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. IPR2023-01075
U.S. Patent No. 11,594,578

PETITIONER'S REPLY IN SUPPORT OF ITS SECOND MOTION TO STRIKE (PAPER 33)

Patent Owner's opposition to Petitioner's second motion to strike simply digs it into a deeper hole. Rather than limiting its opposition to the straightforward procedural issue Petitioner raised, Patent Owner re-makes the very same improper arguments—relying on the same untimely exhibits—that led to Petitioner's motion in the first place. Not only does this further justify striking the offending portions of Patent Owner's sur-reply, but it calls into question the credibility of ***all*** of Patent Owner's IPR arguments. Patent Owner has made it abundantly clear time and time again that it is more than willing to break the rules and blatantly distort the record.

I. <u>Ex. 2083 (Dr. Pattison's ITC Testimony)</u>

According to Patent Owner, the Board should ignore its improper use of new sur-reply exhibits because Dr. Pattison supposedly "disavowed opinions" and "repeatedly contradicted assertions made in his IPR declaration." Opp. (Paper 37), p. 1. Patent Owner points to Dr. Pattison's opinions regarding a dependent claim in the '803 patent as the primary example of this. *Id.* According to Patent Owner, Dr. Pattison's "change" of opinion in connection with this claim is supposedly so serious that Petitioner should have sought "leave to file a corrected declaration." *Id.*

This purportedly "change[d]" testimony has nothing to do with the '578 patent. Thus, even if Dr. Pattison had "change[d]" his opinions on an '803 patent dependent claim—he did not—this does not somehow justify Patent Owner's improper use of his ITC transcript to make substantive arguments in this proceeding.

Moreover, Patent Owner ***does not dispute*** that the prior art teaches what this other dependent claim requires. In fact, in the ITC, Patent Owner itself ***agreed with*** and ***advocated for*** the very same interpretation of the claim that Dr. Pattison applied in the '803 patent IPR. (*E.g.*, Ex. 2083, 240:18-241:9.) Patent Owner's suggestion that Petitioner should have "file[d] a corrected declaration" to address a non-disputed, agreed claims in patents not at issue in this IPR borders on the bizarre. If any party has an obligation to correct and clarify its position, it is ***Patent Owner.*** Patent Owner has now twice filed briefs taking issue with certain of Dr. Pattison's '803 patent dependent claim opinions despite submitting numerous ITC papers in which it arrives at the very same conclusion as Dr. Pattison.

The few procedural points Patent Owner makes also lack merit. For instance, Patent Owner ignores that the Board's rules afforded it multiple different ways to properly introduce Dr. Pattison's ITC testimony into the record. Patent Owner could have asked Dr. Pattison questions about the testimony during his IPR deposition. Or, it could have sought leave to submit the testimony as supplemental information. It chose not to do so because this would have afforded Dr. Pattison—and Petitioner—with an opportunity to respond limiting Patent Owner's ability to mischaracterize the testimony. Next, Patent Owner is wrong when it argues that it properly employed Dr. Pattison's ITC testimony to "test[]" his opinions. Opp., p. 3. Patent Owner did not ask Dr. Pattison at his deposition about any of the testimony it now cites. It is

separately using it to make substantive points. Nor was Petitioner afforded an opportunity to "redirect" Dr. Pattison. *See id.* Much of Dr. Pattison's ITC testimony focused on issues that have no bearing on this IPR. It is also simply not reasonable to expect Petitioner to have redirected Dr. Pattison on a 100-page transcript (*see generally* Ex. 2083) that Patent Owner asked no substantive questions about.

II. <u>Exs. 2084 and 2085 (Unfiled Dictionary Definitions)</u>

Here, Patent Owner argues that its reading of Exs. 2084 and 2085 into the record provides necessary context to Dr. Pattison's deposition testimony. *See* Opp., pp. 4-5. It does not. Patent Owner did not ask Dr. Pattison to correlate the dictionary definitions to Matthies. *See generally* Ex. 2086, 32:14-39:10. Indeed, rather than explaining that Matthies uses the terms "active" and "passive" in the same way as the dictionaries, Dr. Pattison said the opposite. *See* Ex. 2086, 75:11-77:6. Dr. Pattison testified that a POSITA would ***not*** have understood Matthies to be limited to just displays with individual circuit components that are "active" and "passive." *Id.*, 77:7-78:2. Instead, per Dr. Pattison, Matthies plainly contemplates the use of both actively and passively ***driven*** and ***addressed*** displays. *See id.*

III. <u>Improper Incorporation by Reference</u>

Patent Owner simply refers to its opposition to Petitioner's last motion to strike. *See* Opp., p. 5. That paper, however, does nothing to show that Patent Owner was permitted to offload portions of its arguments into separate claim charts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing paper was caused to be served on September 3, 2024 via email upon the following counsel of record for Patent Owner:

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