

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

MIANYANG BOE OPTOELECTRONICS TECHNOLOGY CO., LTD.; TCL
CHINA STAR OPTOELECTRONICS TECHNOLOGY CO., LTD.; TIANMA
MICROELECTRONICS CO. LTD.; AND VISIONOX TECHNOLOGY, INC.,

Petitioner,

v.

SAMSUNG DISPLAY CO., LTD.,

Patent Owner.

Case No. IPR2023-00988
U.S. Patent No. 10,854,683

**PETITIONER'S REPLY IN SUPPORT OF ITS
MOTION TO STRIKE**

Patent Owner’s opposition (Paper 24, “Opp.”) to Petitioner’s motion to strike does little more than dig Patent Owner into a deeper hole. Patent Owner does not limit itself to the narrow, procedural issue raised by the motion: whether the Response improperly incorporated arguments regarding purported “practic[ing]” of the ’683 patent’s claims by Samsung’s and others’ products, or alleged “copying” by BOE. Instead, Patent Owner primarily uses its opposition to make substantive points. Patent Owner spends more than a page further explaining—with many cites to exhibits not at issue here—why it believes “widespread and systemic copying” purportedly occurred. (Opp. at 2-3.) And it spends almost two pages arguing that there is “nexus” between the ’683 patent’s claims and one of its products. (*E.g., id.* 3-4.) In fact, Patent Owner even makes an entirely new argument: it now announces for the first time that “a presumption of nexus applies.” (*Id.* at 3-4.) Patent Owner did not make such argument in its Response, cite to any of the cases it cites here, or otherwise allege that it is entitled to the benefit of any “presumption.” Neither a motion to strike—nor the opposition to such a motion—is a vehicle to make substantive arguments. Petitioner submits that Patent Owner’s improper use of its opposition for this purpose further merits granting Petitioner’s motion.

Moreover, the limited rebuttal Patent Owner attempts to Petitioner’s actual argument misses the point. While Patent Owner argues that striking an entire (or a large portion) of a brief would be an exceptional remedy, this is not the relief

Petitioner seeks. Indeed, the rationale for Petitioner’s motion in the first place is that Patent Owner’s Response did not itself adequately develop its arguments and instead does so only in voluminous cited exhibits. As such, Petitioner’s motion is narrowly tailored to focus only on the specific portions (*i.e.*, a few sentences) of Patent Owner’s response that improperly incorporate arguments. While Patent Owner’s “secondary considerations” arguments are deficient for multiple reasons that will be summarized in Petitioner’s forthcoming reply, Petitioner did not move to strike the entirety of these arguments. Nor did it move to strike whole Response sections discussing purported “copying,” or the alleged “nexus” between the claims and Samsung’s products. Instead, Petitioner’s motion addressed only the improper arguments regarding the “practic[ing]” of claims and “copying” by BOE. Those arguments are improper because they are not properly articulated in Patent Owner’s Response itself and require resort to Exhibits 2028 and 2041-2043.

Next, a party does not “make” its argument by simply asserting in a brief that a product “practices” a patent (or showing a picture) and then citing voluminous claim charts. Such gamesmanship is the precise reason for the rule against incorporation by reference. In this circumstance, the exhibit is the argument. A Patent Owner must explain its arguments just like a Petitioner has to explain how the prior art meets a claim in its Petition and not a separate chart. As such, Exhibits 2028 and 2041-2043 are not merely “evidence” as Patent Owner argues. (*E.g.*, Opp.

at 1.) Instead, they are the argument as to why and how a product “practices” the claims, and why BOE purportedly engaged in “copying.” Indeed, Patent Owner concedes as much in its Opposition: Exhibits 2028 and 2042-2043 “map[]” products to “the challenged claims.” (*Id.* at 2, 3.) No such “mapping” is present in Patent Owner’s Response. And Exhibit 2041 is cited to show alleged “copying,” not just superficial similarity. (*Id.* at 2.) Patent Owner’s Response includes some images, but the explanation of their connection to the ’683 patent is found only in exhibits.

Patent Owner also contends that “claim charts used in support of objective indicia arguments” are somehow immune from the requirements of 37 C.F.R. § 42.6(a)(3). (*See, e.g.,* Opp. At 4-5.) But none of the cases it cites say this. Instead, they merely show that the Board can fashion a variety of remedies. *See, e.g., Intex Rec. Corp. v. Team WW Corp.*, Case IPR2018-00859, Paper 73, at 3-4 (P.T.A.B. Apr. 12, 2019) (finding incorporated arguments can be ignored rather than struck).

Finally, Patent Owner argues the Board should allow incorporation by reference here because Petitioner “can respond to it in its reply.” (Opp. at 4.) But this is precisely the problem: Petitioner should not be required to use its limited 5,600 word reply to rebut pages and pages of argument made in violation of the Board’s rule against incorporation by reference. *See, e.g., Cisco Sys. v. C-Cation Techs.*, Case IPR2014-00454, Paper 12, at 10 (P.T.A.B. Aug. 29, 2014) (Informative).

Petitioner respectfully requests that the Board grant its motion to strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing paper was caused to be served on May 7, 2024 via email upon the following counsel of record for Patent

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