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 MOTION TO EXCLUDE

Pursuant to 37 C.F.R. §42.64(c), the Board's Scheduling Order (Paper 12), and the Federal Rules of Evidence, Petitioner hereby moves to exclude Patent Owner Exhibits 2028, 2041, 2042-2043, 2044-2060, and 2061.

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

Ex. 2028 is a 76-page claim chart that purports to compare the Samsung Galaxy S22 Ultra product to certain claims of the '578 patent. Patent Owner's response alleges that Ex. 2028 shows that "the AMOLED display used in the Samsung Galaxy S22 Ultra product practices all challenged claims of the '578 Patent." Response (Paper 19), p. 71. The exhibit is cited without meaningful discussion or assessment. *See id.* Patent Owner's expert similarly cites Ex. 2028. *See* Ex. 2009, ¶ 303. Petitioner timely objected to Ex. 2028 under, among other rules, F.R.E. 802. *See* Objections (Paper 21), pp. 4-5. Patent Owner provided no supplemental evidence in response.

Ex. 2028 is inadmissible hearsay and should be excluded. The exhibit is an out-of-court statement that was improperly employed to prove that the Samsung Galaxy S22 Ultra display includes features that practice the claimed subject matter. *See Unified Patents, Inc. v. Am. Patents LLC*, IPR2019-00482, Paper 132, pp. 54-56 (PTAB Aug. 3, 2022) ("party statement" that was not in the form of an affidavit or declaration excluded as hearsay).

II. Ex. 2041 (District Court Complaint)

Ex. 2041 is 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). Patent Owner points to Ex. 2041 to show and make arguments regarding the pixel structure employed by a "Mianyang BOE AMOLED." Response, p. 68. Petitioner timely objected to Ex. 2041 under, among other rules, F.R.E. 802. *See* Objections, pp. 7-8. Patent Owner provided no supplemental evidence in response.

This exhibit is inadmissible hearsay: it is an out-of-court statement that Patent Owner improperly relies on to establish the structure possessed by a BOE product. Moreover, no exception applies. The exhibit was authored by Patent Owner's district court counsel and repeatedly explains that it includes allegations made "[u]pon information and belief." *E.g.*, Ex. 2041, ¶¶ 4-6, 8-9. Thus, Ex. 2041 should be excluded.

III. Exs. 2042-2043 (Group Vertical and Sourcely Plus Claim Charts)

Exs. 2042 and 2043 are both 76-page claim charts that purport to compare so-called "Group Vertical" and "Sourcely Plus" products to claims of the '578 patent. Patent Owner's response alleges that Exs. 2042-2043 show that "numerous vendors of replacement AMOLED displays … infringe the challenged claims…." Response, p. 68. The exhibit is cited without meaningful discussion or assessment. *See id.* Patent Owner's expert similarly cites—but does not substantively discuss—Exs.

2042-2043. *See* Ex. 2009, ¶ 295. Petitioner timely objected to Exs. 2042-2043 under, among other rules, F.R.E. 802. *See* Objections, pp. 8-9. Patent Owner provided no supplemental evidence in response.

Exs. 2042-2043 are inadmissible hearsay and should be excluded. The exhibits are both out-of-court statements that were improperly introduced to prove that various products practice the claimed subject matter. *See Unified Patents*, IPR2019-00482, Paper 132, pp. 54-56.

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

Patent Owner identifies Exs. 2044-2060 as "teardown" photos of products purportedly manufactured by "Group Vertical," "Sourcely Plus," "Parts4LCD," and others. *See* Response, pp. 68-70. Patent Owner cites these exhibits to allege that "widespread and systemic copying" of the '683 patent's subject matter occurred. *See id.* Petitioner timely objected to Exs. 2044-2060 under, among other rules, F.R.E. 901 as not authenticated. *See* Objections, p. 9. Patent Owner provided no supplemental evidence in response.

Rule 901 required Patent Owner to "produce evidence sufficient to support a finding" that Exs. 2044-2060 are what Patent Owner claims them to be. F.R.E. 901(a). Patent Owner has not done so. It has produced no evidence of the origin of any of the products pictured in these exhibits. One of Patent Owner's declarants—Aris K. Silzars, Ph.D.—apparently disassembled the products shown in the exhibits

and took pictures. *See* Ex. 2061, ¶ 2. But Dr. Silzars did not himself obtain any of the products and states only that he "understand[s]" that the products "were purchased" from 16 different entities. *Id.* No other declarant provides any other information. Moreover, the exhibits themselves are not self-authenticating. While there are pictures of product packaging, the vast majority of these are either completely devoid of source-identifying information (*see, e.g.*, Ex. 2046, 2052, 2054) or are labeled with descriptions that do not match those provided by Patent Owner (*see, e.g.*, Exs. 2045, 2047-2051, 2053, and 2055-2060).

Because Patent Owner has not authenticated Exs. 2044-2060, it is impossible to assess their pertinence to this proceeding. Among other things, there is no indication in the record of who "Group Vertical," "Sourcely Plus," "Parts4LCD," and the other entities identified by Patent Owner actually are, who manufactured the depicted products, whether the products' manufacturers are in fact different entities as would be required for there to be "widespread" copying as Patent Owner alleges, whether or not the manufacturers were authorized to manufacture the products such that there was no "copying" at all, or when the products were manufactured. Thus, these exhibits should be excluded.

V. Ex. 2061 (Silzars Declaration)

Ex. 2061 is the declaration of signed by one Aris Silzars, Ph.D. Patent Owner's response does not cite Ex. 2061. It appears that Patent Owner intends to

rely on the exhibit to authenticate Exs. 2044-2060. Petitioner timely objected to Ex. 2061 under, among other rules, F.R.E. 602. *See* Objections, p. 9. Patent Owner provided no supplemental evidence in response.

Dr. Silzars declares that he took "photographs" showing "displays" that were purportedly "purchased from" entities such as "Group Vertical," "Phone LCD Parts," "Sourcely Plus," and others. Ex. 2061, ¶¶ 2-19. But Dr. Silzars has no firsthand knowledge of the provenance of the pictured displays, merely stating he "understand[s]" they were purchased from a variety of source. *Id.* "A witness may testify to a matter only if … the witness has personal knowledge of the matter." F.R.E. 602. Because Dr. Silzars has no personal knowledge of the origin of any of the products discussed in his declaration, Ex. 2061 should be excluded.

Respectfully submitted,

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Dated: September 16, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing paper was caused to be served on September 16, 2024 via email upon the following counsel of record for Patent Owner:

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