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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ENPLAS DISPLAY DEVICE  
CORPORATION, et al.,

Plaintiffs,

v.

SEOUL SEMICONDUCTOR  
COMPANY, LTD.,

Defendant.

Case No. 13-cv-05038 NC

**ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT ON  
INVALIDITY OF '209 PATENT;  
GRANTING SSC'S MOTION FOR  
SUMMARY JUDGMENT**

Re: Dkt. No. 166

In this patent infringement suit, plaintiff Enplas moves for summary judgment of invalidity of defendant SSC's '209 patent. Enplas argues that the '209 patent is both expressly and inherently anticipated by the Gleckman patent. Both patents are related to backlighting for LCD panels, such as a virtual reality headset (Gleckman) and a notebook computer ('209 patent). The key difference between the patents is that Gleckman's figures and specifications refer to lights on the perimeter of the panel cavity, while the '209 patent claim 20 refers to lights on both the perimeter and the back of the panel cavity.

After giving notice to both parties, the Court converts SSC's opposition into a cross-motion for summary judgment. The Court finds that, even drawing all inferences in the light most favorable to Enplas, a reasonable jury could not find by clear and convincing evidence that the Gleckman patent anticipates the '209 patent. Enplas' motion for summary judgment is DENIED. SSC's cross-motion for summary judgment is GRANTED.

Case No. 13-cv-05038 NC

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**I. BACKGROUND**

**A. Gleckman Patent**

The Gleckman patent (No. 5,684,354) issued on November 4, 1997, as a continuation-in-part of the '197 patent. The Gleckman patent is entitled, "Backlighting Apparatus For Uniformly Illuminating A Display Panel." The invention relates to a "backlighting apparatus for displays, particularly for small-area liquid-crystal displays (LCDs), such as utilized in virtual reality headsets." The figures in the Gleckman patent show a light source mounted on the side walls of the cavity, generally outside the "viewing aperture portion" (the portion of the cavity that lies directly beneath the aperture). The specification discusses the lamp placement: "Placement of the lamp outside the viewing aperture portion prevents most of the light rays emanating from the lamp from reaching the aperture without first being reflected off the surface of the cavity . . . this arrangement allows the intensity distribution of light emerging from the aperture to be relatively uniform." '354 patent at 7:4-7:13.

**B. '209 Patent**

Dr. Pelka's patent (No. 6,007,209) issued on December 28, 1999. The '209 patent is entitled a "Light Source for Backlighting." The invention relates to "a light source for a display panel of the type used in notebook computers." Figures 3 and 4 of the '209 patent are substantially similar to figures 12 and 13 of the Gleckman patent, but the '209 patent has light sources on the bottom of the cavity in addition to the side walls. The specification discusses the LED placement: "the LEDs that are mounted around the periphery of the aperture serve to illuminate the perimeter area of the aperture, at least 2" inward, while the LEDs that lie within the viewing aperture portion illuminate the interior portion of the aperture that is not illuminated by the LEDs." '209 patent at 5:66-6:4.

**C. Procedural History**

Enplas brings this declaratory judgment action, alleging non-infringement of the '209 and '554 patents, invalidity of both patents as anticipated, and a defense of inequitable conduct, among others. SSC alleges that certain Enplas lenses infringe the

1 '554 patent and that Enplas' LCD screens infringe the '209 patent. Shortly after the fact  
2 discovery cutoff, Enplas moved for summary judgment of non-infringement on most of the  
3 '209 patent claims because SSC indicated that it would not pursue those claims. SSC  
4 covenanted not to sue on the claims, but the Court found that Enplas was entitled to  
5 summary judgment of non-infringement as to those claims. Dkt. No. 282. The only claim  
6 in the '209 patent that remains is claim 20.

