

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REALTEK SEMICONDUCTOR CORP.,

Petitioners

v.

ATI TECHNOLOGIES ULC

Patent Owner.

Case No.: IPR2023-00922

U.S. Patent No. 8,760,454

**PETITIONERS' OBJECTIONS TO
EVIDENCE UNDER 37 C.F.R. §42.64(B)(1)**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”), Petitioners REALTEK SEMICONDUCTOR CORP. (“Petitioners”) hereby object to the exhibits cited and relied upon in Patent Owner’s February 23, 2024 Response on the following grounds. For each objected-to exhibit, the pertinent Federal Rule of Evidence (“FRE”) or other rule that gives rise to the objection is provided, along with a brief summary of the basis for the objection.

II. IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS

1. Exhibits 2009-2053, 2055-2079, 2083-2100, 2104-2112, 2114-2120

37 C.F.R. § 42.61: The exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402: The exhibits are not relevant to any ground upon which trial was instituted. For example, the exhibits have no bearing on whether the challenged claims are patentable under 35 U.S.C. §§ 102 and 103, the grounds of institution in this proceeding.

F.R.E. 403: The exhibits include information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 801/802/803: The exhibits constitute hearsay, which are not statements made by a declarant testifying in the current proceeding, that are offered to prove the truth of the matter asserted in the documents, and Patent Owner has not sufficiently established that the exhibits fall within any of the exceptions to the hearsay rule set forth in F.R.E. 803.

F.R.E. 901: The exhibits are inadmissible because Patent Owner has not submitted sufficient evidence to support that the exhibits are what Patent Owner claims they are.

2. Exhibits 2081, 2082, 2128, 2141, 2143

37 C.F.R. § 42.61: The exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402: The exhibits are not relevant to any ground upon which trial was instituted. For example, the exhibits have no bearing on whether the challenged claims are patentable under 35 U.S.C. §§ 102 and 103, the grounds of institution in this proceeding.

F.R.E. 403: The exhibits include information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 801/802/803: The exhibits constitute hearsay, which are not statements made by a declarant testifying in the current proceeding, that are offered to prove the truth of the matter asserted in the documents, and Patent Owner has not sufficiently established that the exhibits fall within any of the exceptions to the hearsay rule set forth in F.R.E. 803.

F.R.E. 901: The exhibits are inadmissible because Patent Owner has not submitted sufficient evidence to support that the exhibits are what Patent Owner claims they are.

3. Exhibits 2004, 2103, 2118 (Declaration of Laurent Lefebvre from IPR2015-00325)

37 C.F.R. § 42.61: The exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

37 C.F.R. § 42.65: The declaration includes expert testimony that does not disclose the underlying facts or data on which the opinion is based.

F.R.E. 403: The declaration includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 602: The declaration includes statements and testimony made without any personal knowledge, including and not limited to, the source and content of

technical specifications (*e.g.*, Ex. 2004 ¶¶ 7-33), source code (*e.g.*, Ex. 2004 ¶¶ 6, 34, 38, 52), presentations (*e.g.*, Ex. 2004 ¶¶ 4, 49), document logs and file histories (*e.g.*, Ex. 2004 ¶¶ 39-52), and work on various aspects of the R400 project including design and testing (*e.g.*, Ex. 2004 ¶¶ 34, 38-52).

F.R.E. 701/702/703: The declaration includes statements and testimony of a lay witness on conception (*e.g.*, Ex. 2004 ¶¶ 7-33) and diligence (*e.g.*, Ex. 2004 ¶¶ 34-43) not based on scientific, technical, or other specialized knowledge. These statements and testimony are based on insufficient facts or data, and is not the product of reliable principles and methods. Further, the relied upon facts and data are not those on which experts in this field would reasonably rely.

F.R.E. 801/802/805: The declaration includes inadmissible hearsay and/or double hearsay with no applicable exceptions.

F.R.E. 804: The declaration includes inadmissible hearsay and Patent Owner has not established that the declarant is unavailable as a witness and none of the exceptions of Rule 804(b) apply.

F.R.E. 1006: The declaration includes improper summary evidence of certain presentations (*e.g.*, Ex. 2004 ¶¶ 4, 49) and file histories (*e.g.*, Ex. 2004 ¶¶ 39-52).

