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 IPR2023-00987
U.S. Patent No. 9,818,803

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE EVIDENCE

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I. INTRODUCTION

Petitioner's Motion to Exclude Evidence ("Motion") should be denied. Petitioner has not satisfied, and cannot satisfy, its "burden of proving that . . . the material sought to be excluded is inadmissible under the Federal Rules of Evidence." *New World Med., Inc. v. Microsurgical Tech., Inc.*, IPR2020-01573, Paper 63 at 3 (PTAB Feb. 16, 2022) (citing 37 C.F.R. §§ 42.20(c), 42.62(a)).

II. EX2028 SHOULD NOT BE EXCLUDED

Petitioner's hearsay objection to Exhibit 2028 is meritless. Exhibit 2028 is a claim chart prepared by Patent Owner's expert, Dr. Kymissis, explaining his opinion that the Galaxy S22 Ultra practices the challenged claims of the '803 Patent. *See, e.g.*, Ex. 2009 (Kymissis Declaration), ¶ 352 ("Based on the teardown photos and corresponding ImageJ data, I prepared a claim chart [Exhibit 2028] demonstrating how the AMOLED display used in the Samsung Galaxy S22 Ultra practices all challenged claims of the '803 Patent.").

First, Exhibit 2028 is not hearsay. It is not an out-of-court statement. On the contrary, Exhibit 2028 is an integral part of Dr. Kymissis' opinions and is discussed in his declaration to support his opinions regarding objective indicia of nonobviousness. Ex. 2009 (Kymissis Declaration), ¶¶ 341, 346, 350–52. It is an admissible in-court statement of the declarant, which was also subject to cross-examination during Dr. Kymissis' deposition.

Second, even where a claim chart is not prepared by the expert and included with his or her declaration, it is not inadmissible hearsay when relied upon by an expert to assess nexus. For example, in *Polygroup Ltd. v. Willis Elec. Co., Ltd.*, the Board held that a claim chart prepared for parallel district court litigation was "not inadmissible hearsay because it is reasonably relied upon by Patent Owner's expert to determine nexus, and [it] is the type of document that an expert in such circumstance would be expected to review." IPR2016-01610, Paper 187 at 10–11 (PTAB Feb. 26, 2018) (citing FRE 803); *see also* IPR2016-01610, Exhibit 2304 at 3. Thus, an expert can rely even on claim charts prepared by a party for a separate proceeding. Dr. Kymissis certainly can rely on a claim chart that he prepared himself for the present proceeding. Ex. 2009 (Kymissis Declaration), ¶ 352.

Petitioner fails to cite any authority supporting its assertion that Exhibit 2028 is inadmissible hearsay. The only case cited by Petitioner, *Unified Patents, Inc. v. Am. Patents LLC*, IPR2019-00482, Paper 132 at 54–56 (PTAB Aug. 3, 2022), is entirely inapposite. In *Unified Patents*, the petitioner sought "to introduce its own responses to interrogatories," *id.*, at 56, 58, as evidence that it was the only real party-in-interest. *See Unified Patents*, Paper 9 (Petitioner's Reply to Preliminary Response) at 2 (citing the challenged exhibit as evidence that "there is no dispute that Unified solely directed and controlled this IPR"). The interrogatory responses were not relied upon by the petitioner's expert. *See generally Unified Patents*, Ex.

1003 (Reddy Declaration). The Board recognized that generally a party cannot introduce its own interrogatory responses. *Unified Patents*, Paper 132, at 56 (citing Wright & Miller § 2180). Nothing in *Unified Patents* suggests a claim chart prepared by an expert and discussed in the expert's declaration is inadmissible hearsay.

Finally, Petitioner's allegation that Patent Owner's use of Exhibit 2028 is "without meaningful discussion or assessment," Motion at 1, is both incorrect and misplaced. As explained in Patent Owner's Opposition to Petitioner's First Motion to Strike, Paper 25, Exhibit 2028 was introduced as supporting evidence for copying and nexus arguments that Patent Owner thoroughly presented in its Response. Additionally, the Board has stressed that motions to exclude evidence should be "used to exclude evidence that is not *admissible*," rather than used as an opportunity "to reargue [a] motion to strike" as Petitioner does here. *Intex Recreation Corp. v. Team Worldwide Corp.*, IPR2018-00872, Paper 133 at 66 (PTAB Sept. 11, 2019); *see also* Consolidated Trial Practice Guide (Nov. 2019) at 79 ("A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay) but may not be used to challenge the sufficiency of the evidence to prove a particular fact. . . . Nor should a motion to exclude address arguments or evidence that a party believes exceeds the proper scope of [a] reply or sur-reply.").

