

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner

v.

QUALCOMM INCORPORATED,  
Patent Owner

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Case IPR2018-01249  
Patent 7,693,002

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**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO  
PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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## I. INTRODUCTION

Patent Owner's Opposition does not challenge the substance of Petitioner's objections: FRE 702 and 802 prohibit a party from relying on hearsay statements of an individual who had never looked at the '002 patent as reliable expert testimony on the meaning of a claim term of the '002 patent. Instead, Patent Owner sidesteps the issue by mischaracterizing its reliance on Exhibit 2004 as extremely limited: only to the fact that certain statements were made, and not for the truth of their substance. Opposition, 2 ("...his testimony is evidence that Qualcomm's reliance on the IEEE dictionary definition would not be unreasonable to a POSA").

Patent Owner's characterization of its reliance on Exhibit 2004 as so limited cannot be reconciled with the record of these proceedings. Patent Owner has repeatedly attempted to rely on the *substance* of the statements in the Exhibit as evidence of the meaning of "clock" to a POSA. *See* POR, 14-15; Sur-Reply, 10.

[A]ddressing the meaning of the term "clock," **Dr. Alpert told the Board** that the term "clock" **should be interpreted as** "a periodic signal used for synchronization." Ex. 2004 at 3-4. Dr. Alpert stated that the "definition ['a periodic signal used for synchronization'] is consistent with the broadest reasonable interpretation of the term ['clock']." *Id.* **Dr. Alpert's Statement provides further support for Qualcomm's proposed construction.**

POR, 15. Patent Owner likewise argued in its Sur-Reply that the substance of Dr. Alpert's analysis was relevant to the meaning of "clock signal" in this proceeding because "**Dr. Alpert did not qualify his opinion** on the meaning of 'clock' **to indicate that it was specific to that previous proceeding or the patent involved therein.**" Sur-Reply, 10.

Even in its Opposition to Petitioner's Motion to Exclude, Patent Owner admits that it relies on the statements in the Exhibit for their substance, as "plainly relevant to the meaning of the claim term as understood by a POSA." Opposition, 3; *see also id.*, 2 (describing Exhibit 2004 as "extrinsic evidence that Apple's proposed definition for a term is not the broadest reasonable interpretation understood by a POSA.") Thus, Patent Owner has repeatedly relied on Exhibit 2004 both (a) for the truth of the statements contained therein, and (b) as evidence of how a POSA would interpret a claim term. Both uses are precluded by the Federal Rules of Evidence. FRE 702, 802.

#### **A. EXHIBIT 2004 IS INADMISSIBLE UNDER FRE 702**

Patent Owner's representation that "Exhibit 2004 is not being provided as expert testimony" (Opposition, 2) is contradicted by its own arguments. Patent Owner admittedly seeks to rely on Alpert's "**opinion on the meaning of 'clock'**" and "the meaning of the [term clock] **as understood by a POSA.**" Sur-Reply, 10; Opposition, 3. Patent Owner's characterization of the opinions in Exhibit 2004 as

generic is a misrepresentation; as explained in Petitioner’s Motion, the opinions in Exhibit 2004 are specific to a different patent and a different proceeding. But even accepting Patent Owner’s characterizations, Patent Owner cannot rely on the “opinions” in Exhibit 2004 without first establishing that those opinions are reliably based on the facts of the present case: the applicable POSA, at the applicable time period, based on the applicable intrinsic record. Patent Owner made no attempt to do so, instead effectively conceding that Exhibit 2004 does not constitute reliable expert testimony as to the proper interpretation of “clock signal” in the ’002 patent. Opposition, 2 (“Qualcomm does not offer Exhibit 2004 as expert testimony—the contents of Exhibit 2004 were prepared for a different proceeding, as Apple notes.”)

Exhibit 2004 includes no analysis of how the applicable POSA, reading the ’002 patent at the applicable time, would interpret the term “clock signal” in the context of the ’002 patent. Thus, those opinions are not reliable expert testimony in this proceeding, and should be excluded under FRE 702.

### **B. EXHIBIT 2004 IS INADMISSIBLE UNDER FRE 802**

As demonstrated above, Patent Owner has consistently relied on Exhibit 2004 for the truth of the matter asserted: how a POSA would interpret the term “clock.” Thus, the Exhibit is inadmissible under FRE 802.

Patent Owner’s response to Petitioner’s motion is nonsensical. Patent Owner claims that it relies on Exhibit 2004 for the limited purpose of evidence that another

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