

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.

Petitioners,

v.

MAXELL, LTD.,
Patent Owner

Case: IPR2024-00907

U.S. Patent No. 10,129,590

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Pursuant to 37 C.F.R. §§ 42.62 and 42.64(c) and the Federal Rules of Evidence, Patent Owner hereby moves to exclude Exhibits 1002, 1007, 1010, 1014, 1015, 1017, 1018, and 1032-1033, submitted and relied upon by Petitioner in this proceeding.

I. IDENTIFICATION OF OBJECTIONS

Patent Owner timely objected to Exhibits 1002, 1007, 1010, 1014, 1015, 1017, and 1018, on December 23, 2024, including on the basis that they are not sufficiently relevant, unfairly prejudicial, the declarant lacks personal knowledge, contain hearsay, and lack authenticity and foundation and therefore inadmissible under the Federal Rules of Evidence (“FRE”) 401/402, 403, 602, 801/802/805, and 901. Paper 12. Patent Owner objected to Exhibits 1032-1033 on February 5, 2025 when opposing Petitioner's motion to submit “supplemental information,” including on the basis that they are not sufficiently relevant. Paper 17. The Board has not yet ruled on Petitioner's motion.

II. THE BOARD SHOULD EXCLUDE THE OBJECTED-TO EVIDENCE

A. The Board Should Exclude EX1010 (“N93”), EX1014 (“BT-Spec”), and EX1015 (“3GPP-Spec”) Because Petitioner Has Not Shown They Were Publicly Accessible During the Relevant Time

The Petition, without any support, contends that each of EX1010 (“N93”), EX1014 (“BT-Spec”), and EX1015 (“3GPP-Spec”) was “publicly available on [a] website at least as of [the date] when it was archived.” Pet., 5. These assertions are conclusory

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and insufficiently factually supported, and the Petition fails to allege that N93, BT-Spec, or 3GPP-Spec were publicly accessible to a POSITA at the relevant time (2007). Patent Owner timely objected under FRE 901, among others including FRE 401/402, which states: "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(a).

In response, Petitioner filed a motion for supplemental information (Paper 16), opposed by Patent Owner (Paper 17), seeking to submit Exhibits 1032-1033 to establish the public accessibility of N93, BT-Spec, and 3GPP Spec. As set forth in Patent Owner's Opposition, Exhibits 1032-1033 are legally irrelevant to whether N93, BT-Spec, and 3GPP-Spec were publicly accessible to a POSITA in 2004. Paper 17. Therefore, the Board should exclude Exhibits 1032-1033 as at least lacking foundation, authenticity, and relevance.

Additionally, Petitioners attempt to change the theories set forth in the Petition with respect to the public accessibility of N93, BT-Spec, and 3GPP Spec by submission of Exhibits 1032-1033, making these exhibits further irrelevant. With respect to EX1010, Petitioner moves away from its original theory that N93 was available on Nokia's web site, and now offers evidence purportedly showing other ways a POSITA allegedly would have had access to the manual prior to the critical date. See Paper 17 at 6. Yet, exhibits 1032-1033 still shed no light on the public

accessibility of Exhibits 1014 (“BT-Spec”) and 1015 (“3GPP-Spec”). Regarding BT-Spec, Petitioner presents archived links to the Bluetooth web site, *but not to BT-Spec* utilized in the Petition. EX1033, 19-26.

“Whether a reference qualifies as a printed publication under § 102 is a legal conclusion based on underlying fact findings.” *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018). In an *inter partes* review, “the petitioner bears the burden of establishing by a preponderance of the evidence that a particular document is a printed publication.” *Nobel Biocare Servs. AG v. Intradent USA, Inc.*, 903 F.3d 1365, 1375 (Fed. Cir. 2018). To qualify as a printed publication, a reference “must have been sufficiently accessible to the public interested in the art.” *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989). The Federal Circuit has described public accessibility as “the touchstone in determining whether a reference constitutes” a printed publication under § 102. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016). A petitioner establishes public accessibility by demonstrating that a reference was “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” *Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1355–56 (Fed. Cir. 2018).

