

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 MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

I. INTRODUCTION	1
II. EX2008 ¶¶136 AND 138-144 SHOULD BE EXCLUDED	1
III. EX2018 SHOULD BE EXCLUDED	3
IV. EX2021-EX2023 SHOULD BE EXCLUDED	4
V. EX2024-EX2025 SHOULD BE EXCLUDED	5
VI. EX2026-EX2042 SHOULD BE EXCLUDED	5
VII.EX2043 SHOULD BE EXCLUDED.....	7
VIII.EX2047 SHOULD BE EXCLUDED	8
IX. EX2049 SHOULD BE EXCLUDED	9
X. EX2051-EX2052 SHOULD BE EXCLUDED	9
XI. EX2054 SHOULD BE EXCLUDED	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Int’l Land Acquisitions, Inc. v. Fausto</i> , 39 F. App’x 751 (3d Cir. 2002)	11
<i>SEB S.A. v. Montgomery Ward & Co.</i> , 594 F.3d 1360 (Fed. Cir. 2010)	11
<i>Sundance, Inc. v. DeMonte Fabricating Ltd.</i> , 550 F.3d 1356 (Fed. Cir. 2008)	11
<i>U.S. v. Jones</i> , 29 F.3d 1549 (11th Cir. 1994)	11
<i>Wi-Lan Inc. v. Sharp Elecs. Corp.</i> , 992 F.3d 1366 (Fed. Cir. 2021)	2
Other Authorities	
Code of Federal Regulations Title 37, sec. 42.64(c)	1
Federal Rules of Evidence Rule 702	11
Rule 703	2
Rule 403	<i>passim</i>

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.64(c), the Board’s Scheduling Order (Paper 13), and the Federal Rules of Evidence, Petitioner hereby moves to exclude EX2008 (¶¶136 and 138-144), 2018, 2021-2043, 2047, 2049, 2051-2052, and 2054 which were submitted and relied upon by Patent Owner. Petitioner identifies, for each exhibit, when it originally lodged the objection and what objections were made.

II. EX2008 ¶¶136 AND 138-144 SHOULD BE EXCLUDED

EX2008 is the Sealed Declaration of Andrew Wolfe, Ph.D. (the “Wolfe Declaration”) filed with Patent Owner’s Response. On March 20, 2024, Petitioner objected to ¶¶136, 138, and 141-143 of the Wolfe Declaration on the grounds of hearsay, F.R.E. 403, lack of personal knowledge, expert testimony by a non-expert, and speculation. Paper 35, 1. Patent Owner provided no supplemental evidence in response.

The challenged paragraphs all relate to “telephonic discussions” Dr. Wolfe had with Mr. Ka, who is Patent Owner’s employee. *See* EX2008, ¶¶136, 138, and 141-143. Dr. Wolfe does nothing more than serve as mouthpiece for a non-declarant (selected by Patent Owner’s counsel) in relating what Patent Owner’s employee

allegedly told him regarding both technical and non-technical matters.¹ *Id.*, ¶136 (“I had a telephonic discussion with [Mr.] Ka, ... Mr. Ka informed me that the ’599 Patent’s pixel circuit ... Mr. Ka also informed me that Samsung Display has consistently used the ’599 Patent’s pixel circuits ... Mr. Ka explained that the pixel circuits used in AMOLED displays”). This approach is repeated in each of paragraphs 136, 138, 141-43. These paragraphs include Mr. Ka’s assertions and interpretation of technical documents (such as EX2019). *Id.*, ¶142. Petitioner recognizes that an expert may sometimes rely on hearsay, but not where the expert simply regurgitates a non-declarant’s (and non-expert’s) statements and technical analysis. *See, e.g., Wi-Lan Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1375 (Fed. Cir. 2021) (affirming exclusion of expert report where “Wi-LAN attempts to do exactly what is impermissible under Rule 703 by using its expert as a substitute for a fact witness to circumvent the rules of evidence to admit otherwise inadmissible evidence.”). Because Mr. Ka is an employee of Patent Owner, it certainly could have provided a sworn declaration from him, at the time of its Patent Owner Response or as supplemental evidence responsive to Petitioner’s objections. But Patent Owner

¹ Moreover, making this evidence even more unreliable, Petitioner learned during Dr. Wolfe’s deposition that the conversations were conducted through a Korean interpreter because Mr. Ka did not speak English. EX1028, 63.

chose not to do either.

