

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARP CORPORATION, SHARP ELECTRONICS CORPORATION, and
SHARP ELECTRONICS MANUFACTURING
COMPANY OF AMERICA, INC.,
Petitioners

v.

SURPASS TECH INNOVATION LLC
Patent Owner

Case IPR2015-00021
Patent 7,202,843

**PATENT OWNER SURPASS TECH INNOVATION LLC'S
MOTION TO EXCLUDE PETITIONERS' EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(c)**

Patent Owner Surpass timely moves to exclude the following portions of Petitioners' Reply Evidence as set forth below:

Exhibit 1010 – ¶¶ 42-43 of the Rebuttal Declaration of Michael J. Marentic

1. Identity of the exhibit and portion thereof sought to be excluded: ¶¶ 42-43, directed to Mr. Marentic's testimony on the "Level of Skill in the Art."
2. Objection: Fed. R. Evid. 702.
3. An objection was made in Patent Owner Surpass's Objections, filed September 17, 2015. See Paper 25, p. 2, row 3.
4. Petitioners rely on Mr. Marentic's standard for a person "of ordinary skill in the art" on p. 6 (ln. 8) and p. 14 (ll. 11-13) of the Reply. Petitioners also present a standard for a person of ordinary skill in the art on p. 19 (ll. 14-17) of the Petition, though the Petition's standard differs from Mr. Marentic's standard.
5. Mr. Marentic's asserted testimony on the "Level of Skill in the Art" fails to satisfy Fed. R. Evid. 702. Under Fed. R. Evid. 702, a qualified witness "may testify in the form of an opinion or otherwise if: ... (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably

applied the principles and methods to the facts of the case.” Mr. Marentic offers no facts or data to support his opinion on the level of skill in the art, and in fact presents a standard that differs from the standard presented at p. 19 of the Petition without explanation or disclosing the underlying facts or data of his opinion. *See also* Ex. 2007 at 38:10-41:6. His testimony in these paragraphs fails to satisfy Fed. R. Evid. 702 and should be excluded. Similarly, the portions of the Reply that draw conclusions according to the standard of “ordinary skill in the art” (see Reply at p. 6 (ln. 8) and p. 14 (ll. 11-13)) should also be excluded.

Exhibit 1010 – ¶¶ 92-93 of the Rebuttal Declaration of Michael J. Marentic

1. Identity of the exhibit and portion thereof sought to be excluded: ¶¶ 92-93, directed to Mr. Marentic’s reliance on Ex. 1012, 1013, and 1014 for the accuracy of the disclosures contained therein.
2. Objection: Fed. R. Evid. 802.
3. An objection was made in Patent Owner Surpass’s Objections, filed September 17, 2015. See Paper 25, p. 2, row 4.¹

¹In Patent Owner Surpass’s Objections, filed September 17, 2015, Patent Owner indicated that the objection was to “¶¶ 92-92” rather than “¶¶92-93.” Paper 25, p. 2, row 4. However, Patent Owner’s discussion of that objection indicates that the

4. Petitioners rely on Mr. Marentic's ¶¶ 92-93 on p. 23, ln. 14 through p. 24, ln. 16 of the Reply, in support of their claim construction arguments.
5. The written statements in Ex. 1012, 1013, and 1014 are hearsay because Petitioners offer them for the truth of the matter asserted in the statements. Petitioners and Mr. Marentic are not merely relying upon Ex. 1012, Ex. 1013, and Ex. 1014 to show that the term "transmission rate" exists in the prior art. Rather, Mr. Marentic confirmed during his deposition that Sharp is relying on the accuracy of the disclosures of Ex. 1012, Ex. 1013, and Ex. 1014 to support his position regarding how "control a transmission rate" and "transmission rate," as those terms appear in claim 4 of the '843 patent, should be factually understood. *See* Ex. 2007 at 77:7-21. This is consistent with Marentic's statement in ¶ 93 of Ex. 1010, in which he presents what he believes is the "correct understanding" of these terms, and then cites to Ex. 1014 and Ex. 1012 for support. Ex. 1010 at ¶ 93. Petitioners rely on Mr. Marentic's

objection is to "Paragraphs" of Ex. 1010, rather than just a single paragraph, and the objections are founded upon Mr. Marentic's reliance on Ex. 1014, which is discussed in ¶ 93 of the Marentic Rebuttal Declaration, Ex. 1010. Therefore, Petitioners were placed on notice of Patent Owner's objections as to both ¶¶ 92 and 93 with sufficient particularity, per 37 C.F.R. § 42.64(b)(1).

testimony to provide factual support for its position as to the correct construction of the claimed phrase “control a transmission rate.” The testimony in Ex. 1010, ¶¶ 92-93 invokes the rule against hearsay, and therefore fails to satisfy Fed. R. Evid. 802. This testimony should be excluded. Moreover, Petitioners have not identified an exception to the rule against hearsay. Indeed, Mr. Marentic confirmed during his deposition that he has no knowledge about who drafted those exhibits, much less the technical background of the drafter(s). *Id.* at 66:8-69:13; 78:1-81:9; 83:12-86:4. Mr. Marentic’s testimony should be excluded, and the portions of the Reply that rely upon the excluded testimony should be disregarded.

Exhibit 2007 – 116:12 to 118:3 of Deposition of Michael J. Marentic

1. Identity of the exhibit and portion thereof sought to be excluded or stricken: page 116, line 12 to page 118, line 3 of Mr. Marentic’s deposition testimony submitted as Ex. 2007.
2. Objection: Non-responsive.
3. An objection was made by counsel for Patent Owner Surpass at page 118, lines 4-6 of Ex. 2007, immediately upon the conclusion of Mr. Marentic’s testimony.

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