

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MIANYANG BOE OPTOELECTRONICS TECHNOLOGY CO. LTD.,
WUHAN CHINA STAR OPTOELECTRONICS SEMICONDUCTOR
DISPLAY TECHNOLOGY CO., LTD., TIANMA MICROELECTRONICS
CO. LTD, and VISIONOX TECHNOLOGY, INC.,
Petitioner,

v.

SAMSUNG DISPLAY CO., LTD.,
Patent Owner.

IPR2023-00941
Patent 7,414,599 B2

Before JAMESON LEE, TERRENCE W. McMILLIN, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER
Denying Motion to Submit Supplemental Information
37 C.F.R. § 42.123

I. INTRODUCTION

We instituted *inter partes* review on December 15, 2023. Paper 12. With our authorization, Petitioner filed under 37 C.F.R. § 42.123(a) a Motion to Submit Supplemental Information. Paper 18 (hereinafter “Motion” or “Mot”). Patent Owner filed an Opposition to Petitioner’s Motion to Submit Supplemental Information. Paper 19 (hereinafter “Opposition” or “Opp.”). The proposed supplemental information includes three items: (1) a supplemental declaration of Petitioner’s technical declarant, Dr. Daniel Foty (Ex. 1019), (2) U.S. Pat. Pub. 2004/0056257 (Ex. 1020, “Sakamoto”), and (3) U.S. Pat. Pub. 2003/0067424 (Ex. 1021, “Akimoto”). Petitioner filed all three items on the same day it filed its Motion.

For reasons discussed below, the Motion is *denied*.

II. DISCUSSION

A. 37 C.F.R. § 42.123(a)

Section 123(a) of Title 37, Code of Federal Regulations, provides:

- (a) Motion to submit supplemental information. Once a trial has been instituted, a party may file a motion to submit supplemental information in accordance with the following requirements:
 - (1) A request for the authorization to file a motion to submit supplemental information is made within one month of the date the trial is instituted.
 - (2) The supplemental information must be relevant to a claim for which the trial has been instituted.

There is no dispute between the parties that the Motion satisfies both of the above-identified requirements. However, granting of a motion to

submit supplemental information is not automatic whenever the two above-noted requirements are satisfied. *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 444–45 (Fed. Cir. 2015). Commenting on the Board’s denial of a motion to submit supplemental information despite the movant meeting these two requirements, the Court of Appeals for the Federal Circuit has stated:

The PTAB’s interpretation of its governing regulations is not plainly erroneous. Its interpretation of § 42.123(a) is consistent with the regulation’s plain language and the USPTO’s intent in promulgating § 42.123. The plain language of § 42.123(a) does not exclude the application of other general governing regulations. The guiding principle for the PTAB in making any determination is to “ensure efficient administration of the Office and the ability of the Office to complete IPR proceedings in a timely manner.” J.A. 18–19; *see* 35 U.S.C. § 316(b). Requiring admission of supplemental information so long as it was timely submitted and relevant to the IPR proceeding would cut against this mandate and alter the intended purpose of IPR proceedings.

Id. at 445. Further, “the PTAB has discretion to grant or deny motions as it sees fit.” *Id.* at 447.

In numerous cases, the Board has denied a motion to submit supplemental information where the supplemental information is used to refine or bolster the positions taken by Petitioner in the petition. *American Well Corporation v. Teladoc Health, Inc.*, IPR2021-00748, Paper 23 (PTAB Feb. 28, 2022) (citing various cases at 6–7). One example is *Ooma, Inc. v. Deep Green Wireless LLC*, IPR2017-01541, Paper 14 at 3–4 (PTAB Jan. 23, 2018), in which the Board stated: “Supplemental information is not intended to provide a petitioner an advantageous ‘wait-and-see’ opportunity to use a patent owner’s preliminary response and our decision on institution in order to refine or bolster petitioner’s position.”

Another example is *Merck Sharp & Dohme Corp. v. Microspherix LLC*, IPR2018-00393, Paper 21 at 3 (PTAB Sept. 10, 2018), in which the Board denied a motion to submit supplemental information where the petitioner sought to bolster its petition by responding to issues raised in the patent owner's preliminary response and also in the institution decision, and where petitioner tried to modify its reasons to combine references.

A further example is *Nissan North America, Inc. v. Diamond Coating Technologies, LLC*, IPR2014-01548, Paper 37 at 3–4 (PTAB July 15, 2015), in which the Board denied a motion to submit supplemental information where the petitioner sought to submit an expert declaration that contained new opinions as to how a person of ordinary skill in the art would understand the disclosure in the references.

