

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APTIV SERVICES US, LLC,
Petitioner,

v.

MICROCHIP TECHNOLOGY INC.,
Patent Owner.

Patent No. 9,471,074

Inter Partes Review No. IPR2024-00646

**PETITIONER'S REPLY TO OPPOSITION TO
MOTION TO EXCLUDE EVIDENCE**

Patent Owner's Opposition makes two incorrect arguments—one that ignores the facts, and one that belatedly raises a legal issue on which Patent Owner is wrong.¹

I. APTIV DID NOT OPEN THE DOOR TO DR. TAYLOR'S IMPROPER TESTIMONY

First, Patent Owner argues that Aptiv opened the door to Dr. Taylor's redirect testimony. That is wrong. As explained in the Motion to Exclude, Aptiv asked Dr. Taylor about EX2012, a datasheet for a particular commercial product. (*See* Paper 35, 2; EX1029, 90:9-93:16.) Dr. Taylor reviewed and testified regarding Figure 3 of that datasheet. (*Id.*) One of his answers listed "leakage in the transistors" among various factors contributing to quiescent current in the product that corresponding to the figure. (*Id.*, 91:25-92:10.) Critically, this context shows that there was nothing

¹ In a footnote, Patent Owner also complains that Aptiv's Motion to Exclude is "duplicative" and "wasteful" because Aptiv also filed a Motion to Strike. (Paper 38, 1 n.1) But Aptiv has simply followed the Scheduling Order, which provides that "a motion to exclude may be used only to raise admissibility matters" and that "[a]ny matter pertaining to an allegation that a . . . sur-reply exceeds the proper scope" must be raised separately with the Board. (Paper 12, 7.) Accordingly, Aptiv's Motion to Exclude is limited to the admissibility of Dr. Taylor's redirect testimony, and Aptiv's Motion to Strike to the propriety of Patent Owner's new sur-reply argument relying on that testimony.

in Aptiv's questions, or even in Dr. Taylor's passing reference to "leakage," relating to manufacturing processes, let alone the *changes in manufacturing processes over time* that Dr. Taylor discussed in his redirect examination. (See Paper 35, 2-3.)

Tellingly, Patent Owner is unable to articulate any point in Dr. Taylor's cross-examination relating to manufacturing processes. Patent Owner attempts to sweep its improper redirect questions under the umbrella of "quiescent current," arguing that Aptiv's "numerous questions about quiescent current" opened the door. (Paper 38, 5-6.) But Patent Owner's overgeneralization would render limitations on scope meaningless. Quiescent current was a topic that had been briefed by both parties in extensive detail in the Petition and POR because it relates closely to a disputed claim term, "reducing standby current." (EX1001, Claim 1.) That quiescent current was discussed in Dr. Taylor's cross-examination did not give Patent Owner free license to discuss any topic that might relate to quiescent current, any more than discussion of "voltage regulators" gave Patent Owner license to discuss anything it wished on voltage regulators.

Patent Owner also seeks to rely on the prior art's discussion of manufacturing technology. (Paper 38, 6.) But, as an initial matter, the existence of such discussion somewhere in the record does not justify redirect examination that went beyond the scope of *cross-examination*, which indisputably did not discuss the disclosures that Patent Owner invokes. Patent Owner's appeal to those disclosures is thus irrelevant.

Furthermore, Patent Owner overstates those disclosures, none of which address the state of manufacturing technology in 2013 or the impact such technology would have on a POSITA's assessment of obviousness. (See EX1004, Table II; *see also* Paper 38, 6 (relying on the same).) Although Patent Owner argues that the POR discussed the differences in Al-Shyoukh's "0.35 μm technology process" and Rincon-Mora's "2 μm technology," the POR never touched on the state of manufacturing technology *in 2013*. (*Id.*) Patent Owner thus fails to rebut Aptiv's point that "Patent Owner's questioning of Dr. Taylor on redirect was the first time any witness or party to this proceeding discussed or introduced evidence regarding" that topic. (Paper 35, 3.)

Patent Owner seeks to distinguish *Sony* on the basis that the cross-examination questions in that case were more general and that, unlike in *Sony*, Patent Owner did not seek to introduce a new declaration from a new witness.² (Paper 38, 2-4 (citing *Sony Interactive Ent. LLC v. Quantum Imaging LLC*, IPR2023-00954, Paper 22 at

² Patent Owner also takes Aptiv's comment that it was "past 5:00 p.m. Eastern" out of context. (Paper 38, 3-4.) The full statement was: "Aptiv objects to the lines of questioning that were outside the scope of the cross-examination. It's past 5:00 p.m. Eastern. We'll take it up with the Board by moving to strike." (EX1029, 119:4-7.) Aptiv was explaining that it was too late to contact the Board about Patent Owner's improper questions, not that it was too late for re-cross examination.

3-4 (PTAB Mar. 13, 2024).) Neither of these points moves the needle because this is not an issue of degree—Aptiv simply never opened the door. All Patent Owner does is point to Aptiv’s questions about “component characteristics or parameters” relating to a single datasheet from a single point in time. (*Id.*, 4.) Indeed, the cross-examination never discussed manufacturing processes, and certainly not technology in 2013, which was never in the record before Dr. Taylor’s redirect testimony.

II. PATENT OWNER, NOT APTIV, INVITES LEGAL ERROR

In a brief that it should have limited to evidentiary issues, Patent Owner also discusses obviousness, alleging incorrectly that Aptiv somehow invites the Board to commit legal error by assessing validity at the wrong date. (*See* Paper 38, 7.) Patent Owner first raised this argument only five days before, in opposing Aptiv’s Motion to Strike. (*See* Paper 37, 3.) Not even the *Sur-Reply*, let alone the POR, made this “legal error” point or cited to the *Siemens* case on which Patent Owner relies. Thus, Patent Owner’s oppositions to Aptiv’s motions continue its troubling habit of adding new arguments in support of patentability far too late in the proceeding.

Moreover, it is Patent Owner, not Aptiv, who invites legal error. The principle that obviousness is assessed at the time of invention is not the same as the erroneous idea Patent Owner puts forward: that a POSITA’s motivation is constrained by the best manufacturing technology available at that time. According to Patent Owner, a POSITA evaluating a combination of prior art circuits must assume that the circuits

would be fabricated using cutting-edge 2013 processes because the purported date of invention is 2013.

There is no such rule. Indeed, such a rule would improperly limit a POSITA's ability to consider older technology, including older manufacturing processes, that would have been within the POSITA's knowledge. Patent Owner's only authority, *Siemens*, certainly does not limit obviousness in this way; indeed, the only reason the timing of obviousness arose in that case was to explain that, while obviousness is evaluated at the time of invention, equivalency under the doctrine of equivalents is assessed at infringement. *Siemens Med. Sols. USA, Inc. v. Saint-Gobain Ceramics & Plastics, Inc.*, 637 F.3d 1269, 1282 (Fed. Cir. 2011).

The only legal error would be for the Board to adopt Patent Owner's erroneous standard. Thus, even if considered, Patent Owner's untimely "legal error" argument should be rejected.

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PETITIONER’S REPLY TO OPPOSITION TO MOTION TO EXCLUDE EVIDENCE was served as of the below date via e-mail (by agreement) to the following counsel of record for the Patent Owner:

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