

PUBLIC VERSION - REDACTED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV TECHNOLOGIES AG AND APTIV TECHNOLOGIES LIMITED,
Patent Owners.

Case No. PGR2024-00011
U.S. Patent No. 11,681,643

PETITIONER'S MOTION TO EXCLUDE EVIDENCE

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Pursuant to 37 C.F.R. §42.64(c), the Board’s Scheduling Order (Paper 13), and the Federal Rules of Evidence, Petitioner moves to exclude EX2001-2003, EX2005-2010, EX2017, EX2019, EX2024-2028, EX2030-2042, and EX2046 submitted by Patent Owner (“PO”). Petitioner identifies where it originally lodged the objection, what objections were made, and where PO relies on each exhibit.

I. EX2001 AND EX2019 SHOULD BE EXCLUDED

EX2001 is the Declaration of Henry Houh filed with PO’s Preliminary Response. EX2019 is the Supplemental Declaration of Henry Houh filed with PO’s Response (“POR”). The Board should exclude Dr. Houh’s testimony in its entirety as impermissible expert testimony by a lay person (FRE 701/702) (*viz.*, expert testimony by a non-expert who does not satisfy the qualifications of a POSITA) and as being based on an incorrect POSITA standard/definition, making it irrelevant, unreliable, and unfairly prejudicial. The Board should also exclude Dr. Houh’s secondary considerations testimony (re long-felt need, failure/skepticism of others, and copying) at ¶¶139-153 of EX2019 under *Daubert* and FRE 403. Petitioner timely raised these objections. Paper 19, 1; Paper 26, 1-7. PO cites EX2001 and EX2019 at POR, 1, and relies on EX2019 on nearly every page of the POR. PO abandons all reliance on either expert declaration in its Sur-reply.

The parties set forth their respective POSITA definitions at Pet., 28-29 and POR, 3-4. Petitioner stated a POSITA “would have been well-versed in USB

standards (including the USB 2.0 and 3.0 Specifications and the OTG Supplement) and the design/deployment of USB hosts, USB devices, and USB hubs, including suitable environments for USB systems.” Pet., 28. If the Board agrees, it should exclude Dr. Houh’s testimony because: (1) he rendered no opinions under the correct POSITA definition; and (2) he lacks the qualifications of a POSITA.

Petitioner’s level of skill—which requires knowledge/experience with USB standards and USB hosts/hubs/devices—is correct and amply supported by the record. The patent states “detection and enumeration processes are defined by USB standards and not explained here in detail,” thus presuming USB standard familiarity. EX1011, 6:32-34, 7:67-8:12, 1:22-23 (“present invention generally relates to Universal Serial Bus (‘USB’) connectivity”). It also recites the USB OTG standard as giving rise to one problem the patent sought to solve. *Id.*, 3:21-27.

The main prior art references (Chang and Chang II (EX1014-15)) also both presume a working knowledge and familiarity with USB standards and components like USB hubs, hosts, and devices. *E.g.*, Chang II, [0002] (“present invention ... **adopts USB specification**”), [0011] (“the present invention ... **adhere[s] to USB specification**”), [0012] (“**adopts USB specification**”), [0021] (“present invention **adheres to USB specification** by design, so that ‘plug and play’ works.”), [0030] (connectors “covered **under USB specification**”), [0029]-[0032] (similar), [0046]; Chang, [0002] (“**USB 2.0** host-to host transmission cable”). These are merely

examples, and numerous other references submitted with the Petition build on the ubiquitous USB standards, which a POSITA is presumed to know and understand.

A. The Board Should Exclude Dr. Houh’s Testimony Because He Rendered No Opinions Under the Correct POSITA Definition

PO and Dr. Houh were well-aware of Petitioner’s level of skill in the art, which was plainly set forth in the Petition and accompanying expert declaration. Pet., 28-29; EX1013, ¶¶45-49. While PO disputed the level of skill in the art, Dr. Houh conceded at deposition that he rendered no opinions under Petitioner’s POSITA definition, making his testimony irrelevant under that definition. EX1084 (Houh Tr.), 76:13-77:4 (“Q. Did you render any opinions in your declarations under a different definition of a POSITA? A. ... *I applied what I’ve laid out as a POSITA.* Q. And you didn’t render any opinions under someone else’s definition of a POSITA in your reports, did you? A. *In this section¹ I don’t see that I said I did that.*”). Thus, if the Board agrees USB experience/knowledge is required, it should exclude Dr. Houh’s testimony as irrelevant and far more prejudicial than probative.

