

1           SEPTEMBER 29, 2015 HEARING

2           UNITED STATES PATENT AND TRADEMARK OFFICE  
3           BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 SAMSUNG ELECTRONICS CO., LTD., SAMSUNG DISPLAY  
5 CO.,  
6 LTD, and SONY CORPORATION,

7 Petitioner,

8 v.

9 SURPASS TECH INNOVATION LLC,

10 Patent Owner.

11           \_\_\_\_\_

12                           Case IPR2015-00887

13                           Patent 7,420,550 B2

14           \_\_\_\_\_

15 UNITED STATES PATENT AND TRADEMARK OFFICE  
16 BEFORE THE PATENT TRIAL AND APPEAL BOARD

17 SONY CORPORATION, SAMSUNG ELECTRONICS CO.,  
18 LTD., and  
19 SAMSUNG DISPLAY CO., LTD.,

20 Petitioner,

21 v.

22 SURPASS TECH INNOVATION LLC,

23 Patent Owner.

24           \_\_\_\_\_X

25                           Case IPR2015-00863

                          Patent 7,202,843 B2

Job No: 98433 - TELEPHONIC HEARING

1 SEPTEMBER 29, 2015 HEARING  
 2  
 3  
 4  
 5 TELEPHONIC HEARING FOR THE U.S. PATENT  
 6 AND APPEALS BOARD, ADMINISTRATIVE PATENT  
 7 JUDGE BETH SHAW  
 8 on Tuesday, September 29, 2015  
 9 at or about 9:30 a.m.  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 SEPTEMBER 29, 2015 HEARING  
 2 APPEARANCES:  
 3 PETITIONER:  
 4 Jay Alexander, Esq.  
 5 Andrea Reister, Esq.  
 6 COVINGTON & BURLING  
 7 One CityCenter  
 8 850 Tenth Street Northwest  
 9 Washington, DC 20001  
 10  
 11 Walter Hanley, Jr., Esq.  
 12 Michelle Carniaux, Esq.  
 13 KENYON & KENYON  
 14 One Broadway  
 15 New York, NY 10004  
 16  
 17 PATENT OWNER:  
 18 Wayne Helge, Esq.  
 19 DAVIDSON BERQUIST JACKSON & GOWDEY  
 20 8300 Greensboro Drive  
 21 McLean, VA 22102  
 22  
 23  
 24  
 25

1 SEPTEMBER 29, 2015 HEARING  
 2 P R O C E E D I N G S:  
 3 MS. CARNIAUX: Michelle Carniaux,  
 4 lead counsel on the '863 petition, and  
 5 backup counsel for the '887 petition.  
 6 And with me is Walter Hanley, backup  
 7 counsel on the '863 petition.  
 8 ADMINISTRATIVE JUDGE SHAW: Thank  
 9 you.  
 10 Who do we have for the Patent  
 11 Owner?  
 12 MR. ALEXANDER: This is Jay  
 13 Alexander. I am lead counsel on the  
 14 '887 matter and backup counsel on the  
 15 '863 matter. And also with me is backup  
 16 counsel, Andrea Riester.  
 17 ADMINISTRATIVE JUDGE SHAW: Thank  
 18 you.  
 19 For the Patent Owner?  
 20 MR. HELGE: Good morning, your  
 21 Honor, Wayne Helge for the Patent Owner  
 22 Surpass.  
 23 ADMINISTRATIVE JUDGE SHAW: This  
 24 is Judge Shaw. It sounds like we do  
 25 have the court reporter on the line.

