IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV TECHNOLOGIES AG AND APTIV TECHNOLOGIES LIMITED,
Patent Owners.

Case No. IPR2024-00228
U.S. Patent No. 9,619,420

PETITIONER'S OBJECTIONS TO PATENT OWNER'S SUPPLEMENTAL EVIDENCE

Pursuant to 37 C.F.R. §42.64(b)(1), Petitioner submits the following objections to Patent Owner's Supplemental Evidence served November 14, 2024 in connection with its Patent Owner's Response (Paper 25, "POR"). Petitioner incorporates by reference herein its objections to evidence filed as Papers 19 and 26.

- Exhibit 2043 (Trial Transcript Vol. 5): Petitioner objects to this exhibit—which comprises more than 400 pages of testimony (in addition to the 1,000+ pages of trial testimony already submitted) of numerous lay and expert witnesses from a week-long jury trial in a multi-year district court proceeding on different patents with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), is irrelevant (F.R.E. 401), incomplete and misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403), constitutes impermissible expert testimony by a lay person (F.R.E. 701/702), lack of personal knowledge / speculation (F.R.E. 602), and contains hearsay (F.R.E. 801/802). Patent Owner has not established that any hearsay exception applies, including F.R.E. 803 or 804(a), (b)(1), and (b)(3), or than any hearsay exclusion applies, including F.R.E. 801(d)(1) or (d)(2). For example, under F.R.E. 804(b)(1)(B) certain former testimony may qualify as a hearsay

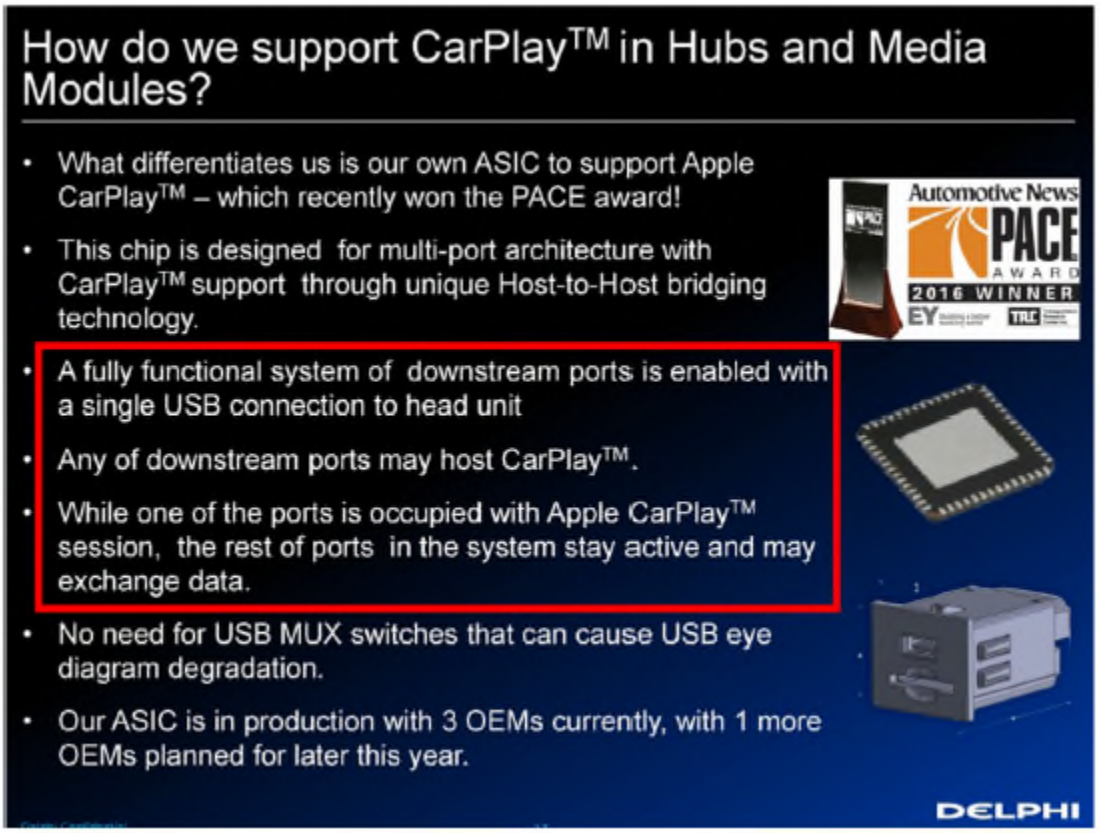
exception where it is "offered against a party who had … an opportunity and similar motive to develop it by direct, cross-, or redirect examination." Patent Owner has not shown that is the case here where the prior trial involved different patents and different issues. Similarly, Patent Owner has not shown that F.R.E. 804(b)(3) applies given the different issues, circumstances, and stakes at issue in the prior trial, and the identity of the witnesses. Additionally, the prior trial involved numerous witnesses (including experts) that are not the same party (or a predecessor in interest) as Petitioner. *See* F.R.E. 804(b)(1)(B) and F.R.E. 801(d)(2). The amount of time and effort required to properly understand the context, asserted patents, related issues, and 1,000+ pages of testimony from a multi-year district court proceeding and jury trial (whose relevance is marginal at best) wastes the parties', counsel, and the Board's limited time/resources on collateral matters, confuses the issues, and is far more prejudicial than probative. This exhibit is not cited anywhere in Patent Owner's Response (nor it cited among the materials considered by Patent Owner's expert or otherwise referenced in Patent Owner's expert declaration). Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any)

