

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case IPR2025-00001
U.S. Patent No. 11,386,024

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Netlist, Inc. (“Patent Owner”) objects under the Federal Rules of Evidence (FRE) to the admissibility of Exhibits 1003, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1015, 1018, 1021, 1024, 1025, 1026, 1029, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1077, 1078, 1080, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1091, 1092, 1093, 1094, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1115, 1116, 1117, and 1118, filed by Petitioner Samsung Electronics Co., Ltd. (“Petitioner”) with its Petition and other pre-institution papers.

Patent Owner’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1) within the allowed ten business days of the institution of trial. Patent Owner files these Objections to provide notice to Petitioner that Patent Owner may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

I. IDENTIFICATION OF GROUNDS FOR OBJECTIONS

A. EX1003 – Dr. Alpert’s Declaration

Patent Owner objects to Exhibit 1003 to the extent Petitioner relies on Exhibits 1005-1007, 1015, 1021, 1024-1026, 1029, 1032-1039, 1044-1046, 1048, 1049, 1051-1053, 1056, 1058-1062, 1069-1075, 1077, 1078, 1083-1089, 1091-

1094, and 1098-1109 for the same reasons as provided below, and/or because Exhibits 1005-1007, 1015, 1021, 1024-1026, 1029, 1032-1039, 1044-1046, 1048, 1049, 1051-1053, 1056, 1058-1062, 1069-1075, 1077, 1078, 1083-1089, 1091-1094, and 1098-1109 are not qualified to be the basis for an expert opinion under FRE 703. Therefore, these portions of Exhibit 1003 are inadmissible under FRE 702 and FRE 703.

Patent Owner also objects to Exhibit 1003, including at least ¶¶36-432, as improper expert testimony under FRE 702, 703, and 37 C.F.R. § 42.65. There has not been an adequate showing that Dr. Alpert's testimony is based on sufficient facts or data, is the product of reliable principles or methods, or that the testimony will help the Board understand the evidence or determine a fact in issue.

Patent Owner further objects to ¶¶1-36, 60, 160-161, 172, 180, 184, 186, 197, 221-222, 326, and 432 of Exhibit 1003 as being irrelevant under FRE 401, 402, and 403 because they have not been relied upon in support of any argument made in the Petition.

B. Exhibits 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1015, 1018, 1021, 1024, 1025, 1026, 1029, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1077, 1078, 1080, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1091, 1092, 1093, 1094, 1098, 1099, 1100, 1101,

1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1115, 1116, 1117, and 1118.

Patent Owner objects to Exhibits 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1015, 1018, 1021, 1024, 1025, 1026, 1029, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1077, 1078, 1080, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1091, 1092, 1093, 1094, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1115, 1116, 1117, and 1118 for one or more of the following reasons.

1. Exhibits that were not cited or discussed in the Petition or Dr. Alpert's Declaration.

Exhibits 1009, 1010, 1011, 1012, 1013, 1018, 1040, 1041, 1042, 1047, 1063, 1064, 1065, 1066, 1067, 1068, 1080, 1082, and 1115 were not cited or discussed in the Petition or in Dr. Alpert's declaration. Rule § 42.104(b)(5) requires the Petition "identify[] specific portions of the evidence that support the challenge," and provides that "[t]he Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge."

Patent Owner objects to these exhibits under FRE 401, 402, and 403, as well as 37 C.F.R. § 42.104(b)(5), for including information that is irrelevant because,

among other things, they do not form a basis of the instituted grounds, and their probative value to any ground upon which trial was instituted is substantially outweighed by other considerations such as danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

2. Exhibits not cited or discussed in the Petition, and which cannot be incorporated by reference from Dr. Alpert's Declaration.

Exhibits 1005, 1006, 1007, 1032, 1033, 1035, 1038, 1058, 1060, 1085, 1086, 1087, 1094, 1098, 1099, 1100, 1101, and 1104 were not cited or discussed in the Petition. These exhibits were cited or discussed in Dr. Alpert's declaration, but to consider them would constitute an improper incorporation by reference under 37 C.F.R. § 42.6(a)(3).

