

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.,
Petitioner,

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00021
Patent No. 7,202,843 B2

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE**

Sharp Corporation, Sharp Electronics Corporation, and Sharp Electronics Manufacturing Company of America, Inc. (collectively, “Petitioner”) submit this opposition to Patent Owner’s Motion to Exclude (“Motion,” Paper 31). As discussed below, Patent Owner provides no legal or factual basis for excluding any of Petitioner’s evidence. Patent Owner’s Motion should be denied in full.

I. Mr. Marentic’s Level of Skill Opinions Are Admissible

Patent Owner asserts that Mr. Marentic’s testimony relating to the applicable “level of skill in the art” (Ex. 1010, ¶¶42-43) should be excluded because “it fails to satisfy Fed. R. Evid. 702.” (Motion at 1). In this regard, Patent Owner states that “Mr. Marentic offers no *facts or data* to support his opinion on the level of skill in the art” (*Id.* at 2) (emphasis added). But, other than regurgitate portions of Rule 702, Patent Owner does not explain why these opinions should be excluded.

In Paragraph 42, Mr. Marentic sets forth the level of skill in the art applicable to this proceeding:

A person of ordinary skill in the art would have had an undergraduate degree in electrical engineering, or equivalent work experience. That person would also have had 3 or more years of experience designing flat panel display drive electronics and active matrices for LCDs.

(Ex. 1010, ¶42). As explained in Paragraph 43, Mr. Marentic provided this opinion in direct response to the level of skill proposed by Patent Owner’s expert,

Mr. Bohannon. (Ex. 1010, ¶43 (“I do not agree that a person with a degree in mathematics or computer science would have the requisite education to design LCD drive electronics”)). Mr. Marentic also explained that, under either of the parties’ proposed level of skill, Patent Owner’s arguments were incorrect and the claims at issue are invalid. (*Id.* at ¶43).

All of this testimony is based upon Mr. Marentic’s “30 years of experience working on liquid crystal display (LCD) and related technologies.” (*Id.* at ¶17). Courts have long recognized that testimony based on an expert’s experience is proper and reliable under F.R.E. 702. *See, e.g., Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010) (“An expert’s testimony is not unreliable simply because it is founded on his experience rather than on data”); *Figueroa v. Boston Sci. Corp.*, 254 F. Supp. 2d 361, 368 (S.D.N.Y. 2003) (“An expert may base his opinion on experience alone, and [arguments critical thereof] implicate the weight of the evidence rather than its admissibility.”).

It is entirely unclear what additional “facts or data” Patent Owner contends are absent from the objected-to paragraphs. Like Mr. Marentic, Patent Owner’s own expert similarly sets forth the education and experience of a person of ordinary skill in the art, without supporting data. (Ex. 2005, ¶ 8).

Tellingly, Patent Owner does not explain how any of the proposed levels of skill in the art materially affect the anticipation or “claim construction” analyses in

this case. Here, no express finding on the level of skill in the art is even required. *See Juniper Networks, Inc. v. Brixham Solutions, Ltd.*, IPR2014-00425, Paper 38 at 9-10 (PTAB July 27, 2015) (no need to determine level of skill where challenging party “has not provided a sufficient explanation as to how its specific proposal regarding the level of ordinary skill . . . affects the analysis in this case.”); *see Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error where the prior art itself reflects an appropriate level and a need for testimony is not shown.”) (internal quotation marks omitted).

Patent Owner also notes that Mr. Marentic “presents a standard that differs from the standard presented [in] the Petition.” (Motion at 2). But Mr. Marentic testified that those “both [standards] are equivalent” (Ex. 2007, 40:21-41:6) and that any minor differences between the two had no bearing on his opinions. (Ex. 2007, 161:10-162:4). And, here again, Patent Owner does nothing more than repeat the text of Rule 702 without providing any argument or analysis.

Finally, it is well established that this type of objection under F.R.E. 702 “goes to the weight and sufficiency of the testimony, rather than its admissibility.” *Primera Tech., Inc. v. Automatic Mfg. Sys., Inc.*, IPR2013-00196, Paper 50 at 28-29 (PTAB July 17, 2014). As the Board has stated, a motion to exclude evidence “may not be used to challenge the sufficiency of the evidence to prove a particular

fact.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012).

For these reasons, Patent Owner’s request to exclude Paragraphs 42-43 of Mr. Marentic’s declaration should be denied.

II. Petitioner’s Exs. 1012, 1013 and 1014 Are Not Hearsay

Patent Owner next asserts that Paragraphs 92-93 of Marentic’s Rebuttal Declaration should be excluded because the patents cited in these Paragraphs (i.e., Exs. 1012, 1013 and 1014) purportedly contain inadmissible hearsay. (Motion at 2-4). Patent Owner is wrong. These three issued U.S. patents were cited to rebut Patent Owner’s odd claim construction arguments and are therefore not hearsay. In all events, U.S. patents are subject to the “public records exception” to hearsay under FRE 803(8). Following Patent Owner’s logic, the ‘843 Patent would itself be inadmissible hearsay, which is simply absurd.

By way of background, Petitioner’s initial petition for *inter partes* review established that no construction is necessary for any term of the ‘843 Patent. (*See* Paper 1 at 18). Patent Owner did not offer any constructions either. The Board agreed, and did not construe any terms in its Decision instituting review. (*See* Paper 10 at 4-5). In its Response, Patent Owner sought to amend Claim 4 under the guise of claim construction, arguing that the phrase “control a transmission rate” should further require the application of “two or more *overdriven* data

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