B. The Board Should Exclude Dr. Houh’s Testimony Because He Lacks the USB Experience Necessary to Qualify as a POSITA

The Board should exclude Dr. Houh’s testimony if it adopts Petitioner’s USB POSITA criteria because Dr. Houh does not qualify as a POSITA. The Federal Circuit held in *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n* that “[t]o

¹ The “section” referenced was the POSITA definition used. EX1084, 74:22-76:8.

offer expert testimony from the perspective of a skilled artisan in a patent case—like for claim construction, validity, or infringement—a witness must at least have ordinary skill in the art.” 22 F.4th 1369 at 1376-77 (Fed. Cir. 2022). As the court explained, “[w]ithout that skill, the witness’ opinions are neither relevant nor reliable.” *Id.* at 1377 (internal quotation omitted).

The record shows Dr. Houh lacks ordinary skill in the art—*viz.*, Dr. Houh does not possess any (let alone the requisite amount) of experience with USB standards or system components. Nowhere in either of his declarations (EX2001 and EX2019) does Dr. Houh identify experience with USB standards or the design/deployment of USB hosts, USB devices, and USB hubs. And he confirmed his lack of USB experience at deposition. *E.g.*, EX1084, 83:3-9 (“So I did not specifically have work experience with [USB] standards”), 83:14-84:7 (“So I did not specifically work with USB ... I don’t have specific experience with the specific USB specifications laid out here”), 80:9-19 (“I don’t have specific professional experience in working with USB”). Dr. Houh suggested his advanced degree entirely compensates for his lack of USB experience. *E.g.*, *Id.*, 80:21-81:2, 88:2-12. While Petitioner stated a “relevant advanced degree may substitute for *some* work experience” (Pet., 29), this did not mean that “an advanced degree (such as a Ph.D. in network communication) could substitute for *any and all* USB experience” (EX1102, ¶30). Indeed, it cannot, especially given the importance of the USB standards in designing and

implementing USB products. *Id.* (“an advanced degree can[not] substitute for a complete lack of USB knowledge/experience.”).

As *Kyocera* made clear, even if a proposed expert has “advanced degrees in engineering and extensive experience in the design and manufacture” of related technologies, the proposed expert lacks ordinary skill in the art if they do not possess experience in the particular area set forth in the definition of a POSITA. *Kyocera*, 22 F.4th at 1376-78 (extensive experience in design and manufacture of fastener driving tools insufficient where POSITA definition entailed experience designing power nailers); *see also Avail Medsystems, Inc. v. Teladoc Health, Inc.*, IPR2022-00444, Paper 10 at 25-26 (July 21, 2022). Here, the record is clear Dr. Houh lacks the requisite USB experience and, under Federal Circuit precedent, is unqualified to opine on the patentability of the challenged claims. *Kyocera*, 22 F.4th at 1376-77.

C. The Board Should Exclude Dr. Houh’s Secondary Considerations Testimony Under *Daubert* and FRE 403

In ¶¶139-153 of EX2019, Dr. Houh opines on the secondary considerations of long-felt need, skepticism of others, and copying. As the Supreme Court has long recognized, secondary considerations such as “long-felt need in the industry for a device” “focus attention on economic and motivational, rather than technical issues.” *Graham v. John Deere Co.*, 383 U.S. 1, 35 (1966). For each topic, Dr. Houh merely provides speculative, non-technical conclusions (his “understand[ing]”) based on a “review of the trial record” (*i.e.*, Emails (*see* §III) and trial transcripts (*see* §II) that

should themselves be excluded). *Id.*, ¶142. The Board should exclude Dr. Houh’s secondary considerations testimony under *Daubert* and/or FRE 403.

Concerning long-felt need (¶¶141-143), Dr. Houh provides his “understand[ing]” that “automakers demanded three features for any viable CarPlay solution,” and simply regurgitates and characterizes inadmissible trial testimony regarding automakers purported desires. He lacks automotive industry expertise and has no independent knowledge or qualifications to opine on car makers’ wishes. Moreover, by Dr. Houh’s own admission (¶41), Apple informed “automakers of its plans to release a new technology known as CarPlay” “around 2013,” the same year the patent was filed. That cannot constitute long-felt need and Dr. Houh’s self-contradictory “long-felt need” testimony is a waste of time, unfairly prejudicial, unreliable, lacks foundation / personal knowledge, and should be excluded.

Regarding failure/skepticism of others (¶¶144-146), Dr. Houh cites only trial testimony and emails for his “understand[ing]” of industry skepticism. But Dr. Houh lacked personal knowledge and relevant industry experience. There is nothing “expert” about Dr. Houh’s testimony (*viz.*, no POSITA understanding or perspective is required) and lay testimony about hearsay is inadmissible. The Board should not endorse an approach that imbues lay speculation with the guise of expert testimony.