1 SEPTEMBER 29, 2015 HEARING  
 2 I'd ask a copy of the transcript be  
 3 filed with the Board in due course after  
 4 this call.  
 5 Petitioner, you have requested this  
 6 call. What is the problem?  
 7 Mr. HANLEY: This is Walter Hanley.  
 8 We requested the conference because we  
 9 received objections from Patent Owner  
 10 the two exhibits that were submitted  
 11 with our petition in the '863 matter.  
 12 And as to certain objections, we don't  
 13 understand the nature of the objection.  
 14 And we want to be able to understand  
 15 that so we can determine whether or not  
 16 to submit supplemental evidence to  
 17 attempt to cure objection.  
 18 So we reached out to counsel for  
 19 Patent Owner and asked for clarification  
 20 relating to certain objections. And,  
 21 essentially, Patent Owner's counsel  
 22 refused to clarify.  
 23 So we thought, albeit reluctant,  
 24 with the crowded court's schedule,  
 25 evidentiary matters, we felt compelled,

1 SEPTEMBER 29, 2015 HEARING  
 2 in view of our deadlines coming up, to  
 3 submit supplemental evidence to bring  
 4 this to the attention of the Board, and  
 5 seek the Board's -- a ruling from the  
 6 Board. And a clarification needs to be  
 7 provided, or absent that, the objection  
 8 should be stricken.

9 ADMINISTRATIVE JUDGE SHAW: Give  
 10 me an example of what information you  
 11 need to clarify.

12 MR. HANLEY: As to the objections,  
 13 first of all, they related to three  
 14 exhibits, and you can put the exhibits  
 15 in the two categories.

16 There are Petitioner Exhibits 1004  
 17 and 1005, which are, respectively, the  
 18 original Japanese-language version of  
 19 the Nitta reference, on which the Board  
 20 instituted trial in part. And 1005 is a  
 21 certified English-language translation  
 22 called the Nitta reference.

23 If the Board has available the copy  
 24 of the objections that were submitted,  
 25 the very first objection goes to

1 SEPTEMBER 29, 2015 HEARING  
 2 Exhibits 1004 and 1005, and the grounds  
 3 stated are, quote, "certification does  
 4 not provide basis or statements.  
 5 Translation contains hearsay offered for  
 6 its truth."

7 So as to that, what we are seeking  
 8 is to what particular respect is the  
 9 certification deficient in providing a  
 10 foundation for the testimony of the  
 11 translator, first of all.

12 And secondly, the objections that  
 13 the translation contains hearsay offered  
 14 for its truth is, frankly, puzzling to  
 15 us because this is the prior art, and we  
 16 are, of course, relying on the prior art  
 17 and what it discloses.

18 So what we would like to understand  
 19 is what particular statements within the  
 20 reference does Patent Owner contend we  
 21 are offering for the truth of them as  
 22 opposed to offering them for what they  
 23 say.

24 So that is the first objection.

25 ADMINISTRATIVE JUDGE SHAW: All

1 SEPTEMBER 29, 2015 HEARING  
 2 right. Patent Owner, what is your  
 3 response to this? Did you give them  
 4 this information?

5 MR. HELGE: Wayne Helge.

6 Your Honor, I think there is a few  
 7 responses to this point. I think  
 8 upfront this issue is simply not ripe  
 9 for adjudication. Objections are  
 10 normally ruled upon in the context of a  
 11 motion to exclude. And what we have  
 12 done is we've timely served objections.

13 I know counsel -- I just pulled up  
 14 Mr. Hanley's experience on Kenyon's  
 15 website; he has got appearances in, I  
 16 would say, probably dozens of  
 17 litigations.

18 So I certainly think he is capable  
 19 of looking at the objections which we  
 20 have provided based on Federal Rules of  
 21 Evidence, and based upon the Board's  
 22 rules, and look at the evidence and the  
 23 option for Petitioner receiving  
 24 objections is to either serve  
 25 supplemental evidence or not.

1 SEPTEMBER 29, 2015 HEARING

2 If they believe there is no hearsay  
 3 issue here, then their option is to not  
 4 serve supplemental evidence.

5 What I think they're really asking  
 6 the Board to do is provide an advisory  
 7 opinion on whether these evidentiary  
 8 objections are appropriate. And,  
 9 frankly, I just don't think that is an  
 10 issue that's ripe for Board adjudication  
 11 at this time.

12 In terms of this specific  
 13 objection, we have identified that the  
 14 certification -- the certification that  
 15 was provided with the translation does  
 16 not provide its basis for its  
 17 statements, and I stand by that.

