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. IPR2023-00987
Patent No. 9,818,803 B2

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO STRIKE (PAPER 24)

Petitioner's Motion to Strike portions of the Patent Owner Response (Paper 19, "POR") should be denied. "[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. Although a motion to strike *may* be appropriate where a brief "raises new issues, is accompanied by belatedly presented evidence, or otherwise exceeds the proper scope of a reply or sur-reply," *id*., Petitioner does not raise any such challenges here. Petitioner further fails to mention that the Board has specifically rejected Petitioner's approach in a similar situation:

> Even assuming that . . . the [POR], by citing the declaration material, thereby incorporates "arguments" by reference, ***we are not persuaded that the appropriate relief in this situation is to strike or, in the alternative, not consider, the Challenged Assertions***.

Intex Recreation Corp. v. Team Worldwide Corp., IPR2018-00870, Paper 77 at 5 (Apr. 12, 2019) (citation omitted) (emphasis added). The Board should likewise do so here.

Nor is there any merit to Petitioner's assertions. None of the passages identified by Petitioner (Paper 24 at 1–2) amount to improper incorporation by reference of arguments under 37 C.F.R. § 42.6(a)(3). *See Silicon Laby's, Inc. v. Cresta Tech. Corp.*, IPR2015-00615, Paper 64 at 17 (Aug. 11, 2016) (distinguishing between evidence and arguments and noting "37 C.F.R. § 42.6(a)(3) prohibits incorporation of *arguments*" only). SDC cited to Exhibits 2028, 2041, 2042, and 2043 as supporting <u>*evidence*</u> for copying and nexus arguments that are thoroughly presented in the POR. Petitioner fails

to fairly describe the POR's contents, and even omits relevant images from the POR that illustrate the arguments.

Copying: The POR presents arguments and evidence concerning "widespread and systemic copying" of the claimed inventions. POR at 68–71. For example, the POR explains how "copying is evident from teardown[s] . . . [of] AMOLED display products that employ near carbon copies of [SDC's] pixel arrangements" and that they "not only infringe the challenged claims" but "suggest manufacturers of these replica products 'had access to, and borrowed from' [SDC's] patented pixel arrangement." *Id*. at 68–69. The POR presents exemplary side-by-side comparisons of teardown images of the pixel arrangements in SDC's AMOLED products and teardown images of "replica products . . . with Figure 5 of the '803 Patent overlayed on top, showing the exact embodiment of Figure 5." *Id*. at 69–71. Petitioner inexplicably omits these images from its motion. Consistent with its showing of copying, the POR cites, as *further evidence*, Exhibits 2042 and 2043, which are claim charts prepared by SDC's expert mapping the challenged claims of two exemplary replica products. In addition, the POR presents a specific teardown image from paragraph 84 of a district court complaint (Ex. 2041) evidencing that "the pixel arrangement used in . . . BOE's AMOLED display . . . is nearly identical to [SDC's] patented pixel arrangement." POR at 69. Petitioner's assertion that the POR urges the Board to consider the entirety of "an 80-page . . . complaint" (Paper 24 at 5) to understand BOE's copying is wrong.

Simply put, the POR does not improperly incorporate-by reference copying arguments from exhibits. The copying arguments are in the POR.

Nexus: The POR likewise presents comprehensive nexus arguments. For example, it argues "the AMOLED display used in the Samsung Galaxy S22 Ultra practices all challenged claims of the '803 Patent." POR at 72. As support, the POR presents a "teardown image . . . of the pixel arrangement obtained from a Galaxy S22 Ultra . . . with Figure 5 of the '803 Patent superimposed," *id*. at 72–73, (which Petitioner inexplicably omits from its motion). Consistent with this showing, the POR cites Exhibit 2028, a claim chart mapping the challenged claims to the same teardown image presented in the POR, as additional evidence.

