

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS LTD, SAMSUNG ELECTRONICS
AMERICA, INC., and APPLE INC.,

Petitioner,

v.

SMARTFLASH LLC,

Patent Owner.

Case CBM2014-00192¹

Patent 8,033,458 B2

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

¹ CBM2015-00119 has been consolidated with this proceeding.

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I. INTRODUCTION

Patent Owner, Smartflash LLC (“Smartflash”) hereby opposes Petitioner’s Motion to Exclude Evidence (“Petitioner’s Motion”) (Papers 35/36). Petitioner moved to exclude three portions of its own expert’s deposition testimony that Patent Owner relied on in Patent Owner’s Response (Papers 20/21). The subject portions of Dr. Jeffrey Bloom’s deposition transcript, Exhibits 2056 and 2057, have a proper foundation, are within the scope of proper cross examination, and are relevant. The deposition excerpts thus are admissible. Petitioner’s Motion should be denied.

II. ARGUMENT

Pursuant to 37 C.F.R. § 42.64(c), the Federal Rules of Evidence (“FRE”) apply in Covered Business Method Review proceedings.

A. The Subject Deposition Excerpts Have Proper Foundation

Petitioner’s Motion seeks to exclude Exhibit 2057 at 193:17-194:8 and 195:5-16 for lacking proper foundation. Petitioner argues (i) that “Dr. Bloom has not been advanced as an expert with regard to subscription-based business practice of a third-party company” (Petitioner’s Motion at 6); and (ii) that Dr. Bloom’s testimony “should be excluded under Rules 702 and 701” “[b]ecause Smartflash sought to have Dr. Bloom opine on matters without laying proper factual support” (*id.* at 7). Petitioner’s arguments lack merit for reasons set forth below.

Petitioner’s Motion would have the Board ignore the issue of bias by Petitioner’s expert, Dr. Bloom. In doing so, Petitioner wants it both ways – claiming that Dr. Bloom’s position at SiriusXM and purported expertise in conditional access is relevant to analyzing the claims at issue, while simultaneously shrouding any potential bias that arises from the fact that a SiriusXM product might read on the Smartflash patent claims with confidentiality objections and a motion to exclude Dr. Bloom’s testimony on the subject. More specifically, Petitioner relies on Dr. Bloom’s qualifications as “Director of System Engineering and Software Development for Conditional Access and Identity Management Systems for SiriusXM radio,” and the fact that Dr. Bloom “manage[s] systems that employ many of the industry standard techniques for calculating one-way hash functions, encrypting content with both symmetric and asymmetric encryption, key management, key generation, zero-knowledge proof, authentication via digital signature, and other industry standard security techniques” and “lead[s] a team of systems engineers, requirement analysts, and software developers responsible for all conditional access (CA) security systems.” Bloom Declaration, Exhibit 1003 at ¶ 5. Because on cross examination Smartflash sought to show how SiriusXM, and thus Dr. Bloom, could have an interest in invalidating the Smartflash patent claims if a SiriusXM product read on the claims, Petitioner now says “Dr. Bloom has not been advanced as an expert with regard to

subscription-based business practice of a third-party company.” Petitioner’s Motion at 6. Of course Dr. Bloom “has not been advanced as an expert with regard to subscription-based business practice of a third-party company,” and Smartflash has never claimed otherwise. The fact is, however, that Dr. Bloom is currently employed by such “third-party company” and its “subscription-based business practices” are both within Dr. Bloom’s job responsibilities and relevant to the patent claims.

All of the factual foundation necessary for Smartflash’s cross examination inquiry into Dr. Bloom’s knowledge of SiriusXM products is set forth in his direct testimony in his declaration, Exhibit 1003 ¶ 5. Dr. Bloom is a *current* SiriusXM employee. He is the “Director of System Engineering and Software Development for Conditional Access and Identity Management Systems” and “*lead[s]* a team of systems engineers, requirement analysts, and software developers responsible for *all* conditional access security systems.” Exhibit 1003 at ¶ 5. Inquiry into how SiriusXM products handle conditional access has a proper foundation. Smartflash is entitled to have the Board consider Dr. Bloom’s responses to the inquiry and how any similarity between Dr. Bloom’s employer’s products and the claims of the patent would provide Dr. Bloom with a motivation to be biased *against* the claims being found to be statutory subject matter under 35 U.S.C. § 101.

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