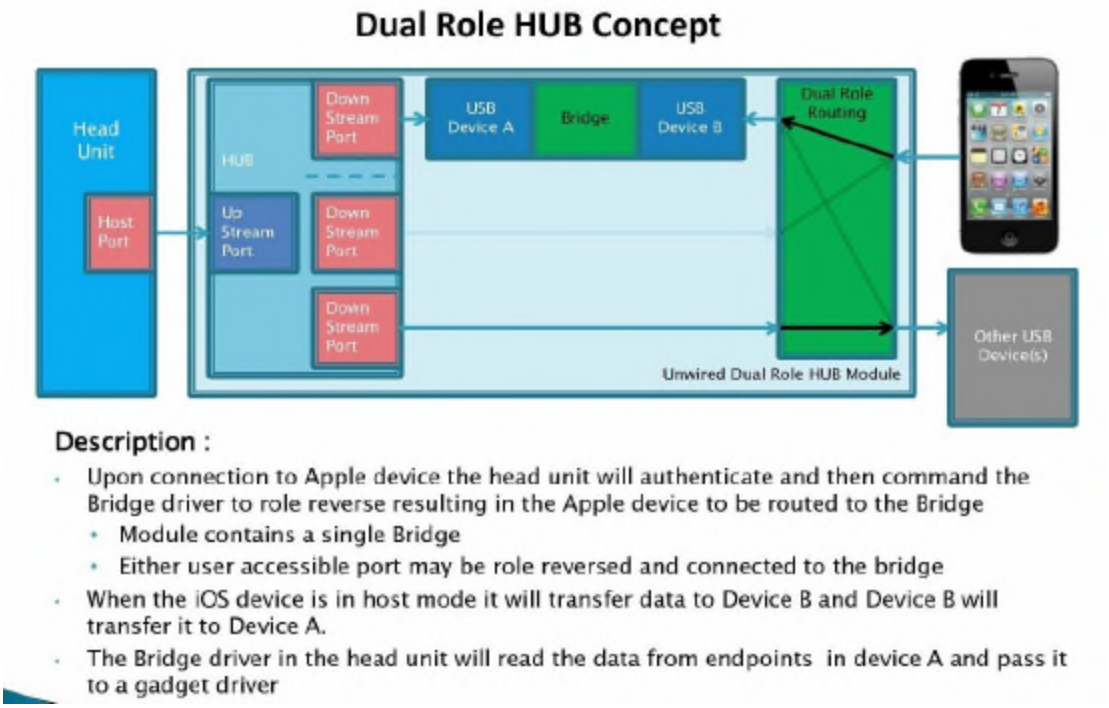
regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner.

- Exhibit 2044 (Amended Patent Owner Response): Petitioner objects to this exhibit because it is not proper supplemental evidence. Indeed, it is not evidence at all; rather, it is an attempt to get a second bite at the apple by submitting a revise Patent Owner Response. To the extent this is exhibit is considered evidence, Petition objections under F.R.E. 403 as far mor prejudicial than probative, incomplete and misleading, confuses the issues, and waste the parties' and the Board's resources/time on collateral matters. Patent Owner neither sought, nor obtained, authorization to submit an Amended POR. Submission of an Amended POR is prejudicial to Petitioner as Petitioner has already diligently been working on its Reply brief based on the POR filed within the deadline. The time for filing the Patent Owner Response has long since passed and Patent Owner should not be allowed to add, supplement, or otherwise develop arguments and/or evidence that present in its original POR. In other words, Patent Owner is not entitled to a do-over to replace its POR with one that it now wishes it had filed instead. Petitioner objects to this exhibit because it cites to additional portions of Dr. Houh's declaration not referenced in the

