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. IPR2024-00495
U.S. Patent No. 9,619,420

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE EVIDENCE

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I. <u>EX2001 AND EX2019 SHOULD BE EXCLUDED</u>

PO's Opposition (Paper 39, "Opp.") confirms the Board should exclude Dr. Houh's testimony. And it's not a close question. To begin, the Motion (Paper 35, "Mot.") at 2-3 cited copious evidence (from the Challenged Patent, Chang, Chang II, etc.) supporting Petitioner's POSITA definition, which requires being "well-versed in USB standards (including the USB 2.0 and 3.0 Specifications and the OTG Supplement) and the design/deployment of USB hosts, USB devices, and USB hubs, including suitable environments for USB systems" and "substantial experience (*e.g.*, several years) designing USB systems." Pet., 22-23. This is precisely the type of evidence *Okajima v. Bourdeau*, 261 F.3d 1350, 1354-55 (Fed. Cir. 2001) (cited in the ID, 18) counsels should determine the level of skill. By contrast, PO cites no evidence (other than Dr. Houh's say-so) supporting its definition, which requires no USB experience or knowledge of USB standards. *See generally* Opp.

Dr. Houh repeatedly and unambiguously conceded at deposition that he lacked actual USB experience and knowledge of USB standards. Mot., 3-5. PO fails to explain how additional non-USB education somehow imbues Dr. Houh with essential knowledge of the USB standards. Instead, PO argues Dr. Houh has "the ability to understand and apply USB standards and technologies" (Opp., 3), but Petitioner's definition requires several years of ***actual experience*** designing USB products and ***actual familiarity*** with USB standards. Pet., 22-23.

The natural corollary to PO's assertion that Dr. Houh's "testimony should not be excluded if the Board [] rejects Petitioner's proposed level of skill" (Opp., 1) is that the Board ***should exclude*** Dr. Houh's testimony if it rejects PO's proposed level of skill. Indeed, such a result is compelled by *Kyocera*, a Federal Circuit case which PO ignores. *Kyocera* is on all fours. It held that, notwithstanding that the proffered expert had "advanced degrees in engineering and extensive experience in the design and manufacture of fastener driving tools," it was an abuse of discretion to "admit[] [his] testimony on any issue that is analyzed through the lens of [a POSITA]" because the POSITA "definition requires, at minimum, two years' experience designing power nailers." *Kyocera*, 22 F.4th at 1376-77; *see also id.* at 1377 ("Without that skill, the witness' opinions are neither relevant nor reliable."). As in *Kyocera*, the issue here is one of admissibility, not weight.

To the extent PO now concedes (in view of Dr. Houh's admissions) its level of skill is the equivalent to Petitioner's (Opp. at 2, PO's definition "overlap[s] substantially" and has "little difference" with Petitioner's), it is because PO moved its definition closer to Petitioner's, a concession further substantiating obviousness.

The Board should exclude Dr. Houh's testimony for the additional reason that he rendered no opinions under Petitioner's POSITA definition. Mot., §I.A. This is true regardless of whether PO now recasts its definition to align with Petitioner's because at the time Dr. Houh rendered his opinions, he did so under PO's then

existing level of skill which required no USB knowledge or experience.

The Board should also exclude Dr. Houh's testimony regarding secondary considerations of long-felt, need, skepticism, copying, etc. (premised on purported automaker wishes and a CarPlay specification that Dr. Houh has never seen), under *Daubert* and/or FRE 403 because Dr. Houh (even if he qualified as a POSITA) does not bring to bear any POSITA lens in his analysis and opinions. Mot., 5-7.