A still further example is *ZTE Corp. v. ContentGuard Holdings, Inc.*, IPR2013-00139, Paper 27 at 3 (PTAB July 30, 2013), in which the Board denied entry of supplemental information petitioner submitted in response to the Board's claim construction in the institution decision.

Petitioner cites to *Telefonaktiebolaget LM Ericsson v. TCL Corp.*, 941 F.3d 1341, 1345–46 (Fed. Cir. 2019) as applicable authority:

As the Federal Circuit has stated, “[t]he introduction of new evidence in the course of the PTAB trial is to be expected in [IPR] proceedings, and, as long as the opposing party is given notice of the evidence and an opportunity to respond to it, the introduction of such evidence is perfectly permissible under the APA.” *Telefonaktiebolaget LM Ericsson v. TCL Corp.*, 941 F.3d 1341, 1345–46 (Fed. Cir. 2019) (internal citation omitted); see also *id.* (allowing supplemental declaration).

Mot. 2. But *TCL Corp.* is distinguishable from the above-noted line of cases that do not permit subsequent refinement or bolstering of a petition. First, the supplemental declaration at issue in *TCL Corp.* is that of a Librarian

attesting to the date of public accessibility of a prior art reference by June 19, 1996, and does not relate to the technical merit of any substantive argument involving the challenged claims. *See TCL Corp.*, 941 F.3d at 1344–45. Second, the information presented in the supplemental declaration had a basis in the existing record of the case, because the cover of the prior art reference already indicated a date of “Mai/Juni” 1996. *Id.* at 1344. We do not read *TCL Corp.* as broadly permitting adding to the substance of a petition or changing the substance of a petition after deficiencies in the petition have been identified by either the Patent Owner or the Board.

B. Analysis

1. Petitioner’s Contentions that are Overbroad

Petitioner asserts that the motion should be granted because it meets both requirements of 37 C.F.R. § 42.123(a). Mot. 1. That is incorrect because, as noted above in Section I.A., satisfaction of both the timeliness and relevance requirements of 37 C.F.R. § 42.123(a) does not lead to automatic granting of a motion to submit supplemental information.

Petitioner also asserts (1) that the supplemental information does not introduce new grounds of unpatentability and does not introduce new combinations of prior art references, and (2) that “[t]he issues on which Dr. Foty now opines address positions taken in the Petition and his original declaration.” Mot. 3.

With regard to the first assertion, we agree that the supplemental information does not introduce new grounds of unpatentability and does not introduce new combinations of prior art references. But that is not dispositive, because we may still consider whether Petitioner has sought to refine or bolster improperly the positions taken by Petitioner in the Petition.

The second assertion is overly broad, even if true, and misses the point that the supplemental information should not add to or otherwise deviate from arguments and positions taken by Petitioner in the Petition. The gist or essence of what Petitioner seeks to present by supplemental information already should have been expressed and understood as such in the Petition. It is the petition which “must specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4); *see also* 35 U.S.C. § 312(a)(3) (“the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim”); 35 U.S.C. § 314(a) (Petitioner has the burden to present in the Petition information which would show a reasonable likelihood of success).

The assertion that “[t]he issues on which Dr. Foty now opines address positions taken in the Petition and his original declaration” has a broad scope and covers situations in which the essence of what Petitioner seeks to present by supplemental information is absent from the Petition, in which case the supplemental information would improperly refine or bolster the positions taken by Petitioner in the Petition. In that regard, the Board has stated:

We agree with Patent Owner that the Supplemental Fischer Declaration “*introduces new citations and conclusions by Dr. Fischer that supplant, not supplement, the original motivation-to-combine argument in the Petition,*” which are “specifically tailored to address the deficiencies identified by the Board.” *Id.* at 5–6. That is, we agree with Patent Owner that Petitioner improperly seeks to change the evidence on which it relied in making the original challenge to claim 6.

American Well Corporation, IPR2021-00748, Paper 23, at 10 (emphasis added).

2. *Contentions about Responding to Board Concerns*

Petitioner asserts that the three items of proposed supplemental information collectively

address three topics raised in the Institution Decision (Paper 12, “ID”), including two where the Board invited “further develop[ment]”: (1) obviousness of a shared light-emitting signal in Kimura Fig. 36 (ID, 51–52); (2) operation of Kimura’s “initialization transistor” (*id.*, 47–49); and (3) Petitioner’s “second theory” re using all PMOS transistors (*id.*, 31–32).

