

Skilled in the Art: Another Board Dispute in Silicon Valley

By Scott Graham

If I say Lucy Koh to you, what comes to mind? Apple v. Samsung? Qualcomm litigation? “No-poach” class action? Her name is practically synonymous with the tech industry’s legal docket.

Last week the San Jose federal judge decided her latest big patent fight, this time involving ... gypsum board?

Yep, even Silicon Valley still has the occasional old economy patent dispute to sort out. *Pacific Coast Building Products v. Certainteed Gypsum* involved double-sided gypsum boards held together with a special noise-attenuating glue and used in place of drywall. Sacramento-based Pacific Coast Building Products markets a version called Quiet Rock that it touts as pliable enough to be easily scored and broken down into useful pieces on construction sites.

The company sued French manufacturer Saint-Gobain, whose subsidiaries market a similar product. The problem for Pacific Coast is a limitation in its 9,388,568 patent that the board have a “scored flexural strength” of “about 22 pounds per half-inch thickness of the structure.”

Saint-Gobain’s **Latham & Watkins** attorneys argued that limitation is indefinite. Koh held a claim construction hearing Nov. 29 and by day’s end agreed. For one thing, different installers will score the board differently, depending on anything from the type of knife used to the installer’s level of fatigue. Nor does the patent explain how to convert the flexural strength measurement to the 5/8-inch thickness used by both companies’ products, Koh wrote in a 24-page page order.

Pacific Coast, represented by Sheppard Mullin Richter & Hampton, argued that Saint-Gobain’s own expert tested 60 sample products using various industry-standard testing methods and came up with an average strength of 23.5 pounds. That proved with “not just reasonable certainty, but rather exact certainty” that a person of skill in the art would understand the strength limitation, the company argued.

It didn’t persuade Koh. “The problem with plaintiff’s argument is that nowhere in the claim does it say to *average* the scored flexural strength value of all scored samples,” she wrote.

Latham’s team was led by partners **Matt Moore**, **Rick Frenkel** and **Adam Greenfield** and associates **Reba Rabenstein**, **Abby Rives** and **Diane Ghrist**.