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 EXCLUDE (PAPER 38)

Patent Owner's Opposition (Paper 39, "Opp")) to Petitioner's Motion to Exclude simply serves to confirm the improper use to which Patent Owner puts Exhibits 2028, 2041, 2042-2043, 2044-2060, and 2061.

I. <u>Ex. 2028 (Samsung Galaxy S22 Ultra Claim Chart)</u>

Patent Owner argues that Ex. 2028—a 44-page claim chart detailing the structure of the Samsung Galaxy S22 Ultra product and then comparing it to certain claims of the '683 patent—"is not hearsay" because it "is an integral part of Dr. Kymissis' opinions" and thus does not constitute an "out-of-court statement." Opp. at 1. The claim chart is not testimony. It is an un-signed, separate exhibit not presented in the form of either an affidavit or declaration. *See* 37 C.F.R. § 42.53(a). Moreover, while Dr. Kymissis does list Ex. 2028 among the materials he considered, Patent Owner itself ***directly relies*** on Ex. 2028 in its Response to show the pixel structure employed by its own products. *See, e.g.*, Response (Paper 18) at 69. This is what makes the chart hearsay: Patent Owner cites Ex. 2028 to improperly prove facts on which it bears the burden of production. The sole case cited by Patent Owner does not hold that claim charts can be used in this manner. *See Polygroup Ltd. V. Willis Elec. Co., Ltd.*, IPR2016-01610, Paper 187 at 10-11 (PTAB Feb. 26, 2018) (simply noting that an expert may rely on a claim chart, not that the chart by itself—without any supporting evidence—can serve to establish a product's features).

Patent Owner is also wrong when it argues that the various factual and legal assertions set forth in Ex. 2028 were "thoroughly presented" in its briefing. Opp. at 3. Patent Owner's response simply declares—without explanation—that "the AMOLED display used in the Samsung Galaxy S22 Ultra product practices all challenged claims of the '683 Patent." Response (Paper 18) at 69. None of the images, annotations, or explanations present in Ex. 2028 are anywhere to be found in Patent Owner's briefing. Dr. Kymissis's declaration is no better. Like Patent Owner, he includes a bare citation to Ex. 2028 without engaging in any explanation or claim-by-claim elaboration. *See* Ex. 2009, ¶ 330.

II. <u>Ex. 2041 (District Court Complaint)</u>

Patent Owner effectively concedes that it its reliance on Ex. 2041—a district court complaint from *Samsung Display Co., Ltd. v. BOE Tech. Co., Ltd. et al.*, Case No. 2-23-cv-00309 (E.D. Tex. Jun. 26, 2023)—is improper. According to Patent Owner, this exhibit is "cited by Patent Owner only for images contained therein of the pixel arrangement structure in an AMOLED display of Petitioner Mianyang BOE, which evidences copying." Opp. at 4. In other words, by its own admission, Patent Owner relies on Ex. 2041—an out-of-court statement—to prove both the structure of a BOE product and that alleged "copying" occurred.

Patent Owner goes on to argue that it should be permitted to employ Ex. 2041 because it purportedly cites only "images" in that exhibit. *Id.* This mischaracterizes

both the exhibit itself and the reason Patent Owner is relying on it. The images in Ex. 2041 on which Patent Owner relies are not "photographs." Instead, they appear to be annotated, graphical demonstratives prepared in some unspecified way by Patent Owner's district court attorneys. *See, e.g.*, Ex. 2041, ¶ 43. This type of labeled image is, according to the same case Patent Owner cites, "classic hearsay." *U.S. v. Lizarraga*-Tirado, 789 F.3d 1107, 1109 (9th Cir. 2015). Moreover, Patent Owner cites Ex. 2041 to show alleged "copying," not merely for the images it contains. *See, e.g.*, Response (Paper 18) at 66.

III. <u>Exs. 2042-2043 (Group Vertical and Sourcely Plus Claim Charts)</u>

Exs. 2042 and 2043—claim charts comparing so-called "Group Vertical" and "Sourcely Plus" products to '683 patent claims—are inadmissible hearsay for the same reasons explained above for Ex. 2028. They are not merely cited by Dr. Kymissis. Patent Owner itself directly relies on the images and factual assertions in the exhibits to show purported "widespread copying." Response (Paper 18) at 66.

IV. <u>Exs. 2044-2060 ("Teardown" photos of various products)</u>

Patent Owner's opposition highlights the inadmissibility of Exs. 2044-2060 (allegedly "teardown" photos of products purportedly manufactured by "Group Vertical," "Sourcely Plus," "Parts4LCD," and others). According to Patent Owner, its declarant Dr. Silzars did authenticate the exhibits. This is wrong. Dr. Silzars testified only that he took the photographs shown in the exhibits. *See* Ex. 2061, ¶ 2.

He ***did not*** testify that he had any first-hand knowledge about the origin of the photographed products. *See id.* He simply states that he "understand[s]" that the products came from various different suppliers. *See id.*

Patent Owner points to no other evidence of record that even remotely establishes the origin and authenticity of the products shown in Exs. 2044-2060. Instead, it now attempts to point to ***other, non-record evidence*** to make up for this shortcoming. For instance, it now for the first time argues that "eTech Parts" and "Wholesale Gadget Parts" websites evince the origin of certain of the products shown in Exs. 2044-2060. *See* Opp. at 8. Likewise, it now argues that a "QR code" from Ex. 2045 can be used to access a link "to Phone LCD Parts' website" to supposedly correlate the product shown in Ex. 2045 to a particular supplier. *Id.* at 9. The time for making such arguments has long since passed. Patent Owner did not cite the websites—or attempt to make any arguments comparing QR codes or other product packaging information to websites—in its response or sur-reply. And it did not point to the websites as supplemental evidence after Petitioner filed and served objections. Moreover, Patent Owner has completely failed to address the fact that many of Exhibits 2044-2060 include no name, QR code, or other identifying information at all that would allow for a similar (albeit untimely) website comparison.

V. Ex. 2061 (Silzars Declaration)

Patent Owner does not appear to dispute that Dr. Silzars has nothing to contribute regarding the origin of the products shown in Exs. 2044-2060. *See* Opp. 10-11. Whether or not Petitioner took Dr. Silzar's deposition is of no moment. As a fact witness, Dr. Silzar is only permitted to testify on issues to which he has personal knowledge. F.R.E. 602. And here, Dr. Silzar conceded in his declaration that he lacks this required knowledge. *See* Ex. 2061, ¶ 2 (explaining that "I understand" that "replacement AMOLED displays" were obtained from various suppliers).

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: September 30, 2024

/K. Patrick Herman/

K. Patrick Herman, Reg. No. 75,018
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Telephone: (212) 506-3596
Email: P52PTABDocket@orrick.com

Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing paper was caused to be served on September 30, 2024 via email upon the following counsel of record for Patent Owner:

David A. Garr (dgarr@cov.com)
Scott C. Weidenfeller (sweidenfeller@cov.com)
Jeffrey H. Lerner (jlerner@cov.com)
Daniel W. Cho (DWCho@cov.com)
Matthew Kudzin (mkudzin@cov.com)
Kee Young Lee (KYLee@cov.com)
SDC-BOE-IPR@cov.com
COVINGTON & BURLING LLP

/K. Patrick Herman/

K. Patrick Herman, Reg. No. 75,018
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Telephone: (212) 506-3596
Email: P52PTABDocket@orrick.com