Mot. 1. Patent Owner asserts: “Petitioner’s new declaration is effectively a 36-page supplemental petition advancing new theories and evidence of supposed unpatentability—and circumventing the Board’s word count limits—after Patent Owner and the Board identified deficiencies in the Petition’s theories.” Opp. 1. Patent Owner further asserts that the filing of a petition for *inter partes* review should not be turned into a two-stage process. *Id.* (citing *ZTE Corp.*, IPR2013-00139, Paper 27, at 3).

a) *Shared Light Emitting Signal*

As we noted in the Decision on Institution (hereinafter “Dec. Inst.”), claim 13 requires the gates of both the fourth and fifth transistors to be controlled by the “current light emitting signal.” Dec. Inst. 49. The Petition explains that although the Figure 33 embodiment of Kimura shows the fourth and fifth transistors controlled by different signals, the Figure 36 embodiment of Kimura uses shared light-emitting signal to control the fourth and fifth transistors. Pet. 64–65. On the basis of the use of a shared light emitting signal in the Figure 36 embodiment to control the fourth and fifth transistors, Petitioner concludes that it would have been obvious to use

a shared light emitting signal in the Figure 33 embodiment to control the fourth and fifth transistors. *Id.* No other modification to the Figure 33 embodiment was proposed by Petitioner to account for this feature.

In the Decision on Institution, we questioned Petitioner's proposal, and explained our concern as follows:

Petitioner's argument is questionable, because Petitioner's reasoning only has application to the embodiment of Figures 36A–36E, where the fourth and fifth transistors are always on and off together, and does not apply to the embodiment of Figures 33A–33E in which the fourth and fifth transistors do not always turn on and off together. *If the fourth and fifth transistors in the Figure 33 embodiment were to be controlled by the same shared signal, such that they have to be turned on and off together, they would produce outputs and make current connections and disconnections inconsistent with what the other components in the pixel circuit of the Figure 33 embodiment expect from them. Petitioner does not explain the effect this inconsistency has on the operation of the Figure 33 embodiment, e.g., whether anything useful results from the change.*

The Figure 36 embodiment is also different structurally from the Figure 33 embodiment in that it makes use of six transistors, not five as in the case of the Figure 33 embodiment. In accounting for claim 7, Petitioner relied on the Figure 33 embodiment to meet each of the limitations regarding the first, second, third, fourth, and fifth transistors. *It is questionable whether the Figure 33 embodiment, after being modified to make the fourth and fifth transistor always turn on and off together, as Petitioner proposes based on the Figure 36 embodiment, would still meet all the requirements of the first, second, third, fourth, and fifth transistor, as recited in claim 7.* Based on the present record, we find that Petitioner has not provided an adequate explanation as to this potential discrepancy.

Dec. Inst. 51–52 (emphasis added).

Rather than answering these concerns directly, for example, by explaining that the fourth and fifth transistors would provide the same output

regardless of whether they are driven by the same light-emitting signal, and that the overall circuit with commonly driven fourth and fifth transistors would still meet all the requirements of the first, second, third, fourth, and fifth transistor, as recited in claim 7, the proposed supplemental information proceeds in a new direction. We find the Opposition articulates the deviation well. For instance, Patent Owner notes:

Petitioner's motion states that "[t]o the extent Fig. 36 has 'architecture differences' (ID, 52) of significance, Petitioner submits Sakamoto to show suitability and use of a shared light emitting signal in a variety of pixel configurations." Mot. at 5. But the Board's concern was the Petition's failure to address "the architecture differences *between the embodiments in Kimura's Figures 33 and 36*" when proposing to modify Figure 33 such that the alleged fourth and fifth transistors are controlled by the same shared signal. Paper 12 at 52 (emphasis added).

Opp. 3–4. We agree with the above-quoted assertion of Patent Owner.

Patent Owner further notes:

In his supplemental declaration, Dr. Foty points to an embodiment of Sakamoto having two transistors that are connected to a common signal line. Ex. 1019, ¶¶ 23–24. However, the issue raised by the Board was not whether a common signal line could be used in any pixel circuit, but rather whether Kimura's Figure 33 embodiment would operate correctly with Petitioner's modifications. Dr. Foty does not explain how Sakamoto is relevant to this question. It is clear that, rather than being an attempt to answer the Board's questions regarding the grounds presented in the Petition, Petitioner raises Sakamoto in an attempt to present new theories because the Petition's actual grounds have deficiencies as flagged by the Board.

