

IN THE 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.

Case No. IPR2023-00941
U.S. Patent No. 7,414,599

**PETITIONER'S REPLY IN SUPPORT OF ITS
MOTION TO STRIKE**

Patent Owner's opposition (Paper 38, "Opp.") to Petitioner's motion to strike does little more than dig Patent Owner into a deeper hole. Patent Owner does not limit itself to the narrow, procedural issue raised by the motion: whether its Response improperly incorporated arguments regarding "practic[ing]" of the '599 patent's claims by SDC and alleged "copying" by BOE and others. Instead, Patent Owner primarily uses its opposition to make substantive points. Patent Owner spends nearly a page explaining why it believes "widespread and systemic copying" occurred. (Opp. at 2.) And it spends almost two pages attempting to show why it believes there to be a "nexus" between the challenged claims and its product. (*E.g.*, *id.* 3-4.) In fact, Patent Owner even makes an entirely new argument: it announces for the first time that "a presumption of nexus applies." (*Id.* at 3-4.) Patent Owner's Response made no such argument, nor did it otherwise allege entitlement to a "presumption" of nexus. Neither a motion to strike nor the opposition to such a motion is a vehicle to make substantive arguments. Patent Owner's improper use of its opposition for this purpose further merits granting Petitioner's motion.

Moreover, the limited rebuttal Patent Owner attempts to Petitioner's actual argument misses the point. While Patent Owner argues that striking an entire (or a large portion) of a brief would be an exceptional remedy, this is not the relief Petitioner seeks. Indeed, the rationale for Petitioner's motion in the first place is that SDC's Response did not adequately develop the arguments and instead relies on

voluminous exhibits to do so. As such, Petitioner's motion is narrowly tailored to focus only on the specific portions (*i.e.*, a few sentences) of the Response that improperly incorporate arguments. While SDC's "secondary considerations" arguments are deficient for multiple reasons that Petitioner will summarize in its forthcoming reply, Petitioner did not move to strike the entirety of these arguments. Nor did it move to strike whole Response sections discussing purported "copying," or the alleged "nexus" between the claims and SDC's products. Instead, Petitioner's motion addressed only the improper arguments regarding the asserted "practic[ing]" or "copying" of claims. Those arguments are improper because they are not properly articulated in the Response itself and require extensive resort to the exhibits at issue.

Next, a party does not "make" its argument by simply asserting in a brief that a product "practices" a patent (or showing a picture) and then citing voluminous claim charts. Such gamesmanship is the precise reason for the rule against incorporation by reference. In this circumstance, the exhibits are the argument. Patent Owner must explain its arguments just like Petitioner has to explain how the prior art meets a claim in its Petition, not merely in a separate chart. As such, the exhibits at issue are not merely "evidence" as Patent Owner argues. (*E.g.*, Opp. At 1.) Instead, they are the argument as to why and how a product "practices" the claims, and why BOE purportedly engaged in "copying." Indeed, Patent Owner concedes as much in its Opposition: these exhibits "map[]" products to "the

challenged claims.” (*Id.* at 2, 3.) No such “mapping” beyond conclusory statements regarding SDC’s product is present in Patent Owner’s Response. And Exhibit 2047 is cited to show alleged “copying,” not just superficial similarity. (*Id.* at 2.) Patent Owner asserts the ’599 patent claims comprise “a[n] [in]significant amount of functional language” and “no written analysis needs to be provided.” (*Id.* at 3-4.) Not so. This assertion is readily refuted by the claim language itself, and is belied by the hundreds of pages of explanatory claim-chart exhibits SDC submits.

Patent Owner also contends that “claim charts used in support of objective indicia arguments” are somehow immune from the requirements of 37 C.F.R. § 42.6(a)(3). (*See, e.g.,* Opp. at 4-5.) But none of the cases it cites say this. Instead, they merely show that the Board can fashion a variety of remedies. *See, e.g., Intex Rec. Corp. v. Team WW Corp.*, Case IPR2018-00859, Paper 73, at 3-4 (PTAB Apr. 12, 2019) (finding incorporated arguments can be ignored rather than struck).

Finally, Patent Owner argues the Board should allow incorporation by reference here because “[Petitioner] can respond to it in its reply.” (Opp. at 4.) But this is precisely the problem: Petitioner should not be required to use its limited 5,600-word reply to rebut hundreds of pages of arguments made in violation of the Board’s rule against incorporation by reference. *See, e.g., Cisco Sys. v. C-Cation Techs.*, Case IPR2014-00454, Paper 12, at 10 (PTAB Aug. 29, 2014) (Informative).

Petitioner respectfully requests that the Board grant its motion to strike.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 7, 2024, the foregoing paper was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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