Patent Owner objects to these exhibits under FRE 401, 402, and 403, as well as 37 C.F.R. §§ 42.6(a)(3) and 42.104(b)(5), for including information that is irrelevant because, among other things, they do not form a basis of the instituted grounds, and their probative value to any ground upon which trial was instituted is substantially outweighed by other considerations such as danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

3. Papers and Exhibits from other PTAB and district court proceedings.

Exhibits 1021, 1032, 1033, 1034, 1035, 1041, 1047, 1050, 1054, 1055, 1058, 1059, 1060, 1061, 1062, 1064, 1065, 1066, 1067, 1068, 1077, 1078, 1082, 1091, 1092, 1093, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, and 1115 are various Papers and Exhibits from *other* PTAB and district court proceedings, related to *other* patents, and *not* the '024 patent at issue in this proceeding.

Patent Owner objects to these exhibits under FRE 401, 402, and 403 for including information that is irrelevant because, among other things, they do not form a basis of the instituted grounds, and their probative value to any ground upon which trial was instituted is substantially outweighed by other considerations such as danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Patent Owner further objects to these exhibits, to the extent they are cited in the Petition without explanation, as being improperly incorporated by reference under 37 C.F.R. § 42.6(a)(3).

Patent Owner also objects to these exhibits as impermissible hearsay under FRE 801 and 802 to the extent these exhibits are offered for the truth of the matters asserted. Petitioner has not identified any applicable exception or exclusion to the rule against hearsay that applies to these exhibits.

4. JEDEC documents

Exhibits 1015, 1024, 1025, 1026, 1029, 1036, 1037, 1039, 1046, 1048, 1049, 1051, 1052, 1053, 1056, 1071, 1072, 1073, 1074, 1075, 1083, 1084, 1085, 1086, 1087, 1088, 1116, 1117, and 1118 are various documents related to the JEDEC standard-setting organization.

Patent Owner objects to these exhibits¹ under FRE 401, 402, and 403 for including information that is irrelevant because, among other things, they do not form a basis of the instituted grounds, and their probative value to any ground upon which trial was instituted is substantially outweighed by other considerations such as danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Patent Owner also objects to these exhibits as impermissible hearsay under FRE 801 and 802 to the extent these exhibits are offered for the truth of the matters asserted. Petitioner has not identified any applicable exception or exclusion to the rule against hearsay that applies to these exhibits.

Patent Owner further objects to these exhibits under FRE 901 because Petitioner has not presented evidence sufficient to support a finding that the

¹ EX1015 is part of Petitioner's asserted grounds. The relevance objections under FRE 401, 402, and 403 do not apply to EX1015.

documents in question are what Petitioner claims them to be. There is no evidence that the documents are self-authenticating under FRE 902.

To the extent any of these exhibits are incomplete versions of the submitted document, Patent Owner further objects to these exhibits under FRE 106 as being incomplete and Petitioner has not produced or otherwise made available the full content of the documents to Patent Owner, and under FRE 106 as omitting the remainder of writings that ought to be considered at the same time as the respective exhibit.

5. Other documents

Patent Owner objects to Exhibits 1044, 1045, 1069, 1070, and 1089 under FRE 901 because Petitioner has not presented evidence sufficient to support a finding that the documents in question are what Petitioner claims them to be. There is no evidence that the documents are self-authenticating under FRE 902.

Patent Owner also objects to Exhibits 1044, 1045, 1069, 1070, and 1089 as impermissible hearsay under FRE 801 and 802 to the extent these exhibits are offered for the truth of the matters asserted. Petitioner has not identified any applicable exception or exclusion to the rule against hearsay that applies to these exhibits.

Patent Owner further objects to Exhibit 1070 under FRE 106 as being incomplete and Petitioner has not produced or otherwise made available the full

content of the document to Patent Owner, and under FRE 106 as omitting the remainder of writings that ought to be considered at the same time as Exhibit 1070.

II. CONCLUSION

To the extent Petitioner fails to correct the defects associated with the Challenged Evidence in view of Patent Owner's objections herein, Patent Owner may file a motion to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/ Jennifer Meyer Chagnon /

Jennifer Meyer Chagnon
Registration No. 55,440
Attorney for Patent Owner

Date: May 30, 2025

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S OBJECTIONS
TO PETITIONER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(B)(1)**

was served in its entirety on May 30, 2025, upon the following parties via
electronic mail:

Eliot D. Williams (Lead Counsel)
Theodore W. Chandler (Back-up Counsel)
Ferenc Pazmandi (Back-up Counsel)
Brianna L. Potter (Back-up Counsel)
BAKER BOTTS L.L.P.
DLSamsungNetlistIPRs@bakerbotts.com

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/ Jennifer Meyer Chagnon /

Jennifer Meyer Chagnon
Registration No. 55,440
Attorney for Patent Owner

Date: May 30, 2025

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600