

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED
Petitioner¹

v.

NETWORK SYSTEM TECHNOLOGIES, LLC
Patent Owner

Case: IPR2024-00338
U.S. Patent No. 7,373,449 B2

PETITIONER QUALCOMM INCORPORATED'S MOTION TO EXCLUDE

¹ Qualcomm Incorporated filed a petition and motion for joinder in IPR2024-01081 and has been joined as a petitioner in this proceeding.

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Pursuant to 37 C.F.R. §§ 42.62 and 42.64(c) and the Federal Rules of Evidence, Petitioner hereby moves to exclude Exhibit 2073, paragraph 81 of Exhibit 2070 (relying on Exhibit 2073), and Exhibit 2081 submitted and relied upon by Patent Owner Network System Technologies, LLC (“PO”). Petitioner also moves to exclude Exhibits 2065, 2067, 2068, and 2082 that PO filed but does not cite or rely on.

I. Identification of Objections

Petitioner timely objected to Exhibits 2073, 2070 (including paragraph 81), 2081, and 2082 on November 26, 2024, including on the basis that they are not sufficiently relevant and therefore inadmissible under Federal Rules of Evidence (“FRE”) 401-403. Paper 36, 1-2 (Ex-2070), 2-3 (Ex-2073), and 4-5 (Exs. 2081-2082). PO did not serve supplemental evidence.

Petitioner also timely objected to Exhibits 2065, 2067, and 2068 that PO filed with its sur-reply on March 4, 2025, including on the basis that these exhibits were not sufficiently relevant and therefore not admissible under FRE 401-403 because they were not cited or relied upon in PO’s sur-reply. Paper 56, 1.

II. The Board Should Exclude the Objected-To Evidence

a. The Board Should Exclude Exhibit 2073 Under FRE 401-403 and 801-807

Exhibit 2073 is a purported copy of “‘Routing Algorithms For On Chip Networks,’ authored by Maksat Atagoziyev, available from the following URL: <https://etd.lib.metu.edu.tr/upload/12609136/index.pdf>.” Ex-2085, ¶3. Exhibit 2073 appears to show an unsigned, unapproved draft “thesis” paper from a student at “Middle East Technical University.” Ex-2073, pp 3, 4 (only blank spaces for date and signatures by both examining committee members and the purported author). Exhibit 2073 also shows the date “December 2007” on its face, which is well after the relevant 2003 date for this IPR.

Exhibit 2073 should be excluded under FRE 401-402 as irrelevant. Information contained in an unapproved draft student thesis is inherently unreliable and does not tend to make a fact more or less probable. Moreover, as explained further below, such an unapproved draft thesis is not the type of information an expert in the field would reasonably rely on. To the extent not excluded under FRE 401-402, Exhibit 2073 should be excluded under FRE 403. To the extent such a document would have any probative value, any probative value would be outweighed by a danger of confusing the issues and misleading the factfinder because the document appears to be merely an unapproved draft of a thesis paper.

Exhibit 2073 is also inadmissible hearsay under FRE 801 and 802. It is a written assertion by another (a student named Maksat Atagoziyev), not made by the declarant while testifying, and is offered by PO's expert to prove the truth of the matter asserted. For example, PO's expert relies and quotes Exhibit 2073 as evidence that "it is impossible to incorporate all of these features [of off-chip applications] into the same system." Ex-2070, ¶81 (quoting Ex-2073 at 7); *see also id.* ¶29. PO's expert also relies on and quotes Exhibit 2073 to support his assertion that "While NoCs share many of the same foundational principles as computer networks, it is understood that there are 'significant difference between on-chip and off-chip (on board) applications.'" Ex-2070, ¶81 (quoting Ex-2073 at 7). Exhibit 2073 is therefore an out-of-court statement by another, relied upon by PO's expert for the truth of the matters asserted therein.

**b. The Board Should Exclude Paragraph 81 of Exhibit 2070
(Declaration of Dr. Nader Bagherzadeh) Under FRE 702-703**

FRE 702 requires that expert testimony be based on "sufficient facts or data," be "the product of reliable principles and methods," and reflect "reliable application of the principles and methods to the facts of the case." FRE 703 allows expert testimony that relies on evidence that would otherwise be inadmissible, "[i]f experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject."

Paragraph 81 of Exhibit 2070 (testimony of PO's expert) should be excluded under FRE 702-703. Paragraph 81 is testimony that relies on Exhibit 2073. As explained above, Exhibit 2073 is itself inadmissible. Exhibit 2073 is also not the kind of facts or data an expert in the field would reasonably rely on in forming an opinion. As explained above, Exhibit 2073 appears to show to show an unsigned, unapproved draft "thesis" paper from a student at "Middle East Technical University." Ex-2073, pp 3, 4. No reasonable expert in the field would rely on such an unreviewed, unapproved draft student-authored document. Therefore Exhibit 2073 is not a permitted basis for expert opinion. FRE 703. Further, paragraph 81 of Exhibit 2070 (the expert testimony relying on Exhibit 2073) is not based on sufficient facts or data, is also not the product of reliable principles and methods reliably applied to the facts of the case, and should be excluded. FRE 702-703.

c. The Board Should Exclude Exhibit 2081 Under FRE 401-403

Exhibit 2081 is a purported copy of "'Terms & Disclosures for Use of IEEE Websites' available from the following URL: <https://www.ieee.org/about/help/site-terms-conditions.html>." Ex-2085, ¶9.