7 Enplas now moves for summary judgment of invalidity, arguing that there is no  
8 dispute of fact that Enplas can prove by clear and convincing evidence that the Gleckman  
9 patent anticipates claim 20 of the '209 patent. In opposition, SSC argues that Enplas  
10 cannot meet its burden as a matter of law to demonstrate invalidity by clear and convincing  
11 evidence. The Court notified the parties of its intent to convert SSC's opposition into a  
12 motion for summary judgment and gave the parties an opportunity to object. Dkt. No. 310.  
13 Enplas responded by filing a brief, detailing its factual support as to why the Court should  
14 not grant SSC's motion for summary judgment. SSC stated it did not object. The Court  
15 provided SSC an opportunity to respond to Enplas' brief. Now, the Court considers all the  
16 briefs presented on the invalidity of the '209 patent.

17 **II. LEGAL STANDARD**

18 Summary judgment may be granted only when, drawing all inferences and  
19 resolving all doubts in favor of the nonmoving party, there is no genuine dispute as to any  
20 material fact. Fed. R. Civ. P. 56(a); *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014);  
21 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under  
22 governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty*  
23 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if “the  
24 evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*  
25 Bald assertions that genuine issues of material fact exist are insufficient. *Galen v. Cnty. of*  
26 *L.A.*, 477 F.3d 652, 658 (9th Cir. 2007).

27 The moving party bears the burden of identifying those portions of the pleadings,  
28 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact.

1 Celotex, 477 U.S. at 323. Once the moving party meets its initial burden, the nonmoving  
2 party must go beyond the pleadings, and, by its own affidavits or discovery, set forth  
3 specific facts showing that a genuine issue of fact exists for trial. Fed. R. Civ. P. 56(c);  
4 *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999, 1004 (9th Cir. 1990) (citing *Steckl v.*  
5 *Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983)). All justifiable inferences, however,  
6 must be drawn in the light most favorable to the nonmoving party. *Tolan*, 134 S. Ct. at  
7 1863 (citing *Liberty Lobby*, 477 U.S. at 255).

8 **III. DISCUSSION**

9 Enplas moved for summary judgment of invalidity of claim 20 of the ’209 patent  
10 under theories of express and inherent anticipation. In its opposition, SSC argued that the  
11 Court should grant summary judgment against Enplas, finding that Enplas could not  
12 demonstrate that a reasonable jury could find by clear and convincing evidence that the  
13 ’209 patent is anticipated. SSC does not argue that there are material disputes of fact.

14 Federal Rule of Civil Procedure 56(f) allows a Court to grant summary judgment  
15 for a nonmovant, or consider summary judgment on its own after identifying material facts  
16 that may not be genuinely in dispute. “District courts unquestionably possess the power to  
17 enter summary judgment sua sponte.” *Norse v. City of Santa Cruz*, 629 F.3d 966, 971 (9th  
18 Cir. 2010). “Sua sponte grants of summary judgment are only appropriate if the losing  
19 party has reasonable notice that the sufficiency of his or her claim will be in issue.” *United*  
20 *States v. 14.02 Acres of Land More or Less in Fresno Cty.*, 547 F.3d 943, 955 (9th Cir.  
21 2008).

22 Here, the Court finds that Enplas had adequate notice, as SSC’s opposition asked  
23 the Court to grant summary judgment against Enplas. Additionally, in moving for  
24 summary judgment on invalidity, Enplas argued that (1) there was no dispute of fact, and  
25 (2) even taking the facts in light most favorable to SSC, Enplas still proved by clear and  
26 convincing evidence that the ’209 patent is invalid. Thus, Enplas placed before the Court  
27 its best legal and factual argument on its motion for summary judgment. Finally, the Court  
28 informed the parties that it intended to convert SSC’s opposition into a cross-motion for

1 summary judgment and gave the parties an opportunity to object. The Court now converts  
2 SSC's opposition to a cross-motion for summary judgment and considers (1) SSC's  
3 objection to Dr. Pollock's testimony; (2) Enplas' motion for summary judgment of  
4 invalidity; and (3) SSC's cross-motion for summary judgment.

