

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 REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE TESTIMONY OF DR. DANIEL FOTY**

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I. INTRODUCTION

As set forth in Patent Owner's Motion, a POSITA for the '599 Patent would have experience with active matrix display design and electroluminescence. Petitioner seeks to explain away its expert's lack of relevant experience, arguing that experience with other technologies could suffice, or seeking to blur the lines between the parties' proposed levels of ordinary skill. Petitioner's arguments are unavailing. Dr. Foty does not have the requisite experience to be a POSITA for the '599 Patent, and accordingly, under Federal Circuit precedent he is not qualified to opine on the validity of the '599 Patent. His opinions should therefore be excluded.

II. THE BOARD SHOULD EXCLUDE DR. FOTY'S DECLARATIONS

A. A POSITA for the '599 Patent Would Have Had Experience with Active-Matrix Display Design and Electroluminescence.

The appropriate level of ordinary skill in the art for the '599 Patent includes experience with active-matrix display design and electroluminescence. Mot. at 3-5; *see also* Ex. 2008 ¶¶ 45–49. A person without experience in these areas would not appreciate issues specific to active matrix OLED displays. *Id.* Accordingly, Patent Owner's proposed level of ordinary skill, which includes this experience, is correct, as the ALJ found in adopting it in the ITC proceedings. Ex. 2005 at 12–13.

In contrast, Petitioner's proposal omits any requirement for such experience, requiring only a generalized "2-3 years of circuit design/analysis experience." Petition at 13. This is unsurprising, because Dr. Foty lacks necessary experience in

active matrix display design. As the ALJ explained, “[t]he question is whether Dr. Foty specifically has experience in active matrix design and electroluminescence. It is clear that he does not.” Ex. 2054 at 5. Unable to dispute this, Petitioner instead argues against the proper standard.

Petitioner first notes that at the institution stage the Board adopted Petitioner’s proposal. Resp. at 2-3. But, as Petitioner acknowledges, the Board did not have the benefit of Patent Owner’s Response and its expert’s testimony at that stage. Resp. at 3. As Dr. Wolfe¹ has explained in detail, Patent Owner’s proposal is correct. Ex. 2008 ¶¶ 45–49. Petitioner mischaracterizes Dr. Wolfe’s testimony to suggest that he somehow “modified” this proposal. Resp. at 1-2. On the contrary, Dr. Wolfe was clear that “just general circuit design and/or analysis experience” is insufficient, and that “one needs experience that is specific in helping to understand Active Matrix Display design and electroluminescence.” Ex. 1028 at 72:22-73:7.

Petitioner also argues now that Patent Owner’s and Petitioner’s proposals are “substantially similar,” and asserts Dr. Foty qualifies under either. Resp. at 3. This is demonstrably wrong; as described above, Petitioner proposal omits from the qualifications any experience with active matrix design. Petitioner incorrectly

¹ Petitioner’s suggestion that Dr. Wolfe lacks active-matrix experience, Resp. at 1 n.1, 6, is unfounded and belied by the fact that Petitioner has never disputed that Dr. Wolfe is a POSITA under either proposal. *See, e.g.*, Ex. 1028, 59:19-66:1.

suggests Dr. Wolfe “modified” Patent Owner’s proposal, and asserts without citation or explanation that under this unarticulated “modified” definition, “Dr. Foty plainly qualifies as a POSITA.” Resp. at 6. Dr. Wolfe did not “modify” Patent Owner’s proposal, nor suggest experience with active matrix display design is not required. Resp. at 5-6. He simply observed that study and analysis could substitute for design experience “as long as that study and analysis was specific to the technologies that are at issue in this patent and not just to circuits in general.” Ex. 1028 at 73:8-18.

Finally, Petitioner points to testimony of Mr. Credelle, but whether or not Mr. Credelle is a POSITA is not at issue. Mr. Credelle did not provide any opinions relating to the validity of the ’599 Patent in this proceeding. Mr. Credelle’s declaration merely attempts to prop up Petitioner’s proposed level of ordinary skill. Ex. 1035, ¶ 25. Mr. Credelle provided a similar declaration in the ITC proceedings, as Petitioner acknowledges. Resp. 11-12. There the ALJ struck Mr. Credelle’s testimony relating to the level of ordinary skill.

