

Samsung-Petitioners' Objections to Evidence
IPR2021-00145 (U.S. Patent No. 8,812,993)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND
APPLE INC.

Petitioners,

v.

NEONODE SMARTPHONE LLC

Patent Owner.

Case IPR2021-00145
Patent No. 8,812,993

**PETITIONER SAMSUNG ELECTRONICS CO. LTD. and SAMSUNG
ELECTRONICS AMERICA, INC.'S
OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (“Samsung-Petitioners”), object under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Neonode Smartphone LLC (“Patent Owner”) with its Patent Owner Response.¹ Paper No. 29.

Patent Owner’s Reply was filed on September 22, 2021. Paper No. 29. Thus, Samsung-Petitioners’ objections are timely under 37 C.F.R. § 42.64(b)(1). Samsung-Petitioners serve Patent Owner with these objections to provide notice that Samsung-Petitioners will move to exclude these exhibits as improper evidence.

I. DECLARATION OF PER BYSTEDT (EXHIBIT 2015)

Samsung-Petitioners object to the admissibility of the Declaration of Per Bystedt for at least the following reasons:

1. Samsung-Petitioners object to the Bystedt declaration because the declarant is not testifying as an expert and does not limit their opinion to

¹ These objections are brought at this time by only the Samsung-Petitioners due to a dispute between the parties whether the information at objected-to Exhibits 2015 and 2016 are confidential to Samsung and Neonode, and therefore should not be disclosed to Petitioner Apple Inc.

- one that is rationally based on the witness's perception, helpful to clearly understand the witness' testimony or determine a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of FRE 702. The declarant also offers opinions that merely state a legal conclusion in a way that says nothing about the facts, and are therefore objectionable because such opinions are not helpful to the trier of fact. FRE 704.
2. For example, ¶ 3 of the Bystedt declaration describes the N1 phone's design as "novel;" ¶ 5 describes an "original conception" of a user interface and that "Magnus invented a new technology;" and ¶ 11 concludes the "company enjoyed substantial commercial success." The identified statements are inadmissible under **FRE 702** and **FRE 704**.
 3. Samsung-Petitioners object to the Bystedt declaration because it contains hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**. For example, at ¶ 5 the declarant begins a statement with "they told me," and at ¶ 9 the declarant begins statements with "Ki Tai Lee ... told us," and "Mr. Lee told Samsung's negotiators." The identified statements (the contents of which are not further repeated here due to a confidentiality dispute between the parties) are inadmissible under **FRE 801**.

II. DECLARATION OF MARCUS BÄCKLUND (EXHIBIT 2016)

Samsung-Petitioners object to the admissibility of the Declaration of Marcus Bäcklund for at least the following reasons:

1. Samsung-Petitioners object to the Bäcklund declaration because it contains hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
2. For example, at ¶ 4 of Exhibit 2016, the declarant recounts what others “told us,” and ¶ 12 recites what representatives “told us.” These statements are inadmissible under **FRE 801**.

III. CONCLUSION

Therefore, Samsung-Petitioners reserve their rights to file motions to exclude this evidence and exhibits under 37 C.F.R. § 42.64(c).

Respectfully submitted,

Date: September 29, 2021

/Tiffany C. Miller/

Tiffany C. Miller, Reg. 52,032

James M. Heintz, Reg. No. 41,828

Attorneys for Samsung-Petitioners

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 D.F.R. § 42.6(e), that service was made on the Patent Owner as detailed below:

Date of Service: September 29, 2021

Manner of Service: Electronic Mail
rasher@sunsteinlaw.com,
bsunstein@sunsteinlaw.com,
tmurphy@sunsteinlaw.com,
ahans@sunsteinlaw.com, philipg@hbsslaw.com
greers@hbsslaw.com, markc@hbsslaw.com,
sunsteinip@sunsteinlaw.com

Documents Served: Samsung-Petitioners' Objections to Evidence

Persons Served: Robert M. Asher, Bruce D. Sunstein, Timothy M. Murphy, Arne Hans, Phil J. Graves, Greer N. Shaw, Mark S. Carlson

/Tiffany C. Miller/

Tiffany C. Miller
Registration No. 52,032
Attorney for Samsung-Petitioners