

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SMARTFLASH LLC,
Patent Owner.

Case CBM2014-00194
Patent 8,118,221 B2

PATENT OWNER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE

Smartflash - Exhibit 2097

Pursuant to 37 C.F.R. § 42.64, Patent Owner hereby objects to the admissibility of certain evidence submitted with Petitioner's petition ("the Petition"). Patent Owner's objections are based on the Federal Rules of Evidence and the Board Rules and are set forth with particularity below.

Exhibit 1003 (Declaration of Dr. Jeffrey Bloom re the '221 Patent)

Patent Owner objects to Exhibit 1003, Declaration of Dr. Jeffrey Bloom re the '221 Patent ("the Bloom Declaration"), in its entirety under Fed. R. Evid. 401 as the trial as instituted is limited to patentability under 35 U.S.C. 101. As such, paragraphs 23-112 (and any portion other of the Bloom Declaration that is directed to patentability under 35 U.S.C. 102/103) is not relevant to the instituted proceeding. Fed. R. Evid. 401. Being irrelevant evidence, those paragraphs are not admissible. Fed. R. Evid. 402.

Furthermore, the remaining portions of the declaration (i.e., paragraphs 23-26 and 113-128) deal with the strictly legal issue of statutory subject matter for which Dr. Bloom is not an expert. Thus, those portions of the Bloom Declaration are objected to under Fed. R. Evid. 401 as not relevant, under FRE 602 as lacking foundation, and under FRE 701 and 702 as providing a legal opinions on which the lay witness is not competent to testify. Being irrelevant evidence, those paragraphs are not admissible. Fed. R. Evid. 402.

In addition, the Patent Owner objects to Exhibit 1003 under 37 CFR 42.65 in its entirety as it does not set forth the relative evidentiary weight (e.g., substantial evidence versus preponderance of the evidence) Dr. Bloom used in arriving at his conclusions.

The Bloom Declaration is further objected to in all instances where any paragraph relies upon an exhibit that specifically is objected to herein for the reasons set forth in those specific

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objections. Further, any paragraph in the Bloom Declaration that relies upon any exhibit not relied upon by the PTAB to institute this proceeding is further objected to (under Fed. R. Evid. 401) as not being relevant and therefore being inadmissible (under Fed. R. Evid. 402).

Patent Owner also objects to the following specific paragraphs of the Bloom Declaration:

Paragraphs 102-107 – Patent Owner objects to Paragraphs 102-107 under Fed. R. Evid. 1002 because they purport to prove the content of multiple writings without submitting into evidence the original writings to prove their content. Moreover, duplicates of the original writings as contemplated by Fed. R. Evid. 1003 have not been submitted, nor do Paragraphs 102-107 meet any of the exceptions for the requirements of an original set forth in Fed. R. Evid. 1004. Patent Owner further objects to Paragraphs 102-107 as hearsay pursuant to Fed. R. Evid. 801 and 802, not meeting any of the hearsay exceptions of Fed. R. Evid. 803 or 804.

Paragraph 122 – Patent Owner objects to Paragraph 122 on relevance grounds because the description of the ASCAP licensing scheme for performance rights is not relevant to the technological solution for digital rights management embodied in the '221 Patent. Paragraph 122 fails the test for relevant evidence because nothing in Paragraph 122 makes a fact of consequence in determining this action more or less probable than it would be without Paragraph 122. Fed. R. Evid. 401(b). Being irrelevant evidence, Paragraph 122 is not admissible. Fed. R. Evid. 402. Patent Owner further objects to Paragraph 122 under Fed. R. Evid. 1002 because it purports to prove the content of a writing without submitting into evidence the original writing to prove its content. Moreover, a duplicate of the original writing as contemplated by Fed. R. Evid. 1003 has not been submitted, nor does Paragraph 122 meet any of the exceptions for the requirements of an original set forth in Fed. R. Evid. 1004. Patent Owner further objects to

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Paragraph 122 as hearsay pursuant to Fed. R. Evid. 801 and 802, not meeting any of the hearsay exceptions of Fed. R. Evid. 803 or 804.

