

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

OPPOSITION TO PETITIONER'S MOTION TO STRIKE

Mail Stop "*PATENT BOARD*"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioner's motion to strike Exhibits 2105 and 2106 should be denied because it is based on (1) an incorrect reading of 37 C.F.R. § 42.23(b) and PTAB precedent, and (2) an incorrect understanding of the reason the exhibits were submitted.

As to (1), Section 42.23(b) prohibits the submission of non-transcript “*new evidence*” with the sur-reply, but says nothing about deposition exhibits submitted, not as evidence, but for the purpose of allowing the Board to understand the context of the cross-examination. Previous panels have allowed such exhibits. For example, in *Ascend Performance Operations LLC v. Samsung SDI Co.*, IPR2020-00349, Paper 53 (July 15, 2021), the patent owner moved to exclude exhibits submitted for the first time with petitioner's sur-reply. The Board interpreted Rule 42.23(b), noting that “if exhibits are introduced during deposition for the purpose of testing the witness’ testimony, a party should be able to submit those exhibits with the transcript, so the Board has the full context available in order to evaluate the testimony.” *Id.* at 12. While *Ascend* was vacated on unrelated grounds (*id.*, Paper 57), a later panel in *Edwards Lifesciences Corp. et al. v. Cardiovalve, Ltd.*, IPR2021-00383, Paper 60 (P.T.A.B. July 18, 2022) followed the same reasoning in denying a motion to strike deposition exhibits. *Id.* at 87 (allowing deposition exhibits “to be used as an adjunct to reading and understanding the deposition transcript.”). The panel in *Edwards* found no prejudice to the patent owner because the deponent “had an opportunity to respond to the exhibits during his deposition.” *Id.*

In support of the Motion, Petitioner cites only to *Resi Media* (Motion at 1), but in *Resi Media* the patent owner had submitted a new expert declaration with supporting exhibits with its sur-reply, none of which were used as deposition exhibits. *See Resi Media LLC v. BoxCast Inc.*, IPR2022-00067, Paper 56 at 48-49 (PTAB Apr. 12, 2023); *see also id.*, Paper 40 (Sur-Reply Exhibit List) at 5-6.

There are also strong policy reasons to allow submission of deposition exhibits, particularly in situations where the petitioner has submitted a lengthy reply declaration, as here. If petitioners were permitted to submit reply declarations without patent owners being able to present the Board with a full picture of what transpired at the deposition, petitioners would be incentivized to load the record with lengthy reply declarations and supporting evidence, knowing that the Board's ability to test the voracity of the deposition testimony would be handcuffed by not having access to the actual documents on which the deposition testimony was based.

As to (2), the Motion cites to EX3004, which does not mention EX2105-2106 of this IPR, *i.e.*, the web bios of the co-author of Yang (EX1017). The exhibits provide important context for Dr. Holmes' testimony that, despite not knowing the co-author of Yang (EX1017) personally, it is "a reasonable conclusion" that "he would be an expert at that point in time," *i.e.*, when he authored Yang. EX2033, 132:15-24. Thus, the exhibits are helpful to understand the context of Dr. Holmes' testimony that Dr. Neher, the co-author of Yang, would have been an expert, not a

POSITA, when he wrote Yang (EX1017).

Regarding timing, it was in the Reply that Petitioner first argued that “Yang illustrates how tuning the composition of the hole transporting material TPD in PVK is a standard practice for optimizing device performance (Ex.1017, Table I), and this same approach would be applicable for a device utilizing PMMA.” Reply, 12 (citing Dr. Holmes *reply* declaration). That the authors of Yang were experts, not POSITAs, is directly relevant to whether Yang’s alleged “tuning” was in fact “standard practice” or not. Since that argument was presented only in the Reply, the Sur-reply was the earliest opportunity for Patent Owner to address the issue. Moreover, Petitioner did not move to strike three other deposition exhibits (EX2107-2109), strongly suggesting that the Motion is designed to shield important information from the Board and not to address a legitimate infraction.

Finally, striking “a portion of a party’s brief is an exceptional remedy that the Board expects will be granted rarely.” CTPG at 80. Petitioner does not dispute that the evidence was in response to the new reply argument, as described above. Nor does Petitioner claim to be prejudiced. Thus, the Board should not strike any portion of the Sur-reply. *Meta Platforms, Inc. v. Eight KHZ, LLC*, IPR2023-01003, Paper 61 at 78-79 (PTAB, Jan. 7, 2025) (denying motion to strike where sur-reply cited transcript that discussed newly introduced exhibits); *Casper Sleep Inc. v. Werner Media Partners, LLC*, IPR2024-00474, Paper 48 at 7 (PTAB Jan. 13, 2025).

Dated: October 5, 2025

Respectfully submitted,

By: /Jonathan Lindsay/

H. Annita Zhong (Reg. No. 65,530)

IRELL & MANELLA LLP

1800 Avenue of the Stars, Suite #900

Los Angeles, CA 90067-4276

Telephone: (310) 203-7183

hzhong@irell.com

Jonathan M. Lindsay (Reg. No. 45,810)

IRELL & MANELLA LLP

840 Newport Center Drive, Suite 400

Newport Beach, CA 92660

Tel: (949) 760-0991

Email: jlindsay@irell.com

Counsel for Patent Owner

Pictiva Displays International Ltd.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on October 5, 2025, a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION TO STRIKE** was served by electronic mail, as agreed to by the parties, upon the following:

COVINGTON & BURLING LLP

Scott C. Weidenfeller (Reg. No. 54,531)

sweidenfeller@cov.com

David A. Garr (Reg. No. 74,932)

dgarr@cov.com

Hyun S. Byun (Pro Hac Vice)

hbyun@cov.com

SDC-Pictiva-IPR@cov.com

/Pia S. Kamath/

Pia S. Kamath