II. PO'S GENERIC SECONDARY CONSIDERATIONS ARGUMENT

The Opp. at §II fundamentally misunderstands the nature of Petitioner's Motion, mischaracterizing it as a frontal attack on the very notion of secondary considerations as a legal concept. Opp., 6-7. But Petitioner's Motion does no such thing. *See generally* Mot. Rather, the Motion seeks to exclude particular exhibits under specific, applicable rules of evidence. Invoking the mantra of secondary considerations does not create a free-for-all that suspends evidentiary rules. The Opposition proves Petitioner's point, asserting that the Challenged Patents "describe[] CarPlay in all but name" (Opp., 7) when PO failed to even introduce the CarPlay specification into evidence or discuss the iPhone protocols for entering host mode (which requires the iPhone to first connect as ***USB device*** as a pre-requisite to disconnecting and reconnecting as host). In any event, even in the prior case (where only Microchip's affirmative infringement claims were at issue), CarPlay and related matters of copying, etc. were collateral issues.

III. EX2002-2003, EX2017, AND EX2040-2043 (TRIAL TESTIMONY)

The Opp. at 8 again makes Petitioner's point when it says, in essence, "take our word for it" that everything you need is in the 1,000+ pages of transcripts (from years ago in a case involving different lawyers and witnesses no longer at the company) and tries to shift the burden to Petitioner and the Board to wade through the morass of testimony and exhibits and contextualize PO's cherry-picked excerpts in a page constrained brief. This is a good example of why FRE 403 exists.

PO does not even try to argue any hearsay exception applies (an issue on which it bears the burden) to the former testimony. Opp., 8-9. Indeed, PO does not dispute that any witness whose prior testimony it cites was unavailable in this IPR, as FRE 804(a)(5) and (b)(1) requires. Instead, PO contends prior expert testimony is not hearsay. *Id*. But this argument runs directly contrary to the case law in the Motion which holds exactly the opposite. Mot., 9 (discussing *Kirk.*, 61 F.3d at 163-164 (expert testimony from a different case is ***not*** a party admission). Further, PO ignores that some witnesses (*e.g.*, Mr. Dreon) were ***Aptiv witnesses***, not Microchip experts, whose testimony is plainly hearsay. Thus, PO paints with too broad a brush and fails to rebut the witness-specific arguments in the Motion. Mot., 7-10.

IV. EX2005-2010 AND EX2031-2035 (EMAILS) SHOULD BE EXCLUDED

Without addressing the roles of most email authors/recipients, PO asserts Microchip's descriptions of sales/marketing personnel is "false." Opp., 9. This

baseless accusation is not well-taken. PO only mentions three of eight individuals in the Motion. Mr. Behal's LinkedIn profile (Opp., 10) proves Microchip's point, listing roles as "Field Sales Engineer" and "Field Applications Engineer," a far cry from a USB product designer. Per LinkedIn (www.linkedin.com/in/davesroka), Mr. Sroka's role is "Product Marketing" with responsibility for "[w]orldwide marketing" of various USB products. His name on the USB 3.1 standard is due to his role as a Board member of that organization since 2009. *Id*. That leaves only Mr. Steele, who received the email stating Apple's position about a bridge-based solution.

V. EX2024-2025 AND EX2027-2028 (APTIV PRODUCT DOCUMENTS)

While Petitioner does not dispute that experts may sometimes rely on, *e.g.*, otherwise inadmissible hearsay, that does not mean an expert has carte blanche to rely on all incomplete, undated, contextless, and/or irrelevant documents.

VI. EX2026 AND EX2030 (MICROCHIP PRODUCT DOCUMENTS)

PO address a relevancy objection Petitioner did not make. Opp., 12-13. Rather, Petitioner's arguments sounds in FRE 403. Mot., 14-15. Thus, Petitioner's basis for exclusion is unrebutted as to the Microchip product documents.

VII. EX2036-2039 (DREON DECLARATION AND EXHIBITS)

PO's argument concerning Mr. Dreon's testimony misses the mark and is self-defeating. PO contends the judges' statements to Mr. Dreon (and internet articles) are not hearsay because PO is not relying on them for their truth (Opp., 14), but that makes the statements irrelevant to industry praise since the award lacks nexus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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