Dr. Houh’s testimony of purported copying (¶¶147-153) fares no better. Again, Dr. Houh merely “reviewed trial testimony” (¶148) where copying was not

at issue and the accompanying “evidentiary record” (¶147) to render speculative testimony about Microchip’s “CarPlay[] Hypothesis” and things he admits merely “appear[] to” have happened (*e.g.*, ¶149). Microchip’s alleged teardown copying was done in “July of 2016” as part of its pre-suit investigation before suing Aptiv, *after* Microchip “finished [its] device and [was] making it available [for customer testing].” EX2040, 125:9-126:16. Dr. Houh has no independent knowledge or basis for his copying “opinions,” and utilizes no POSITA expertise in rendering his speculative conclusions about Microchip’s product development decisions and timing. He has no experience in, and is not otherwise qualified to opine on, issues involving intent such as copying. His testimony should be excluded.

II. EX2002-2003, EX2017, EX2040-2042, AND EX2046 (DISTRICT COURT TRIAL TESTIMONY) SHOULD BE EXCLUDED

These exhibits are trial testimony from a week-long jury trial in an unrelated case involving different facts and circumstances on patents (owned by Microchip) not at issue here and should be excluded under FRE 401 as irrelevant, under FRE 403 as misleading, confusing the issues, a waste of the parties’ and the Board’s resources/time on collateral matters, and as far more prejudicial than probative, and under FRE 801/802 as hearsay. Petitioner timely raised these objections. Paper 19, 1-2; Paper 26, 21-22. PO’s supplemental evidence (EX2046) is just more trial testimony subject to the same objections. Paper 27, 1-3. The table identifies the exhibits and POR cites thereto (no exhibits were cited in the Sur-reply).

Exhibit	Description	POR Cite
2002	District court trial excerpts (Mitchel Obolsky)	51
2003	District court trial excerpts (Robert Voto)	55
2017	District court trial excerpts (Michael Dreon)	Not cited
2040	District court trial transcript Vol. 2 (320 pages) (Mark Bohm and Mitchel Obolsky)	50, 55-56, 61, 64-68
2041	District court trial transcript Vol. 3 (408 pages) (Ivan Zatkovich, Stephen Becker, Mitchel Obolsky)	50, 52, 54, 59, 61
2042	District court trial transcript Vol. 4 (242 pages) (Michael Dreon)	60, 62-63, 69
2046	District court trial transcript Vol. 5 (432 pages)	Not cited

The transcripts total well-over 1,000 pages of testimony and discuss numerous exhibits not submitted in the IPR proceeding. The amount of time and effort required to properly understand the context and circumstances, asserted patents (not challenged in this IPR), related issues, and voluminous testimony from a multi-year court proceeding and jury trial wastes the parties' and the Board's limited time/resources on collateral matters, confuses the issues, and is unduly prejudicial.

The Board should exclude the prior trial testimony of Mr. Dreon, Mr. Zatkovitch, Dr. Becker, and Mr. Voto for the additional reason that it is inadmissible hearsay. “[F]or former testimony to be admissible as an exception to the hearsay rule: (1) the declarant must be unavailable; (2) testimony must be taken at a hearing, deposition, or civil action or proceeding; and (3) the party against whom the testimony is now offered must have had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.” *Kirk v. Raymark*

Indus., Inc., 61 F.3d 147, 164 (3d Cir. 1995) (citing FRE 804(b)(1), (a)(5)).

The Board should exclude Aptiv employee Michael Dreon's prior trial testimony (EX2042 cited at POR, 60, 62-63, 69 and EX2017) because it is hearsay and PO has not shown that any hearsay exception applies. PO cannot invoke the former testimony exception of FRE 804(b)(1) because it requires that "the declarant is unavailable as a witness." PO's submission of Mr. Dreon's declaration (EX2036) in this IPR plainly shows he was not "unavailable."

The Board should exclude the prior trial testimony of Microchip experts Ivan Zatkovich (technical) and Dr. Stephen Becker (damages) (EX2041 cited at POR, 50, 52, 54, 61) as hearsay. *First*, under *Kirk*, prior expert testimony from a different proceeding is not a party admission and constitutes hearsay. 61 F.3d at 163-164 ("expert witnesses are supposed to testify impartially" and "[w]e are unwilling to adopt the proposition that the testimony of an expert witness who is called to testify on behalf of a party in one case can later be used against that same party in unrelated litigation, unless there is a finding that the expert witness is an agent of the party and is authorized to speak on behalf of that party.").

