

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SMARTFLASH LLC,
Patent Owner

CBM2014-00192
U.S. Patent 8,033,458

PETITIONER'S MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	Legal Standard	1
III.	Argument	3
	A. Dr. Bloom’s Testimony, as being solicited in Exhibit 2056 at 179:1-20 and Exhibit 2057 at 193:17-194:8 and 195:5-16, is Irrelevant	4
	B. Dr. Bloom’s Testimony, as being solicited in Exhibit 2057 at 193:17- 194:8 and 195:5-16, Lacks Proper Foundation	6
	C. Dr. Bloom’s Testimony, as being solicited in Exhibit 2056 at 179:1-20, and Exhibit 2057 at 193:17-194:8 and 195:5-16, is outside the Scope.....	7
IV.	CONCLUSION.....	8

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence, SAMSUNG ELECTRONICS AMERICA, INC. and SAMSUNG ELECTRONICS CO., LTD. (“Samsung”), moves to exclude portions of Exhibit 2056 and Exhibit 2057 (Deposition Transcripts of Dr. Jeffrey Bloom) as submitted by Patent Owner, SMARTFLASH LLC (“Smartflash”) in connection with Patent Owner’s Response in CBM2014-00192.

Smartflash failed to produce its own expert witness in this proceeding. Instead, Smartflash deposed Samsung’s expert witness, Dr. Bloom. During the deposition, Smartflash attempted to solicit testimony that would be inadmissible on three grounds. First, Smartflash sought testimony from Dr. Bloom that is irrelevant to the determination of patent claim validity, as mandated to the Board by the Congress. Second, Smartflash failed to provide sufficient factual foundation for the testimony being solicited. Third, Smartflash sought to solicit testimony outside the scope as warranted by Samsung’s direct examination of Dr. Bloom. This solicited testimony should be excluded from this proceeding as inadmissible under the Federal Rules of Evidence.

II. Legal Standard

The admissibility of expert testimony in IPRs and CBMs is governed by the Federal Rules of Evidence. *See* 37 C.F.R. § 42.62 (“[T]he Federal Rules of

Evidence shall apply to [an IPR or CBM] proceeding.”). According to Rule 402, “[i]rrelevant evidence is not admissible.” Evidence is only relevant if it has a “tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Rule 401.

According to Rule 702, an expert witness must be “qualified as an expert by knowledge, skill, experience, training, or education,” and the testimony must “help the trier of fact to understand the evidence or to determine a fact in issue.” In addition, Rule 702 requires that the expert’s testimony be “based on sufficient facts or data” and “the product of reliable principles and methods”; and the expert must “reliably appl[y] the principles and methods to the facts of the case.” *Id.*

In *Daubert*, the Supreme Court held that scientific expert testimony is admissible only if it is **both relevant and reliable**. See *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993); see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) (stating that in *Daubert* “this Court focused upon the admissibility of scientific expert testimony. It pointed out that such testimony is admissible only if it is both relevant and reliable.”). In *Kumho*, the Supreme Court extended its holding in *Daubert* to apply “not only to testimony based on ‘scientific’ knowledge, but also to testimony based on ‘technical’ and ‘other specialized’ knowledge.” 526 U.S. at 141.

In determining whether an expert's testimony is admissible, the Board must make the following determinations: (1) the expert is qualified to provide the testimony; (2) the expert's testimony is relevant; and (3) the expert's testimony is based on sufficient facts or data and is reliable. If any of these requirements is not met, the expert's proposed evidence and opinions should be excluded under Rule 702, Rule 402, and the Supreme Court's holdings in *Daubert* and *Kumho*.

Further, under Rule 611(b), the scope of cross-examination "should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." If the expert's testimony solicited in cross-examination is outside the subject matter of the direct examination and does not have bearing on the expert's credibility, it should be excluded under Rule 611(b).

III. Argument

Samsung objected to portions of Exhibits 2056 and 2057 in its Notice of Objections served on June 8, 2015 as well as during the deposition on May 20, 2015. Smartflash relied on Exhibits 2056 and 2057 in its Response to Petition (Papers 20 and 21), filed on June 1, 2015¹. For reasons detailed below, the

¹Smartflash also relied on portions of Exhibit 2057 to which Samsung objected in its Notice of Objections served on June 8, 2015 as well as during the deposition on May 20, 2015. The Board ordered such portions of Exhibit 2057 under seal. *See* Paper 25.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.