

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
and SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,
v.

HARBOR ISLAND DYNAMIC, LLC,
Patent Owner.

Case No. IPR2024-01404
U.S. Patent No. 9,147,609

**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO
MOTION TO EXCLUDE EVIDENCE**

Patent Owner's (HID's) Opposition does not remedy the fundamental defects in Exs. 2008, 2010, and 2011. These exhibits should be excluded.

I. EXHIBIT 2008

A. Lack of Authentication

HID asserts that Mr. Berg authenticates Ex. 2008. Paper 27 ("Opp."), 2. He does not. He does not claim any personal knowledge of the document's authenticity, publication date, or accessibility. *See* Ex. 2012 ("Berg"), ¶50.

HID contends that various indicia appearing on Ex. 2008 are sufficient to authenticate the document. Opp., 2-3. But they are not. Ex. 2008 contains no publication date or ISBN number. Its recitation of "ICEP 2014 Proceedings" does not prove what the exhibit is. Paper 26 ("Motion"), 3 (citing *TRW Automotive U.S. LLC v. Magna Elecs. Inc.*, IPR2014-01348, Paper 25 at 9-10 (PTAB Jan. 15, 2016)). The number at the bottom of the first page also does not demonstrate that the alleged larger volume is a published work. Ex. 2008, 1. The notation "Downloaded on June 18, 2025 at 18:45:11 UTC from IEEE Xplore" or that Ex. 2008 can be currently downloaded from IEEE Xplore (Opp., 2 n. 2, 3) merely reflects access in 2025; it does not establish that the document was published or accessible in 2014, as HID claims.

None of HID's alleged indicia demonstrates publication in 2014, distinguishing this case from those cited by HID. In *Continental Automotive Sys.*,

Inc. v. Intellectual Ventures II, LLC, the Board emphasized that the document at issue bore “a *publication date* of the [IEEE] Standard.” IPR2022-01130, Paper No. 41 at 14 (PTAB. Dec. 4, 2023) (emphasis original). And, in *Mercedes-Benz USA, LLC v. Daedalus Prime LLC*, the Board not only considered IEEE Xplore evidence, but also relied heavily on a “MacPherson Declaration” for confirming “that copies of Xu were made available no later than the ‘last date of the conference,’ which was November 15, 2011.” IPR2023-01344, Paper No. 31 at 39-41 (PTAB January 25, 2025). In contrast, Ex. 2008 contains no publication date, and HID has submitted no IEEE Xplore evidence and no declaration to authenticate this non-patent literature.

HID asserts that Ex. 2008 is self-authenticating under FRE 902. Opp., 3 (citing *Intel Corp. v. Pact XPP Schweiz AG*, IPR2020-00528, Paper No. 39 (PTAB Aug. 9, 2021)). But FRE 902 applies only to documents bearing characteristics that render them self-authenticating without extrinsic evidence. The characteristics here do not evidence authenticity or publication. In *Intel*, unlike here, the document at issue had a copyright notice and an ISBN number. IPR2020-00528, Paper No. 39 at 16. The Board also specifically “credit[ed] ... testimony that the date on the article, 1996, corresponds to the ‘date of publication.’” *Id.* at 17. It also relied on witness testimony authenticating a physical copy. *Id.* Here, HID offers none of this evidence.

B. Irrelevant, Prejudicial, and Confusing

HID argues that extrinsic evidence may postdate the critical date of the ’609

Patent. Opp., 4. But contrary to HID's assertion, Ex. 2008 does not address the knowledge of one of skill in the art at the time of the alleged invention. HID's cited case law does not remedy this deficiency of the exhibit. *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.* merely held a district court erred in refusing to consider extrinsic evidence that was a non-public use but nonetheless "before the priority date of the [] patent." 359 F.3d 1367, 1375 (Fed. Cir. 2004). *Disney Enters., Inc. v. Kappos* permitted the use of references published one to six months after the critical date in assessing the state of the art, 923 F. Supp. 2d 788, 800-01 (E.D. Va. 2013), but this is very different from the nearly 2 years after the alleged critical date of the '609 Patent that Ex. 2008 was supposedly published. And *Yeda Research and Dev. Co. v. Mylan Pharms. Inc.* permitted a postdated reference in assessing state of the art because the research disclosed in the reference was initiated before the alleged critical date. 906 F.3d 1031, 1041-42 (Fed. Cir. 2018). That is not the case here.

II. EXHIBITS 2010 AND 2011

A. Lack of Authentication

HID asserts that Mr. Berg's declaration authenticates these exhibits. Opp., 6, 8. It does not. Mr. Berg asserts no personal knowledge regarding these documents' authenticity, publication date, or public accessibility. *See* Berg ¶¶69, n. 2; ¶72.

HID argues that various indicia on these exhibits are sufficient to authenticate the documents. Opp., 6, 8. But they are not. Neither exhibit contains any mention of

ISSN or a publication date. The copyright notices and other information on the exhibits do not prove what they are. Motion, 5 (citing *TRW*, IPR2014-01348, Paper 25 at 9-10). Further, the notation “Downloaded on June 24, 2025 at 01:11:26 UTC from IEEE Xplore” or the ability to download Ex. 2010 currently reflects access in 2025—not publication in 2014. Likewise, the ability to download Ex. 2011 from Elsevier (Science Direct) reflects access in 2025—not publication in 2024. The starting page numbers on Exs. 2010 and 2011 also do not demonstrate that the alleged respective larger volumes are published works.

None of HID’s alleged indicia demonstrates publication of Ex. 2010 in 2014 or of Ex. 2011 in 2024. Unlike the cases cited by HID, Exs. 2010 and 2011 contain no publication date and HID has submitted no evidence and no declaration to authenticate these exhibits. *Cf. Continental*, IPR2022-01130, Paper No. 41 at 14; *Mercedes-Benz*, IPR2023-01344, Paper No. 31 at 39-41.

HID also asserts that Exs. 2010 and 2011 are self-authenticating under FRE 902. Opp., 7, 9 (citing *Intel*, IPR2020-00528, Paper No. 39). However, any indicia on Exs. 2010 and 2011 fall short of establishing authenticity or publication. Unlike in *Intel*, they have no ISBN number and there are no physical copies, much less testimony about physical copies. *Cf. Intel*, IPR2020-00528, Paper No. 39 at 17.

B. Irrelevant, Prejudicial, and Confusing

HID argues that extrinsic evidence may postdate the ’609 Patent’s alleged

critical date. Opp., 7-8, 9-10. But contrary to HID's assertion, Exs. 2010 and 2011 do not address the knowledge of one of skill in the art at the time of the alleged invention. HID's repeated reliance on the case law it cited for Ex. 2008 does not remedy this deficiency of Exs. 2010 and 2011. *Supra* Section I.B. Nor does HID's reliance on *In Re Epstein*. The documents in *Epstein* were used to show the public use of software products before the critical date. *Epstein*, 32 F.3d at 1566-67 (Fed. Cir. 1994). That is not the case here: Exs. 2010 and 2011 do not disclose anything occurring before the '609 Patent's alleged critical date.

The Board should exclude Exs. 2008, 2010, and 2011.

Respectfully submitted,

Dated: December 29, 2025

By: / Joshua L. Goldberg /
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner's Reply to Patent Owner's Opposition to Motion to Exclude Evidence** was served on December 29, 2025, via email directed to counsel of record for Patent Owner at the following:

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Patent Owner has consented to service by email.

Dated: December 29, 2025

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