Second, PO has not shown that any hearsay exception applies, including the former testimony exception of FRE 804(b)(1). PO "bears the burden of proving the unavailability of the declarant" and disclosed no effort (either informally or through formal means such as a subpoena) to obtain testimony from Mr. Zatkovich or Dr.

Becker. *Kirk*, 61 F.3d at 165; *id.*, 165-166 (“it is an abuse of discretion ... to admit former testimony into evidence under Rule 804(b)(1) without a finding of unavailability” and plaintiff “made no independent attempt to contact [the witness], offer him his usual expert witness fee, and request his attendance at trial. Because [the witness] was never even as much as contacted, [the party] failed to prove that she used ‘reasonable means’ to enlist his services.”).

The Board should exclude inventor Robert Voto’s prior trial testimony (EX2003 cited at POR, 55) because it is hearsay and PO has not shown that any hearsay exception applies. PO cannot invoke the former testimony exception of FRE 804(b)(1) because it requires that “the declarant is unavailable as a witness” and Aptiv has made no showing of unavailability. Further, for Mr. Dreon, Zatkovitch, Becker, and Voto, PO has not met its burden of showing Microchip had a “similar motive to develop the testimony” in the prior trial, which involved different patents, issues, and stakes (*e.g.*, Microchip faced no liability as the plaintiff). FRE 804(b)(1).

III. EX2005-2010 AND EX2031-2035 (EMAILS) SHOULD BE EXCLUDED

The Board should exclude EX2005-2010 and EX2031-2035—various email threads (collectively the “Emails”) between Microchip personnel (and third-parties) used in the previously mentioned jury trial—as lacking foundation (FRE 104), irrelevant (FRE 401), incomplete and misleading, confusing the issues, wasteful of the parties’ and Board’s resources/time on collateral matters, and far more

prejudicial than probative (FRE 403), and lack of foundation / speculation (FRE 602). Petitioner timely raised these objections. Paper 19, 3-5; Paper 26, 13-16. The POR and Sur-reply cite these exhibits at: EX2005 (POR, 51, 56, Sur-reply, 25); EX2006 (POR, 51, 59); EX2007 (POR, 59, 62); EX2008 (POR, 51, 58, 60); EX2009 (POR, 58, Sur-reply, 21); EX2010 (POR, 59, Sur-reply, 22); EX2031 (POR, 65); EX2032 (POR, 51, 66); EX2033 (POR, 51, 62, 64); EX2034 (POR, 60, 67).

PO cites the Emails for their reference to Apple CarPlay and discussion of Microchip product development, as if this were an infringement case where CarPlay (or a Microchip or Aptiv product) was at issue. *E.g.*, POR, 55-59. It is not. This is an invalidity challenge where CarPlay has marginal (if any) relevance. The patent neither discusses nor claims CarPlay. EX1011. The CarPlay specification is not in the record. No prior art mentions CarPlay, nor does either party's POSITA definition. Dr. Houh has no CarPlay expertise. EX2001, ¶¶2-16, Appendix A. Nor should Microchip's understanding of CarPlay's requirements vis-à-vis the USB standards be at issue. It is simply irrelevant that Microchip had questions in 2014 about the interplay between Apple's CarPlay requirements and the USB standards.

The Emails are irrelevant and far more prejudicial than probative for the further purpose Aptiv relies on them for—(1) substituting out-of-context snippets from various Microchip personnel (primarily in sales/marketing roles) for the knowledge and perspective of a POSITA (*e.g.*, POR, 55-59 (citing EX2005-2010));

and (2) purported copying (*e.g.*, POR, 64-68 (citing EX2031-2034)). It is well-established that obviousness is assessed from the perspective of a hypothetical POSITA, not any actual individual(s). *E.g.*, 35 U.S.C. §103; *McCoy v. Heal Sys., LLC*, 850 F. App'x 785, 788 (Fed. Cir. 2021). Aptiv barely describes the education, qualifications, or experience of anyone who authored the Emails. And for good reason—the majority (Ray Kamps, Kurt Ebert, Don Perkins, David Sroka, and Stefan Saenger) were in sales/marketing roles,² two individuals (Chris Behal and Sal Canu) provided field application support,³ and one was a “self-taught” Delphi staffer who said he “work[ed] on these products a little over a year” (EX2005, 1). Nor is it proper for Aptiv to substitute Microchip (*i.e.*, the company as a whole) for a POSITA, which is presumed to be familiar with all relevant prior art. *In re Carlson*, 983 F.2d 1032, 1037 (Fed. Cir. 1992). At bottom, EX2005-2010 have no bearing on the patentability of the challenged claims, and are far more prejudicial than probative of the obviousness/nonobviousness of the claims, and should be excluded.

