

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZTE (USA) Inc.,
Samsung Electronics Co., Ltd., and
Samsung Electronics America, Inc.,
Petitioner

v.

Fundamental Innovation Systems International LLC,
Patent Owner.

Case IPR2018-00111
Patent 8,624,550 B2

PETITIONER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1) TO
PATENT OWNER'S EXHIBITS 2002 AND 2005

Before RAE LYNN P. GUEST, JO-ANNE M. KOKOSKI, and
JON B. TORNQUIST, *Administrative Patent Judges*.

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects to the admissibility of Patent Owner's exhibits 2002 and 2005 as follows.

EXHIBIT 2002
(DECLARATION OF MR. STEVEN ROGERS)

Exhibit 2002 is a purported declaration from Mr. Steven Rogers, the sole named inventor of the primary prior art reference (Ex. 1005, U.S. Patent No. 6,556,564) at issue in this IPR proceeding. Petitioner objects to the admissibility of paragraphs 7-22 of Exhibit 2002 under FED. R. EVID. 401, 402, 701, and 702.

Paragraphs 7-22 of Exhibit 2002 purport to offer opinions from the perspective of a person of ordinary skill in the art (POSITA). Mr. Rogers is not a POSITA at least under Patent Owner's own standard of a POSITA (*see* Paper 12 at 15) and is thus unqualified to give these opinions under FED. R. EVID. 702. The opinions in paragraphs 7-22 of Exhibit 2002 also do not qualify as lay opinion under FED. R. EVID. 701. Because Mr. Rogers is unqualified to offer opinions from the perspective of a POSITA at least under Patent Owner's own standard of a POSITA, the opinions in Exhibit 2002 are irrelevant to the issue of obviousness and are thus further inadmissible under FED. R. EVID. 401-402.

EXHIBIT 2005
(DISTRICT COURT DEPOSITION TRANSCRIPT EXCERPTS)

Exhibit 2005 contains excerpts from the transcript of Mr. John Garney's deposition taken in connection with the district court action *Fundamental*

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Innovation Systems Int'l LLC v. Samsung Elec. Co., Case No. 2:17-cv-00145-JRG

(E.D. Tex.). Petitioner objects to the admissibility of Exhibit 2005 under FED. R.

EVID. 802.

In this IPR proceeding, Mr. Garney's testimony meets both prongs of the hearsay rule (*see* FED. R. EVID. 801(c)): (1) his testimony was not taken in this IPR (*i.e.*, it contains statements "not ma[de] while testifying at the current trial or hearing"); and (2) Patent Owner offers Exhibit 2005 solely to prove the truth of Patent Owner's incorrect and misleading assertions, including the assertions in Paper 12 at 5-6, 41, 47-48, 53, 60. Exhibit 2005 does not qualify for any hearsay exclusion or exception, and Patent Owner, as its proponent, has not demonstrated otherwise.

Dated: May 22, 2018

Respectfully submitted,

/Charles M. McMahon/

Charles M. McMahon (Reg. 44,926)

MCDERMOTT WILL & EMERY LLP

Attorney for Petitioner

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CERTIFICATE OF SERVICE

On May 22, 2018, this document was sent by electronic mail to the attorneys of record for the Patent Owner at the following e-mail addresses:

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/Hersh H. Mehta/
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