Exhibit 2081 should be excluded under FRE 401-402 as irrelevant, as it does not tend to make a fact at issue in the case more or less probable. The portion of Exhibit 2081 PO points to appears to be merely a statement intended to

“Disclaim[]” any legal liability for any “typographical errors, miscatalogued information, or technical inaccuracies.” Ex-2081, 3 (“Disclaimer of Accuracy”). Whether an entity has a statement directed to disclaiming *legal* liability for typographical mistakes regarding information on its website is a separate issue from whether a Petitioner has proven, by a preponderance of the evidence, that a particular publication obtained from the IEEE Xplore service is prior art. This is particularly true where, as here, the IEEE organization has voluntarily provided a declaration regarding a particular publication from its designated records custodian. Ex-1025, Ex-1026. Moreover, and further demonstrating its irrelevance, Exhibit 2081 is undated, and it also does not specify when it was created or posted. *See* Ex-2081.

To the extent not excluded under FRE 401-402, Exhibit 2081 should be excluded under FRE 403. PO’s citation to Exhibit 2081 tries to conflate the issue of whether a proponent has proven prior art status by a preponderance of the evidence with the (very different) issue of a statement of disclaimer of legal liability. A party may choose to include a statement regarding disclaimer of legal liability for many different reasons that are completely unrelated to the actual likelihood the information is accurate. The fact that a party may do so does not make it more or less likely that, under the preponderance of the evidence standard, a particular publication obtained from IEEE Xplore is prior art. Even if Exhibit 2081 had any

minimal probative value (it does not), that would be outweighed by a danger of confusing the issues.

d. The Board Should Exclude Exhibit 2082

Exhibit 2082 is not cited in any PO brief or exhibit and at least for that reason is irrelevant to this proceeding. Petitioner therefore respectfully requests that the Board exclude Exhibit 2082 under Federal Rules of Evidence 401-403.

e. The Board Should Exclude Exhibits 2065, 2067, and 2068

PO filed Exhibits 2065, 2067, and 2068 for the first time on March 4, 2025 with its sur-reply brief. PO introduced these exhibits at the February 25, 2025 deposition of Dr. Nikil Dutt.² However, PO does not cite or rely on any of Exhibits 2065, 2067, or 2068 in its sur-reply in this IPR. Evidence that is not cited or relied on does not tend to make a fact at issue in the case more or less probable and therefore is not admissible under FRE 401-402. Further, even if it were somehow minimally relevant, such uncited evidence would impermissibly confuse the issues,

² Dr. Dutt submitted declarations in conjunction with Petitioner's Replies in each of this (the -00338) and the -00343 IPRs. For the convenience of the parties and the witness, the February 25, 2025 deposition covered both declarations.

cause undue delay, and waste time. FRE 403. The Board should therefore exclude Exhibits 2065³, 2067, and 2068 as inadmissible under FRE 401-403.

Respectfully submitted,

Dated: March 5, 2025

By: /Peter M. Kohlhepp/

J. Derek Vandenburg (Reg. No. 32,179)

Peter M. Kohlhepp (*pro hac vice*)

Aaron W. Pederson (Reg. No. 58,607)

Nathan D. Louwagie (Reg. No. 70,057)

Ryan D. Rypka (Reg. No. 79,451)

Carlson Caspers Vandenburg

& Lindquist, P.A.

225 South Sixth Street, Suite 4200

Minneapolis, MN 55402

Telephone: (612) 436-9600

Facsimile: (612) 436-9605

dvandenburg&carlsoncaspers.com

pkohlhepp@carlsoncaspers.com

apederson@carlsoncaspers.com

nlouwagie@carlsoncaspers.com

rrypka@carlsoncaspers.com

*Counsel for Petitioner Qualcomm
Incorporated*

³ Exhibit 2065 appears to be like Exhibit 2081 and should also be excluded for the same reasons explained with respect to Exhibit 2081.

CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on March 5, 2025 a true and correct copy of the foregoing Petitioner Qualcomm Incorporated's Motion to Exclude was served via electronic mail upon the following:

Jennifer Hayes
Registration No. 50,845
Phone: 213-629-6179
Facsimile: 213-629-6001
jenhayes@nixonpeabody.com
Nixon Peabody LLP
300 South Grand Avenue, Suite 4100
Los Angeles, CA 90071-3151

Daniel Stringfield
Registration No. 68,677
Phone: 312-977-4130
Facsimile: 833-923-0056
dstringfield@nixonpeabody.com
Nixon Peabody LLP
70 West Madison, Suite 5200
Chicago, IL 60602-4224

Angelo J. Christopher
Registration No. 81,594
Phone: 312-977-4391
Facsimile: 312-977-4405
achristopher@nixonpeabody.com
Nixon Peabody LLP
70 West Madison, Suite 5200
Chicago, IL 60602-4224

Hang Zheng
Registration No. 73,464
Phone: 202-585-8307
Facsimile: 833-739-7878
hzheng@nixonpeabody.com
Nixon Peabody LLP
799 9th Street NW, Suite 500
Washington, Dc 20001-5327

Peter Krusiewicz
Pro Hac Vice
Phone: 312-977-4473
Facsimile: 312-977-4405
pkrusiewicz@nixonpeabody.com
70 West Madison, Suite 5200
Chicago, IL 60602-4224

Benjamin R. Holt
Registration No. 78,605
Phone: 202-585-8048
Facsimile: 833-824-1380
bholt@nixonpeabody.com
Nixon Peabody LLP
799 9th Street NW, Suite 500
Washington, DC 20001-5327

/Peter M. Kohlhepp/
Peter M. Kohlhepp