18 If you read the certification,  
 19 there is no basis explained for the  
 20 statements made therein. And in terms  
 21 of translation contains hearsay offered  
 22 for its truth. I think, again, I am  
 23 frankly a little surprised counsel can't  
 24 understand that, in fact, a prior art  
 25 reference that is written in a foreign

1 SEPTEMBER 29, 2015 HEARING  
 2 language may be the prior art reference  
 3 and may be offered for what it discloses  
 4 rather than its truth, but the  
 5 translation -- frankly, the  
 6 certification cites the translation is  
 7 true.

8 And so, you know, I think if we  
 9 were to go to every one of those things,  
 10 it's simply a matter of Petitioner  
 11 looking for the Board to tell them  
 12 whether they have already done their job  
 13 or not. That is not the Board's job  
 14 right now. That is not really -- that  
 15 is really the Petitioner's job.

16 If I can throw out -- if I can  
 17 explain one more issue. In terms of  
 18 what we've provided in terms of the  
 19 disclosure, I think every objection in  
 20 here is pinpointed to either an  
 21 exhibit -- if it is a full exhibit that  
 22 we are objecting to, or in the case of  
 23 the declaration, the declaration of  
 24 their witness, we've identified the  
 25 specific paragraphs.

1 SEPTEMBER 29, 2015 HEARING  
 2 comply with Section 42.63b, is not an  
 3 affidavit, and the person making the  
 4 certification does not attach to perform  
 5 the translation or the basis for the  
 6 certification."

7 ADMINISTRATIVE JUDGE SHAW: Do you  
 8 believe that you provided sufficient  
 9 particularity to allow correction here?  
 10 I hear what you're saying, and our rules  
 11 do state that although once objections  
 12 are filed, petition for particularity to  
 13 allow correction is required.

14 MR. HELGE: Your Honor, I  
 15 absolutely believe that all of these are  
 16 sufficiently clear, and that Petitioner,  
 17 with their experience and understanding  
 18 of the Federal Rules of Evidence, and  
 19 understanding of admission requirements,  
 20 would absolutely be able to look through  
 21 these and understand exactly the  
 22 objections being made.

23 I would note again that opposing  
 24 counsel, Petitioner has substantial  
 25 litigation experience, and I would say

1 SEPTEMBER 29, 2015 HEARING  
 2 Again, I think they have the  
 3 ability to go through and determine  
 4 whether they think that their evidence  
 5 is sufficient or whether they need to  
 6 cure it.

7 ADMINISTRATIVE JUDGE SHAW: Let me  
 8 ask you, why is every translation -- is  
 9 every translation hearsay?

10 MR. HELGE: So we have -- your  
 11 Honor, honestly, I am not prepared to  
 12 answer that with a full answer to say  
 13 whether we have identified every  
 14 translation.

15 I know that in the '863 case,  
 16 Exhibit 1004 and 1005, one is the  
 17 foreign-language document, and one is  
 18 the translation.

19 The '863 case, I believe, didn't  
 20 have any other foreign-language  
 21 translations but the '887 had one, and  
 22 that is one where we objected to  
 23 Exhibits 1006 and 1007. And the  
 24 objection, I will quote here is,  
 25 "certification of translation does not

1 SEPTEMBER 29, 2015 HEARING  
 2 that these objections go above and  
 3 beyond what is ordinarily provided in  
 4 context of pretrial disclosures in  
 5 litigation.

6 MR. ALEXANDER: This is Jay  
 7 Alexander. If I may, on the '887 case,  
 8 Mr. Helge referred to the objection of  
 9 the translation there. The grounds they  
 10 provided are twofold. One is under  
 11 42.63b, because the translation was not  
 12 in the form of an affidavit. We  
 13 understand that, and we are prepared to  
 14 submit an affidavit.

15 However, the second ground just  
 16 simply says FRE 802, which refers to  
 17 hearsay rules, but there is no further  
 18 explanation whatsoever. So we are  
 19 actually left with the same question  
 20 that you asked, your Honor, which is how  
 21 is the translation hearsay? And if it  
 22 is, how is that different from every  
 23 other translation that the Board deals  
 24 with?

