

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES, INC.,
Petitioner

v.

REALTEK SEMICONDUCTOR CORPORATION,
Patent Owner

CASE: IPR2023-00788
U.S. PATENT NO. 9,590,582

**PATENT OWNER'S OBJECTIONS TO
PETITIONER'S EVIDENCE FILED WITH PETITIONER'S REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner hereby submits the following objections to the evidence Petitioner filed with its Reply Brief dated May 3, 2024. (Paper 25). Patent Owner's objections apply equally to Petitioner's reliance on these Exhibits in the Reply and any subsequently-filed papers in this proceeding. These objections are being filed within five business days of service.

Patent Owner makes the following objections of the following exhibits:

Exhibit 1044	Relevance (FRE 401 & 402) Hearsay (FRE 801 & 802)
Exhibit 1045	Relevance (FRE 401 & 402) Hearsay (FRE 801 & 802)
Exhibit 1047	Relevance (FRE 401 & 402) Foundation (FRE 602) Hearsay (FRE 801 & 802) Authenticity (FRE 901)

Exhibits 1044 and 1045 are hearsay, as they are out of court statements being used to establish the truth of the matter asserted. Specifically, each is being used to attempt to establish that a citation contained therein refers to the alleged prior art reference the Petition relies on, Muh (Ex. 1006), and that therefore Muh constitutes prior art. There is no applicable hearsay exception that would apply to either document, and certainly not to the specific portions relied upon by the Petition. Reply at 20-21. Therefore, the two articles are hearsay. As a result, Exhibits 1044 and 1045 are also irrelevant to the proceeding as they do not relate to a fact that is of consequence in determining the action. Finally, each of these exhibits is improper

supplemental information. *See* 37 C.F.R. § 42.123. This information could have been obtained earlier and submitted with the Petition, and its submission with Petitioner's Reply precludes Patent Owner's ability to submit any competing evidence. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide at 73 (Nov. 2019) ("Petitioner may not submit new evidence or argument in reply that it could have presented earlier"); *see also id.* ("The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness").

Exhibit 1047 is a declaration from a deponent that has not yet been made available for deposition. As a result, Exhibit 1047 and the Exhibit A attached to Exhibit 1047 are hearsay as the entirety is an out of court statement made without opportunity for cross examination, and are out of court statements being offered for the truth of the matter asserted. Exhibit 1047, the declaration and the attachments, therefore lacks any foundation and, as a document that is not self-authenticating, there is no basis to conclude Exhibit 1047 and its attachments are what Petitioner purports them to be. Exhibit 1047 is inadmissible under FRE 401 and 402 because it does not relate to a fact that is of consequence in determining the action. Exhibit 1047 is improper supplemental information. *See* 37 C.F.R. § 42.123. This information could have been obtained earlier and submitted with the Petition, and its submission with Petitioner's Reply precludes Patent Owner's ability to submit

any competing evidence. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide at 73 (Nov. 2019) (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier”); *see also id.* (“The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness”).

To the extent Petitioner fails to correct the evidentiary defects associated with the above evidence in view of Patent Owner’s objections, Patent Owner reserves the right to file one or more motions to exclude the exhibits or portions thereof under 37 C.F.R. § 42.64(c).

Respectfully submitted,

Dated: May 10, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, a true and correct copy of the foregoing was caused to be served electronically on the following counsel of record for Petitioner at the following email addresses:

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