

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

**PATENT OWNER'S OPPOSITION TO PETITIONER'S
SECOND MOTION TO STRIKE (PAPER 46)**

Petitioner’s motion to strike Exhibit 2054 and associated arguments in Patent Owner’s Surreply has no merit and should be denied. Exhibit 2054 is a legal ruling from a parallel litigation. It is not “new evidence.” In the ruling, Administrative Law Judge Moore found that Petitioner’s “Dr. Foty does not meet the level of ordinary skill in the art for the ’599 and ’593 patents,” and therefore could not offer expert testimony about them. Ex. 2054 at 5, 8. Petitioner failed to apprise the Board of this development on a common issue in the parties’ parallel litigation. Despite its relevance to Patent Owner’s objections to Dr. Foty’s declaration, and to arguments raised in Patent Owner’s Response and Petitioner’s Reply, Petitioner now attempts to preclude the Board from even considering the ALJ’s ruling, and from considering Patent Owner’s explanation of how it undercuts arguments in Petitioner’s Reply.

“[S]triking the entirety or a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” Consolidated Office Trial Practice Guide (Nov. 2019) at 80. There is no reason for the Board to do so here.

Exhibit 2054: Exhibit 2054 is a copy of a publicly accessible order that Patent Owner cites not as substantive evidence, but rather as a legal ruling that is pertinent to the parties’ disputes in this matter. *See* Order No. 60, Granting Complainant’s Motion in Limine No. 1, Inv. No. 337-TA-1351 (U.S.I.T.C. July 2, 2024). Petitioner cites to no rule or authority that prohibits citing to a new legal ruling in surreply, and Patent Owner is aware of none. While Patent Owner submitted the ALJ’s order as an

exhibit, it did so simply for the Board’s convenience.

In contrast, the decisions Petitioner cites all involve a party seeking to admit numerous pieces of substantive evidence—not a copy of a legal ruling—and do not support the striking of Exhibit 2054. *See Satco Prods., Inc. v. Seoul Semiconductor Co., Ltd.*, PTAB-IPR2020-00836, Paper 45 at 77 (Oct. 22, 2021) (striking exhibits 2009-2016); *id.* at paper 36 at 2-3 (struck exhibits are websites, textbooks, dictionaries, and journal articles); *Resi Media LLC v. Boxcast Inc.*, IPR2022-00067, Paper 56 at 49 (Apr. 12, 2023) (striking exhibits 2054, 2056-2074); *id.* at paper 53 at 5-7 (struck exhibits are declarations, papers, websites, and dictionaries).

The ALJ’s order was not issued until July 2, 2024—well after the Patent Owner Response and only ten days before Patent Owner’s Surreply. Thus, Petitioner’s insinuation that Patent Owner should have introduced this exhibit earlier is illogical. *See* Paper 46 at 4 (“EX2054 should be stricken because it ‘w[as] not of record prior to Patent Owner filing [it] with its Sur-reply’”).

Dr. Foty’s Lack of Relevant Qualifications: Petitioner is also wrong to assert that Patent Owner is “belatedly” “raising a dispute over Dr. Foty’s qualifications” (Paper 46 at 2). On the contrary, Patent Owner timely and specifically objected to Dr. Foty’s testimony based on his lack of qualifications on January 2, 2024 (*see* Paper 14), well before Petitioner’s May 31, 2024 Reply. Moreover, Patent Owner raised this objection for the same reason that ALJ Moore has since concluded that

Dr. Foty lacks qualifications to offer relevant expert testimony:

Exhibit 1003, Expert Declaration of Dr. Daniel Foty: Patent Owner objects to this testimony under Federal Rule of Evidence 702 in that the witness, whose curriculum vitae identifies no experience in active matrix display design, does not qualify as a person of ordinary skill in the art with respect to U.S. Patent No. 7,414,599, and accordingly lacks qualification to opine on matters requiring the perspective of a person of ordinary skill, including the alleged obviousness of the challenged claims. *See, e.g., Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1376–77 (Fed. Cir. 2022) (“To offer expert testimony from the perspective of a skilled artisan in a patent case—like for claim construction, validity, or infringement—a witness must at least have ordinary skill in the art.”).

Paper 14 at 1. Indeed, Patent Owner objected to *both* of Dr. Foty’s declarations on this ground. *See id.*; *see* Paper 42 at 1 (raising same objection for Dr. Foty’s Reply declaration, Ex. 1029). Petitioner cannot claim that this issue was not in dispute.

Petitioner not only was on notice of Patent Owner’s objection and contention, but specifically responded in Petitioner’s Reply, asserting that “Samsung and its expert manufacture a POSITA [level of skill] dispute where one does not, and should not, exist.” Pet. Reply, Paper 41 at 2. While Petitioner’s assertion that the dispute is “manufacture[d]” is plainly incorrect, it unmistakably shows Petitioner understood the issue to be in dispute and presented arguments on it in its Reply. Patent Owner’s surreply arguments on this topic are responsive to Petitioner’s Reply, and explain

why Dr. Foty's lack of relevant qualifications presents a real, substantive issue which Petitioner is attempting to brush under the table.

The further showing that Dr. Foty does not qualify as a POSITA thus responds to Petitioner's Reply, in which Petitioner both asserted (incorrectly) that this dispute is semantic rather than substantive, *see* Pet. Reply at 2, and implied (inaccurately) that there is no dispute with respect to Dr. Foty's qualifications. *See* Pet. Reply at 3 (“[Dr. Wolfe] rendered no opinion on Dr. Foty or Mr. Credelle's qualifications . . . The Board should reject Samsung's manufactured POSITA dispute.”). Patent Owner responds to Petitioner's arguments by explaining both the dispute over the definition of a person of ordinary skill in the art and why it matters: the dispute (1) bears on Patent Owner's objections to Dr. Foty's testimony, *see* Paper 14, Paper 42, and (2) relates to Petitioner's misreading of the art. *See* P.O. Surreply, Paper 45 at 22.

Indeed, Patent Owner explained in its Response and its Surreply how Petitioner and Dr. Foty's lack of understanding of active matrix display technology led them to misread or misunderstand prior art. For example, Patent Owner noted in its Patent Owner Response that “Petitioner's misreading of the art appears to result from a lack of appreciation of active matrix display-related technology.” POR, Paper 33, at 8; *see also* P.O. Surreply, Paper 45 at 22.

Finally, it is unclear what Petitioner's motion seeks to accomplish. The ALJ's Order is publicly available legal authority.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Patent Owner's Opposition to Petitioner's Second Motion to Strike was served by electronic mail on the following counsel of record for petitioner:

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