25 So that is why I think both

1 SEPTEMBER 29, 2015 HEARING  
 2 petitioners are scratching their heads  
 3 here, and looking for any kind of  
 4 statement of what the Patent Owner  
 5 thinks is deficient about the  
 6 translation, and so far we haven't heard  
 7 anything.

8 MR. HELGE: Your Honor, Wayne Helge  
 9 again. May I discuss one more point  
 10 here?

11 ADMINISTRATIVE JUDGE SHAW: Yes.  
 12 Please go ahead.

13 MR. HELGE: I think one thing that  
 14 we haven't really established on this  
 15 call is what the relief the petitioners  
 16 are actually seeking.

17 Normally a call like this is  
 18 scheduled to request permission to file  
 19 a motion. I haven't heard them explain  
 20 that they are specifically requesting  
 21 permission to file a motion here or  
 22 raise this dispute in any sort of  
 23 written correspondence.

24 So just for clarification, I am not  
 25 sure if we are actually looking at

1 SEPTEMBER 29, 2015 HEARING  
 2 their -- a rule -- if they are asking  
 3 the Board to rule today on this call  
 4 some -- some substantive evaluation of  
 5 these objections, or whether there is  
 6 some additional filing that they are  
 7 seeking to provide.

8 MR. HANLEY: This is Walter Hanley.  
 9 May I respond?

10 ADMINISTRATIVE JUDGE SHAW: Yes.

11 MR. HANLEY: First of all, going  
 12 back to the earlier comment Mr. Helge  
 13 made. We should not have to guess what  
 14 their issue is. Yes, I thank him for  
 15 commenting on my litigation experience,  
 16 but my litigation experience, typically  
 17 counsel will confer with each other, and  
 18 if there is a lack of clarity, such as  
 19 there is here, that that clarity is  
 20 resolved before so that the issue can be  
 21 presented in a pointed form to the  
 22 judge, if need be.

23 They simply have not provided  
 24 clarity. So the relief that we are  
 25 seeking is a ruling order, and may be

1 SEPTEMBER 29, 2015 HEARING  
 2 required to clarify these objections.

3 So far I have only spoken on one of  
 4 them. There are several others that go  
 5 to another exhibit, which is the  
 6 declaration of our expert, Mr. Credelle.  
 7 But that is what we are seeking.

8 And if the Board view's is we need  
 9 to submit a motion to obtain that  
 10 ruling, then of course we will do that.

11 One thing I'd point out is that our  
 12 deadline for submitting something is  
 13 next week, is October 6. So the time is  
 14 running short for us to get what we  
 15 think we need in order to make a  
 16 determination as to whether or not the  
 17 supplemental evidence is required.

18 With regard to the objection we are  
 19 talking about, look, this translation of  
 20 the Nitta reference, Exhibit 1005, it's  
 21 a 26-page translation. The grounds for  
 22 the objections stated are that it  
 23 contains hearsay somewhere in those 26  
 24 pages, I guess, that's offered for its  
 25 truth.

1 SEPTEMBER 29, 2015 HEARING

2 It seems to me in reviewing the  
 3 exhibit and arriving at this position  
 4 that there is a hearsay problem, they  
 5 should be able to point to specific  
 6 statements that they contend we are  
 7 relying on for the truth of the content  
 8 as opposed to, as I said, what they  
 9 disclosed.

10 That is all we are asking for. We  
 11 are asking for that kind of  
 12 particularity. We are asking on the  
 13 certification of what is it that is  
 14 inferred about the certification in  
 15 terms of its foundation for providing a  
 16 basis for the testimony about the  
 17 translation.

18 There isn't -- there should not  
 19 have to be any mystery here about what  
 20 the problem so that we can address the  
 21 problem under the rules.

22 ADMINISTRATIVE JUDGE SHAW: Thank  
 23 you both. We are going to put you on  
 24 hold for a few minutes while we confer.  
 25 (Off the record)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.