

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 IPR2024-01094
Patent No. 8,558,223

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 2057, 2105, and 2106, the portion of Exhibit 2056 that includes Exhibits 2105 and 2106, and the portions of Patent Owner's Sur-reply that rely upon these exhibits, as barred by the Board's rule prohibiting the introduction of new exhibits (37 C.F.R. § 42.23(b)) with a sur-reply. Petitioner also moves to strike Exhibit 2058 as duplicative of Exhibit 1021.

"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 (despite advising Petitioner's counsel that it would do so), Patent Owner filed several new exhibits with its sur-reply. Each of these exhibits, their inclusion in Dr. Rand's transcript (Ex. 2056), and references to these exhibits in Patent Owner's sur-reply, 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 34]." 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 statements are not inconsistent, and, in any event, Rule 42.51(b)(1)(iii) requires service, not filing, of inconsistent statements. Patent Owner certainly received the documents; it filed them. *Finally*, the General Order addresses the filing of developments in “adjudication,” not positions taken by other experts. Paper 34.

Exhibit 2057 is not “cross-examination” of any witness in this IPR. It is the transcript of a different witness (Dr. Holmes) in a different IPR (IPR2024-01095), who has not offered any opinions on the ’223 patent at issue in this IPR. Patent Owner sought to question Dr. Holmes about Dr. Rand’s opinion (in this IPR) that Ma showed a 2-3 fold conductivity improvement (Ex.1020 at ¶12 & n.3).¹

In any event, Dr. Holmes’s testimony is not “inconsistent.” Rather, Dr. Holmes testified that he had not considered the issue in his reply declaration in IPR2024-01095, and he was not willing to give a quantitative number based only on the data Patent Owner gave him during his deposition. Ex.2057, 226:14-232:9.

Exhibits 2105 and 2106: Ex.2105 is a technical paper, and Ex.2106 is a

¹ Notably, Patent Owner considers attempts to manufacture inconsistent statements by experts in different IPRs to be inappropriate. *See* IPR2024-01093 Ex.1043, 76:5-21 (“Ms. Zhong: Counsel, are you trying to get testimony for the 223 IPR? That is inappropriate and it is outside the scope. . . .”) (cleaned up).

transcript from an expert in parallel litigation to which Petitioner is not a party. Patent Owner first sought to introduce these two exhibits in redirect during its own expert's deposition, after a delay of more than one hour after cross-examination was concluded. *See* Ex.1021, 149:25-150:25; 168:8-24. Patent Owner faulted Petitioner for not filing these exhibits with the transcript, even though 37 C.F.R. § 42.53(f)(7) makes clear that only "[t]he testimony must be filed as an exhibit," not all exhibits used in a deposition. And when Patent Owner sought to use the exhibits again when deposing Dr. Rand, he just read the lines Patent Owner directed him to in Ex.2106 and confirmed he had not reviewed either exhibit. Ex.2056, 64:1-70:10; 154:15-156:10. That is not "inconsistent" testimony.

Nor are the exhibits "inconsistent" with Dr. Rand's testimony. As Dr. Rand explained, the numerical value of the HOMO of $W_2(hpp)_4$ in Ex.2105 is irrelevant: doping BPhen with $W_2(hpp)_4$ improves conductivity over BPhen alone. Ex.1020 ¶29; *see id.* at ¶¶20-30. For Ex.2106, Dr. Kymissis says he does not 'necessarily' agree that, in the abstract, simultaneous and joint vaporization are the same. Ex.2106, 103:12-16. Dr. Rand says nothing contrary, instead opining that Werner and Ma, specifically, disclose joint vaporization. *E.g.*, Ex.1020; ¶¶31-36; 42-54.

Exhibit 2058 is purportedly Ex.1021 "with missing exhibits" (Paper 32 at ix), but it includes no exhibits. It therefore is substantively identical to Ex.1021 and is duplicative. No exhibits are "missing" from either document.

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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