III. EX2041 SHOULD NOT BE EXCLUDED

Petitioner's hearsay objection to Exhibit 2041, which is cited simply for

images contained therein, has no merit. Despite bearing the burden of proving that Exhibit 2041 is hearsay, 37 C.F.R. §§ 42.20(c), 42.62(a), Petitioner's "hearsay objections are unsupported by any analysis at all applying the law to the substance of Exhibit [2028], so these objections are not persuasive." *Paragon 28, Inc. v. Wright Med. Tech., Inc.*, IPR2019-00894, Paper 41 at 9 (PTAB Sept. 23, 2020).

Additionally, "Petitioner does not identify any specific statements in [Exhibit 2041] that constitute hearsay." *Alaska Fuel Distrib. Inc. v. Flac Shack Inc.*, IPR2019-00995, Paper 32 at 11 (PTAB Oct. 15, 2020). "In the absence of any particularized argument, Petitioner's hearsay challenge is unpersuasive." *Id*. at 12. Accordingly, Petitioner's undeveloped and unsupported assertion should be rejected.

Exhibit 2041 is a district court complaint cited by Patent Owner only for images contained therein of the pixel arrangement structure in an AMOLED display of Petitioner Mianyang BOE, which evidence copying. As Petitioner acknowledges, "Patent Owner points to Ex. 2041 to show . . . the pixel structure employed by a 'Mianyang BOE AMOLED.'" Motion at 2 (citing PO Response at 69). Specifically, Patent Owner cites Exhibit 2041 for its *image* of the pixel arrangement structure in a product. *See* PO Response at 69. It is well established that a "photograph isn't hearsay because it makes no 'assertion.' Rather, a photograph merely depicts a scene as it exists at a particular time." *U.S. v. Lizarrago-Tirado*, 789 F.3d 1107, 1109 (9th Cir. 2015) (citations omitted). Petitioner's objection on purported hearsay grounds

fails for this additional reason as well.

It bears note that Petitioner Mianyang BOE has not contested that it was the manufacturer of the display shown in the cited images from Exhibit 2041, much less put forward facts to contest that it manufactured the display. Regardless, the images evidence of copying by others the industry even were they manufactured by a company other than Mianyang BOE.

IV. EX2042–2043 SHOULD NOT BE EXCLUDED

Petitioner's hearsay objections to Exhibits 2042 and 2043 have no merit. Exhibits 2042 and 2043 are claim charts prepared by Patent Owner's expert, Dr. Kymissis, for this proceeding analyzing AMOLED displays sold by third-parties Group Vertical (Exhibit 2042) and Sourcely Plus (Exhibit 2043). Ex. 2009 (Kymissis Declaration), ¶¶ 344–45; PO Response at 69–71. Dr. Kymissis explains using these claim charts, how these AMOLED displays practice the challenged claims of the '803 Patent and support his opinions regarding objective indicia of nonobviousness, including copying. Ex. 2009 (Kymissis Declaration), ¶¶ 344–45; PO Response at 69–71.

As discussed in Section II above for Exhibit 2028, claim charts like Exhibit 2042 and 2043 are not inadmissible hearsay. First, these claim charts are not out-of-court statements, but are an integral part of Dr. Kymissis' opinions, were prepared by him, and are discussed in his declaration to support his opinions regarding

objective indicia of nonobviousness. Ex. 2009 (Kymissis Declaration), ¶¶ 344–45. They are admissible in-court statements of the declarant, which was also subject to cross-examination during Dr. Kymissis' deposition. Second, even claim charts not prepared by the expert are not inadmissible hearsay where, as here, they are relied upon by the expert to assess nexus. *See, e.g.*, *Polygroup*, Paper 187 at 10–11 (citing FRE 803). Petitioner fails to cite any authority to the contrary, citing only *Unified Patents*, which, as discussed in Section II above, does not support Petitioner's objection and does not address claim charts at all. Dr. Kymissis himself prepared Exhibits 2042 and 2043, Ex. 2009 (Kymissis Declaration), ¶ 344, and Petitioner had a full opportunity to question him about these claim charts.

