

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 TO ITS MOTION TO EXCLUDE
EVIDENCE**

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

PO make two arguments against exclusion. First, PO contends ¶¶136, 138, and 141-143 “summarize[] a conversation in which Dr. Wolfe received factual information that he used to form his own opinions.” Opp. (Paper 61), 4. Not so. The paragraphs recite, practically verbatim, a litany of things Mr. Ka told Dr. Wolfe. He did not then use that information to “form his own opinions.” *Id.* Rather, Dr. Wolfe adopted the regurgitated statements *as his opinion*. See EX2008 ¶¶136, 138, and 141-143; *see also, e.g.*, EX1028, 64 (Tr. 250:10-15) (“Q. Did you conduct an analysis of any other products besides the Galaxy S21 to determine whether Samsung is using the embodiments of the ’599 patent []? A. No. Because Mr. Ka represented that the other displays are quite similar.”). This is improper. *See, e.g., Wi-Lan Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1375 (Fed. Cir. 2021). Second PO asserts Petitioner “chose not to” depose Dr. Wolfe about the substance of his conversation with Mr. Ka. Opp., 4. That is false. Petitioner did exactly that, which confirmed, *e.g.*, that he relied exclusively on Mr. Ka for certain opinions. EX1028, 64 (Tr. 250:10-15); *see generally id.*, 63-64 (Tr. 246:16-251:10). PO does not even respond to Petitioner’s argument that ¶¶139-144 improperly rely on information PO’s counsel provided Dr. Wolfe regarding arguments Petitioner purportedly made *in a different proceeding* that it did not raise here. Mot. (Paper 59), 3. This is precisely what Rule 403 is intended to address.

II. EX2018 SHOULD BE EXCLUDED

PO misframes Petitioner's argument. Petitioner's argument is not that secondary considerations are *per se* a waste of time. *See* Opp., 5. Rather, Petitioner moves to exclude *certain evidence* that is a waste of time. Mot., 3. In particular, if an issue (*viz.*, practicing a patent) is not sufficiently important for PO to meaningfully address it in its briefing, but requires a single-spaced 86-page claim chart to make its point, that evidence should be excluded under FRE 403 as wasting the parties' and the Board's time/resources on a collateral matter.

III. EX2021-EX2023 SHOULD BE EXCLUDED

EX2021-EX2023 facially have nothing to do with the '599 patent and should be excluded. PO's baseless contrary assertion cannot change the substance of the (unauthenticated) articles, which plainly were generic awards given to the inventors. Notably, it is "[e]vidence that the industry praised a claimed invention" that is relevant. *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1334 (Fed. Cir. 2016).

IV. EX2024-EX2025 SHOULD BE EXCLUDED

PO relies on EX2024-EX2025 (which are BOE patents) to show alleged copying. *See* Paper 33, 60 (arguing BOE must have copied PO's circuit because BOE patented other pixel circuits that it did not practice). PO asserts that Petitioner has made "no concrete assertion of prejudice." Opp. 9. Not so. It is hard to imagine more prejudicial allegations than assertions of copying premised on entirely unrelated and irrelevant patents. PO's argument fails to even cross the start line.

V. EX2026-EX2042 SHOULD BE EXCLUDED

PO does not dispute that the “teardown” images in EX2026-EX2042 are incomplete and that neither Dr. Silzars nor Dr. Wolfe had any personal knowledge of where, when, or how the alleged products were obtained. *See* Opp., 9-10. The most PO can say is that Dr. Silzars had an “understand[ing]” of where the products came from. *Id.*, 10. That is insufficient. It would have been trivial for PO to lay the proper foundation via supplemental evidence if it could have. And given the purpose for which EX2026-EX2042 are used—to show alleged widespread copying—it is significant that Dr. Wolfe admitted the images are from resellers, not display designers or manufacturers. *See, e.g.*, EX1028, 66-67 (retracting declaration statement that “numerous display manufacturers” copied PO). PO’s lack of foundation makes the (incomplete) images of marginal (if any) relevance, and certainly makes them far more prejudicial than probative, wasteful of the parties’ and the Board’s time and resources, and warrants exclusion under FRE 403.

VI. EX2043 SHOULD BE EXCLUDED

PO’s briefing does not cite or discuss EX2043. The most PO can say is that Dr. Wolfe “considered” it. Opp., 11. PO’s primary argument is that Petitioner should have undertaken the burden and expense of deposing Dr. Silzars to confirm the deficiencies which are facially apparent from the declaration itself. *Id.*, 10. Such an exercise is not required, especially where PO submitted declarations from three

declarants. The burden is not on Petitioner to definitively prove a negative—if PO was able to lay proper necessary foundation for its evidence, it should have done so.

VII. EX2047 SHOULD BE EXCLUDED

PO contends it is proper to rely on unauthenticated images from a district court complaint because PO only relies on “discrete portions” of the complaint. Opp., 11. But, the “discrete portions” relied upon were expressly plead on “upon information and belief.” *See* EX2047, ¶¶31-50. This is not proper evidence of any substantive factual or technical matter. Again, if PO had been able to do so, it would have been trivial for it to serve supplemental evidence providing the requisite authentication. In tacit recognition of the problem it created, PO shifts its position by arguing the images show “copying by others the industry even if they were manufactured by a company other than Mianyang BOE.” Opp., 12. It is far too late in the game to switch horses now, and doing so would still not resolve the evidentiary failing.

VIII. EX2049 SHOULD BE EXCLUDED

PO still does not adequately explain the relevance of EX2049. In particular, PO does not address why the article’s substance (dealing with polysilicon TFT leakage unsuitable for commercial purposes) would make any meaningful difference in Kimura’s circuit where commercially viable TFTs with far less leakage current were available years before the patent. *See* EX1029, ¶52 (compiling examples).

IX. EX2051-EX2052 SHOULD BE EXCLUDED

Petitioner’s Motion acknowledged that PO served supplemental evidence in

the form of a declaration for Dr. Wolfe. Mot., 9. This does not make EX2051-EX2052 admissible. PO did not even address—let alone refute—the core issues: that “whether a third-party product reads on a claim is not evidence of copying ... and is irrelevant” and that “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 [] meets the claim limitations.” *Id.*, 10. This should end the inquiry.

X. EX2054 SHOULD BE EXCLUDED

EX2054 is not admissible evidence of anything. PO now contends EX2054 is merely “authority that the Board may consider in its legal function.” Opp., 14. But if so, there is no reason to submit it as an evidentiary exhibit. Moreover, PO did not dispute it “failed to timely raise the issue for which the exhibit is cited in its [POR].” Mot., 10. This should end the inquiry. PO further asserts Petitioner’s case law “predate[s] the ... *Kyocera* opinion.” Opp., 15. But it is well established that subsequent cases cannot silently overrule prior precedent. Moreover, PO ignores more relevant, subsequent authorities addressing *Kyocera*. For example, PO ignores *Certain Outdoor & Semi-Outdoor Elec. Displays*, Inv. No. 337-TA-1331, USITC Order No. 17, 2023 WL 4145878 (June 9, 2023) and *GeigTech East Bay LLC v. Lutron Elecs. Co., Inc.*, 2023 WL 6614486, (S.D.N.Y. Sept. 20, 2023), both of which distinguished *Kyocera* and declined to exclude expert testimony on similar facts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 6, 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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