

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.

Case CBM2014-00199

Patent 8,118,221 B2

PATENT OWNER'S RESPONSE

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PATENT OWNER'S LIST OF EXHIBITS

Exhibit Number	Exhibit Description
2001	Congressional Record - House, June 23, 2011, H4480-4505
2002	Congressional Record - Senate, Sep. 8, 2011, S5402-5443
2003-2023	Reserved
2024	Samsung's Motion To Stay Litigation Pending CBM Review
2025-2054	Reserved
2055	Deposition Transcript of Jeffrey A. Bloom dated May 19, 2015
2056	Non-Confidential Portion of Deposition Transcript of Jeffrey A. Bloom dated May 20, 2015
2057	Confidential Portion of Deposition Transcript of Jeffrey A. Bloom dated May 20, 2015
2058	Reserved

I. INTRODUCTION

The present proceeding involves a single ground for trial: whether claims 2 and 11 of U.S. Patent No. 8,118,221 are anticipated by U.S. Patent No. 5,915,019 to Ginter et al. (hereinafter “the ‘019 Patent” or “Ginter”) (Exhibit 1023). In support of this Patent Owner’s Response, reference will be made to concurrently filed Exhibits 2055-2057: (1) the non-confidential Deposition Transcript of Jeffrey A. Bloom, PhD., dated May 19, 2015, (2) the non-confidential Deposition Transcript of Jeffrey A. Bloom, PhD., dated May 20, 2015, and (3) the confidential Deposition Transcript of Jeffrey A. Bloom, PhD., dated May 20, 2015, respectively. Those deposition transcripts refer to Exhibit 1003, the Declaration of Jeffrey A. Bloom, Ph.D. (hereinafter “the Bloom Declaration”).

II. STATEMENT OF MATERIAL FACTS

1. The Bloom Declaration does not state that Dr. Bloom’s opinions presented therein were based on a “preponderance of the evidence” standard.
2. The Bloom Declaration does not state that Dr. Bloom’s opinions presented therein were based on a “more likely than not” evidentiary weight standard.

III. THE BLOOM DECLARATION SHOULD BE GIVEN LITTLE OR NO WEIGHT

A. No Evidentiary Standard Is Disclosed in the Bloom Declaration

The Bloom Declaration does not disclose the underlying facts on which the opinions are based and is, therefore, entitled to little or no weight. 37 CFR 42.65 (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). More specifically, the Bloom Declaration does not state the evidentiary weight standard (e.g., substantial evidence versus preponderance of the evidence) that Dr. Bloom used in arriving at his conclusions. Given that there is no evidence that Dr. Bloom even knows how much weight need be relied upon to show that a claim is nonstatutory, the PTAB can only afford little or no weight to the testimony therein. To do otherwise would be to accept his opinions without knowing “the underlying facts ... on which the opinion is based” (i.e., how much evidence he thinks shows any of his opinions discussed therein).

For example, when Dr. Bloom opines that he believes a statement to be true or that he believes an element is inherently present, is that belief based on less than a preponderance of the evidence, or more? Without his having disclosed what evidentiary standard he used in forming his opinions, and given that there is no evidence that he even knew what evidentiary standard he was supposed to be

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