V. EX2044–2060 SHOULD NOT BE EXCLUDED

Petitioner's authenticity objections to Exhibits 2044–2060 are meritless. Patent Owner's declarant, Dr. Silzars, explained in his declaration that Exhibits 2044–2060 are photographs he took of teardowns that he personally performed on AMOLED displays. *See, e.g.*, Ex. 2061 (Silzars Declaration), ¶ 2 ("I was asked by counsel for Samsung Display Co., Ltd. to tear down and obtain photographs from replacement AMOLED displays"), ¶ 3 ("Exhibit 2044 contains true and accurate copies of product packaging and teardown photographs taken from the AMOLED display sample purchased from Group Vertical.") (footnote omitted); *see also id.*, ¶¶ 2–19 (similar). Petitioner acknowledges as much. Motion at 3–4.

Petitioner's assertion that Patent Owner "produced no evidence of the origin of any of the products pictured in these exhibits," Motion at 3, is wrong, and ignores Dr. Silzars' testimony to the contrary. *See* Ex. 2061 (Silzars Declaration), ¶¶ 2–19. Dr. Silzars' unrebutted testimony sufficiently shows Exhibits 2044–2060 are what Patent Owner and Dr. Kymissis says they are—i.e., teardown photographs of sample AMOLED displays sold by vendors of replacement AMOLED displays for mobile phones. *See* Ex. 2009, ¶ 342. Indeed, "authentication is a low bar, requiring only a rational basis that [the exhibit] is what it is asserted to be." *Inductev Inc. v. Witricity Corp.*, IPR2021-01166, Paper 35 at 53 (PTAB Dec. 20, 2022).

Petitioner misconstrues Dr. Silzars' declaration in insinuating that Dr. Silzars' "understand[ing]" merely comes from his communications with unidentified individuals. Motion at 4. Not so. Dr. Silzars explains in his declaration that he tore down and photographed the samples and product packaging. Ex. 2061 (Silzars Declaration), ¶ 2 ("I was asked . . . to tear down and obtain photographs from replacement AMOLED displays"). Dr. Silzars provided knowledge and understanding from a review of samples and their packaging, many of which contain information indicating the identity of the vendor. *See, e.g.*, Ex. 2044 (Teardown Photos of Group Vertical Product) (bearing a product label saying, *inter alia*, "GROUP VERTICAL"); Ex. 2045 (Teardown Photos of Phone LCD Parts Product) (bearing a product label with a QR code linked to Phone LCD Parts' website); Ex.

2047 (Teardown Photos of eTech Parts Product) (labeled as "Platinum OLED Screen Assembly for use with iPhone 12 / 12 Pro-1 Pcs," which is an eTech Parts product name, *see* https://www.etechparts.com/platinum-hard-oled-screen-assembly-for-use-with-iphone-12-iphone-12-pro); Ex. 2056 (Teardown Photos of Wholesale Gadget Parts Product) (labeled with the website www.wgp.com, which is Wholesale Gadget Parts' website). This information also renders Petitioner's argument that the exhibits "are not self-authenticating," Motion at 4, dubious at best. *See New World Medical, Inc.*, IPR2020-01573, Paper 63 at 8 (finding exhibits are authentic because "[a]uthentication is a low bar, requiring only a rational basis that evidence is what it is asserted to be," and noting that "FRE 901(b)(4) indicates that 'the appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances' can authenticate an item") (cleaned up). Yet whether the exhibits are self-authenticating is ultimately immaterial because Dr. Silzars' unrebutted testimony authenticates the exhibits.

Petitioner's vague assertion that certain exhibits "are labeled with descriptions that do not match those provided by Patent Owner," Motion at 4, is incorrect and ignores Dr. Silzars' testimony identifying by vendor the displays shown in the photographs. To take the first exhibit identified by Petitioner as an example, Patent Owner identified Exhibit 2045 as "Teardown Photos of Phone LCD Parts Product," PO Response at viii, consistent with Dr. Silzars' description of it, *see* Ex. 2061

(Silzars Declaration), ¶ 4 ("Exhibit 2045 contains true and accurate copies of product packaging and teardown photographs taken from the AMOLED display sample purchased from Phone LCD Parts."). To the extent that Petitioner's argument is that the packaging label on the sample does not contain the words "Phone LCD Parts," the argument is misplaced. Indeed, the photograph of the packaging shows the QR code, which is linked to Phone LCD Parts' website, and further shows a product SKU number used by Phone LCD Parts. Patent Owner's description of the exhibit as "Teardown Photos of Phone LCD Parts Product" is accurate, and Petitioner has put forward no evidence suggesting otherwise.