Uploading a document to a website may make the document “technically accessible” since “someone could theoretically find it on the Internet,” but uploading

a document to a website does not necessarily make the document “publicly accessible.” *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019); see *Acceleration Bay*, 908 F.3d at 772–74. For a document uploaded to a website, a petitioner must present “some evidence that a person of ordinary skill could have reasonably found the website” and then found the document “on that website.” See *Samsung*, 929 F.3d at 1369.

The Petition contains no credible evidence that N93, BT-Spec, or 3GPP-Spec were publicly accessible in 2007 to a POSITA. Nor do Exhibits 1032-1033 provide evidence that N93, BT-Spec, or 3GPP-Spec were publicly accessible. There is no testimony from Petitioner's expert at the time the Petition was filed that he was able to publicly access N93, BT-Spec or 3GPP-Spec in 2007, or was otherwise familiar with N93, BT-Spec or 3GPP-Spec more broadly at that time. EX1002, ¶¶52, 55-56. Dr. Creusere merely relies on the Internet Archive declaration submitted as Exhibit 1007, which does not establish public accessibility of the references, and opines on paths that could be taken based on archived links. *Id.*

Petitioner claims, through Dr. Creusere in Exhibit 1058, that navigation to N93, BT-Spec or 3GPP-Spec from an archived version of the websites could be accomplished via different paths. Paper 25, 2-5; EX1058, ¶¶ 8-14. This self-serving statement—based on information not presented in the Petition—was conducted in 2025 using the Internet Archive, not in real-time from the actual live website as it

existed in 2007. Reconstruction of a path using modern archival tools does not equate to public accessibility at the relevant time. *See Samsung Elecs.* 929 F.3d at 1370–72.

Further, Mr. McNair's testimony regarding a POSITA's inability to access 3GPP-Spec, based on the definition of POSITA in the Petition, without prior knowledge remains unrebutted. POR, 8-9; EX2017, ¶¶82-88; EX1057, 79:12-20. Petitioner's exhibits confirm that the specifications require previous knowledge and are for those looking for "a particular spec" or are "for those who know where they are going." EX1033, at 10. "[A] work is not publicly accessible if the only people who know how to find it are the ones who created it." *Samsung Elecs.*, 929 F.3d at 1372.

Petitioner fails to provide any evidence that a person would know of the particular 3GPP-Spec, especially given its status as a working document. POR, 8-9. Petitioner has failed to show by a preponderance of the evidence that Exhibits 1010, 1014, and 1015 were publicly accessible in 2007 and therefore the exhibits should be excluded because they lack foundation, are inauthentic, and irrelevant.

B. Exhibit 1015, Which Was Not Implemented as Part of the UMTS Standard, Lacks Relevance and Is Misleading Regarding Characteristics of the UMTS Standard

Petitioner cites Exhibit 1015 as evidence of the modulation schemes purportedly used by a UMTS radio. Pet., 56, *see* Pet., 8-9. But Exhibit 1015 is a

preliminary working document for the LTE standard—and was never implemented as part of the UMTS standard. *See, e.g.*, Pet., 8-9, 56; EX1057, at 81:11-21. Because Exhibit 1015 was never incorporated into the UMTS specification, it does not set forth the correct modulations (or other characteristics) required for UMTS-compliant devices and, it has no probative value on that question. The introduction of Exhibit 1015 is confusing and misleading and should therefore be excluded under the Federal Rules of Evidence.