Petitioner seeks to materially change its obviousness theories based on Kimura in other ways as well. The Board stated that "[i]t is questionable whether the Figure 33 embodiment, after being modified... would still meet all of the requirements of the first, second, third, fourth, and fifth

transistor, as recited in claim 7.” Paper 12 at 51–52. Recognizing that the Petition’s theory of modifying the Figure 33 embodiment to control the fourth and fifth transistors with a shared light emitting signal would disrupt the operation of the circuit, *Petitioner now attempts to introduce a new theory. Specifically, the supplemental declaration relies on an additional transistor from Figure 36, transistor 3612, which was neither referenced nor discussed in the Petition or Dr. Foty’s original declaration with respect to claim 13. See, e.g., Ex. 1019, ¶¶ 9–22.*

In his supplemental declaration, *Dr. Foty opines about the operation of transistor 3612, which he acknowledges is not present in the Figure 33 embodiment, but which he now states is necessary to “enable[] use of a shared light emitting signal.” Ex. 1019, ¶ 10. Dr. Foty provides a raft of new opinions relating to this transistor, including with respect to a “synchronized operation of the fourth transistor and the fifth transistor” in the Figure 36 embodiment, and asserts for the first time that these would motivate a [person of ordinary skill in the art] to use a shared light emitting signal. Ex. 1019, ¶¶ 11–17. Dr. Foty also states that “all of the ‘599 claims are ‘comprising’ claims—and thus do not preclude the use/presence of an additional transistor.” Ex. 1019, ¶ 10. Neither the Petition nor Dr. Foty’s original declaration described any “additional transistor” in the proposed modification of Figure 33 for claim 13.*

Opp. 4–5 (emphasis added).

The emphasized portions of the above-quoted statements in the Opposition are essentially correct and we are in agreement therewith. Neither the Petition nor the first declaration of Dr. Foty proposed any modification of the Kimura’s Figure 33 embodiment, in connection with the shared light emitting signal feature of claim 13, beyond simply applying the same light emitting-signal to the gates of transistors 4 and 5.

All of the opinions in the proposed supplemental declaration of Dr. Foty with regard to additional modifications including adding another

transistor, are new and not in any way addressed or referred to in the Petition or Dr. Foty's first declaration. The proposed supplemental declaration changes Petitioner's theory of obviousness and the citation to Sakamoto appears to be in furtherance of this new approach and not responsive to answering the Board's stated concern.

b) Initialization versus Erasure

Claim 8 depends from claim 7 and further recites: "a sixth initialization transistor for discharging the data signal voltage stored in the capacitor in response to a scan signal just before the current scan signal upon initialization." Ex. 1001, 9:59–64. To account for this limitation of an initialization transistor, Petitioner asserts in its Petition: "Kimura discloses that the fifth transistor in Fig. 33 'can also be used as an erasure [transistor]' that resets the capacitor voltage to a default initialization value. EX1002, [0658]." Pet. 51. According to Petitioner, such use of Kimura's fifth transistor as an erasure transistor resets the capacitor voltage to a default initialization value, is shown in Kimura's Figure 33B. *Id.* at 18. Based on its identification of an undesirable consequence of using the fifth transistor as an erasure transistor to reset the capacitor voltage, Petitioner proposes a modification to incorporate an additional transistor from Kimura's embodiment of Figure 16 and 17, into Kimura's Figure 33 embodiment to reset the capacitor voltage. Pet. 51–56.

In the Decision on Institution, we stated:

Patent Owner asserts that Petitioner "Conflates 'Initialization' with 'Erasure.'" Prelim. Resp. 16. On this record, that appears to be true. The record evidence does not support Petitioner's assertion that the fifth transistor, when used as an erasure transistor, resets the capacitor voltage to a default initialization value. In particular, Kimura's paragraph 658, cited by Petitioner, does not support this assertion. It reads as follows:

Further, the TFT 3310 [fifth transistor] can also be used as an erasure TFT when applying a driving method that uses a digital time gray scale method. In addition, the erasure TFT can be placed in any location, provided that it is a location at which electric current supplied to the EL device can be cut off at an arbitrary timing.

Ex. 1002 ¶ 658. Based on the preliminary record, we agree with Patent Owner that “Kimura uses ‘erasure’ to mean ‘forcibly plac[ing] [the EL device] in a non-light-emitting state.’” Prelim. Resp. 16 (alterations in original).

