

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED

Petitioner

v.

NETWORK SYSTEM TECHNOLOGIES, LLC

Patent Owner

Case: IPR2024-00338

U.S. Patent No. 7,373,449 B2

**PETITIONER QUALCOMM INCORPORATED'S REPLY TO PATENT
OWNER'S OPPOSITION TO MOTION TO EXCLUDE**

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Petitioner Qualcomm Incorporated’s Motion to Exclude (“Motion”) should be granted. The Board’s Consolidated Trial Practice Guide (“CTPG”) states that “A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay)” CTPG at 79. That is what the Motion does.

I. The Board Should Exclude the Objected-To Evidence

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

Patent Owner (“PO”) argues that Petitioner fails to address the content of Exhibit 2073. Not so. The Motion explains that the content of Exhibit 2073 is an unsigned, unreviewed, apparent draft of a student thesis, which is inherently unreliable and therefore does not tend to make a fact more or less probable. Moreover, the Motion also quotes the substantive portions of Exhibit 2073 that PO’s expert relies on. Paper 57, 3.

PO also argues that “Exhibit 2073 is not hearsay because it is relied upon for the effect that it would have had on a POSITA.” Paper 59, 3. Contrary to PO’s argument, it appears that Dr. Bagherzadeh, in paragraph 81, is relying on Exhibit 2073 for the truth of the matter asserted therein—that there is “significant difference between on-chip and off-chip (on board) applications”—as he quotes directly from Exhibit 2073 without providing any additional support or independent analysis. *See Mylan Pharmaceuticals, Inc. v. Bausch Health Ireland, Ltd.*, IPR2022-00722, Paper 78 at 69, 72 (PTAB Sept. 8, 2023).

PO argues that the Motion “ignores” PO’s authenticating declaration. Again, not so—the Motion specifically cites and quotes from that declaration. Paper 57, 2 (citing Ex-2085). Moreover, Petitioner is not moving to exclude under the authenticity rule (FRE 901). PO also argues that Exhibit 2073 falls under the learned treatise exception of FRE 803(18). Again, not so. For one, a draft student thesis paper is certainly not a “treatise, periodical, or pamphlet.” For another, there has been no showing—as required under FRE 803(18)(B)—that the draft thesis paper has been “established as a reliable authority.” Finally, for the reasons above, Exhibit 2073 is not admissible under the residual exception, because it is inherently unreliable and has no tendency to make a fact more or less probable.

b. The Board Should Exclude Paragraph 81 of Exhibit 2070 Under FRE 702-703

PO’s only argument as to Paragraph 81 of its expert’s declaration is that Petitioner does not provide expert testimony supporting the position that an expert would not reasonably rely on an unreviewed, non-final draft of a student paper. However, the burden is on the proponent of expert testimony to explain why it is admissible. *See* FRE 702 (“A witness ... may testify ... if the proponent demonstrates ...that ... the testimony is based on sufficient facts or data ...”). Moreover, it is a matter of basic common sense that an expert would not reasonably rely on an unreviewed, non-final draft of a student paper. PO’s argument that Petitioner’s expert “relies” on Exhibit 2073 fares no better.

Petitioner's expert Dr. Mowry is merely responding to PO's expert's citation of the exhibit, and pointing out that even that exhibit is consistent with his (Dr. Mowry's) testimony.

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

Exhibit 2081 ("Terms") is a purported copy of "Terms & Disclosures for Use of IEEE Websites." Ex-2085 ¶ 9. These Terms, which appear to be a boilerplate disclaimer of legal liability, do not tend to make the fact that Goossens2002 was publicly available prior to the '449 Patent's priority date less probable, particularly where, as here, the IEEE has provided a declaration regarding that publication from its designated records custodian. Ex-1025, Ex-1026. PO argues that the exhibit provides "context" to Mr. MacPherson's deposition. But PO provides no authority for the assertion that a document inadmissible under FRE 401-402 and/or 403 is made automatically admissible by presenting it to a witness at a deposition.

As to Rule 403, PO contends that the exhibit has "substantial probative value." Again, not true. As explained in the Motion, the fact that a party may choose to disclaim legal liability 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. This is particularly true where, as here, there is no evidence as to why the entity made that decision, and where, as here, there may be

many potential reasons for that decision entirely unrelated to the likelihood that the information is accurate.

d. The Board Should Exclude Exhibit 2082

Petitioner objected to Exhibit 2082 on the basis of relevance, “including that... Ex. 2082 does not appear to be cited in Patent Owner’s Response.” Paper 26, 5. PO did not provide any supplemental evidence explaining the relevance. Nor did PO’s Response brief explain the relevance. PO now for the first time seeks to explain the purported relevance, but PO concedes that none of its papers in this proceeding rely on Exhibit 2082.

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

PO does not dispute that its briefing does not cite Exhibits 2065, 2067, or 2068. PO contends only that it cites “Dr. Dutt’s deposition testimony” in its sur-reply and then argues that these exhibits “provide context” for Dr. Dutt’s testimony. But PO does not even attempt to show that the testimony from Dr. Dutt it cites pertains to any of these exhibits and therefore provides no support for its bare assertion that the exhibits provide “context.”

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Respectfully submitted,

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CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on March 13, 2025, a true and correct copy of the foregoing Petitioner Qualcomm Incorporated's Reply to Patent Owner's Opposition to Motion to Exclude was served via electronic mail upon the following:

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