Petitioner relies on Exhibit 1015 to show “the appropriate modulations and frequencies in order to comply with the disclosed standards and enable communications with the intended standard-compliant devices” for an alleged UMTS radio. Pet., 56, *see* Pet., 8-9. However, Exhibit 1015 is an unimplemented, working document for the LTE standard (rather than UMTS standard). POR at 8, 12; EX2017, ¶¶74, 83-88, 194. For example, Exhibit 1015 explicitly states it was not part of the standard and not to be implemented. EX1015, 1 (“The present document has not been subject to any approval process by the 3GPP Organizational Partners and ***shall not be implemented***. . . . The Organizational Partners accept no liability for any use of this Specification.”). Further, the webpages purportedly linking to the document establish it was part of “LTE-Phys” rather than part of UMTS. EX1061, 1 (“Work item which gave rise to this spec: ***LTE-Phys***”). Petitioner failed to produce any evidence regarding the incorporation of 3GPP-Spec into the UMTS standard.

Therefore, 3GPP-Spec is irrelevant to showing the "appropriate modulations . . . in order to comply with the disclosed standards and enable communications with the intended standard-compliant devices" as asserted in the Petition. Pet., 56. Exhibit 1015 was never used as part of the UMTS standard and therefore Exhibit 1015 and all related exhibits that purportedly show the "public accessibility" of Exhibit 1015 should be excluded (*i.e.*, Exhibits 1007, and 1032-1033).

C. Exhibits 1002, 1007, and 1032-1033, Purportedly Relating to "N93," "BT-Spec," or "3GPP-Spec," Should Also Be Excluded

Exhibits 1002, 1007, and 1032-1033 should also be excluded because they do not show by a preponderance of the evidence that Exhibits 1010, 1014, and 1015 were publicly accessible to a POSITA in 2004.

1. Exhibits 1007, 1032, and 1033

Exhibits 1007 1032, and 1033 are Internet Archive declarations that are irrelevant and hearsay because they do not purport to prove that Exhibits 1010, 1014, and 1015 were publicly accessible to a POSITA in 2007. Therefore, Exhibits 1007, 1032, and 1033 should be excluded.

Exhibits 1032 and 1033 are additionally problematic because they attempt to change the evidence relied on in the Petition related to N93. The Petition represents Petitioner's case-in-chief, and, under the Board's rules, Petitioner's ability to supplement that case after institution is necessarily limited. 37 C.F.R. § 42.123. For example, while the Petition relied on the alleged availability of N93 via Nokia's web

site in the Petition, Petitioner now relies on a Wikipedia page relying on the N93 product. EX1032, 7-63; 178-179; 1271-72; EX1033, 4-60. Petitioner's attempt to change the evidence on which the Petition is based should be rejected.

Exhibits 1032-1033 should be stricken from the record for the reasons set forth in Patent Owner's Opposition to the Motion for Supplemental Information. Paper 17 at 3-10.

2. Exhibit 1002

Exhibit 1002, paragraphs relating to N93, BT-Spec, and 3GPP-Spec, in Dr. Creusere's declaration, should be excluded from evidence, namely ¶¶ 13, 15, 52, 55-56, 58-69, 71-78, 80-86, 90-85, 97-101, 103-104, 106-107, 109-110, 112-114, 116-119, 122-123, 125-129, 131-133, 136-137, 144, 146, 150, 154, 191, 194, 208, 219 224-225, 269-274.

Dr. Creusere fails to provide evidence of public accessibility of Exhibits 1010, 1014, and 1015, nor did he offer any testimony of his personal knowledge of Exhibits Exhibits 1010, 1014, and 1015 in 2007. Thus, testimony relying on such exhibits should be excluded pursuant to at least FRE 401/402, 403, 602, 801/802 and 901/902 as well as 37 C.F.R. §42.65.

III. CONCLUSION

For at least the foregoing reasons, the Board should exclude Exhibits 1002, 1010, 1014, 1015, 1017, 1018, and 1032-1033.

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Dated: August 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2025, a copy of the attached Patent Owner's Motion to Exclude Evidence, together with all exhibits was served by electronic mail to the attorneys of record, at the following addresses:

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Respectfully submitted,

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