Panel’s relevant findings in the Report concerning the obvious nature of technologies disclosed and claimed in the United States Patents Nos. 10,295,125 B2 (“125 Patent”) and 10,352,540 B2 (“540 Patent”). The Association takes no position on the other issues in the appeal.

Statement of Authorship and Funding

The undersigned counsel authored this brief and received no compensation for their efforts except compensation from the Association.

Argument

I.

THE ASSOCIATION’S EXPERT PANEL REPORT CONCLUDES THAT CERTAIN TECHNOLOGIES DISCLOSED AND CLAIMED IN THE ‘125 PATENT AND THE ‘540 PATENT ARE OBVIOUS

As in China, the identification of invalid patents, that reduce fair competition is, and should be, a primary concern of patent law. *Lear, Inc. v. Adkins*, 395 U.S. 653, 663-64 (1969)(“It is as important to the public that competition should not be repressed by worthless patents, as that the patentee of a really valuable invention should be protected in his monopoly...””) quoting *Pope Mfg. Co. v. Gormully*, 144 U.S. 224, 234 (1892); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1564 (Fed. Cir.1988)(“Public policy requires that only inventions which fully meet the statutory standards are entitled to patents.”).

“Obviousness is a question of law based on underlying facts.” *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1358 (Fed. Cir. 2017) (citing *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1326 (Fed. Cir. 2016)).

A. The Association’s Panel Conducted A Substantial Review Of The Relevant Prior Art.

The Panel analyzed the following historical uses of LED straight tube lamps, as they concern the novelty of the patents asserted in this case. As set forth in the Report, the Panel conducted the following analysis regarding the ‘125 Patent and ‘540 Patent:

“1. Historical review of the product and its technology development: The predecessor of the LED straight tube lamp structure is the straight tube fluorescent lamp T10/T9/T8 lamp tube, which is produced by using a straight glass tube, phosphor powder, and a metal lamp cap. Fluorescent lamp products can be traced back to before the 1940s. The LED straight tube lamp can be traced back to around 2009. The shell of a LED straight tube lamp is made of transparent plastic or glass, the packaging device is F5 surface mounted with LED lamp beads, the circuit board is made of glass fiber board, and the power supply is a built-in non-isolated power supply. Before 2013, many domestic companies tried to use glass tubes as the main body of LED lamps. These companies included, but were not limited to, dozens of domestic companies such as Cree, Philips, Shanghai Yaming (亚明), Suzhou Mengtai Libao (苏州盟泰励宝), and Shangyu Chenhuiguangbao (上虞晨辉光宝).

“2. Cases of third-party certification of LED straight tube lamp products in the lighting industry:

07-03-2013	LED glass lamp	Shanghai TUV Rheinland third party certification
07-31-2013	LED glass lamp	US UL third party certification
01-24-2014	North American TYEP A glass lamp	US ETL third party certification
02-27-2014	North American TYEP A glass lamp	US UL third

		party certification
04-14-2014	LED glass lamp	China CQC energy saving certification
08-29-2014	North American TYEP B glass lamp	US UL third party certification

“3. Existing patent cases of LED straight tube lamp: Chinese utility model patent CN202469638U of Suzhou Mengtai Libao Optoelectronics Co., Ltd., priority date 03-07-2012, the patent recorded, in detail, the basic structural features and functions of LED straight tube lamps. The patent was terminated on 09-17-2013 after it was evaluated by the State Intellectual Property Office of China as having no technical novelty. All the technical content recorded in patent CN202469638U therefore became commonly known technology at home and abroad. *Every enterprise in China’s lighting industry, including Chenhuiguangbao, has the right to use the above-mentioned known technology.*

“4. By querying professional databases, Shanghai Guanghua Patent Office [a private law firm] retrieved a large number of technical documents of domestic and foreign LED straight tube lamps that are earlier than the application of the 540 patent and the 125 patent. The 540 patent has a total of 23 claims, and the 125 patent has a total of 54 claims. After evaluation and analysis, the overall stability of the 77 claims of these two patents is low. *It is our belief that these two patents and their claims of rights should be partially or completely invalidated in the administrative invalidation procedure.* The expert panel supports this point of view through research and discussion.” (Emphases added.)

B. The Association’s Panel Found That, Given The Ubiquitousness Of The Claimed Technologies In The Market, The Competitive Impact Of Validating The ‘125 And ‘540 Patents Would Be Grave.

Regarding the ‘125 Patent and ‘540 Patent, the Panel further concluded:

“Analysis of the main technical points by the expert panel:

“(1) The use of a protective film on the PCB of the light source module is a commonly used technology in the lighting industry on LED lighting products since before 2013 and is a well-known technology in the lighting industry.

“(2) Applying a layer of astigmatism film on the glass lamp tube (inner wall or outer wall) to prevent individual packaged light beads from being seen from the outside to avoid a kind of discomfort is an existing technology that has been widely used in the lighting industry since before 2013 and until the present, and it is also a well-known technology in the lighting industry.

“If these known technologies become monopoly technologies, it will inevitably bring confusion and panic to the industry, which is not conducive to the healthy development of China’s lighting industry. The panel cited and discussed the historical technology and product literature of these two known technologies.” (Emphasis added.)

II.

THE PANEL’S REPORT SUPPLEMENTS THE ANALYSES OF PRIOR ART IN THE RECORD

The Panel’s conclusions that claims of the ‘125 Patent and ‘540 Patent contain unpatentable technology are consistent with those of the reexamination proceedings before the USPTO, which issued a final rejection of certain claims of the ‘125 Patent (Reexamination of U.S. Patent No. 10,295,125, Control No. 90/015,003) (USPTO Examination Art Unit 3992), and a non-final rejection of certain claims of the ‘540 Patent (Reexamination of U.S. Patent No. 10,352,540, Control No. 90/015,002) (USPTO Examination Art Unit 3992) (pending).

The Panel may have reviewed different prior art than the USPTO during the reexamination proceedings, and than defendants-appellant's expert, Dr. Michael Lebbly. However, nothing in the Report, or this brief, is intended to challenge any of their findings or conclusions. Rather, the Association submits that any differences in the citation of any particular prior art results from the abundance of prior art in this field, and the obviousness of the claimed inventions.

Conclusion

For the reasons set forth above, the Association respectfully requests that the Court reverse the district court concerning the validity of the '125 Patent and the '540 Patent.

Dated: August 1, 2023

Respectfully submitted,



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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 2023-1715

Short Case Caption: Jiaxing Super Lighting Electric Appliance, Co., Ltd. v. CH Lighting Technology Co., Ltd.

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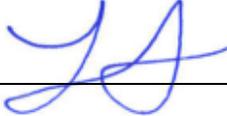
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