

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

LAM RESEARCH CORP.,

Petitioner

v.

DANIEL L. FLAMM,

Patent Owner

---

U.S. Patent No. 6,017,221

Issued: January 5, 2000

Named Inventor: Daniel L. Flamm

Title: PROCESS DEPENDING ON PLASMA DISCHARGES  
SUSTAINED BY INDUCTIVE COUPLING

---

Case IPR2015-01767

Patent 6,017,221

**LAM RESEARCH CORP.'S MOTION TO EXCLUDE THE  
DECLARATION OF DANIEL L. FLAMM, Sc.D.**

Mail Stop: PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## I. INTRODUCTION

Pursuant to Rules 702 and 703 of the Federal Rules of Evidence as well as *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593 (1993), Lam Research Corp. ("Lam") hereby moves to exclude the **expert** declaration of Dr. Daniel L. Flamm, Ex. 2001, (the "Flamm Declaration") and arguments relying thereon. As the sole owner of U.S. Patent No. 6,017,221 (the "'221 patent"), Dr. Flamm is not an independent expert. Indeed, due to pending and threatened patent litigation brought by Dr. Flamm against some of the largest semiconductor manufacturers in the world, Dr. Flamm has a huge financial stake in the outcome of this proceeding, calling into question the reliability of his **expert** declaration.

Due to the foreseeability of this challenge, Dr. Flamm and his attorneys could have and should have relied upon an expert with no financial stake in the outcome of this proceeding to address the issues in Dr. Flamm's expert declaration, if any such expert were willing to so testify. Dr. Flamm and his attorneys should therefore not be permitted to now claim prejudice because of their inability or unwillingness to retain such an expert.

## II. BACKGROUND.

On February 24, 2016, the Board ordered an IPR with respect to claims 1

and 4-7 of the '221 patent based on a petition filed by Lam. Paper No. 10.<sup>1</sup> On May 17, 2016, Dr. Flamm filed a Patent Owner Response as well as the Flamm Declaration. Paper No. 15; Flamm Declaration (Ex. 2001). In that declaration, Dr. Flamm provides expert opinions regarding, among other things, the purported non-obviousness of the '221 patent and the teachings of the prior art relied upon by Lam. Flamm Declaration at 3-11.

Dr. Flamm is the owner of the '221 patent.<sup>2</sup> While serving as an expert in defending the '221 patent in this proceeding, Dr. Flamm is also seeking to monetize the '221 patent in district court proceedings. Case Nos. 15-cv-01277-BLF; 16-cv-01578-BLF; 16-cv-01579-BLF; 16-cv-01580-BLF; 16-cv-01581-BLF; 16-cv-02252-BLF (N.D. Cal.) Indeed, the '221 patent is the subject of five pending

---

<sup>1</sup> Citations to "Papers" refer to papers filed in IPR2015-01767.

<sup>2</sup> In his deposition, Dr. Flamm confirmed his ownership of the patent at issue in this proceeding: *See* Ex. 1021 [Flamm Depo.], 17:2-7.

2 Q Who is the inventor on this?

3 A I am.

4 Q Okay. Are you the only inventor?

5 A I am the sole inventor.

6 Q Are you the owner of the patent?

7 A I am

lawsuits brought by Dr. Flamm as the named plaintiff against some of the largest semiconductor manufacturing companies in the world.<sup>3</sup> *Id.* Dr. Flamm's attorneys have also sent out correspondence to numerous other companies seeking to license the '221 patent. *See, e.g.*, Ex. 1026 ¶ 29 (Lam's Second Amended Complaint in Case No. 5:15-cv-01277-BLF alleging that "[a]t that time [September 2014], attorneys representing Flamm began sending Lam's customers unsolicited letters requesting that they take a license to the '849, '221, and '264 patents. On information and belief, Flamm has since sent such letters to the vast majority of Lam's key customers."); Ex. 1027 ¶ 29 (Flamm's Answer admitting that "Dr. Flamm lacks knowledge and information sufficient to form a belief as to the identity of all of Lam's customers, but admits the remaining allegations in this paragraph.").

### III. ARGUMENT

Judges are charged with a "gatekeeping" role to ensure the reliability of

---

<sup>3</sup> The companies that Dr. Flamm is presently suing include Samsung Electronics Co. Ltd. (and certain affiliated entities); Intel Corporation; Micron Technology, Inc.; Global Foundries U.S. Inc.; and Maxim Integrated Products, Inc. Ex. 1025 (*Lam Research Corp. v. Flamm*, No. 5:15-cv-01277-BLF ("Order Staying Case") (N.D. Cal. Aug. 8, 2016), Doc. No. 145).

"expert" analysis. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999) ("Federal Rule of Evidence 702 imposes a special obligation upon a trial judge to 'ensure that any and all scientific testimony ... is not only relevant, but reliable.'") (Quoting *Daubert*, 509 U.S. at 589); *FURminator, Inc. v. Kim Laube & Co.*, 758 F. Supp. 2d 797, 807 (E.D. Mo. 2010) ("The initial question of whether expert testimony is sufficiently reliable is to be determined by the court, as part of its gatekeeper function.") (citing *Daubert*, 509 U.S. at 593). Unreliable "expert" analysis should be excluded under Federal Rule of Evidence 702. *See, e.g., FURminator*, 758 F. Supp. 2d at 808 (Excluding unreliable expert testimony, and considering among other things "[w]hether the expert is being as careful as he would be in his regular professional work outside his paid litigation consulting.")

Courts have excluded expert testimony because of underlying bias reflected in an expert's analysis. Such biased testimony is inherently unhelpful to the finder of fact, and should be excluded. For example, in *Bowling v. Hasbro, Inc.*, No. C.A. 05-229 S, 2008 WL 717741 (D.R.I. Mar. 17, 2008), a Court excluded biased expert testimony as unreliable. In excluding the expert report, the Court held that the expert's "report is marred by an obvious bias in favor of Bowling." *Id.* at \*6. In that case, the expert opined on the topic of damages. The expert offered opinions that tended to arbitrarily inflate the damages that would be awarded to the

# 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.