original POR, including ¶¶145-147 (spanning dozens of pages and thousands of words). Where objected to material was not discussed in the Response, Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. In particular, at least ¶¶145-147 were not discussed in the Amended POR. Accordingly, at least those paragraphs are objected to as not being relevant to any issue in this proceeding, and an attempt to circumvent Patent Owner's word count limitation. The Amended POR relies exclusively on Exhibit 2019 to establish "how Aptiv's Dual Role Hub meets all limitations of additional claims, including at least 8, 16, and 17" (*see* Amended POR at 89) in contravention of 37 C.F.R. §42.6(a)(3) and numerous related decisions. Petitioner maintains and renews its objections that Petitioner is attempting to skirt the word count limits (as to all newly added material) and engaging in gamesmanship by now referencing many thousands of additional words from Dr. Chen's declaration. *See* 37 C.F.R. §42.24(b)(2). For example, ¶¶145-148 spans approximately 60 pages, and Patent Owner has now strategically decided which portion(s) of its arguments to include in its Amended POR. Contrary to the suggestion

that Patent Owner merely copied ¶148 into the Petition (which itself is improper), Patent Owner edited selectively chose what to include in a (failed) attempt to comply with the word limit (by, for example, excising claim language and cross-referencing to a non-existent claim listing/appendix). Moreover, Patent Owner failed to count the text/words in the numerous images (many of which includes expansive screen capture of text and add well over 1,000 words) it pasted into its Amended POR, which amounts to further self-help on the word limit in violation of established Board precedent. Examples are shown below:





A correct word count in the Amended POR (currently at 13,756 as stated by Petition) far exceeds the limit. *See, e.g.*, Practice Guide, II.A.3 ("Excessive words in figures, drawings, or images, deleting spacing between words, or using excessive acronyms or abbreviations for word phrases, in order to circumvent the rules on word count, may lead to a party's brief not being considered. *See, e.g., Pi-Net Int'l, Inc. v. JPMorgan Chase & Co.*, 600 F. App'x 774 (Fed. Cir. 2015)."); *Limelight Networks, Inc. v. Akamai Techs., Inc.*, No. IPR2016-01894, Paper 8 at 16 (PTAB Mar. 8, 2017) (declining to consider arguments incorporated by reference into a petition "made only in a supporting document" and indicating that such gamesmanship could also violate

the word count rule); 37 C.F.R. §§42.5, 42.12(b)(2), (3), (5), and (8); *Innovations4Flooring NV v. Välinge Innovation AB*, No. IPR2017-02130, Paper 8 at 3-4 (P.T.A.B. Feb. 7, 2018) ("Based on our review of the Petition, it appears that the Petition likely circumvents the word count limits set forth in 37 C.F.R. §42.24(1)(a) by one or both of (1) incorporating claim limitation language by reference using abbreviations such as 'Element 1[a],' and (2) failing to count figure annotations in the certified word count. … [I]t is within our discretion to dismiss a petition or fashion a less severe remedy based on the particular facts before us."); *Google Inc. v. Ji-Soo Lee*, No. IPR2016-00022, Paper 25 at 5 (PTAB Nov. 23, 2016). Patent Owner's end run around the word count limitation is prejudicial to Petitioner, who is also constrained by word count limits in its Reply. If Patent Owner wished to pursue secondary considerations of non-obviousness, it was required to do so in its original POR. *Bos. Sci. SciMed, Inc. v. Iancu*, 811 F. App'x 618, 623 (Fed. Cir. 2020). And to the extent Patent Owner alleges—in its effort to satisfy this burden—that its own products "practice" the challenged patent, it was required to provide explanations in the body of its original POR. The Board's rules unambiguously explain that "[a]rguments must not be incorporated by

reference from one document into another document." 37 CFR 42.6(a)(3); *see also Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12, at 10 (P.T.A.B. Aug. 29, 2014) (Informative). This "prohibition … eliminate[s] abuses that rise from incorporation and combination." *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed. Cir. 2023). Among other things, an improper "incorporation by reference" both operates as "self-help increase in the length of the brief" and results in a "pointless imposition" on the Board's time by forcing it to dig through the record to determine what is actually being argued. *Id*. By shifting its argument out of the Response and into an expert declaration, Patent Owner improperly provided itself with "self-help." It was able to jam more arguments into its Response and avoided the need to make choices regarding what arguments to include or exclude. Both the Board and the Federal Circuit have specifically rejected attempts to incorporate claim charts and other lengthy documents that are no different from what Patent Owner has done here. For example, in one case the Board rejected an attempt to show that certain claim limitations were satisfied by the prior art by making only short, declarative statements in the petition itself while citing to exhibits

spanning "nearly five pages, four pages of which is a claim chart." *Cisco Sys.*, Case IPR2014- 00454, Paper 12, at 8.

Dated: November 21, 2024

Respectfully submitted,

/Travis Jensen/

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 21, 2024, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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