5 **A. Admissibility of Dr. Pelka's Testimony**

6 Dr. Pelka is the named inventor of the '209 patent, and Enplas submits his  
7 testimony to demonstrate that Dr. Pelka understood the Gleckman patent to encompass all  
8 of the elements of his own claim 20 (of the '209 patent). SSC argues that Dr. Pelka's  
9 testimony is not admissible because Dr. Pelka is not an expert in this case, and Dr. Pelka's  
10 personal knowledge only extends to his own patent (the '209 patent). Therefore, Dr.  
11 Pelka's opinions as to the Gleckman patent are not relevant under Federal Rule of  
12 Evidence 401 and 403. Enplas responds: "[I]t is Dr. Pelka's very status as a non-inventor  
13 of the prior art '354 Patent that makes his testimony not only admissible, but particularly  
14 probative as to this issue." Dkt. No. 230 at 1. Enplas argues that it can rely on testimony  
15 of a person of ordinary skill in the art to support its inherent anticipation argument, citing  
16 *Shering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1377-78 (Fed. Cir. 2003) ("a court may  
17 consult artisans of ordinary skill to ascertain their understanding about subject matter  
18 disclosed by the prior art, including features inherent in the prior art").

19 The Court finds that Dr. Pelka has not been disclosed as an expert witness, so his  
20 testimony may only be used as a fact witness. For purposes of summary judgment, the  
21 Court considers Dr. Pelka's testimony as a fact witness, in as much as it is relevant to the  
22 determination of the questions presented. However, SSC may renew its objections to the  
23 admissibility of Dr. Pelka's testimony at trial as a motion in limine.

24 **B. Enplas' Motion for Summary Judgment of Invalidity**

25 Enplas moves for summary judgment of invalidity of the '209 patent, arguing that  
26 the '209 patent should be unenforceable because it is not novel. The Court addresses  
27 (1) the legal standard; (2) express anticipation; and (3) inherent anticipation.

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1                   **1. Legal Standard for Invalidity**

2                   Generally, a patent is presumed valid. 35 U.S.C. § 282. While this presumption  
3                   can be rebutted, the party challenging validity must meet the “high burden” of proving  
4                   invalidity by “clear and convincing evidence.” *Sciele Pharma Inc. v. Lupin Ltd.*, 684 F.3d  
5                   1253, 1260 (Fed. Cir. 2012). “[A] moving party seeking to invalidate a patent at summary  
6                   judgment must submit such clear and convincing evidence of invalidity so that no  
7                   reasonable jury could find otherwise.” *Eli Lilly v. Barr Labs., Inc.*, 251 F.3d 955, 962  
8                   (Fed. Cir. 2001) (citing *Anderson*, 477 U.S. at 248). Generally, the invalidity argument of  
9                   anticipation, which attacks the novelty of the patent-in-suit, is a question of fact. *Finnigan*  
10                  *Corp. v. Int’l Trade Comm’n*, 180 F.3d 1354, 1362 (Fed. Cir. 1999). “Although  
11                  considered a question of fact, anticipation is appropriate for summary judgment if no  
12                  genuine issue of material fact exists.” *Fresenius Med. Care Holdings, Inc. v. Baxter Int’l,*  
13                  *Inc.*, No. 03-cv-1431 SBA, 2006 WL 1343648, at \*15 (N.D. Cal. May 16, 2006) (citing  
14                  *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1327 (Fed. Cir. 2001).

15                  Enplas argues that the ’209 patent is invalid under the theory of anticipation. If the  
16                  claimed invention was “described in a printed publication” either before the date of  
17                  invention, or more than one year before the U.S. patent application was filed, then that  
18                  prior art anticipates the patent, rendering it invalid and unenforceable. 35 U.S.C. § 102  
19                  (a)-(b). The anticipation inquiry proceeds on a claim-by-claim basis. *Finisar Corp. v.*  
20                  *DirecTV Grp., Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008). The Court must first construe  
21                  the claims, then the fact finder must compare the construed claims to the prior art. *Key*  
22                  *Pharms. v. Hereon Labs Corp.*, 161 F.3d 709, 714 (Fed. Cir. 1998). “To anticipate a  
23                  claim, a single prior art reference must expressly or inherently disclose each claim  
24                  limitation” arranged as in the claim. *Finisar*, 523 F.3d at 1334.

