

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD;
SAMSUNG ELECTRONICS AMERICA, INC.;
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC;

Petitioners,

v.

AFFINITY LABS OF TEXAS, LLC

Patent Owner.

CASE IPR2014-01181*
PATENT 8,532,641

**PATENT OWNER'S OBJECTIONS
TO PETITIONERS' REPLY EVIDENCE**

*Case Nos. IPR2014-01182 and IPR2014-01184 were consolidated with the instant proceeding. *See* IPR2014-01181, Paper 15; IPR2014-01182, Paper 15; IPR2014-01184, Paper 15. Patent Owner therefore submits this single set of objections to exhibits submitted in conjunction with Petitioner's Reply.

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Affinity Labs of Texas, LLC, hereby submits the following objections to certain evidence filed by Petitioners on August 31, 2015.

I. General Objections to Exhibits 1025-1061

Grounds for objections: 37 C.F.R. § 42.23 (“Oppositions and replies”), 37 C.F.R. § 42.223 (“Filing of supplemental information”), and 37 C.F.R. § 42.61 (“Admissibility”).

Patent Owner objects to Exhibits 1025-1061 to the extent they could have been presented in a prior filing and are proffered in support of arguments that are presented for the first time in Petitioners’ Reply. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding . . . patent owner response.”); OFFICE TRIAL PRACTICE GUIDE, 77 Fed. Reg. 48767 (Aug. 14, 2012) (“Examples of indications that a new issue has been raised in a reply include . . . new evidence that could have been presented in a prior filing.”) Petitioners’ Reply exceeds the permissible scope for a reply by introducing 36 new exhibits, including a new, 180-page declaration from Dr. Schuyler Quackenbush. This new evidence constitutes improper supplemental evidence under 37 C.F.R. § 42.223. Patent Owner reserves its right to challenge Dr. Quackenbush’s testimony via deposition and bring all appropriate motions to exclude evidence submitted in support of Petitioners’ Reply.

II. Objections to Exhibit 1025

Evidence objected to:

- **Exhibit 1025** – “Rebuttal Declaration of Schuyler Quackenbush”

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 403 (“Exclusion for Prejudice, Confusion, Waste of Time, Other Reasons”).

The witness providing the declaration attached to Petitioners’ Reply as Exhibit 1025 provides insufficient underlying facts or data upon which the opinions contained in Exhibit 1025 could legitimately be based, in violation of F.R.E. 702. For example, Dr. Quackenbush opines repeatedly about the functioning of specific pieces of hardware in his declaration. However, Dr. Quackenbush’s CV indicates that his experience in hardware design was limited to designing a SONAR system and a RADAR jamming system, hardware generally described as relating to audio encoding and decoding, and hardware generally described as related to image, speech, and audio codecs. (*See* Ex. 1025 at ¶ 2; Ex 1023.) There is no indication that Dr. Quackenbush has adequate experience in hardware design sufficient as underlying facts or data upon which his opinions could legitimately be based. As such, his testimony will not help to understand the evidence or to determine a fact at issue. Accordingly, permitting any reliance on Exhibit 1025 would be misleading and unfairly prejudicial to Patent Owner under F.R.E. 403.

III. Objections to Exhibits 1040 and 1049A

Evidence objected to:

- **Exhibit 1040** – “Bluetooth Whitepaper,” AU-System, (January 2000);
- **Exhibit 1049A** – Website Excerpt – SoftSound.com, (March 2000)

Grounds for objection: 37 C.F.R. § 42.61 (“Admissibility”); F.R.E. 402, 403 (“Relevance/Exclusion for Prejudice, Confusion, Waste of Time, Other Reasons”); F.R.E. 801, 802 (“Hearsay”).

Exhibit 1040 appears to be a paper compiled by “au-system,” an unknown entity, that was simply downloaded by Petitioners’ from the following web address: www.roggeweck.net/uploads/media/Bluetooth_Handout.pdf. (*See* Ex. 1060, Moncreif Decl. at ¶ 8.) Similarly, Exhibit 1049A is a March 2000, single-page excerpt from the website SoftSound.com that purports to describe “an established low complexity waveform coder.” (*See* Ex. 1049, Butler Decl. ¶ 8.) Petitioners rely on Exhibits 1040 and 1049A for the truth of the matter asserted, specifically the existence of particular technology prior to March 2000. Patent Owner therefore objects to Exhibits 1040 and 1049A as inadmissible hearsay that is otherwise irrelevant to the instant proceeding.

IV. Objections to Exhibits 1041A-1045

Evidence objected to:

- **Exhibit 1041A** – *“Philips Shows Central Gateway for the Home,”* Electronic Engineering Times, (December 1999);
- **Exhibit 1042** – *“Ericsson Demonstrates Bluetooth at CeBIT ’99,”* Mobic.com, (March 1999);
- **Exhibit 1043** – *“Ericsson Received Innovations Award for Driving Bluetooth Development, CeBIT 2000,”* Business Wire, (February 2000);
- **Exhibit 1044** – *“CTIA Wireless 2000 View From The Floor - Day 2,”* wirelessdevnet.com, (February/March 2000);
- **Exhibit 1045** – *“Ericsson’s Bluetooth Modules,”* Ericsson Review, (1999);

Grounds for objection: 37 C.F.R. § 42.61 (“Admissibility”); F.R.E. 402, 403 (“Relevance/Exclusion for Prejudice, Confusion, Waste of Time, Other Reasons”); F.R.E. 801, 802 (“Hearsay”).

Exhibits 1041A-1045 are articles describing tradeshow demonstrations and developmental technologies. Petitioners rely on Exhibits 1041A-1045 for the truth of the matter asserted, specifically the capabilities and benefits of Bluetooth technology, as well as its commercial implementation, prior to March 2000. Patent Owner therefore objects to Exhibits 1041A-1044 as inadmissible hearsay that is otherwise irrelevant to the instant proceeding.

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