4. Exhibits 2002, 2115 (Declaration of Andrew Wolfe from IPR2015-00325)

37 C.F.R. § 42.61: The declaration is not admissible under any applicable rule of the Patent Trial and Appeal Board.

37 C.F.R. § 42.65: The declaration includes expert testimony that does not disclose the underlying facts or data on which the opinion is based.

F.R.E. 401/402: The declaration is not relevant to any ground upon which trial was instituted. For example, the declaration includes sections on terminologies and background that have no bearing on whether the challenged claims are patentable under 35 U.S.C. §§ 102 and 103, the grounds of institution in this proceeding (*e.g.*, Ex. 2002 ¶¶ 50-60) and prior art that is not of record or at issue in this action (*e.g.*, Ex. 2002 ¶¶ 276-321).

F.R.E. 403: The declaration includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 602: The declaration includes statements and testimony made without any personal knowledge, including and not limited to, industry acceptance and adoption of ATI's unified shader (*e.g.*, Ex. 2002 ¶¶ 322-329).

F.R.E. 702/703: The declaration includes statements and testimony on the industry acceptance and adoption of ATI's unified shader (*e.g.*, Ex. 2002 ¶¶ 322-329). These statements and testimony are based on insufficient facts or data, and is not the product of reliable principles and methods. Further, the relied upon facts and data are not those on which experts in this field would reasonably rely.

F.R.E. 801/802/805: The exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions.

F.R.E. 804: The declaration includes inadmissible hearsay and Patent Owner has not established that the declarant is unavailable as a witness and none of the exceptions of Rule 804(b) apply.

5. Exhibits 2003, 2117 (Declaration of Calvin Watson from IPR2015-00325)

37 C.F.R. § 42.61: The declaration is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 403: The declaration includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 602: The declaration includes statements and testimony made without any personal knowledge, including and not limited to, the source and content of technical specification (*e.g.*, Ex. 2003 ¶¶ 22-129), source code (*e.g.*, Ex. 2003 ¶¶ 130-132), presentations (*e.g.*, Ex. 2003 ¶¶ 133-35), document logs and file histories (*e.g.*, Ex. 2003 ¶¶ 136-48).

F.R.E. 801/802/805: The exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions.

F.R.E. 804: The declaration includes inadmissible hearsay and Patent Owner has not established that the declarant is unavailable as a witness and none of the exceptions of Rule 804(b) apply.

F.R.E. 1006: The declaration includes improper summary evidence of certain presentations (*e.g.*, Ex. 2003 ¶¶133-35) and file histories (*e.g.*, Ex. 2003 ¶¶136-48).

6. Exhibits 2122 (Declaration of Calvin Watson)

37 C.F.R. § 42.61: The declaration is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 403: The declaration includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 602: The declaration includes statements and testimony made without any personal knowledge, including and not limited to, the source and content of technical specification (*e.g.*, ¶¶ 29-36, 41-42, 58-59), source code (*e.g.*, ¶¶27-28), presentations (*e.g.*, ¶¶27-28, 37-40, 43-46, 60-83), reports (*e.g.*, 47-57), folder histories, document logs and file histories (*e.g.*, ¶¶84-123, 128-208), Excel files (*e.g.*, 124-127).

F.R.E. 801/802/805: The exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions.

7. Exhibits 2005 (Calvin Watson Depo Transcript), 2006 (Andrew Wolfe Depo Transcript), 2007 (Laurent Lefebvre Depo Transcript), 2101 (Stephen Morein Depo Transcript), 2102 (Laurent Lefebvre Depo Transcript), 2113 (Andrew Gruber Depo Transcript), 2115 (Andrew Wolfe Depo Transcript), 2117 (Calvin Watson Depo Transcript), 2118 (Laurent Lefebvre Depo Transcript), 2120 (re: embedded depo transcripts of Nader Bagherzadeh (IPR2015-00326 at Exs. 2073 and 2074))

37 C.F.R. § 42.61: These depositions in which Petitioner was not a party are not admissible under any applicable rule of the Patent Trial and Appeal Board.

FRCP 32(a)(8): Depositions from earlier actions are not admissible in later cases when the previous case was not between the same parties.

F.R.E. 804: These depositions include former testimony that is only admissible if the party (here, Petitioner) had the opportunity to examine the witness in the earlier action.

F.R.E. 403: The depositions include information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Dated: March 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 1, 2024, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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