Paragraph 123 – Patent Owner objects to Paragraph 123 on relevance grounds because the descriptions of the ASCAP licensing scheme for performance rights and audit logs is not relevant to the technological solution for digital rights management embodied in the ‘221 Patent. Paragraph 123 fails the test for relevant evidence because nothing in Paragraph 123 makes a fact of consequence in determining this action more or less probable than it would be without Paragraph 123. Fed. R. Evid. 401(b). Being irrelevant evidence, Paragraph 123 is not admissible. Fed. R. Evid. 402. Patent Owner further objects to Paragraph 123 under Fed. R. Evid. 1002 because it purports to prove the content of multiple writings without submitting into evidence the original writings to prove their content. Moreover, duplicates of the original writings as contemplated by Fed. R. Evid. 1003 have not been submitted, nor does Paragraph 123 meet any of the exceptions for the requirements of an original set forth in Fed. R. Evid. 1004. Patent Owner further objects to Paragraph 123 as hearsay pursuant to Fed. R. Evid. 801 and 802, not meeting any of the hearsay exceptions of Fed. R. Evid. 803 or 804.

Paragraph 125 – Patent Owner objects to Paragraph 125 on relevance grounds because the description of formal requirements on programming for internet radio stations is not relevant to the technological solution for digital rights management embodied in the ‘221 Patent. Paragraph 125 fails the test for relevant evidence because nothing in Paragraph 125 makes a fact of consequence in determining this action more or less probable than it would be without Paragraph 125. Fed. R. Evid. 401(b). Being irrelevant evidence, Paragraph 125 is not admissible. Fed. R. Evid. 402. Patent Owner further objects to Paragraph 125 under Fed. R. Evid. 1002 because it purports to prove the content of a writing without submitting into evidence

the original writing to prove its content. Moreover, a duplicate of the original writing as contemplated by Fed. R. Evid. 1003 has not been submitted, nor does Paragraph 125 meet any of the exceptions for the requirements of an original set forth in Fed. R. Evid. 1004. Patent Owner further objects to Paragraph 125 as hearsay pursuant to Fed. R. Evid. 801 and 802, not meeting any of the hearsay exceptions of Fed. R. Evid. 803 or 804.

Paragraph 128 – Patent Owner objects to Paragraph 128 on relevance grounds because the description of the planned establishment of credit facilities into retail establishments is not relevant to the technological solution for digital rights management embodied in the ‘221 Patent. Paragraph 128 therefore fails the test for relevant evidence because nothing in Paragraph 128 makes a fact of consequence in determining this action more or less probable than it would be without Paragraph 128. Fed. R. Evid. 401(b). Being irrelevant evidence, Paragraph 128 is not admissible. Fed. R. Evid. 402. Patent Owner further objects to Paragraph 128 as hearsay pursuant to Fed. R. Evid. 801 and 802, not meeting any of the hearsay exceptions of Fed. R. Evid. 803 or 804.

Exhibit 1004 (U.S. Patent No. 5,530,235 (“Stefik ‘235”))

Exhibit 1005 (U.S. Patent No. 5,629,980 (“Stefik ‘980”))

Exhibit 1006 (PCT Publication No. WO 00/08909 (“Gruse”))

Patent Owner objects to Exhibits 1004, 1005, 1006 (“the Alleged Prior Art Exhibits”) on relevance grounds because the Patent Trial and Appeal Board’s (PTAB’s) Decision did not adopt any of the proposed invalidity grounds based on the Alleged Prior Art Exhibits. The Alleged Prior Art Exhibits therefore fail the test for relevant evidence because nothing in the Alleged Prior Art Exhibits makes a fact of consequence in determining this action more or less probable

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