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 SECOND MOTION TO STRIKE (PAPER 33)

In sworn testimony at the ITC, Petitioner's expert, Dr. Pattison, disavowed opinions he offered in these proceedings and repeatedly contradicted assertions made in his IPR declarations about the prior art. He testified, for example, that his views "have changed," and that he no longer believes Matthies and Yamada teach the "encloses" limitation of claim 4 of the '803 patent. Ex. 2083, 237:10–23. Petitioner did not bring this information to the Board's attention. Nor did Petitioner seek leave to file a corrected declaration or candidly address its inconsistencies. Now, Petitioner moves to strike the ITC testimony *of its own expert* so it can continue to advance positions and arguments about the prior art that he admitted are incorrect.

Through its motion, Petitioner seeks to deny the Board the opportunity even to consider Dr. Pattison's inconsistent testimony when evaluating the issues and assessing his credibility. Petitioner cites no grant of a motion to strike in similar circumstances, and its motion has no merit. "[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 Trial Practice Guide (Nov. 2019) at 80. A motion to strike should not be used to prevent the Board from considering unquestionably relevant admissions of Petitioner's expert. Petitioner's Second Motion to Strike should thus be denied.

I. Reliance on Dr. Pattison's ITC Trial Testimony Is Proper.

Patent Owner sought leave to file Dr. Pattison's ITC testimony as an exhibit in these proceedings. Ex. 3002. The Board authorized the filing as long as the

testimony "was presented to Dr. Pattison for questioning" and "Patent Owner's sur-reply refers to Dr. Pattison's answers at cross-examination pertaining to his trial testimony before the ITC." *Id.* Patent Owner satisfied both of these conditions.

The ITC testimony was introduced as an Exhibit during Dr. Pattison's July 30, 2024 deposition. Ex. 2086, 18:8–19:14. He was given an opportunity to review the transcript. *Id.* In response to questions from Patent Owner's counsel, Dr. Pattison agreed his ITC testimony related to the same prior art—Matthies, Yamada, Phan, and Arnold—at issue in these IPRs. *Id.*, 15:10–20. Dr. Pattison further agreed his ITC testimony was "truthful, accurate, and complete." *Id.* 15:21–16:2. Thus, the ITC testimony "was presented to Dr. Pattison for questioning." Ex. 3002.

Further, "Patent Owner's sur-reply refers to Dr. Pattison's answers at cross-examination pertaining to his trial testimony before the ITC." *Id.* The sur-reply refers, for instance, to Dr. Pattison's cross-examination responses that he testified about the same references in the ITC and attesting to the accuracy and completeness of his ITC testimony. Paper 31 at 2 n.1. It refers to specific examples of Dr. Pattison's cross-examination testimony pertaining to his ITC trial testimony, including Dr. Pattison's flat contradiction of sworn testimony he recently gave in the ITC. *Id.* at 2–3. The sur-reply further refers to Dr. Pattison's cross-examination in deposition and his ITC testimony to show Dr. Pattison's selective reading of Arnold. *Id.* at 15. And the sur-reply discusses multiple instances in which Dr. Pattison's ITC testimony

contradicts his IPR declarations, including his reply declaration. *Id.* at 2–4. Patent Owner satisfied the Board's conditions, and was authorized to submit Dr. Pattison's ITC trial testimony "as an exhibit to support Patent Owner's sur-reply." Ex. 3002.

The Board's previous decisions further support the submission of Dr. Pattison's ITC testimony, which is relevant impeachment evidence. As Petitioner admits, Paper 33 at 2, a document used "for the purposes of testing the witness' testimony" may be submitted with the deposition transcript "so the Board has the full context available in order to evaluate the testimony." *Ascend Perf. Materials Ops. LLC v. Samsung SDI Co.*, IPR2020-00349, Paper 53 at 12 (PTAB Jul. 15, 2021). That is exactly what Patent Owner has done here. The sur-reply does not introduce new references or arguments. It uses Dr. Pattison's ITC testimony as quintessential impeachment, identifying blatant inconsistencies with his declarations and deposition testimony, including his renunciation of a theory he advanced in his IPR declaration (which Petitioner has not withdrawn). Petitioner cites no case suggesting the Board cannot consider such inconsistencies. Nor would it be sound policy to prevent the Board from considering information indicating that an expert has taken contradictory positions on the same issues in a co-pending proceeding.