Petitioner had the opportunity to depose Dr. Silzars, where Petitioner could have explored any alleged deficiencies concerning alleged lack of personal knowledge, but it chose not to do so. *See, e.g., Banerji v. Leggett & Platt, Inc.*, 2016 WL 11759104, at *2 (C.D. Cal. Dec. 21, 2016) (denying motion to exclude under FRE 403 and 703; "[T]o the extent that plaintiff challenges the reliability of the information provided by the recruiters, either because Remas did not provide sufficient details regarding his conversations with the these recruiters in his report or because plaintiff questions their methodology, plaintiff could have deposed Remas to explore these issues, which he chose not to do.").

Petitioner's argument that "there is no indication . . . who manufactured the depicted products, [and] whether the products' manufacturers are in fact different

entities as would be required for there to be 'widespread' copying," Motion at 4, is not only dubious but does not bear on the authenticity. It "attacks the merits of Patent Owner's substantive arguments on objective indicia"— e.g., seeking to question the number of entities copying the '803 Patent—"and does not establish an evidentiary basis for excluding" the exhibits. *Alaska*, IPR2019-00995, Paper 32 at 11.

Finally, "experts like [Dr. Kymissis] are permitted to rely on otherwise inadmissible materials if experts in the same field would reasonably rely on such materials in forming opinions and inferences based on the subject." *Tekni-Plex, Inc. v. Converter Mfg., LLC*, IPR2021-00919, Paper 77 at 77 (PTAB Oct. 20, 2022). Here, "there exists sufficient evidence to support a finding that the images . . . [Dr. Kymissis] relies upon are in fact what [Dr. Kymissis] purports them to be. Specifically, the images . . . were photographs taken by [Dr. Silzars] from samples…." *Id*. at 72. An expert such as Dr. Kymissis reasonably relies on teardown images in forming opinions about whether a display practices patent claims.

VI. EX2061 SHOULD NOT BE EXCLUDED

Petitioner's objection to Exhibit 2061, which is Dr. Silzars' declaration, has no merit. As Petitioner acknowledges, Dr. Silzars' declaration explains the origin of the teardown photographs used in Exhibits 2044–2060. Motion at 4–5. Specifically, Dr. Silzars explains that tore "down and obtain[ed] photographs from replacement AMOLED displays," provided to him by counsel. Ex. 2061, ¶ 2. Dr. Silzars further

testifies as to the contents of Exhibits 2044–2060, i.e., that each "contains true and accurate copies of product packaging and teardown photographs taken from the AMOLED display sample purchased from" various sources. *Id.*, ¶¶ 3–19. Accordingly, Dr. Silzars *does* have personal knowledge of the origins of the samples, and *does* have personal knowledge of the contents of the contents of Exhibits 2044–2060, as he is the one who created the images.

Petitioner had the opportunity to depose Dr. Silzars, where it could have explored any alleged deficiencies, but chose not to. *See Banerj*, 2016 WL 11759104, at *2 ("[T]o the extent that plaintiff challenges the reliability of the information … plaintiff could have deposed Remas to explore these issues."). For the reasons explained in Section IV above for Exhibits 2044–2060 (teardown photos), there also "exists sufficient evidence to support a finding that the images and samples [Dr. Silzars] relies upon are in fact what [Dr. Silzars] purports them to be. Specifically, the images of [the] samples were photographs taken by [Dr. Silzars] from samples he obtained himself from [counsel for Patent Owner]." *Tekni-Plex*, Paper 77 at 72–73. If Petitioner had questions regarding the photograph's authenticity, foundation, or completeness, it could and should have deposed Dr. Silzars.

VII. CONCLUSION

For the foregoing reasons, the Board should deny Petitioner's motion to exclude evidence.

Date: September 23, 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 Motion to Exclude Evidence was served by electronic mail on the following counsel of record for petitioner:

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