On March 20, 2024, Petitioner objected to ¶¶139-144 of the Wolfe Declaration on the grounds of hearsay, authentication, speculation, F.R.E. 403, and relevance because these paragraphs are based on information purportedly provided to Dr. Wolfe by Patent Owner's counsel that Patent Owner's counsel attributed to Petitioner Mianyang BOE. Paper 35, 1-2. Patent Owner provided no supplemental evidence in response. These paragraphs confuse the issues and waste the parties' and the Board's resources and time on collateral matters. In particular, the entire discussion at ¶¶139-144 is premised on purported statements and arguments from a separate ITC proceeding that Petitioner never raised in this IPR proceeding. Thus, ¶¶139-144 are irrelevant, based hearsay, a waste of time, and should be excluded.

III. EX2018 SHOULD BE EXCLUDED

EX2018 is a SEALED 86-page single-spaced claim chart—mentioned only in passing in Patent Owner's Response (*see* Paper 33 at 54)—that purportedly shows how one of Patent Owner's products practices the claims of the challenged patent. On March 20, 2024, Petitioner objected on the ground of F.R.E. 403 because submitting an 86-page single-spaced claim chart unrelated to the prior art at issue confuses the issues and wastes the parties' and the Board's time/resources on

collateral matters.² Paper 35, 2-3. Patent Owner provided no supplemental evidence in response.

IV. EX2021-EX2023 SHOULD BE EXCLUDED

EX2021-EX2023 are a series of webpage printouts purportedly showing that one or more of the inventors of the Challenged Patent received awards. On March 20, 2024, Petitioner objected to these exhibits as lacking proper authentication, relevance, and F.R.E. 403. Paper 35, 3. Patent Owner provided no supplemental evidence in response.

Patent Owner relies on EX2021-EX2023 to show purported “industry recognition for the inventors” in support of secondary considerations. *See* Paper 33, 56-57 (merely asserting that EX2020 contains “teardown images of pixel circuits in a Samsung Display AMOLED display”). But mere general recognition for the inventors (instead of the claimed invention) is not relevant to secondary considerations, and is far more prejudicial than probative. Moreover, these exhibits are not authenticated. Accordingly, EX2021-EX2023 should be excluded.

² EX2018 is only marginally referenced in the Patent Owner Response and is an improper attempt to incorporate material by reference and circumvent the word count limit. Petitioner moved to strike EX2018 on this basis. *See* Paper 37.

V. EX2024-EX2025 SHOULD BE EXCLUDED

EX2024-EX2025 are both U.S. patents assigned to Petitioner. On March 20, 2024, Petitioner objected to these exhibits on the grounds of relevance and F.R.E. 403. Paper 35, 3-4. Patent Owner provided no supplemental evidence in response.

Patent Owner relies on EX2024-EX2025 to show that Petitioner tried—but failed—to design its own pixel circuit, and therefore must have resorted to copying Patent Owner’s circuit. *See* Paper 33, 60 (“Mianyang BOE’s patent filings demonstrate it tried to develop its own AMOLED pixel circuits, including using 5 transistors and 1 capacitor (Ex. 2024) or 4 transistors and 1 capacitor (Ex. 2025). Yet in order to commercialize AMOLED displays for mobile devices, Mianyang BOE resorted to copying Samsung Display’s patented pixel circuits.”). But whether Petitioner has U.S. patents, the number of such patents, and/or whether Petitioner practices any of its patents is irrelevant to the validity of the challenged ’599 patent. Focusing on such collateral issues is far more prejudicial than probative, confuses the issues, and wastes the parties’ and the Board’s time/resources. EX2024-EX2025 should be excluded.

VI. EX2026-EX2042 SHOULD BE EXCLUDED

EX2026-EX2042 are a series of 17 exhibits showing purported teardown photos of a variety of displays. On March 20, 2024, Petitioner objected to these exhibits as lacking proper authentication, incomplete, relevance, hearsay, and F.R.E.