Dec. Inst. 47–48. The Decision on Institution also cited to Kimura’s paragraph 415, which states in part: “The erasure TFT 914 is on only during the sustain (light emitting) period. The erasure TFT 914 is off during initialization, image signal input, and the erasure period, and electric current to the EL device 909 is thus cutoff.” Ex. 1002 ¶ 415 (cited at Dec. Inst. 48). We stated that “Kimura’s paragraph 415 indicates that erasure is an operation different from initialization.” Dec. Inst. 48. Additionally, we noted Patent Owner’s color-annotated version of Kimura’s Figure 16B and stated that it shows separate, non-overlapping, periods of initialization and erasure. *Id.* at 49.

On the basis of the foregoing, we questioned Petitioner’s accounting for the alleged obviousness of claim 8 over Kimura. Dec. Inst. 49.

The Motion asserts that in the proposed supplemental declaration of Dr. Foty, it is explained that in Figure 16B of Kimura, “the initialization period (green) overlaps (and is contained within) with the erasure period (blue),” and that Patent Owner’s assertion that the erasure period and the initialization period do not overlap is incorrect. Mot. 6. According to Petitioner, the relevance requirement of 37 C.F.R. § 42.123(a)(2) is thus met. *Id.* Although this content of the proposed supplemental declaration of

Dr. Foty (Ex. 1019 ¶¶ 25–34) does not change the theory or arguments in the Petition or the first declaration of Dr. Foty, the problem lies in paragraphs 35 and 36 of the proposed supplemental declaration of Dr. Foty, reproduced in part below:

35. It should also be noted that even if other things besides initialization occur during the “erasure” period, the claims are comprising claims – and it is my understanding from counsel for Petitioner *that this allows for other such things to be present* (including things which are simply irrelevant to the ’599 claims). This includes Samsung’s example (cited by the Board) that erasure “forcibly plac[es] [the EL device] in a non-light-emitting state”). See Institution Decision at 47-49. *Rather, I rely on Kimura’s disclosure that the initialization/reset transistor 1607 discharges the voltage on the capacitor – and resets it to a known/pre-determined voltage (which prepares the programming circuitry for the next programming cycle). . . .*

Ex. 1019 ¶ 35 (emphasis added).

36. . . . Indeed, Kimura expressly recognizes a flexible approach, stating that “**other steps may be taken if an erasure period is provided**” (emphasis added). Kimura, [0651]. As annotated Figure 16B above indicates, my opinion is based on the initialization period (highlighted in green) rather than the optional additional erasure period in blue.

Id. ¶ 36.

As noted above, in the Petition, Petitioner accounts for the initialization transistor of claim 8 by asserting: “Kimura discloses that the fifth transistor in Fig. 33 ‘can also be used as an erasure [transistor]’ that resets the capacitor voltage to a default initialization value. EX1002, [0658].” Pet. 51. It is only based on Petitioner’s identification of an undesirable consequence of using the fifth transistor as an erasure transistor that Petitioner proposes a modification to incorporate an additional transistor

from Kimura's embodiment of Figure 16 and 17, into Kimura's Figure 33 embodiment to reset the capacitor voltage. Pet. 51–56.

Petitioner may not now divorce itself from its original reliance on the use of the fifth transistor in Figure 33 as an erasure transistor to account, at least in part, for the initialization transistor of claim 8, and switch to sole reliance on Kimura's disclosure of initialization/reset transistor 1607 in Kimura's Figures 16 and 17. This change is significant, and substantially alters, if not completely eliminates, Petitioner's initial reasoning to use transistor 1607 in Kimura's Figures 16 and 17. *See* Pet. 51–56.

Patent Owner asserts that Dr. Foty's supplemental declaration now seeks to present a new, and different, interpretation of Kimura. Dr. Foty now states that “my opinion is based on the initialization period . . . rather than the optional additional erasure period.” Ex. 1019, ¶ 36. This acknowledgment that initialization period and erasure are not the same starkly contrasts with the Petition and Dr. Foty's original declaration, which definitively equated these operations. *See, e.g.*, Pet. at 18, n.4 (“Kimura also calls [initialization] ‘reset’ (*see* Fig. 1B) and ‘erasure’ (*see* [0658]).[”]); Ex. 1003, ¶¶ 224–230 (repeatedly referring to an “initialization/erasure operation and initialization/erasure transistor”). Indeed, Petitioner's theory as to why an initialization transistor “is readily applicable to the baseline circuit of Fig. 33” and could be placed where Petitioner proposes was based entirely on equating erasure and initialization. Pet. at 52–53 (arguing Kimura teaches “the erasure [transistor] can be placed in any location” and “[t]hus a POSITA would have been motivated to place the initialization transistor” as Petitioner proposes).

