

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner.

IPR2023-00454
Patent 11,093,417

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE
AND PRELIMINARY SUR-REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Samsung Electronics Co., Ltd. (“Samsung”) objects to the following exhibits filed by Patent Owner Netlist, Inc. (“Netlist”) with its Preliminary Response (Paper No. 6) and its Preliminary Sur-Reply (Paper No. 10). In addition to the specific objections below, each of the exhibits is also objected to under Rules 401-403 as irrelevant and unfairly prejudicial to the extent the exhibits are relevant only to issues waived by Patent Owner and/or to the extent the exhibits are relevant only to testimony that is withdrawn by Patent Owner.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2001 – Crisp, R., “Direct Rambus Technology: The New Main Memory Standard,” <i>IEEE Micro</i> , pp. 18-28 (1997)	401-403: EX2003 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of features of Rambus memory (see POPR at p. 1, 15-17, 19, 38) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2001 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2002 – Datasheet for Samsung’s RIMM MR16R1624 (Wolfe Deposition Exhibit 2100)	401-403: EX2002 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of features of Rambus memory (see POPR at p. 16, 38) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2002 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2003 – Deposition Transcript of Dr. Andrew Wolfe from IPR2022-00615	402/403: This exhibit purports to be a Deposition Transcript of Petitioner’s expert witness from another <i>Inter Partes</i> Review proceeding involving a different set of claims in a different patent, cited without context. <i>See, e.g.,</i> EX2003. Patent Owner cites this exhibit in connection with a discussion of Perego’s teachings of ranks and/or chip-select signals (<i>see</i> POPR at pp. 13, 22-23, 31, 33 and Preliminary Sur-Reply at p. 2) and data buffers (<i>see</i> POPR at pp. 17-18, 34) but has failed to establish any connection to the disclosure of the ’417 Patent or the knowledge of a POSITA at the relevant time. 801/802/901: Samsung objects to EX2003 for lacking foundation, for containing hearsay, and/or causing undue prejudice. <i>See</i> 37 C.F.R. § 42.62(a); Fed. R. Evid. 801-04. In particular, Netlist has failed to establish how testimony from a trial proceeding not involving the invalidity issues here is relevant to the issues here, or that Samsung had a “similar motive to develop [the testimony in the case above as relating to this exhibit] by direct, cross- or redirect examination.” Fed. R. Evid. 804(b)(1)(B); <i>see also Berroteran v. Superior Court</i>, 12 Cal.5th 867, 890-93 (2022) (holding that discovery deposition from one case normally cannot be introduced at trial in another case given lack of “motive” at discovery depositions to ask many questions of your own witness). Furthermore, the transcript is defective, and thus inadmissible, under 37 C.F.R. § 42.53(f)(5)–(6).

<u>Exhibit</u>	<u>Objection(s)</u>
EX2004 – Samsung datasheet on Rambus Direct RDRAM (Dec. 2001)	401-403: EX2004 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion comparing JEDEC to Rambus (see POPR at pp. 19, 38) but has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2004 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