403 (e.g., far more prejudicial than probative, cumulative, waste of the parties' and the Board's time/resources). Paper 35, 4. Patent Owner provided no supplemental evidence in response.

Patent Owner cites EX2026-EX2042 (with no analysis) to show purported copying by others. See Paper 33, 60-62 ("The widespread copying is further apparent from samples of AMOLED displays sold by numerous vendors of replacement AMOLED displays."). The amount of time and effort required to properly understand and adequately reverse engineer seventeen products from partial layouts without circuit diagrams is wasteful of the parties' and the Board's limited time/resources, confuses the issues, and is far more prejudicial than probative. Paper 35, 4. Moreover, Patent Owner's expert admitted during deposition that he knew next to nothing about any of the images or who made them. EX1028, 66-67 ("Q. Does Group Vertical manufacture its own displays? A. I don't know. Q. Does Group Vertical design its own displays? A. I don't know. Q. Would your answers be the same for the rest of the entities listed in Paragraph 161 of your report? A. Yes."). Indeed, Patent Owner's expert admitted "[i]t is possible that these [displays] are all sourced from a small number or even a single manufacturer."

EX1028, 67.³ Such lack of foundation makes the images of marginal (if any) relevance. And it certainly makes the exhibits far more prejudicial than probative, and a waste of the parties' and the Board's time and resources. EX2026-EX2042 should be excluded.

VII. EX2043 SHOULD BE EXCLUDED

EX2043 is the declaration of Aris Silzars, Ph.D. (the "Silzars Declaration"). On March 20, 2024, Petitioner objected to this exhibit as lacking proper authentication, cursory, incomplete, relevance, hearsay, and F.R.E. 403. Paper 35, 4. Patent Owner provided no supplemental evidence in response.

Patent Owner does not cite EX2043 at all. But Dr. Silzars states he was asked to "obtain photographs" from a variety of "displays," with exhibit numbers that "were assigned to [him] by counsel for Patent Owner." EX2043, ¶2. But Dr. Silzars has no firsthand knowledge of the provenance of the displays, merely stating he "understand[s]" they were purchased from a variety of source. *Id.* This does not, and cannot, establish the requisite foundation, especially given the purpose for which Patent Owner cites the images as discussed above. Moreover, the images are incomplete and there was no explanation provided of the when, how, or where he

³ Dr. Silzars declaration (EX2043) does not supply any of this information either, and had no personal knowledge of where the products were sourced. EX2043, ¶2.

performed the purported teardowns, or how/why he selected the particular images he did. *Id.* Accordingly, EX2043 should be excluded.

VIII. EX2047 SHOULD BE EXCLUDED⁴

EX2047 is the district court Complaint in *Samsung Display Co., Ltd. v. BOE Tech. Co., Ltd. et al.*, No. 2-23-cv-00309-JRG-RSP, ECF No. 1 (E.D. Tex. Jun. 26, 2023). On March 20, 2024, Petitioner objected to this exhibit on the grounds of containing materials lacking proper authentication, relevance, hearsay, and F.R.E. 403. Paper 35, 5. Patent Owner provided no supplemental evidence in response.

Patent Owner cites EX2047 for its images of various pixel circuits, and relies on them for the truth of the matter asserted. *See* Paper 33, 59-60 (“The pixel circuit in Mianyang BOE’s AMOLED display for the iPhone 12 is a replica of Samsung Display’s patented pixel circuit (see Ex. 2047 at ¶¶31–50), as illustrated below in the side-by-side annotated comparison of teardown images of pixel circuits in a Samsung Display AMOLED display (Galaxy S21) (Ex. 2020 at 5) and a Mianyang BOE AMOLED display (iPhone 12) (Ex. 2047 at ¶35).”). But, by its very terms, EX2047 pleads repeatedly and expressly “upon information and belief” the very things it is cited for by Patent Owner and Dr. Wolfe. *See* EX2047, ¶¶31-50. This is

⁴ EX2047 is the subject of a separate motion to strike. *See* Paper 37.

not proper evidence of any substantive factual or technical matter in this IPR proceeding and should be excluded.

