

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

SAMSUNG DISPLAY CO., LTD.
Petitioner,

v.

PICTIVA DISPLAYS INTERNATIONAL LTD.,
Patent Owner.

Case IPR2024-01093
Patent No. 8,723,164

PETITIONER'S MOTION TO STRIKE

Pursuant to 37 C.F.R. §§ 42.5(a), 42.7(a), 42.20(a), and Board authorization, Petitioner moves to strike Exhibits 2105 and 2106, and the portion of Patent Owner’s Sur-reply that relies upon these exhibits, as barred by the Board’s rule prohibiting the introduction of new exhibits with a sur-reply.

“A sur-reply . . . may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” 37 C.F.R. § 42.23(b). This rule imposes a “prohibition on submitting new evidence with a Sur-reply,” absent Board authorization. *Resi Media LLC v. BoxCast Inc.*, IPR2022-00067, Paper 56 at 48-49 (PTAB Apr. 12, 2023). In contradiction of this rule, and without seeking Board authorization, Patent Owner filed new exhibits with its sur-reply that are not “cross-examination” of any witness. These exhibits, and Patent Owner’s attempt to rely on them in its sur-reply, therefore should be stricken.

Patent Owner asserts that it filed these documents (1) “for completeness”; (2) because “Petitioner should have submitted them under 37 C.F.R. § 42.51(b)(1)(iii)” because they allegedly include “inconsistent positions that Petitioner or its RPI has taken in other proceedings”; and (3) under “the spirit and letter of the recently issued General Order [Paper 36].” Ex. 3004. All of these justifications lack merit. *First*, Rule 42.23(b)’s prohibition on exhibits does not (and should not) include a “for completeness” exception. *Second*, the documents are web bios of an author, and do not include any “positions” that have been taken

in other proceedings. Further, the documents do not include any information that is “inconsistent” with Petitioner’s arguments in this proceeding. In any event, Rule 42.51(b)(1)(iii) requires service, not filing, of inconsistent evidence, and Patent Owner certainly received the documents; it filed them. *Finally*, the General Order addresses the filing of developments in adjudication, which these exhibits are not. *See* Paper 36.

Exhibits 2105 and 2106 are web bios of one of the authors (Dr. Neher) of Exhibit 1017 (“Yang”). Yang is a prior art background reference that Petitioner submitted with the Petition, and that Patent Owner and its expert addressed in detail in the P.O. Response and accompanying declaration. *See* P.O Response (Paper 21) at 28–31, 36–40, 50; Ex. 2019 at ¶¶ 70–72, 78–79, 85–86, 89, 107, 112, 131. Patent Owner now seeks to rely on Exhibits 2105 and 2106 to make a dubious assertion that Yang should be disregarded because “the authors are experts, not POSITAs,” as discussed below. P.O. Sur-reply (Paper 35) at 15. If Patent Owner desired to use these exhibits, it should have introduced them with its Response, when it addressed the Yang paper in detail. Patent Owner did not do so.

Rather, Patent Owner sought to introduce these web bios at the sur-reply stage by marking them as exhibits during the reply deposition of Petitioner’s expert, Dr. Holmes. *See* Ex. 2033 (Holmes Tr.) at 128:11–130:9. This attempt to circumvent Rule 42.23(b) is improper, particularly as Dr. Holmes lacked

familiarity with the exhibits or the information therein.

Indeed, Dr. Holmes testified that “I don’t know these authors [of Yang], I’m not familiar with them” (Ex. 2033 at 128:6–7) and indicated that he had not seen Exhibit 2105 nor Exhibit 2106 before (Ex. 2033 at 128:22–129:12, 130:7–9). Now, Patent Owner seeks to use these documents to establish that “the authors [of Yang] are experts, not POSITAs, as Dr. Holmes confirmed” (P.O. Sur-reply at 15), by citing to a portion of Dr. Holmes’s testimony where he testified that, “just going back to the biographical information you sent me. . . . I suspect that it is a reasonable conclusion, that he [Dr. Neher] would be an expert at that point in time.” Ex. 2033 at 132:23–24. Rather than mere cross-examination, this is an oblique attempt to use the web bio exhibits as substantive evidence.

Moreover, the web bios are not “inconsistent” evidence. The fact that one of the authors of Yang may have further experience does not establish that this prior art paper is not indicative of what was known to POSITAs (who would have access to the information in the paper). Exhibits 2105 and 2106 should be stricken.

Dated: September 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Petitioner's Motion to Strike was served by electronic mail on the following counsel of record for patent owner:

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Date: September 30, 2025

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