

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. IPR2024-01095
Patent No. 11,828,425

PATENT OWNER'S PRELIMINARY SUR-REPLY

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EXHIBIT LIST

Exhibit	Description
2001	Disclaimer, U.S. Patent 11,828,425 (filed Oct. 25, 2024)
2002	Declaration of P. Morgan Pattison, Ph.D.
2003	Kim, H. M., Seo, J. H., Han, W. K., Lee, K. H., Kang, H. J., Yoon, S. S., & Kim, Y. K. (2011), Improvement of Mixed Electron Transport Structure Red Phosphorescent Organic Light-Emitting Diodes, <i>Molecular Crystals and Liquid Crystals</i> , 538(1), 53-60
2004	Arunandan Kumar, Ritu Srivastava, Priyanka Tyagi, D. S. Mehta, M. N. Kamalasanan, Effect of doping of 8-hydroxyquinolinatolithium on electron transport in tris(8-hydroxyquinolinato)aluminum, <i>J. Appl. Phys.</i> 1 June 2011; 109 (11): 114511
2005	Chan Seok Oh, Jun Yeob Lee, High triplet energy n-type dopants for high efficiency in phosphorescent organic light-emitting diodes, <i>Organic Electronics</i> , Volume 16, 2015, Pages 34-39
2006	Sunwoo Kang, Sang Ho Jeon, Taekyung Kim, Unraveling the complexation effect of electron transporting materials with Liq on the charge transport properties: A theoretical perspective, <i>Chemical Physics Letters</i> , Volume 810, 2023, 140207
2007	T. Sasaki, T. Oono, T. Shimizu, H. Fukagawa, Effects of Energy-Level Alignment on Operating Voltages of Blue Organic Light-Emitting Diodes. <i>Adv. Mater. Interfaces</i> 2023, 1, 2201925
2008	Vadim I. Adamovich, Steven R. Cordero, Peter I. Djurovich, Arnold Tamayo, Mark E. Thompson, Brian W. D'Andrade, Stephen R. Forrest, New charge-carrier blocking materials for high efficiency OLEDs, <i>Organic Electronics</i> , Volume 4, Issues 2-3, 2003, Pages 77-87
2009	Björn Lüssem, Chang-Min Keum, Daniel Kasemann, Ben Naab, Zhenan Bao, and Karl Leo, Doped Organic Transistors, <i>Chemical Reviews</i> 2016 116 (22), 13714-13751

Exhibit	Description
2010	U.S. Patent No. 11,585,504
2011	U.S. Patent No. 10,605,422
2012	U.S. Patent No. 9,797,567
2013	Federal Court Management Statistics for U.S. District Courts, available from https://www.uscourts.gov/statistics/table/na/federal-courtmanagement-statistics/2024/06/30-1
2014	Samsung Invalidity Contentions in the parallel district court case

I. Ma Has Not Been Shown to Be Prior Art

An IPR cannot be instituted unless “the information presented *in the petition*” shows a reasonable likelihood of prevailing. *Microsoft Corp. v. Throughputer, Inc.*, IPR2023-00852, Paper 18 at 17-18 (PTAB Nov. 9, 2023); 35 U.S.C. § 314(a). It is therefore “fundamental” for Petitioner to establish Ma’s status as a prior art printed publication. *Microsoft Corp. v. Corel Software, LLC*, IPR2016-01083, Paper 14 at 13, n.5 (PTAB Dec. 1, 2016). Yet, the Petition presents no such evidence and the new Garland declaration fails to remedy that fatal flaw.

Just like a thesis housed in a traditional library is not prior art when its index card was filed only alphabetically by author name and therefore was not sufficiently searchable (*see, e.g., In re Cronyn*, 890 F.2d 1158 (Fed. Cir. 1989)), an article in Elsevier’s digital library would not be prior art unless it was “sufficiently accessible to the public interested in the art” as of the critical date. *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009); *see also Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 773 (Fed. Cir. 2018) (“[P]ublic accessibility requires more than technical accessibility.”) (cleaned up).

No evidence has been supplied on the requisite public accessibility. *See* Reply 1-4; EX1036 *generally*. Ms. Garland does not aver that Exhibit A to her declaration, downloaded “on or about November 8, 2024,” is what existed on August 29, 2008. *See, e.g.,* EX1036, ¶¶9-11. Nor does she provide any information on Elsevier’s

practice in 2008-2009 on indexing or cataloging. Nor does she explain what “available online” meant in 2008-2009, how readers learnt of new articles then, or how the purported volume of *Synthetic Metals* was disseminated.

The declaration merely confirms the undisputed fact that Ma is *now* available from Elsevier’s web site. It does not claim or show that a skilled artisan interested in the article could have located it by exercising reasonable diligence at the relevant time. *See* EX1036. It does not describe Elsevier digital library’s search capability at the relevant time. *See id.* Nor does she or Petitioner present any evidence that a copy of Ma could be located after a reasonable search using some other search tools. In *Cronyn*, a thesis was disqualified as prior art because it could not be located unless one knew of its title or the author. *Cronyn*, 890 F.2d at 1159-61. Here too, there is no evidence that Ma could be located unless one knew the author’s names or the title of the paper. *See* EX1018 *generally*; IPR2024-01094 EX2001, ¶116. Nor does the Garland Declaration contradict Dr. Schanze’s recollection that (1) “in 2008-2009, Elsevier journals often did not promptly index new articles, especially online-only versions,” (2) that “in 2008-2009, Elsevier’s search tool had limited keyword search capability” and “often failed to identify articles of interest,” or (3) that then-existing “indexing services, ... did not index online only articles, making them difficult or impossible to locate.” *Id.*

In that regard, the Garland Declaration is nothing like the declarations that

courts found sufficient to establish public accessibility. In *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 745 F. Supp. 2d 1237, 1245-46 (M.D. Fl. Sept. 29, 2010) and *Palo Alto Networks, Inc. v. Finjan, Inc.*, IPR2015-01979, Paper 62 at 26-28 (PTAB Mar. 15, 2017), the declarants explained how a publication could be accessed online before the priority date using search tools. Ms. Garland, however, does not even claim that Ma is one of the “certain records” for which she is a “custodian of.” EX1036, ¶4. She mentions “metadata,” but offers no testimony on Ma’s metadata. *Id.*, ¶10. She does not testify that Ma was a business record as of 2008-2009 or the general record practices of Elsevier in 2008-2009. Nor does she explain her basis for her conclusion about Ma’s publication. *Id.*, ¶11.