IX. EX2049 SHOULD BE EXCLUDED

EX2049 is a technical article. On March 20, 2024, Petitioner objected to this exhibit on grounds that it lacked proper authentication, hearsay, relevance, and F.R.E. 403. Paper 35, 5. Patent Owner provided no supplemental evidence in response.

Patent Owner cites EX2049 for its purported disclosure of leakage current. *See* Paper 33, 13. But, Patent Owner does not authenticate the article, demonstrate why it is not hearsay, or adequately explain its relevance, and the article should be excluded.

X. EX2051-EX2052 SHOULD BE EXCLUDED⁵

EX2051-EX2052 are both 82-page single-spaced claim charts that purportedly map the Challenged Claims to two different third-party displays. On March 20, 2024, Petitioner objected to these exhibits on grounds of lacking proper authentication, lack of foundation, relevance, and F.R.E. 403. Paper 35, 6. Patent Owner served (but did not file) supplemental evidence in the form of a Supplemental Declaration of Andrew Wolfe, Ph.D.

⁵ EX2051-EX2052 are the subject of a separate motion to strike. *See* Paper 37.

Patent Owner cites EX2051-EX2052 a single time, as evidence of purported copying by others. *See* Paper 33, 60. But whether a third-party product reads on a claim is not evidence of copying another party's patent practicing product and is irrelevant. Moreover, requiring Petitioner and the Board to analyze hundreds of pages of highly technical claim mappings and teardown images is a waste of time and confuses the issues, which should focus on whether the prior art (not someone else's product) meets the claim limitations. For this additional reason, EX2051-EX2052 should be excluded. Further, even Dr. Wolfe's Supplemental Declaration evinces a lack of personal knowledge regarding the provenance and identify of the products analyzed.

XI. EX2054 SHOULD BE EXCLUDED

EX2054 is an ITC Order in Inv. No. 337-TA-1351, USITC Pub. 824992 (July 2, 2024) and is the subject of a separate motion to strike. *See* Paper 46. On July 19, 2024, Petitioner objected to these exhibits on grounds of relevance, hearsay, and F.R.E. 403 (misleading, confuses the issues, any probative value is substantially outweighed by unfair prejudice, untimely, and waste of time).

Petitioner objects on the ground of timeliness (and prejudice) because Patent Owner failed to timely raise the issue for which the exhibit is cited in its Patent Owner Response. Petitioner objects that Exhibit 2054 is a waste of time because the Board may consider Dr. Foty's testimony regardless of EX2054. *See* Practice Guide,

§I.G (“There is, however, no requirement of a perfect match between the expert’s experience and the relevant field. *SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010). A person may not need to be a person of ordinary skill in the art in order to testify as an expert under Rule 702, but rather must be ‘qualified in the pertinent art.’ *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363–64 (Fed. Cir. 2008). For example, the absence of an advanced degree in a particular field may not preclude an expert from providing testimony that is helpful to the Board, so long as the expert’s experience provides sufficient qualification in the pertinent art.”). Petitioner objects to EX2054 as misleading because it is not a final ruling, and remains subject to reconsideration, review by the full ITC commission, and/or appeal to the Federal Circuit. Further, Petitioner objects to EX2054 as inadmissible evidence. *U.S. v. Jones*, 29 F.3d 1549, 1554 (11th Cir. 1994); *Int’l Land Acquisitions, Inc. v. Fausto*, 39 F. App’x 751, 756 (3d Cir. 2002) (collecting cases).

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: August 23, 2024

/Travis Jensen/

Travis Jensen

Reg. No. 60,087

1000 Marsh Road

Menlo Park, CA 94025

Telephone: (650) 614-7400

Facsimile: (650) 614-7401

Email: T61PTABDocket@orrick.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on August 23, 2024, the foregoing paper was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

David A. Garr Scott C. Weidenfeller Jared R. Frisch Derek J. Andros COVINGTON & BURLING LLP One CityCenter, 850 Tenth Street NW Washington, D.C. 20001	dgarr@cov.com sweidenfeller@cov.com jfrisch@cov.com dandros@cov.com SDC-BOE-IPR@cov.com
--	---

/Victor Santos/
Victor Santos