UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD and SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioners

v.

AFFINITY LABS OF TEXAS, LLC
Patent Owner

Case IPR2014-01181[1]
Patent 8,532,641 B2

Before the Honorable KEVIN F. TURNER, LYNNE E. PETTIGREW, and JON B. TORNQUIST, *Administrative Patent Judges*.

PETITIONERS' RESPONSE TO PATENT OWNER'S MOTION FOR OBSERVATION ON EXAMINATION OF DR. SCHUYLER QUACKENBUSH

[1] Case Nos. IPR2014-01182 and IPR2014-01184 have been consolidated with the instant proceeding. *See* IPR2014-01181, Paper 15; IPR2014-01182, Paper 15; and IPR2014-01184, Paper 15. In view of this consolidation, Petitioners submit this single Response in IPR2014-01181.

GLOSSARY OF ABBREVIATIONS

Shorthand	Description
PO	Patent Owner
POSA	Person of Ordinary Skill in the Art
ID1	IPR2014-01181, Paper 10, Decision Institution of Inter Partes Review
ID2	IPR2014-01182, Paper 10, Decision Institution of Inter Partes Review
ID3	IPR2014-01184, Paper 10, Decision Institution of Inter Partes Review
R	IPR2014-01181, Paper 20, Patent Owner's Response
RP	IPR2014-01181, Paper 23, Petitioners' Reply to Patent Owner's Response

Note: All emphasis herein added unless otherwise stated.

Petitioners have the following responses to each of PO's observations on the September 30, 2015 cross-examination testimony of Dr. Quackenbush (Pap. 32):

Response to Observation #1. PO's observation is improper and should be expunged or not considered because it contains attorney argument. To the extent considered, PO argues that Dr. Quackenbush advanced positions "for the first time in his supplemental declaration" for the claim terms "stream a signal" / "streaming audio signal," "communication rate," and "provides for a CD quality listening experience"—but Dr. Quackenbush assumed a construction for each of these terms in his initial declarations (Ex. 1023¶27, 1123¶27, 1223 ¶28); and in direct response to Dr. Wolf's opinions, Dr. Quackenbush opined on the proper construction for these terms in his rebuttal declaration (Ex. 1025 ¶¶47-49, 51-58). *See* Ex. 2038 at 21:3-22:3. Dr. Quackenbush testified that the proper construction for these terms is consistent with his initial declarations and the '641 patent specification (Ex. 2038 at 8:12-11:13, 21:19-22:3). Further, the testimony PO cites is incomplete—it should include Ex. 2038 at 8:12-12:5, 12:23-13:6, 25:4-28:17; and contrary to PO's assertion, it is not relevant to at least Ex. 1025 ¶¶43-46, 50, 59-61.

Response to Observation #2. PO's observation is improper and should be expunged or not considered because it contains attorney argument. To the extent considered, the Board correctly construed "streaming audio signal." ID1 at 7-8; ID2 at 7-8; ID3 at 6-7; Ex. 1015 at 7. PO is wrong that the constructions for

"stream a signal" and "streaming audio signal" are "over[broad]." In response to Dr. Wolf's declaration, Dr. Quackenbush agreed with the Board that the ordinary meaning of "streaming audio signal" is an "audio signal that is transferred in a continuous stream,"—consistent with the '641 patent specification. Ex. 1025 ¶47. During his deposition, Dr. Quackenbush confirmed this understanding. Ex. 2038 at 9:14-18 ("streaming speaks to a transfer of data, and that may result in downloading as '641 informs us."); *see also* Ex. 2038 at 9:9-11:13, 14:9-17; Ex. 1001 at 8:31-35; Ex. 1025 ¶47; RP4.

Response to Observation #3. PO's observation is improper and should be expunged or not considered because it contains attorney argument and raises new arguments which constitute improper sur-reply. To the extent considered, the testimony PO cites does not demonstrate that "Petitioners' arguments and Dr. Quackenbush's opinions regarding the functionality of Bluetooth … are based upon a selective, hindsight-driven analysis," as PO argues. During his deposition, Dr. Quackenbush confirmed the opinions set forth in his declarations that a POSA would have been motivated to use Bluetooth to wirelessly transfer data and implementing Bluetooth would have worked, based on the cited references and the knowledge of a POSA. *See* Ex. 2038 at 16:9-16, 17:16-18:18; *see also* Ex. 1023 ¶¶74-76, Ex. 1123 ¶¶83-84; Ex. 1025 ¶¶68-79, 117-122, 133-155. And with respect to the Bluetooth specification, Dr. Quackenbush testified that Bluetooth

"has been available and was … widely publicized, widely adopted, and therefore would be well-known to [a POSA]," and that he reviewed the Bluetooth specification in preparing his declarations and cited it in his rebuttal declaration. Ex. 2038 at 16:9-16, 18:19-19:24.

Response to Observation #4. PO's observation is based on an underlying premise that is false: Petitioners do not argue "that Abecassis itself teaches a rechargeable power supply" (*see* RP10). Thus, this observation is irrelevant. Consistent with his declarations, Dr. Quackenbush testified that it would have been obvious to include a rechargeable battery in Abecassis' multimedia player ***based on the knowledge of a POSA or Herrod***. Ex. 2038 at 34:21-35:4 ("So that citation which I just read out, plus one of ordinary -- plus the skill of a person, ***plus the knowledge of a [POSA] and then of course I bring in Herrod.***"); *see also* Ex. 2038 at 35:16-22; Ex. 1123 ¶¶41-44; Ex. 1025 ¶¶89-93. And, Dr. Quackenbush cited Herrod's disclosure that battery charging technology was "well known to the skilled person..." (Ex. 1106 at 14:18-24) (not a "single disclosure" in Abecassis, as PO asserts) to support his opinion that it would have been obvious to a POSA that Abecassis' power supply could be rechargeable. Ex. 1123 ¶42; Ex. 2038 at 35:5-15.

Response to Observation #5. PO's observation is improper and should be expunged or not considered because it contains attorney argument and raises new arguments which constitute improper sur-reply. To the extent considered, PO is

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