The POR thus cites claim charts as <u>*evidence*</u> supporting its arguments, consistent with accepted practice before the Board. For example, in *Polygroup Ltd. v. Willis Elec. Co., Ltd.*, IPR2016-01610, Paper 187 (Feb. 26, 2018), the Board rejected an argument that the patent owner improperly incorporated by reference nexus arguments in the form of "350+ pages of attorney-prepared claim charts" because, as here, "it is quite easy to look at the pictures in evidence and compare them to the claims; the claims are to a particular structure, and that structure is shown plainly in the pictures." *Id.* at 44. The POR's teardown images—overlayed with the '803 Patent's Figure 5—show that "effectively no written analysis needs to be provided; the pictures speak for themselves." *Id.*; *see also, e.g.*, *Medtronic, Inc. v. Teleflex Life Scis. Ltd.*, IPR2020-

01344, Paper 69 at 51 (Feb. 23, 2022) (finding "a presumption of nexus applies" and citing as the support claim charts provided in declaration); *Yita LLC v. MacNiel IP LLC*, IPR2020-01139, Paper 82 at 72–73 (Apr. 15, 2022) (similar); *Ashworth Bros., Inc. v. Laitram, LLC*, IPR2020-00593, Paper 63 at 65 (Aug. 23, 2021) (similar); *RTI Surgical, Inc. v. Lifenet Health*, IPR2019-00571, Paper 79 at 47 (Aug. 4, 2020) (similar). The charts provide straightforward supporting evidence; and in the event that Petitioner disputes this evidence, it can respond to it in its reply.

This is not a case in which the POR "cites to the entirety of" an expert declaration "as well as [additional] exhibits, without explaining what is discussed in the [expert] [d]eclaration, what the cited exhibits are, what the significance of the exhibits is, and how the cited evidence shows that the claimed invention is embodied in which specific . . . product." *Microsoft Corp. v. Bradium Tech.*, IPR2016-00449, Paper 67 at 64–65 (July 26, 2017). Nor is this a case where "the claims included a significant amount of functional language not immediately discernable using pictures," and "the relevant briefing contained no explanation for how the panel was to bridge the gap." *Polygroup*, at 44–45 (citing *CaptionCall LLC, v. Ultratec*, IPR2015-00637, Paper 98, at 68–69 (Sept. 7, 2016)).

Petitioner's cited cases are readily distinguishable. None even involve claim charts used in support of objective indicia arguments. In *Cisco Systems, Inc. v. C-Cation Technologies, LLC*, the Board rejected petitioner's attempt to satisfy its burden

to specify where in the prior art each element of a claim was allegedly found through "footnotes cit[ing] a total of seventeen pages" of an expert declaration, "including eleven pages of claim charts," "without sufficient explanation of those portions." IPR2014-00454, Paper 12 at 8 (Aug. 29, 2014). In *Google LLC v. Parus Holdings, Inc.*, to establish an earlier inventive date, the patent owner had merely filed claim charts and declarations and, significantly, failed in its briefs to "cite any such evidence [or testimony] with specificity," requiring the Board to read the "declarations and construct for [itself] a case for conception of ten claims." IPR2020-00846, Paper 31 at 16–17 (Oct. 19, 2021). Finally, in *Sprint Spectrum L.P. v. General Access Solutions, Ltd.*, the "Patent Owner acknowledge[d]" it had "incorporat[ed] Exhibit 24[72] into its Response and ha[d] not provided a substantive analysis of the conception of the [challenged] claims . . . in its Response or Sur-Reply." IPR2017-01885, Paper 57 at 13–14 (Mar. 7, 2019). That is not the case here. The charts here are specifically cited in the POR, and as evidence supporting specific arguments. The POR's claim charts, provide annotated reproductions of teardown images next to the challenged claims, unlike the inventor declaration and claim charts in *Sprint*, which contained detailed substantive arguments such as what constituted "understood practices" to "anyone skilled in the art" "[b]y the late 1990's," *id*., Ex. 2472 at 16.

Petitioner's Motion to Strike is both procedurally flawed and substantively without merit. Accordingly, the Board should deny Petitioner's Motion to Strike.

Date: April 30, 2024

Respectfully submitted,

By /David A. Garr/

David A. Garr
Registration No.: 74,932
Scott C. Weidenfeller
Registration No.: 54,531
Jeffrey H. Lerner (*pro hac vice*)
Daniel W. Cho (*pro hac vice*)
Matthew Kudzin (*pro hac vice*)
Kee Young Lee (*pro hac vice*)

Counsel for Patent Owner

CERTIFICATE OF SERVICE

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

K. Patrick Herman (P52PTABDocket@orrick.com)
Richard F. Martinelli (RFMPTABDocket@orrick.com)
Xiang Wang (XW0PTABDocket@orrick.com)
ORRICK, HERRINGTON & SUTCLIFFE, LLP

Date: April 30, 2024

/David A. Garr/
David A. Garr
Registration No.: 74,932