

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

SAMSUNG ELECTRONICS CO., LTD.,

and

SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioners,

v.

FIRSTFACE CO., LTD.,

Patent Owner.

Case IPR2019-00612
U.S. Patent No. 8,831,557

**PETITIONERS' OBJECTIONS TO EXHIBITS SUBMITTED WITH
PATENT OWNER'S RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Apple Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (“Petitioners”) hereby submit the following objections to Patent Owner Firstface Co., Ltd. (“Patent Owner”)’s Exhibits 2001-2004, 2007 and any reference to or reliance on them, without limitation. Petitioners’ objections below apply the Federal Rules of Evidence (“F.R.E.”). These objections address evidentiary deficiencies in the material submitted by Patent Owner with its Response on November 25, 2019.

I. Objections to Exhibits 2001-2004, And Any Reference to/Reliance Thereon

To the extent Patent Owner does not cite these Exhibits (Exhibits 2002-2004) or to paragraphs of its witness declaration (Exhibit 2001) in its Patent Owner Response, permitting reference to or reliance on these Exhibits and paragraphs in other submissions of Patent Owner would be impermissible, misleading, irrelevant, and unfairly prejudicial to Petitioners (F.R.E. 401, 402, 403). By failing to cite Exhibits or paragraphs of its witness declaration, Patent Owner has also waived any arguments as to those Exhibits and portions of the declaration. *See* 37 C.F.R. § 42.6(a)(3).

II. Objections to Exhibit 2001, And Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703 (“Bases of an Expert’s Opinion Testimony”); F.R.E. 602 (“Need for Personal Knowledge”); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 401

(“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioners object to Exhibit 2001. The declarant of Exhibit 2001, Dr. Weaver, fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702. Dr. Weaver has also not “reliably applied the principles and methods to the facts of the case,” and his opinions in Exhibit 2001 are not “the product of reliable principles and methods,” in violation of F.R.E. 702. Furthermore, there is no indication that Dr. Weaver based his opinions on facts or data upon which an expert in the relevant field would reasonably rely in violation of F.R.E. 703. In addition, Dr. Weaver lacks personal knowledge of material to which he testifies in violation of F.R.E. 602.

Further, Dr. Weaver purports to repeat statements in the exhibit and/or other sources they cite for the truth of the matter contained therein, but without demonstrating that any hearsay exception applies, in violation of F.R.E. 801, 802, and 403.

Accordingly, permitting reliance on Exhibit 2001 in Patent Owner’s Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioners (F.R.E. 403).

III. Objections to Exhibits 2002-2003, And Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703 (“Bases of an Expert’s Opinion Testimony”); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 801, 802, 803 (Impermissible Hearsay); F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioners object to Exhibits 2002-2003, which contain purported technical analysis reports. The author(s) of the reports fail to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702. The author(s) of the reports have also not “reliably applied the principles and methods to the facts of the case,” and their opinions in Exhibits 2002-2003 are not “the product of reliable principles and methods,” in violation of F.R.E. 702. Furthermore, there is no indication that the author(s) based their opinions on facts or data upon which an expert in the relevant field would reasonably rely in violation of F.R.E. 703.

Patent Owner fails to provide the authentication required for these exhibits under F.R.E. 901, and the Exhibits are not self-authenticating under F.R.E. 902.

To the extent Patent Owner or its witnesses rely on these exhibits for the purpose of proving the truth of the matter asserted (*e.g.*, purported technical analysis) without demonstrating that any hearsay exception applies, this is impermissible hearsay (F.R.E. 801, 802, 803, 805).

Accordingly, permitting reliance on Exhibits 2002-2003 in Patent Owner's Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioners (F.R.E. 403).

IV. Objections to Exhibit 2007, And Any Reference to/Reliance Thereon

Grounds for objection: 37 C.F.R. § 42.61 ("Admissibility"); 37 C.F.R. § 42.64(a) ("Deposition evidence"); 37 C.F.R. § 42.53(f)(8) (Objections in depositions).

Exhibit 2007 is a deposition transcript from the present proceeding. Petitioners hereby expressly repeat and incorporate by reference all objections stated on the record in that deposition, and affirmatively maintain all such objections.

Dated: December 3, 2019

Respectfully submitted,

By: /s/ Christopher M. Bonny
Christopher M. Bonny
Reg. No. 63,307

*Counsel for Petitioners Apple Inc., Samsung
Electronics Co., Ltd., and Samsung
Electronics America, Inc.*

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