

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD; SAMSUNG
ELECTRONICS AMERICA, INC¹.

Petitioners,

v.

AFFINITY LABS OF TEXAS, LLC,

Patent Owner.

IPR2014-01181²

PATENT 8,532,641 B2

**PATENT OWNER'S MOTION FOR OBSERVATION
ON EXAMINATION OF DR. SCHUYLER QUACKENBUSH**

¹ On January 1, 2015, Samsung Telecommunications America, LLC, an originally-named Petitioner in this case, was merged into Samsung Electronics America, Inc. (See IPR2014-01181, Paper 9.)

² Case IPR2014-01182 and IPR2014-01184 were consolidated with IPR2014-01181. (Paper 15 at 2.)

Patent Owner, Affinity Labs of Texas, LLC (“Affinity”) respectfully moves for observation of the following testimony from the September 30, 2015 deposition of Dr. Schuyler Quackenbush, submitted as Exhibit 2038.

1. In Exhibit 2038, at 6:19-8:11, 12:19-22, and 20:9-22:9, Dr. Quackenbush testified regarding claim construction positions advanced for the first time in his supplemental declaration (Ex. 1025). This testimony is relevant to Dr.

Quackenbush’s claim construction opinions advanced at Paragraphs 43-61 of his supplemental declaration. (Ex. 1025 at ¶¶ 43-61.) This testimony is relevant because it demonstrates that the claim construction positions advanced by Dr. Quackenbush in his supplemental declaration were not presented at any time prior to Petitioners’ Reply.

2. In Exhibit 2038, at 9:9-14:8, Dr. Quackenbush testified regarding his understanding of the terms “streaming” versus “downloading.” This testimony is relevant to Petitioners’ arguments and Dr. Quackenbush’s opinions as to the proper construction of the claim terms “stream a signal”/“streaming audio signal.” (Ex. 1025 at ¶¶ 47-49; Paper 23 at 3-4.) This testimony is relevant because it demonstrates the overbreadth of Petitioners’ and Dr. Quackenbush’s proposed construction of the above-cited claim terms.

3. In Exhibit 2038, at 15:19-19:24, Dr. Quackenbush testified regarding the bases of his opinions regarding the general functionality of Bluetooth technology at

the time of invention. This testimony is relevant to Dr. Quackenbush's underlying opinions regarding the functionality of Bluetooth at the time of invention, as well as his opinions regarding the motivation and ability of a person of ordinary skill in the art (POSITA) to implement Bluetooth technology with various technologies set forth in the Petitions. (Ex. 1025 at ¶¶ 68-79, 133-155, 212-216; Paper 23 at 16-22, 32-35, 47-49.) This testimony is relevant because it demonstrates that Petitioners' arguments and Dr. Quackenbush's opinions regarding the functionality of Bluetooth technology at the time of invention are based upon a selective, hindsight-driven analysis.

4. In Exhibit 2038, at 33:9-36:11 and 41:9-42:2, Dr. Quackenbush testified regarding his opinions as to the disclosures of U.S Patent No. 6,192,340 (IPR2014-01182, Ex. 1103, hereinafter "Abecassis"). This testimony is relevant to Petitioners' argument that Abecassis itself teaches a rechargeable power supply, as required by the '641 Patent. (Ex. 1025 at ¶¶ 89-93; Paper 23 at 10-11.) This testimony is relevant because it illustrates the single disclosure (Abecassis at Col. 8:42 and Col. 8:45) relied upon by Dr. Quackenbush and Petitioners to support their argument that Abecassis discloses a battery for its power supply.

5. In Exhibit 2038, at 42:11-47:12, Dr. Quackenbush testified regarding the combination of Abecassis with U.S. Patent No. 6,405,049 (IPR2014-001182, Ex. 1106, hereinafter "Herrod"). This testimony is relevant to Petitioners' argument

and Dr. Quackenbush's opinions that the combination of Abecassis and Herrod teach a physical interface with the functionality required by the '641 Patent. (Ex. 1025 at ¶¶ 94-100; Paper 23 at 11-13.) This testimony is relevant because it demonstrates that the above-cited argument is based only upon Dr. Quackenbush's general interpretation of the Herrod reference, rather than a particular disclosure from Herrod itself.

6. In Exhibit 2038, at 48:3-53:9, Dr. Quackenbush testified regarding his understanding of the claim term "a means for recharging the internal battery," which Patent Owner submits is a means plus function claim. (*See* Patent Owner Response at 39-42, 69-70, 118-122.) This testimony is relevant to Petitioners' argument and Dr. Quackenbush's opinions that the cited reference combinations set forth by Petitioners in IPR2014-01182 teach this claim element. ([IPR2014-01181], Paper 23 at 28-29; Ex. 1025 at ¶¶ 93.) This testimony is relevant because it demonstrates that Petitioners' and Dr. Quackenbush's analysis failed to identify the structure disclosed in the '641 Patent for this claim element, as required for a means-plus function claim under 35 U.S.C. § 112(f).

7. In Exhibit 2038, at 53:25-61:2 and 64:8-65:22, Dr. Quackenbush testified regarding his reading of Abecassis and its alleged disclosure of "a selectable menu item associated with available media content." This testimony is relevant to Dr. Quackenbush's underlying analysis of the Abecassis reference with respect to this

claim element. (Ex. 1025 at ¶¶ 104-112; Paper 23 at 13-16.) This testimony is relevant because it demonstrates that Dr. Quackenbush's analysis is based upon his selective interpretation of disparate disclosures within the Abecassis reference rather than a single express teaching.

8. In Exhibit 2038, at 67:11-73:23, Dr. Quackenbush testified regarding his reading of Abecassis and its alleged teaching of "stream[ing] a signal representing at least a portion of a song." This testimony is relevant to Dr. Quackenbush's underlying analysis of the Abecassis reference with respect to this claim element. (Ex. 1025 at ¶¶ 114-116; Paper 23 at 16-17.) This testimony is relevant because it demonstrates the select disclosures in Abecassis regarding "virtual audio ... played in a real-time manner" that Dr. Quackenbush's relies upon as disclosing the above-cited teaching.

9. In Exhibit 2038, at 83:25-84:38, 85:2-12, and 87:12-23, Dr. Quackenbush testified regarding his understanding that Bluetooth includes a synchronous and asynchronous data channel related to his opinions regarding transferring asynchronous data channel (See Ex. 1025 at ¶¶ 113-116, 212-217). This testimony is relevant because Dr. Quackenbush admits that data may be transmitted in Bluetooth on either the synchronous and asynchronous data channel.

10. In Exhibit 2038, at 88:16-91:16, Dr. Quackenbush testified regarding his opinion that "[t]ransmitting data in an asynchronous manner was a simple, flexible,

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