

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**MACRONIX INTERNATIONAL CO., LTD., MACRONIX ASIA LIMITED,
MACRONIX (HONG KONG) CO., LTD., and MACRONIX AMERICA, INC.**
Petitioner

v.

SPANSION LLC
Patent Owner

Case IPR2014-00108
Patent 7,151,027 B1

Before the Honorable DEBRA K. STEPHENS, JUSTIN T. ARBES, and RICHARD E. RICE, *Administrative Patent Judges*.

**PATENT OWNER SPANSION LLC'S FIRST SET OF OBJECTIONS TO
PETITIONERS' EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Patent Owner, Spansion LLC ("Patent Owner"), hereby submits the following objections to Petitioners Macronix Intl. Ltd.'s, Macronix Asia Ltd.'s, Macronix (Hong Kong) Co. Ltd.'s, and Macronix America, Inc.'s (collectively "Petitioners") Exhibit MX027-1002, Exhibit MX027-1008, Exhibit MX027-1009, and any reference to/reliance on the foregoing. As required by 37 C.F.R § 42.62, Patent Owner's objections below apply the Federal Rules of Evidence ("F.R.E").

I. Objections to Exhibit MX027-1002 and Any Reference to/Reliance Thereon

Evidence objected to: Exhibit MX027-1002 of Petitioners' Petition for *Inter Partes* Review of U.S. Patent No. 7,151,027 ("Petition"), titled "Corrected Declaration of Dhaval J. Brahmabhatt," including at least ¶¶ 13-137.

Grounds for objection: F.R.E. 702 ("Testimony by Expert Witnesses"); F.R.E. 403 ("Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons").

The witness providing the declaration attached as Exhibit MX027-1002 provides insufficient underlying facts or data upon which the opinions contained in Exhibit MX027-1002 could legitimately be based, in violation of F.R.E. 702. Accordingly, permitting any reliance on this purported expert testimony in the Petition or other submissions of Petitioners would be misleading and unfairly prejudicial to Patent Owner (F.R.E. 403).

II. Objections to Exhibit MX027-1008 and Any Reference to/Reliance Thereon

Evidence objected to: Exhibit MX027-1008, and any reference to or reliance thereon.

Grounds for objection: F.R.E. 106 ("Remainder of or Related Writings or Recorded Statements"); F.R.E. 901 ("Authenticating or Identifying Evidence"); F.R.E.

403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

While Petitioners attach a purported “Excerpt from Streetman, Ben, SOLID STATE ELECTRONIC DEVICES, 4th Ed (Prentice Hall 1995)” as MX027-1008, Petitioners’ citations to that Exhibit in the Petition (on page 21) and in the Corrected Declaration of Dhaval J. Brahmbhatt (in ¶ 120 (citing to MX027-1011 [sic])) omit citations to portions “that in fairness ought to be considered at the same time” (F.R.E. 106; *see also* Fed. R. Civ. P. 32(a)(6)).

Furthermore, Petitioners fail to provide for Exhibit MX027-1008 the authentication required by F.R.E. 901. While Petitioners’ exhibit list refers to Exhibit MX027-1008 as “Excerpt from Streetman, Ben, SOLID STATE ELECTRONIC DEVICES, 4th Ed (Prentice Hall 1995),” Petitioners have presented no evidence concerning the origin of this document or confirming that it is what it is labeled to be. Petitioners thus improperly cite to Exhibit MX027-1008 without providing any authenticating evidence sufficient to support a finding that the item is what Petitioners claim it is, in violation of F.R.E. 901.

In addition, to the extent the Petition, the Corrected Declaration of Dhaval J. Brahmbhatt, or any other submission of Petitioners purports to refer to or rely on Exhibit MX027-1008, Patent Owner objects to such reference to/reliance on evidence that is not properly authenticated (F.R.E. 901) and/or omit citations to

portions “that in fairness ought to be considered at the same time” (F.R.E. 106), and as misleading and unfairly prejudicial (F.R.E. 403).

III. Objections to Exhibit MX027-1009 and Any Reference to/Reliance Thereon

Evidence objected to: Exhibit MX027-1008, and any reference to or reliance thereon.

Grounds for objection: F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

Petitioners fail to provide for Exhibit MX027-1009 the authentication required by F.R.E. 901. While Petitioners’ exhibit list refers to Exhibit MX027-1009 as “Kim, J.H., et al, An Empirical Model for Charge Leakage Through Oxide-Nitride-Oxide Interpoly Dielectric in Stacked-Gate Flash Memory Devices, 18 SEMICONDUCTOR SCI. & TECH. 158 (16 Jan. 2003),” Petitioners have presented no evidence concerning the origin of this document or confirming that it is what it is labeled to be. Petitioners thus improperly cite to Exhibit MX027-1009 without providing any authenticating evidence sufficient to support a finding that the item is what Petitioners claim it is, in violation of F.R.E. 901.

In addition, to the extent the Petition, the Corrected Declaration of Dhaval J. Brahmabhatt, or any other submission of Petitioners purports to refer to or rely on Exhibit MX027-1009, Patent Owner objects to such reference to/reliance on

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evidence that is not properly authenticated (F.R.E. 901) and/or omit citations to portions “that in fairness ought to be considered at the same time” (F.R.E. 106), and as misleading and unfairly prejudicial (F.R.E. 403).

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