PO's argument that Microchip copied Aptiv because it failed to develop a competing product omits key information and presents a misleading narrative. ■

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² See, *e.g.*, EX2006, 4; EX2007, 2; EX2008, 3; www.linkedin.com/in/stefansaenger

³ See EX2006, 3; EX2002, 99 (291:16-18), 134 (11:14-19); EX2007, 3.

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insinuation that Microchip copied Aptiv because it “obtained ... and analyzed [an Aptiv product]” is baseless. POR, 67. The alleged activity was done in “July of 2016” as pre-suit investigation before suing Aptiv, after Microchip “finished [its] device and [was] making it available [for customer testing].” EX2040, 125:9-126:16. This demonstrates that the Emails cited by PO are misleading. It also highlights that the time and effort necessary to adequately understand the district court trial proceeding and Microchip’s product development decisions for the proper context (including the timing and reasons for Microchip’s business decisions and lawsuit) wastes time on collateral matters and unfairly prejudices Petitioner.

Moreover, the Emails are replete with unexplained jargon, acronyms, and shorthand about multiple different products not at issue here. *E.g.*, EX2032, 1 (“The diagram is our creation / interpretation of what Unwired is doing, and has not been confirmed.”), 3 (discussing “current assumption[s]”). This speculation is not the type of “evidence” that should form the basis of the Board’s patentability determination. But making this IPR proceeding a trial-within-a-trial about irrelevant and highly technical collateral matters (spanning hundreds of pages of highly technical product documents about products that are not at issue) confuses the issues, presents an incomplete picture, is misleading and wasteful of the Board’s

resources/time, and is far more prejudicial than probative (FRE 403).

IV. EX2024-2025 AND EX2027-2028 (APTIV PRODUCT DOCUMENTS) SHOULD BE EXCLUDED

The Board should exclude EX2024-2025 and EX2027-2028 (four technical Aptiv product development documents used in the previously discussed jury trial) as irrelevant, incomplete (FRE 106), misleading, confusing the issues and wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (FRE 403). Petitioner timely raised these objections. Paper 26, 7-11. PO does not cite EX2024 (an undated, one-page, contextless, complex diagram) in its POR or Sur-reply, making it irrelevant, incomplete, and prejudicial. PO cites EX2025, EX2027, and EX2028 a single time for the assertion that Aptiv's product satisfied three purported automaker CarPlay requirements. POR, 55, 62. But the challenged patent does not claim (or even mention) CarPlay and none of PO's alleged "requirements" appear in the claims, making CarPlay analysis irrelevant, a waste of time, confusing, and unfairly prejudicial.

V. EX2026 AND EX2030 (MICROCHIP PRODUCT DOCUMENTS) SHOULD BE EXCLUDED

The Board should exclude EX2026 and EX2030 (technical Microchip product documents used in the jury trial) as irrelevant (FRE 401) and misleading, confusing the issues, wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (FRE 403). Petitioner timely raised

these objections. Paper 26, 11-13. PO cites EX2026 once, cherry-picking a single line out of context to draw a false inference (based on an incorrect interpretation of the word “unique”). POR, 60. As such, it is misleading and unfairly prejudicial. PO’s only cite to EX2030 is for how a Microchip product supports CarPlay, as if this were an infringement case where a Microchip product or CarPlay was at issue. POR, 68. It is not and the Board should exclude EX2026 and EX2030.

VI. EX2036-2039 (DREON DECLARATION AND ACCOMPANYING EXHIBITS) SHOULD BE EXCLUDED

The Board should exclude EX2036-2039 (Dreon Dec. and Exhibits A-C thereto concerning a “PACE Award”) as lacking foundation and context (FRE 104), lack of personal knowledge / speculation (FRE 602), and containing hearsay (FRE 801/802). Petitioner timely raised these objections. Paper 26, 16-20. PO cites EX2036-2039 at: EX2036 (POR, 61-63); EX2037 (POR, 52-55, 61); EX2038 (POR, 63); and EX2039 (POR, 63). Mr. Dreon, at ¶9 of his declaration, states that “[b]ased on *my conversations with the judges*, as well as from the judges’ citation and award video, it is my understanding that the feature driving their selection of the dual-role hub was [CarPlay persistence].” This is classic hearsay, and PO established no applicable exception. In ¶¶8-9, Mr. Dreon seeks to authenticate Exs. B-C (EX2038-2039), but asserts no personal knowledge of the exhibits, or their content (which is hearsay). For Ex. C (EX2039), he cites an internet link, and Ex. B (EX2038) is also just a webpage (and hearsay). These exhibits should be excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 24, 2025, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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