B. Patent Owner’s Reliance on Federal Circuit Precedent Is Correct.

Petitioner makes the surprising assertion that Patent Owner’s reliance on *Kyocera* is “misplaced.” Resp. at 9. Petitioner fails to explain how it is “misplaced” to rely on binding Federal Circuit precedent. *Kyocera* is directly on point. Mot. at 7-8. Dr. Foty does not have the necessary experience to be a POSITA for the ’599 Patent, and as the Court in *Kyocera* found, “advanced degrees in engineering and

extensive experience in the design and manufacture” of related technologies is no substitute. 22 F.4th at 1376–78. Accordingly, Dr. Foty is not qualified to offer opinions on validity of the patent. *See id.* at 1376–77.

Unable to distinguish *Kyocera*, Petitioner accuses Patent Owner of purportedly “ignoring” “more relevant, subsequent authorities that address *Kyocera*.” Resp. at 9-10. Tellingly, Petitioner does not cite any Federal Circuit precedent or controlling authority, instead citing only to an order from a different ITC Investigation and a district court opinion. Moreover, these cases are readily distinguishable. In *Certain Outdoor & Semi-Outdoor Electronic Displays*, the ALJ avoided the issue by modifying the definition of a POSITA that had been previously adopted, to allow the technical expert to satisfy the modified standard. Inv. No. 337-TA-1331, USITC Order No. 17, 2023 WL 4145879 (June 9, 2023) at *3. Petitioner cited this same case in the ITC proceeding, and the ALJ declined to modify the standard previously adopted because it was the correct standard. Ex. 2054 at 6-7.

Petitioner next cites to *GeigTech East Bay LLC v. Lutron Electronics Co., Inc.*, 2023 WL 6614486, (S.D.N.Y. Sept. 20, 2023). There the court found that a technical expert had “significant relevant technical expertise” with the claimed technology, which the court determined to be sufficient despite acknowledging that the expert did “not qualify as a POSITA” under the articulated standard. *Id.* at *32. Here, it is undisputed that Dr. Foty has no experience, let alone expertise, with active matrix

display design. Ex. 2054 at 5; *see also id.* at 4, n.2. Further, *GeigTech* remains ongoing, and has not been reviewed or endorsed by the Federal Circuit.

Patent Owner does not ask the Board to “rotely rely” on the ALJ’s decision in the ITC proceeding. Resp. at 11. Patent Owner references it because it involved the same patent, same disputed level of ordinary skill, and same expert. There, the ALJ found that “*Kyocera* requires that I exclude the testimony.” Ex. 2054, n.4.

Petitioner seeks to discredit the ALJ’s opinion by suggesting the ALJ determined the level of ordinary skill during *Markman* proceedings, without the benefit of a full record. Resp. at 11. This misstates the record. In fact, the ALJ struck Dr. Foty’s opinions in response to a motion *in limine* filed after full expert discovery and just prior to the evidentiary hearing. *See* Ex. 2054. Indeed, Petitioner acknowledges the ALJ also had Dr. Credelle’s declaration before him. Resp. at 11-12. Further, and as the ALJ explained, “Respondents never sought reconsideration or clarification of” the ALJ’s determination of level of ordinary skill. Ex. 2054 at 3.

Here, as in the ITC proceeding, the record is clear that Dr. Foty lacks the requisite experience for the ’599 Patent, and accordingly does not qualify as a POSITA. As the Court found in *Kyocera*, “[a]dmitting testimony from a person ... with no skill in the pertinent art serves only to cause mischief and confuse the factfinder.” 22 F.4th at 1377 (cleaned up). Accordingly, Dr. Foty’s testimony should be excluded.

Date: September 6, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Patent Owner's Reply in Support of Its Motion to Exclude Testimony of Dr. Daniel Foty Due to Lack of Qualifications was served by electronic mail on the following counsel of record for petitioner:

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