EX2005 – Deposition Transcript of SungJoo Park in <i>Netlist, Inc. v. Samsung Electronics Co., Ltd.</i>, 2:21-cv-00463-JRG (E.D. Tex. November 23, 2022) (excerpt)	Samsung objects to EX2005 for each of the reasons noted in the objections during the taking of the underlying deposition. For example, given the improper compound nature of the question at 87:4–:17, the answer to the question is ambiguous. Furthermore, the answer did not agree with the question, making it ambiguous what the witness was agreeing to (if anything). Netlist easily could have clarified the question and answer, but did not. This testimony therefore should be excluded. Protective Order: In the underlying proceeding where the deposition marked as Exhibit 2005 was taken, Netlist requested — and received — a Protective Order that expressly prohibits the use of Exhibit 2005 outside of that proceeding: “[d]ocuments, information or material produced pursuant to any discovery request in this Action [No. 21-cv-463]...shall be used by the Parties <i>only</i> in the litigation of <i>this Action and shall not be used for any other purpose.</i>” 402/403/701/702: EX2005 is irrelevant and prejudicial because it is from a trial about infringement that did not consider the invalidity grounds presented here. Patent Owner has failed to establish that this exhibit has any connection to the disclosure of the cited prior art, the challenged patent, or the knowledge of a POSITA at the relevant time. The testimony in Exhibit 2005 is also from a <i>fact</i> witness, which is another reason the testimony should be excluded. Claim construction and infringement are issues “in the clear purview of <i>experts</i>[,] and lay witness testimony on such issues does not comply with the Federal Rules of Evidence or Civil Procedure.” <i>HVLPO2, LLC v. Oxygen Frog, LLC</i>, 949 F.3d 685, 689 (Fed. Cir. 2020); <i>see also</i> Fed. R. Evid. 701–02. 801/802/901: Samsung objects to EX2005 for lacking foundation, for containing hearsay, and/or causing undue prejudice. See 37 C.F.R. § 42.62(a); Fed. R. Evid. 801-04. The testimony is from a Samsung witness that has
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<u>Exhibit</u>	<u>Objection(s)</u>
	not submitted direct testimony in this proceeding, making the testimony hearsay. Furthermore, Netlist has failed to establish how testimony from a trial proceeding not involving the invalidity issues here is relevant to the issues here, or that Samsung had a “similar motive to develop [the testimony in the case above as relating to this exhibit] by direct, cross- or redirect examination.” Fed. R. Evid. 804(b)(1)(B); <i>see also Berroteran v. Superior Court</i>, 12 Cal.5th 867, 890-93 (2022) (holding that discovery deposition from one case normally cannot be introduced at trial in another case given lack of “motive” at discovery depositions to ask many questions of your own witness). Furthermore, the transcript is defective, and thus inadmissible, under 37 C.F.R. § 42.53(f)(5)–(6). 106: Samsung objects to EX2005 as only an excerpt was provided, and thus it is further misleading and/or confusing given that the context of the excerpt is not present.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2006 – Ex. 7 to Park Depo	401-403: Samsung objects to EX2033 as irrelevant and prejudicial because it is from a trial about infringement that did not consider the invalidity grounds presented here. EX2006 is further cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites EX2006 in connection with a discussion on ranks (<i>see</i> POPR at p. 36) but has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2006 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2007 – <i>Frequently Asked Questions</i>, What is the difference between a “bank” and a “rank?”, Micron, https://web.archive.org/web/20141231144416/https://www.micron.com/support/faqs (last accessed Mar. 7, 2023).	401-403: EX2007 has a copyright date of 2014 and was last accessed in 2023, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2007 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner does not cite this exhibit in either its POPR or its Preliminary Sur-Reply and has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2007 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate. 106: Samsung objects to EX2007 as only an excerpt was provided, and thus it is further misleading and/or confusing given that the context of the excerpt is not present.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2009 – “XDR Architecture” by Rambus (last modified December 2005), downloaded from https://web.archive.org/web/20110724044154/http://www.rambus.com/assets/documents/products/dl_0161_v0_8.pdf	401-403: EX2009 is from an archive dated July 24, 2011, and is marked “Confidential,” and thus it is unclear that it is relevant to the knowledge of a POSITA in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2009 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of Rambus memory technology (see POPR at pp. 1, 15-16, 19, 38) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2009 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2010 – IDT, “DDR4 LRDIMMs Unprecedented Memory Bandwidth on Samsung DDR4 LRDIMM Enabled by IDT’s Register and Data Buffer,” downloaded from https://www.renesas.com/us/en/document/whp/ddr4-lrdimms-both-memory-capacity-and-speed	401-403: EX2010 has a copyright date of 2014, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2010 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of data buffers (<i>see</i> POPR at p. 52-54) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2010 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2011 – “HyperCloud HCDIMM: Scaling the High Density Memory Cliff,” July 14, 2012, downloaded from https://web.archive.org/web/20120915083048/http://www.netlist.com/media/blog/hypercloud-memory-scaling-the-high-density-memory-cliff/	401-403: EX2011 is dated July 24, 2012, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2011 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of data buffers (<i>see</i> POPR at pp. 52-54) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2011 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2012 – <i>What is a Memory Rank</i>, Crucial: Micron, https://www.crucial.com/support/articles-faq-memory/what-is-a-memory-rank (last accessed Mar. 7, 2023)	401-403: EX2012 has a copyright date of 2019, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2012 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner does not cite this exhibit in either its POPR or its Preliminary Sur-Reply and has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2012 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2013 – <i>Lecture 15: DRAM Main Memory Systems</i> , University of Utah, https://my.eng.utah.edu/~cs6810/pres/11-6810-15.pdf	401-403: EX2013 has a “Created” date of March 8, 2012, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2013 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner does not cite this exhibit in either its POPR or its Preliminary Sur-Reply and has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2013 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2014 – “Configuring and using DDR3 memory with HP ProLiant Gen8 Servers: Best Practice Guidelines for ProLiant Servers with Intel Xeon Processors” by HP, downloaded from https://web.archive.org/web/20121023195754/http://h20000.www2.hp.com/bc/docs/support/SupportManual/c03293145/c03293145.pdf	401-403: EX2014 has a copyright of 2012, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2014 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of data buffers (<i>see</i> POPR at pp. 53-54) but has failed to establish any connection to the disclosure of the ’417 Patent. 801/802/901/1002/1003: Samsung objects to EX2014 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2015 – Ganesh, B. et al., <i>Fully-Buffered DIMM Memory Architectures: Understanding Mechanisms, Overheads and Scaling</i>, HPCA (2007)	401-403: EX2015 has a copyright of 2007, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, EX2015 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner does not cite this exhibit in either its POPR or its Preliminary Sur-Reply and has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2015 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.
EX2016 – Datasheet for Micron DDR2 SDRAM FBDIMM MT36HTF51272FD	401-403: EX2016 has a copyright of 2009, and thus it is unclear that it is relevant in light of the alleged priority date of either March 5, 2004 or July 1, 2005. In any event, Patent Owner cites this exhibit in connection with a discussion of Rambus memories and chip-select buses (see POPR at pp. 15-16) but has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2016 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

<u>Exhibit</u>	<u>Objection(s)</u>
EX2018 – Redline Comparison of EX1035 (U.S. Patent No. 7,363,422 to Perego) With Related U.S. Patent No. 7,356,639	401-403: EX2018 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of the '417 Patent's prosecution history and Perego (see POPR at pp. 44, 60) but has failed to establish any connection to the disclosure of the '417 Patent. 801/802/901/1002/1003: Samsung objects to EX2018 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Netlist has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Samsung further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

Dated: August 16, 2023

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 16th day of August, 2023, **Petitioner's Objections to Patent Owner's Evidence Submitted With Patent Owner's Preliminary Response and Preliminary Sur-Reply** was served by email on the following counsel for Patent Owner:

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