25                  Here, the Court already held a Markman hearing and construed the necessary  
26                  claims. Additionally, SSC does not dispute that the Gleckman patent constitutes prior art.  
27                  Enplas argues both express and inherent anticipation.

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**2. Express Anticipation**

The only claim in the '209 patent still at issue is claim 20. Enplas argues that claim 20 is substantially the same as claim 16 of the Gleckman patent, and that figures 3 and 4 of the '209 patent were copied from figures 12 and 13 of the Gleckman patent. A comparison of the claims reveals that there are two differences between claim 20 of the '209 patent and claim 16 of the Gleckman patent:

	<b>Claim 16 of Gleckman Patent</b>	<b>Claim 20 of '209 Patent</b>
<b>a</b>	A method of backlighting a display panel, comprising:	A method of backlighting a display panel, comprising:
<b>b</b>	Producing illumination from a substantially lambertian light source comprising	Producing illumination from a substantially lambertian light source comprising
<b>c</b>	a cavity with <b>internal walls</b> and an aperture	a cavity with <b>internal side walls, an internal bottom wall, and an aperture</b>
<b>d</b>	said step of producing illumination comprising the step of directing light rays <b>from</b> the perimeter of the aperture into the cavity	said step of producing illumination comprising the step of directing light rays <b>emitted by plural light sources mounted on said internal bottom wall and around</b> the perimeter of the aperture into the cavity
<b>e</b>	such that the light exiting the aperture is substantially uniform in intensity and color;	such that the light exiting the aperture is substantially uniform in intensity and color;
<b>f</b>	using a diffuser to diffuse light from said substantially lambertian light source;	using a diffuser to diffuse light from said substantially lambertian light source;
<b>g</b>	using a brightness enhancing film to concentrate the diffused light into a predetermined angular range without significantly reducing the uniformity of the diffused light; and	using a brightness enhancing film to concentrate the diffused light into a predetermined angular range without significantly reducing the uniformity of the diffused light; and
<b>h</b>	directing the concentrated, diffused light onto said display panel.	directing the concentrated, diffused light onto said display panel.

1           The primary issue is whether the Gleckman patent expressly discloses that light  
2 sources could be mounted on an internal bottom wall. Enplas argues that Gleckman  
3 expressly anticipates the '209 patent by disclosing that lights could be mounted on an  
4 internal bottom wall, but Enplas does not point to any part of the Gleckman patent that  
5 expressly states that. SSC argues that neither the figures, text of the specification, nor  
6 claims of the Gleckman patent disclose light sources mounted on an internal bottom wall.  
7 After reviewing the Gleckman patent, the Court agrees that the phrase “internal bottom  
8 wall” is not present in the Gleckman patent, and the figures demonstrate that light sources  
9 should be mounted on the side and top walls of the cavity. Therefore, the Gleckman patent  
10 does not expressly anticipate the '209 patent.

11                           **3. Inherent Anticipation**

12           When a prior art reference does not expressly disclose all elements of a claim, it  
13 may still anticipate “if that missing characteristic is necessarily present, or inherent, in the  
14 single anticipating reference.” Schering, 339 F.3d at 1377 (citing Continental Can Co. v.  
15 Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991)). This is referred to as inherent  
16 anticipation, which requires “that the missing descriptive material is ‘necessarily present,’  
17 not merely probably or possibly present, in the prior art.” Trintec Indus., Inc. v. Top-  
18 U.S.A. Corp., 295 F.3d 1292, 1295 (Fed. Cir. 2002). To determine what features are  
19 inherent in the prior art, the Court may consult persons of ordinary skill in the art to assess  
20 their understating about the subject matter disclosed by the prior art. Schering, 339 F.3d at  
21 1377-78.

