

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD., SAMSUNG DISPLAY CO., LTD;  
SONY CORPORATION,  
Petitioners,

v.

SURPASS TECH INNOVATION LLC,  
Patent Owner.

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Case No. IPR2015-00887  
U.S. Patent No. 7,420,550

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**PETITIONERS' MOTION TO EXCLUDE  
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64**

## **I. Introduction**

In accordance with 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper No. 10) as modified by the Joint Stipulation to Modify the Scheduling Order (Paper No. 21), Petitioners Samsung Electronics Co., Ltd., Samsung Display Co., Ltd., and Sony Corporation move to exclude Patent Owner Exhibits 2004, 2006, 2007 and 2024, which were cited by Surpass Tech Innovation LLC (“Patent Owner”) in support of its Patent Owner’s Response (“PO Response,” Paper 16), filed on November 24, 2015. Petitioners further move to exclude Exhibit A of the October 30, 2015 Deposition of Tsu-Jae King Liu, Ph.D., which Patent Owner cited in its PO Response as Exhibit 2005. This motion to exclude is based on grounds listed in Petitioners’ Objections to Patent Owner’s Evidence Under 37 C.F.R. § 42.64(b)(1) (“Petitioners Objections,” Paper 17), which were timely filed and served on Patent Owner on December 2, 2015. Petitioners’ motion is based on the Federal Rules of Evidence (“FRE”), relevant case law, and the PTAB’s rules as codified in the Code of Federal Regulations, Title 37, at Part 42.

## **II. Argument**

### **A. Exhibit 2004 – October 28, 2015 Deposition of Thomas Credelle in IPR2015-00863 Case – Should Be Excluded**

In its PO Response, Patent Owner cited an excerpt from Thomas Credelle’s deposition testimony in another, unrelated IPR trial, IPR2015-00863. This exhibit

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(Exhibit 2004) should be excluded under FRE 801 and 802 as inadmissible hearsay. *See* Petitioners Objections, pp. 1-2.

Mr. Credelle is not a witness in this trial. Neither U.S. Patent No. 7,420,550 (“the ’550 patent”) nor the publication of PCT Appl. WO 02/075708 to Janssen *et al.* (“Janssen ’708”) (Exhibit 1004 in this proceeding) were disclosed or discussed in Mr. Credelle’s declaration or deposition in the IPR2015-00863 trial. The cited Credelle testimony from pages 31:20-32:6 of Exhibit 2004 included in the PO Response is an out-of-court statement offered in an attempt to prove that the “pixel symbol indicated in Janssen ’708 is commonly used to indicate a liquid crystal device in an LCD panel” and that “a liquid crystal pixel is not shown as a resistor in a circuit diagram.” PO Response, p. 18. The cited testimony is not being offered as evidence of what an ordinary artisan understands with respect to liquid crystal pixels, but instead in an impermissible attempt to prove the truth of the matter regarding the pixel elements disclosed in Janssen ’708. *Cf. Biomarin Pharm. Inc., v. Genzyme Therapeutic Prod. Ltd. P’ship*, IPR2013-00537, Paper 79, p. 25 (Exhibit offered as evidence of what it describes to an ordinary artisan, and not for proving the truth of the matters addressed in the exhibit).

The cited Credelle testimony is therefore hearsay under FRE 801(c) and presumptively inadmissible under FRE 802. None of the hearsay exceptions of

FRE 803 or 804 applies to the cited Credelle testimony and Patent Owner has not suggested that any such exceptions exist.

Petitioner has had no opportunity to examine Mr. Credelle as to the truth of the matter for which his testimony is being offered. Exhibit 2004 and the testimony therein is inadmissible hearsay, and should be excluded under FRE 801 and 802.

**B. Exhibit 2005 – Exhibit A of October 30, 2015 Deposition of Tsu-Jae King Liu, Ph.D. in IPR2015-00887 Case Should Be Excluded**

In its PO Response, Patent Owner referenced Exhibit A of Exhibit 2005, which is the deposition transcript of Petitioners' expert witness Dr. Liu. Exhibit A of Exhibit 2005 is irrelevant and misleading, and should be excluded under FRE 402 and 403. *See* Petitioners Objections, pp. 2-3.

In the PO Response, Patent Owner characterizes Exhibit A as “the drawing prepared by Dr. Liu during the deposition” (PO Response, p. 3) and “the symbol she drew as Exhibit A of her deposition” (*Id.*, p 20). Contrary to this representation, counsel for Patent Owner *directed* Dr. Liu to draw the symbol in Exhibit A. First, Patent Owner’s counsel instructed Dr. Liu to draw the electrical symbol for a resistor (Ex. 2005, p. 8:3-15), and then instructed Dr. Liu to draw a circle around the resistor symbol. *Id.*, p. 8:16-18. Dr. Liu did not draw the entire symbol shown in Exhibit A of Exhibit 2005 in response to a question directed to common electrical symbols for a resistor – the symbol was the direct result of

drawing instructions from Patent Owner's counsel, including the circle around the resistor symbol.

Exhibit A to the deposition of Dr. Liu is irrelevant in light of Dr. Liu's testimony at pages 8:5-13:17 of Exhibit 2005 establishing that the symbol appearing on the exhibit is not a commonly used symbol with a commonly understood meaning in the art and therefore its meaning depends on the context in which it is used. Patent Owner has not offered any contrary evidence and has not established the meaning of the symbol contrary to the meaning shown by Petitioner in the context of the '550 Patent. Thus, Exhibit A of Exhibit 2005 is irrelevant and misleading, and should be excluded under FRE 402 and 403.

**C. Exhibit 2006 – November 11, 2015 Deposition of Michael J. Marentic in IPR2015-00913 Case – Should Be Excluded**

In its PO Response, Patent Owner cited an excerpt from Michael J. Marentic's deposition testimony in another, unrelated IPR trial, IPR2015-00913. This exhibit (Exhibit 2006) should be excluded under FRE 801 and 802 as inadmissible hearsay. *See* Petitioners Objections, p. 3.

Mr. Marentic is not a witness in this trial. Neither the '550 patent nor Janssen '708 were disclosed or discussed in Mr. Marentic's declaration or deposition in the IPR2015-00913 trial. The cited Marentic testimony from page 25:4-10 of Exhibit 2006 included in the PO Response is an out-of-court statement offered in an attempt to prove that "ramp retrace was applicable to LCD

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