

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00887
Patent 7,420,550 B2

**PATENT OWNER SURPASS TECH INNOVATION LLC'S
OPPOSITION TO PETITIONERS' MOTION TO EXCLUDE EVIDENCE**

I. Introduction

Petitioners' Motion to Exclude Evidence ("Petitioners' Motion") (Paper 27) seeks to exclude five specific exhibits or portions thereof from the record in this case against U.S. Patent No. 7,420,550 ("the '550 patent"):

<u>Exhibit</u>	<u>Description</u>
2004	Transcript for the Deposition of Thomas Credelle dated October 28, 2015, IPR2015-00863
2006	Transcript for the Deposition of Michael J. Marentic dated November 11, 2015, in IPR2015-00913
2007	Transcript for the Deposition of Richard Zech, Ph.D. dated November 13, 2015, in IPR2015-00885
Page 164 of Ex. 2005	Handwritten Drawing performed by Dr. Liu; Included in Ex. 2005, the Transcript for the Deposition of Tsu-Jae King Liu dated October 30, 2015, in IPR2015-00887
2024	Chapter 3. Introduction to Electronics (available at http://users.ece.utexas.edu/~valvano/Volume1/E-Book/C3_Electronics.htm)

None of this evidence should be excluded from this case for the reasons explained below.

II. Exhibits 2004, 2006, and 2007 are Admissible as Sworn Testimony

The first three Exhibits 2004, 2006, and 2007 listed above constitute the sworn deposition testimony of technical witnesses tendered by the petitioners in the respective identified IPR matters against Patent Owner Surpass Tech

Innovation LLC (“Surpass”). Exhibit 2004 is in fact the testimony of Petitioners’ own witness, Mr. Credelle, in related IPR2015-00863 against U.S. Patent No. 7,202,843, and Petitioners’ counsel were present to defend and conduct redirect examination of Mr. Credelle during this proceeding. *See* Ex. 2004 at 3. Exhibit 2006 is the testimony of Mr. Marentic in IPR2015-00913 brought by the Sharp petitioners against the ‘550 patent at issue in this case, and Exhibit 2007 is the testimony of Dr. Zech in IPR2015-00885 brought by LG Display Co., Ltd. also against the ‘843 patent. In each case, the respective petitioners have touted the technical prowess of their technical witnesses, yet Mr. Credelle, Mr. Marentic, and Dr. Zech each gave testimony that contradicted Dr. Liu’s testimony and conclusions in this matter.

Petitioners’ Motion moves to exclude Exhibits 2004, 2006, and 2007 as hearsay under Fed. R. Evid. 801 and 802. But the relied-upon statements of Mr. Credelle, Mr. Marentic, and Dr. Zech are not “hearsay” under Fed. R. Evid. 801, just as a signed and sworn declaration of a witness’s own testimony does not constitute inadmissible hearsay in an *inter partes* review. “Hearsay” is defined under the Federal Rules of Evidence as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Fed. R. Evid. 801. The statements of Mr. Credelle, Mr. Marentic and Dr. Zech that Petitioners wish to exclude were their own

opinions, based on their understanding of LCD-related technology, delivered while testifying on cross-examination and under oath. They were testifying to their own technical opinions, just as if they had issued a signed and sworn declaration for submission as evidence in this case. In other words, their relied-upon testimony as contained in Exhibits 2004, 2006, and 2007 were statements by the respective declarants, offered into evidence to prove (*inter alia*) the truth of their statements.

Petitioners' Motion treats the sworn deposition testimony of Mr. Credelle, Mr. Marentic, and Dr. Zech as somehow a lower pedigree than direct testimony provided in the form of a declaration. But under the Board's regulations, these deposition transcripts of Exhibits 2004, 2006, and 2007 are appropriate evidence under 37 C.F.R. § 42.53(a), which states that "all other testimony [other than uncompelled direct testimony] ... must be in the form of a deposition transcript."

Indeed, Exhibits 2004, 2006, 2007 do not constitute an "out-of-court" statement any more than a witness's declaration prepared, signed, and filed as an exhibit. The only reason that Petitioners can even argue that these transcripts constitute "out-of-court" statements here (*see, e.g.*, Motion at 2) is because Petitioners failed to take appropriate steps to cross-examine the testimony of Mr. Credelle, Mr. Marentic, and Dr. Zech in this proceeding. Specifically, Petitioners made no attempt to cross-examine by deposition any of these three witnesses, and did not seek or include any declaration from any of these witnesses to either recant

or explain away the testimony that Petitioners now seek to exclude. Petitioners state in their Motion that they had “no opportunity to examine Mr. Credelle as to the truth of the matter for which is testimony is being offered.” Motion at 3.

Similar statements are made about Mr. Marentic and Dr. Zech. *Id.* at 4, 6. But Petitioners’ counsel defended Mr. Credelle at the deposition identified as Ex. 2004 (see p. 3), and there has been no showing by Petitioners anywhere in this case that these witnesses were unavailable for cross-examination by Petitioners on Exhibits 2004, 2006, and 2007. Petitioners certainly never contacted the undersigned Patent Owner’s counsel to set up a deposition of any of these witnesses. And Mr. Credelle was even present with counsel for Petitioners and Patent Owner for another witness’s deposition in IPR2015-00863 (*see* IPR2015-00863, Ex. 1019 at p. 3). Petitioners’ statement that they had “no opportunity” to cross-examine these witnesses is simply unfounded.

Petitioners then go so far as to say that each of these three witnesses “is not a witness in this trial.” Motion at 2, 4, 5. Not true. Petitioners chose not to submit a declaration from any of these witnesses in this case, and elected not to cross-examine these witnesses. But that does not prohibit Patent Owner from introducing them as witnesses. Indeed, the Board’s own Office Patent Trial Practice Guide acknowledges that patent owners may submit witness testimonial evidence that is not prepared specifically for the case in which it is submitted. *See*

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