Opp. 6–7. We agree with the above-quoted assertions of Patent Owner.

For reasons discussed above, Petitioner's proposed supplemental information improperly seeks to refine or bolster the positions taken by Petitioner in the Petition.

c) *Second Theory for Using all PMOS Transistors*

Petitioner presented two rationales for modifying the embodiment t in Kimura's Figures 33A–33E for using only pMOS transistors. The first is based on general interchangeability of nMOS and pMOS transistors which are used as switching transistors (Pet. 4, 39), and the second is that single-transistor-species circuit is simpler and less costly to manufacture (Ex. 1003 ¶¶ 58, 151 (cited at Pet. 4, 20)). In the Decision on Institution, we questioned the second theory as follows:

We question the completeness of the second theory. The second theory appears incomplete because what is shown in Figures 33A–33E is merely a pixel circuit and *does not include other components which are fabricated on the same substrate*. Patent Owner notes that in addition to the pixel circuit, Kimura discloses a CMOS driver circuit, separate from the pixel circuit, on the same semiconductor substrate, which includes complementary nMOS and pMOS transistors. PO Resp. 36. Petitioner has not asserted, much less explained, the interchangeability of a CMOS pair of nMOS and pMOS transistors with either two nMOS transistors or two pMOS transistors.

At this stage, the record does not show sufficiently how a circuit would stay operative if a CMOS pair of nMOS and pMOS transistors were replaced with two nMOS transistors or two pMOS transistors. Petitioner does not explain how two nMOS transistors or two pMOS transistors would provide the same outputs, as seen from the other connected elements in the circuit, as a CMOS pair of complementary nMOS and pMOS transistors.

Dec. Inst. 31 (emphasis added).

Patent Owner correctly notes that Dr. Foty's proposed supplemental declaration does not answer our questions, and that Petitioner "does not even attempt to explain how [Dr. Foty's] new opinions are relevant to the Board's questions, which they are not." Opp. 7. Instead, Dr. Foty's proposed

supplemental direction goes in a new direction. Specifically, Dr. Foty now testifies “a [person of ordinary skill in the art] would understand the teachings of Kimura as having application where the pixel array and the peripheral control circuitry are made separately from each other (using two different manufacturing processes and on two separate substrates) – then electrically-connecting those substrates together.” Ex. 1019 ¶ 50. Dr. Foty also now further testifies that there are advantages and benefits for doing so, and that there are well-known trade-offs between having all circuits on a single silicon integrated circuit and having components distributed across two or more integrated circuits. *Id.* ¶¶ 51–54.

The concept of putting the pixel circuit and its driver circuit on different substrates is simply absent from Dr. Foty’s first declaration and also from the Petition.

Dr. Foty’s proposed supplemental declaration presents still another new concept foreign to his first declaration, i.e., that one would use a CMOS process to manufacture both the driver circuitry and the pixel circuit on the same substrate, but have nMOS and pMOS transistors in the driver circuit and only pMOS transistors in the pixel circuit, and that there are benefits for doing that. Ex. 1019 ¶¶ 55–59. Akimoto is relied on by Dr. Foty in this discussing this new concept. *Id.* ¶¶ 57–59. This split concept is also new. In his first declaration, Dr. Foty testified to benefits and advantages of a manufacturing process that used only transistors of one type. *E.g.*, Ex. 1003 ¶¶ 58, 151.

d) Incorporation by Reference

As discussed above, the proposed supplemental declaration of Dr. Foty presents new concepts and arguments not contained in his first declaration. The proposed supplemental declaration is 35 pages in length.

We are troubled by the notion that admitting this proposed supplemental declaration is tantamount to adding pages to the Petition. This is particularly true given Petitioner's suggestion that Patent Owner can simply depose Dr. Foty on the substance of the supplemental declaration and address his new theories in the Patent Owner Response. Mot. 2–3. In essence, Petitioner asks us (and Patent Owner) to treat Dr. Foty's supplemental declaration as reflecting Petitioner's own positions. We decline to do so because this would violate the rule against incorporation by reference. *See* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”).

e) Conclusion

For all of the foregoing reason, we find Petitioner's proposed supplemental information improper, as it bolsters the Petition in presenting new arguments and concepts that are absent from the Petition and Dr. Foty's first declaration. Therefore, we decline to admit Petitioner's proposed supplemental information.

III. ORDER

Petitioner's Motion to Submit Supplemental Information is *denied*.

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