Petitioner incorrectly claims it did not have an opportunity "to engage in meaningful redirect." Paper 33 at 3. In fact, it had multiple opportunities—at the ITC and at Dr. Pattison's reply deposition. If Petitioner wanted to provide "context" to

its expert's testimony, as it now asserts, Paper 33 at 4, it could have done so. Indeed, Petitioner's counsel asked re-direct questions in the deposition. That Petitioner fails to identify any purportedly missing "context" only underscores that Dr. Pattison's ITC testimony was "truthful, accurate, and complete." Ex. 2086, 15:21–16:2.

Petitioner's generalized accusation that the sur-reply "mischaracterize[s]" Dr. Pattison's testimony, Paper 33 at 4, is unfounded. Petitioner fails to identify a single alleged mischaracterization. Patent Owner has not sought to "characterize" Dr. Pattison's testimony—it has quoted Dr. Pattison. *See, e.g.*, Paper 31 at 2–4, 11.

II. Reliance on Dr. Pattison's Deposition Testimony Is Proper.

The sur-reply properly relies on Dr. Pattison's reply deposition testimony about the standard meaning of "active" and "passive" components. Paper 31 at 5–6; 37 C.F.R. § 42.23(b). Petitioner's assertion that Patent Owner merely read "passages from the dictionaries … into the record" to cite to those parts of the transcript, Paper 33 at 4–5, is incorrect. Patent Owner substantively questioned Dr. Pattison about his own understanding of those terms, Ex. 2086, 33:13–34:15; 37:2–39:10; 78:5–80:14, and relied on his responsive testimony, rather than the definitions alone. Paper 31 at 5. Dr. Pattison agreed the dictionary definitions were "consistent with the standard definition[s] … in electrical engineering," Ex. 2086, 33:19–34:3; *id.*, 34:9–15, 37:13–38:1, 38:11–39:10, and applied them to assertions he made about Matthies, *id.*, 39:11–40:4. This was not "merely read[ing], without substantive questioning,

[exhibits] into the record." *See Guardant Health, Inc. v. Univ. of Wash.*, IPR2022-00817, Paper 47 at 48 (PTAB Oct. 10, 2023) (noting "counsel only ask[ed] 'Did I read that correctly' each time after reading three passages" from exhibit).

Because the exhibits were used to test Dr. Pattison's testimony about Matthies' use of "active" and "passive," Ex. 1017, ¶¶8–11, they could even have been filed with the sur-reply, as Petitioner admits. Paper 33 at 2 (citing *Ascend* at 12). Not filing them because they are not relied upon is not improper "procedural maneuvering."

Petitioner does not dispute the meaning of "active" and "passive" is properly within the scope of the sur-reply. Petitioner's argument that Patent Owner should have addressed it in the POR, Paper 33 at 5, is nonsensical, as Petitioner's misreading of Matthies in its reply could not have been anticipated, and Dr. Pattison's reply deposition testimony confirming the same could not have been elicited before his reply declaration. Petitioner is seeking to strike arguments because it does not like how they show the lack of merit in its position. This is exemplified by Petitioner's attempt to strike arguments citing a portion of Dr. Pattison's testimony that does not even reference these exhibits. *See* Paper 33 at 4 (identifying Ex. 2086, 41:5–42:4).

III. The Sur-reply Does Not Incorporate Arguments by Reference.

Petitioner's arguments about the POR are improperly incorporated by reference from Paper 24 (Paper 33 at 5) and fail for the reasons explained in Paper 25. Moreover, the sur-reply itself presents all arguments. *See* Paper 31 at 25.

Date: August 28, 2024

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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