22           Enplas argues that the Gleckman patent inherently anticipates the '209 patent  
23 because (1) the location for lights in the cavity is a limited series, so the Gleckman patent  
24 necessarily discloses lights on the bottom; and (2) a person having ordinary skill in the art  
25 would know that the Gleckman patent discloses lights mounted on the bottom of the  
26 cavity.

27           First, Enplas relies on a line of cases that hold when a prior art reference  
28 encompasses a discrete series of possibilities, each limitation in that series is inherently



1 present in the prior art. Thus, the prior art anticipates the later patent that claims one  
2 limitation in the series. Application of Schaumann, 572 F.2d 312 (C.C.P.A. 1978);  
3 Application of Petering, 301 F.2d 676, 678 (C.C.P.A. 1962). In *Eli Lilly & Co. v. Zenith*  
4 *Goldline Pharm., Inc.*, 471 F.3d 1369, 1376 (Fed. Cir. 2006), the Federal Circuit clarified  
5 that prior art anticipated when the patent “expressly spelled out a definite and limited class  
6 of compounds that enabled a person of ordinary skill in the art to at once envisage each  
7 member of this limited class.”

8 For example, in *Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356,  
9 1362 (Fed. Cir. 2012), the prior art reference identified that three “particularly preferred”  
10 cooling agents could be used in combination with menthol to create an ideal gum flavor.  
11 The Federal Circuit found a later patent that identified only one of the cooling agents and  
12 menthol as anticipated because it was part of the same grouping or series identified in the  
13 prior art. *Id.* Thus, when a prior art refers to and expressly spells out a discrete series, the  
14 Court can read into that discrete series each of its limitations. However, the Federal  
15 Circuit has cautioned that inherency “may not be established by probabilities or  
16 possibilities.” *Betcher Indus., Inc. v. Bunzl USA, Inc.*, 661 F.3d 629, 639 (Fed. Cir. 2011).  
17 Thus, “[t]he mere fact that a certain thing may result from a given set of circumstances is  
18 not sufficient.” *Id.* (citing *In re Oelrich*, 666 F.2d 578, 581 (C.C.P.A. 1981)).

19 Here, Enplas argues that the Gleckman patent discloses lights in the cavity, and that  
20 the cavity of a backlighting display necessarily only contains three possible locations: the  
21 side, the back, and the perimeter. This is an oversimplification, and not analogous to the  
22 above cases where there was a definite and limited class. All of the above cases referred to  
23 a limited number of closely related chemical compounds, and specifically described the  
24 claimed compound. Accord *Eli Lilly*, 471 F.3d at 1376. Here, the LCD cavity is not a  
25 chemical compound, and there are an infinite number of locations that the lights could be  
26 placed, with varying effect. Also, some figures of the Gleckman patent demonstrate that  
27 the cavity could have curved walls, in which case, there would be no distinct side wall.  
28 The Gleckman patent’s reference to a cavity does not “spell out a definite and limited

1 class” of locations where lights in an LCD screen could be placed.

2 Second, Enplas argues that a person of ordinary skill in the art would know that the  
3 Gleckman patent discloses lights mounted on the bottom of the cavity. In support of this,  
4 Enplas points to Dr. Pelka’s testimony and relies on its own expert, Dr. Pollock’s expert  
5 report. The relevant part of Dr. Pollock’s expert report reads:

6 When asked about Figures 3 and 4 of the ’209 Patent, and in  
7 particular the placement of light sources (elements 12), Dr.  
8 Pelka confirmed that the placement in the figure was only  
9 exemplary and that they could also be placed on the side wall  
10 of the cavity or the bottom wall of the cavity. Similarly, Dr.  
11 Pelka confirmed that Gleckman did not exclude mounting the  
12 plurality of light sources (elements 12), on the top (as shown)  
13 or on the side wall or the bottom wall of the cavity. . . .

