

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
SAMSUNG SEMICONDUCTOR, INC., and
SAMSUNG AUSTIN SEMICONDUCTOR, LLC,

Petitioners

v.

CHIEN-MIN SUNG,

Patent Owner

IPR2024-00534
U.S. Patent No. 9,138,862

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S PRE-
INSTITUTION EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Alexandria, VA 22313-1450

Submitted Electronically via PTACTS

Pursuant to the Federal Rules of Evidence and 37 C.F.R. § 42.64, Patent Owner Chien-Min Sung (“Patent Owner”) timely objects to evidence submitted by Petitioners Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, LLC (“Petitioners”) prior to institution of Inter Partes Review IPR2024-00534. Patent Owner serves Petitioners with these objections to provide notice that Patent Owner may move to exclude the challenged exhibits under 37 C.F.R. § 42.64(c) unless Petitioners cure the defects identified in the challenged exhibits below.

Exhibit 1002 – Declaration of Stanley Shanfield, Ph.D. on Behalf of Petitioner

Patent Owner objects to this exhibit under Fed. R. Evid. 702 and/or 802 as Dr. Shanfield has not yet been made available for cross-examination during a deposition.

Patent Owner objects to this exhibit under Fed. R. Evid. 702, 703, and/or 802 because it includes testimony based on evidence that is inadmissible under Fed. R. Evid. 402 and/or 802 (e.g., Exhibit 1005).

Patent Owner further objects to this exhibit under Fed. R. Evid. 702 as improper expert testimony as it is not based on sufficient facts or data and Dr. Shanfield lacks requisite technical knowledge of CMP pad conditioners.

Exhibit 1005 – SungICPT

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee simply concludes that Ex. 1019 is “the same” as Ex. 1005 without providing the factual basis for this conclusion. (Ex. 1027 at ¶ 39.)

Patent Owner objects to Ex. 1005 as hearsay under Fed. R. Evid. 801(c) and 4 thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex. 1005 for the truth of the matter asserted therein. (*See, e.g.*, Pet. at 48.) Yet Petitioner has not offered sufficient evidence that Ex. 1005 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Exhibit 1019 – Electronic Copy of SungICPT

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee simply concludes that Ex. 1019 is “the same” as Ex. 1005 without providing the factual basis for this conclusion. (Ex. 1027 at ¶ 39.)

Exhibit 1020 – Records for *Proceedings ICPT 2007*

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the

proponent claims it is.” For example, Dr. Hsieh-Yee does not provide evidence indicating that the dates of the German National Library catalog are accurate or that they reflect public availability of a given text. Instead, Dr. Hsieh-Yee speculates that “German National Library cataloged the conference proceedings containing SungICPT on September 28, 2007” (Ex. 1027 at ¶ 47), based on unauthenticated data from the German National Library which she did not personally log. Nor does Dr. Hsieh-Yee claim personal knowledge regarding the creation or maintenance of that data.

Exhibit 1021 – TIB Records for *Proceedings ICPT 2007*

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee does not point to any evidence showing that the archived webpage downloaded from the Internet Archive is a true copy of the original webpage or that the alleged archive date is accurate or reflects public availability. Dr. Hsieh-Yee speculates that “the archive date in the extended URL means that an archived copy of a web resource was available before, and definitely no later than, the archive date.” (Ex. 1028 at ¶ 45.)

Exhibit 1022 – Program and Invitation, ICPT International Conference on Planarization/CMP Technology

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the

proponent claims it is.” For example, Petitioner has not identified evidence that would confirm the accuracy of the dates provided. Instead, Dr. Hsieh-Yee speculates that “the conference proceedings containing SungICPT would have become accessible to conference attendees on October 25, 2007, when the 2007 ICPT Conference began.” (Ex. 1027 at ¶ 58.)

Patent Owner objects to Ex. 1022 as hearsay under Fed. R. Evid. 801(c) and 4 thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex. 1022 for the truth of the matter asserted therein. (*See, e.g.*, Ex. 1027 at ¶ 58.) Yet Petitioner has not offered sufficient evidence that Ex. 1023 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Exhibit 1023 – ICPT 2007 Conference Registration website

Patent Owner objects to this Exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee does not point to any evidence showing that the archived webpage downloaded from the Internet Archive is a true copy of the original webpage or that the alleged archive date is accurate or reflects public availability. Instead, Dr. Hsieh-Yee speculates that “[a]n archived copy of the Conference Program Order Form (EX1024) shows that users would have been able to access the form by November 3, 2007.” (Ex. 1027 at ¶ 63.)

Patent Owner objects to Ex. 1023 as hearsay under Fed. R. Evid. 801(c) and 804 thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex. 1023 for the truth of the matter asserted therein. (*See, e.g.*, Ex. 1027 at ¶ 69.) Yet Petitioner has not offered sufficient evidence that Ex. 1023 falls within any exclusion or exception of the rule against hearsay under Fed. R. Evid. 803 or 804.

Exhibit 1024 – ICPT 2007 Program order form webpage

Patent Owner objects to this Exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee does not point to any evidence showing that the archived webpage downloaded from the Internet Archive is a true copy of the original webpage or that the alleged archive date is accurate or reflects public availability. Instead, Dr. Hsieh-Yee speculates that “EX1024 shows the Conference Program Order Form would have been publicly accessible on the Internet no later than November 3, 2007” (Ex. 1027 at ¶ 63.)

Exhibit 1025 – Online catalog of the German National Library

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that

the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee does not point to any evidence showing that the archived webpage downloaded from the Internet Archive is a true copy of the original webpage or that the alleged archive date is accurate or reflects public availability. Further, Dr. Hsieh-Yee does not provide evidence indicating that the dates of the German National Library catalog are accurate or that they reflect public availability of a given text. Instead, Dr. Hsieh-Yee speculates that “German National Library cataloged the conference proceedings containing SungICPT on September 28, 2007” (Ex. 1027 at ¶ 47), based on unauthenticated data from the German National Library which she did not personally log. Nor does Dr. Hsieh-Yee claim personal knowledge regarding the creation or maintenance of that data.

Exhibit 1026 – GetInfo Portal of the German National Library of Science and Technology (TIB)

Patent Owner objects to this exhibit under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support finding that the item is what the proponent claims it is.” For example, Dr. Hsieh-Yee does not point to any evidence showing that the archived webpage downloaded from the Internet Archive is a true copy of the original webpage or that the alleged archive date is accurate or reflects public availability. Instead, Dr. Hsieh-Yee speculates based on the Internet Archive capture dates that “EX1026 shows that as of October 2007

TIB has had an active portal to support the discovery and access to scholarly publications in science and technology. . . .” (Ex. 1027 at ¶ 52.)

**Exhibit 1027 – Declaration of Ingrid Hsieh-Yee, Ph.D. on Behalf of
Petitioner**

Patent Owner objects to this exhibit under Fed. R. Evid. 702 and/or 802 as Dr. Hsieh-Yee has not yet been made available for cross-examination during a deposition. Patent Owner also objects to this exhibit under Fed. R. Evid. 702 as not based on sufficient facts or evidence. Petitioners cannot meet the requirements of Rule 901 by comparing two or more unauthenticated documents or versions of documents. Rather, “[a] comparison with an authenticated specimen by an expert witness or the trier of fact” is required. Fed. R. Evid. 901(b)(3).

Dated: October 2, 2024

/s/ Joel Glazer

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on October 2, 2024, the foregoing document is being served via electronic mail upon the following counsel of record for Petitioner:

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