

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

Case No. IPR2023-00847
Patent No. 10,268,608

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

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Netlist, Inc. (“Netlist”) objects to the following exhibits filed by Petitioner Samsung Electronics Co., Ltd. (“Samsung”) with its Reply to Patent Owner’s Response (Paper No. 23), which was served on June 21, 2024. These objections are timely, having been served within five business days. Netlist also objects to Petitioner Samsung’s Reply brief itself to the extent that it relies on any of the below listed exhibits.

EXHIBIT NO.	OBJECTION(S)
EX1059 – JESD82-20 AMB standard (March 2007)	FED. R. EVID. 401–403: EX1059 is a JEDEC standard that is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the ’608 patent, the prior art at issue, or the knowledge of a POSITA.
EX1072 – Errata to the deposition of Robert Wedig (EX2012)	Improper Deposition Errata: EX1072 is errata to the deposition of Samsung’s expert, Dr. Robert Wedig, that is procedurally and substantively improper. Samsung did not obtain prior authorization to file this errata. Furthermore, the errata introduces material changes to the substance of Dr. Wedig’s testimony. <i>See Garmin International, Inc. et al. v. Cuozzo Speed Technologies LLC</i> , PTAB-IPR2012-00001, Paper 50 at 2, 4 (expunging errata sheets filed by the patent owner and noting: “The rules for an <i>inter partes</i> review do not provide for the filing of errata sheets in connection with the deposition testimony of a witness. Thus, <i>a party intending to file an errata sheet, for whatever purpose, especially if it is to change the substantive testimony of a witness, must contact the Board and obtain prior authorization</i> before doing so.” Additionally noting that: “Unless unopposed by the other party, <i>a request to make a material change to the substance of cross examination testimony is unlikely to</i>

	<i>be successful</i> no matter when the request is made. Error in transcription is a different matter.”) (emphasis added).
EX1073 – Errata to the deposition of Robert Wedig in IPR2022-00711 (EX2016)	Improper Deposition Errata: EX1073 is errata to the deposition of Samsung’s expert, Dr. Robert Wedig, that is procedurally and substantively improper for the same reasons stated above with respect to EX1072.
EX1075 – Deposition of Mangione-Smith (May 4, 2023)	FED. R. EVID. 401–403: EX1075 is a deposition of Dr. Mangione-Smith from an unrelated <i>Inter Partes</i> Review proceeding. It is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the ’608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801–802: Netlist further objects to EX1075 for containing hearsay. Samsung has not laid the foundation for any hearsay exception.
EX1076 – Declaration of Mangione-Smith (Jan. 31, 2023)	FED. R. EVID. 401–403: EX1076 is a declaration of Dr. Mangione-Smith from an unrelated <i>Inter Partes</i> Review proceeding. It is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the ’608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801–802: Netlist further objects to EX1076 for containing hearsay. Samsung has not laid the foundation for any hearsay exception.
EX1077 – Netlist’s Technology Tutorial	FED. R. EVID. 401–403: EX1077 is an alleged Netlist technology tutorial from an ITC proceeding for unrelated patents. It is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection

	to the '608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801-802, 901: Netlist further objects to EX1077 for containing hearsay and for lacking authenticity. For example, Samsung has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Netlist further objects to this exhibit because Petitioner has not shown that it is an original document or authentic duplicate.
EX1085 – 2008 presentation on read and write leveling	FED. R. EVID. 401–403: EX1085 is an alleged 2008 presentation by non-party Altera Corporation. It is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the '608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801-802, 901: Netlist further objects to EX1085 for containing hearsay and for lacking authenticity. For example, Samsung has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Netlist further objects to this exhibit because Petitioner has not shown that it is an original document or authentic duplicate.
EX1086 – Netlist’s demonstratives for oral argument in IPR2022-00711 (EX2013)	Improper use of demonstrative as evidence: EX1086 are alleged demonstrative exhibits used by Netlist in an unrelated proceeding. Demonstratives are not evidence. <i>See</i> Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) at 84 (“Demonstrative exhibits used at the final hearing are aids to oral argument and not evidence, and should be clearly marked as such.”); <i>see also, e.g., St. Jude Medical, Inc. v. The Regents Of The University Of Michigan</i>, PTAB-IPR2013-00041, Paper 65 at 2 (“During the call, the Board explained to the parties that demonstrative exhibits are not evidence . . .”). Indeed each page of EX1086 is marked “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE.”

	FED. R. EVID. 401–403: Netlist further objects that EX1086 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the '608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801-802, 901: Netlist further objects to EX1086 for containing hearsay and for lacking authenticity. For example, Samsung has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Netlist further objects to this exhibit because Petitioner has not shown that it is an original document or authentic duplicate.
EX1087 – Dictionary definition of path	FED. R. EVID. 401–403: EX1087 is an alleged screenshot of a Google search result for the phrase “path definition.” It is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner fails to establish any connection to the '608 patent, the prior art at issue, or the knowledge of a POSITA. FED. R. EVID. 801-802, 901: Netlist further objects to EX1087 for containing hearsay and for lacking authenticity. For example, Samsung has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. Netlist further objects to this exhibit because Petitioner has not shown that it is an original document or authentic duplicate.

Dated: June 28, 2024

Respectfully submitted,

By: /Jonathan Lindsay/

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on June 28, 2024, a complete copy of the foregoing document **PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S REPLY** was served by electronic mail, as agreed to by the parties, upon the following:

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