14 Dr. Pelka testified that the “light rays from the perimeter of the  
15 aperture” of Gleckman could be produced by light sources  
16 around the perimeter on either the top, side, or bottom walls.  
17 The plain language of claim 20 of the ’209 Patent likewise  
18 covers an embodiment in which the light rays can be emitted  
19 by light sources around the perimeter on the bottom wall.

20 Pollock Expert Report at ¶¶ 127, 134 (citing Pelka Tr. at 26-27; 59-60). According  
21 to Dr. Pollock, Dr. Pelka’s relevant testimony is that Gleckman did not exclude mounting  
22 lights on the bottom wall of the cavity, and that Gleckman could be produced by light  
23 sources on the bottom walls. Dr. Pollock’s opinion relies on Dr. Pelka’s testimony about  
24 the possibility that Gleckman could have lights on the bottom wall of the cavity. These  
25 statements are not sufficient to establish that the Gleckman patent inherently discloses  
26 lights mounted on the bottom of the cavity. Inherency “may not be established by  
27 probabilities or possibilities.” Bettcher, 661 F.3d at 639. A person of ordinary skill in the  
28 art must understand that lights on the internal bottom wall of the cavity is necessarily  
present in the Gleckman patent. Thus, taking the facts in the light most favorable to SSC,  
Enplas is not entitled to summary judgment on its invalidity defense as to the ’209 patent.

**C. Summary Judgment Against Enplas**

The Court must analyze each motion for summary judgment separately and evaluate  
the evidence presented in the light most favorable to the nonmoving party. Tolan, 134 S.

1 Ct. at 1863. Even though both parties argue that there is no dispute of fact, the Court  
2 should still consider the factual evidence presented and determine whether material issues  
3 of fact remain. *United States v. Fred A. Arnold, Inc.*, 573 F.2d 605, 606 (9th Cir. 1978).  
4 The Court must now considers the above evidence in the light most favorable to Enplas  
5 and determines whether a reasonable jury could find by clear and convincing evidence that  
6 the Gleckman patent anticipates the '209 patent.

7 “A moving party seeking to have a patent held not invalid must show that the  
8 nonmoving party, who bears the burden of proof at trial, failed to produce clear and  
9 convincing evidence on an essential element of a defense upon which a reasonable jury  
10 could invalidate the patent.” *Eli Lilly v. Barr Labs., Inc.*, 251 F.3d 955, 962 (Fed. Cir.  
11 2001) (citing *Anderson*, 477 U.S. at 248).

12 As to express anticipation, the Court finds that no facts support Enplas’ position that  
13 the Gleckman patent expressly discloses lights mounted on the internal bottom wall of the  
14 cavity.

15 As to inherent anticipation, the Court disagrees with Enplas’ interpretation of the  
16 law on inherent anticipation of limited series, and finds that the term cavity does not create  
17 a limited series of locations where lights could be placed, as discussed above. Second, the  
18 Court considers whether taking the evidence in the light most favorable to Enplas, a person  
19 of ordinary skill in the art would find the lights on the bottom of the cavity is “necessarily  
20 present” in the Gleckman patent. Neither Dr. Pelka nor Dr. Pollock state unequivocally  
21 that a person of ordinary skill in the art would understand that the Gleckman patent  
22 necessarily discloses lights mounted on the internal bottom wall of the cavity. Based on  
23 the above testimony of Dr. Pelka and Dr. Pollock, the Court concludes that a reasonable  
24 jury could not find that Enplas could meet the clear and convincing threshold for  
25 invalidity.

26 The Court GRANTS SSC’s cross-motion for summary judgment on invalidity of  
27 the '209 patent.

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**IV. CONCLUSION**

The Court DENIES Enplas' motion for summary judgment, and GRANTS SSC's motion for summary judgment as to Enplas' defense of invalidity of the '209 patent.

**IT IS SO ORDERED.**

Dated: February 5, 2016

  
\_\_\_\_\_  
NATHANAEL M. COUSINS  
United States Magistrate Judge