Instead, Ms. Garland focuses on Ma “as it existed on or about November 8, 2024,” noting that Ma is “currently available for public download” and presently “is maintained in the ordinary course of Elsevier’s business.” *Id.*, ¶¶9-11. This information on present-day record and practice is too late to establish public accessibility or to even overcome a hearsay objection to Ma’s date over a decade earlier. Fed. R. Evid. 803(6) (record must be “made at or near the time”). The referenced “hyperlink” with “information” about “version[s]” of Ma (Reply 1) is not part of the record and highlights Ma’s version problem.

Lacking evidence, Petitioner argues that Ma should be presumed published because Elsevier is allegedly an “established” publisher and Ma was “peer-

reviewed,” citing only EX1010, 810 that says no such thing. Reply 1. Petitioner counsel’s unsupported “[a]ttorney argument is not evidence.” *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018) (cleaned up). Petitioner’s cases all involved significant, external evidence—Copyright Office records, Library of Congress records, MARC records, Internet Archive records, Amazon listings, librarian declarations, etc.—to explain the when and how of access by skilled artisans and why the publisher was “established.” *VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1062-63, 1065-67 (Fed. Cir. 2020); *NearMap US, Inc. v. Eagle View Techs. Inc.*, IPR2022-01009, Paper 28 at 25-27 (PTAB Dec. 14, 2023) (similar). In contrast, there is “no evidence [here] that [Ma] was disseminated to the interested public” beyond identifying a disembodied online “date.” *Blue Calypso LLC v. Groupon, Inc.*, 815 F.3d 1331, 1349-50 (Fed. Cir. 2016) (cleaned up). As in *Blue Calypso*, Petitioner did not provide any evidence of online viewing, downloading, indexing for search, or any roadmap for how a skilled artisan would navigate to Ma before the critical date. *Id.* A “[p]ublished in print” online date without the “how,” “where” or “to whom” cannot establish online public availability. *In-Depth Geophysical, Inc. v. Conocophillips Co.*, IPR2019-00849, Paper 17 at 9-10 (PTAB, Mar. 30, 2020); *First Solar, Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13 at 18 (PTAB Nov. 16, 2023) (archive with no evidence of indexing). Petitioner has simply failed to demonstrate that Ma qualifies as prior art.

II. Discretionary Denial under 314(a) is Justified

In IPR2024-00855 involving another patent in the same suit, the Board found that *Finitiv* factors 2, 4, 5 favored discretionary denial. *Samsung Display Co., Ltd. v. Pictiva Displays Int'l Ltd.*, IPR2024-00855, Paper 12 at 12 (Nov. 19, 2024). The facts here are even more compelling because the deadline for an institution decision in this proceeding is two months later than that of IPR2024-00855. Thus, more resources will have been spent by the projected deadline of institution decision. For instance, in addition to activities mentioned in POPR, by then, the parties will have also completed 4-6 depositions, conducted source code reviews, and spent resources on reverse engineering.

Petitioner also speculates that the initial suit (the -495 matter) might be dismissed. Reply 4-5. That is unlikely, in light of Dr. Gilstrap's ruling in a case involving similar facts. *See Valtrus Innovations Limited v. SAP America, Inc.*, 2:24-cv-00021, Dkt. 84-1 (E.D. Tex. Nov. 14, 2024). There, Judge Gilstrap denied defendants' motion to dismiss for lack of standing based on arguments nearly identical to those made by Samsung. Thus, Pictiva does not expect the Court to dismiss the -495 action. Instead, the suit is expected to proceed as scheduled.

Dated: November 27, 2024

Respectfully submitted,

By: /Hong Zhong/H. Annita Zhong. (Reg. No. 66,530) (lead)
Jason Sheasby (*pro hac vice to be filed*)

IRELL & MANELLA LLP

1800 Avenue of the Stars, Suite 900

Los Angeles, CA 90067

Tel: (310) 277-1010

Fax: (310) 203-7199

Email: hzhong@irell.com

Email: jsheasby@irell.com

Philip Warrick (Reg. No. 54,707)

Blair A. Silver (Reg. No. 68,003)

IRELL & MANELLA LLP

750 17th Street NW, Ste. 850

Washington, DC 20006

Tel.: (202) 777-6500

E-mail: pwarrick@irell.com

E-mail: bsilver@irell.com

Rebecca Carson (*pro hac vice*)

Jie Gao (Reg. No. 73,835)

IRELL & MANELLA LLP

840 Newport Center Drive, Suite 400

Newport Beach, CA 92660

Telephone: (949) 760-0991

Facsimile: (949) 760-5200

Email: rcarson@irell.com

Email: jgao@irell.com

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6, that on November 27, 2024, a complete copy of the **PATENT OWNER'S PRE-INSTITUTION SUR-REPLY** was served upon the following, by ELECTRONIC MAIL:

Scott C. Weidenfeller, sweidenfeller@cov.com,

David A. Garr, dgarr@cov.com

SDC-Pictiva-IPR@cov.com

/Susan Langworthy/

Susan Langworthy