

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD., MICRON TECHNOLOGY, INC.,  
MICRON SEMICONDUCTOR PRODUCTS, INC., and MICRON  
TECHNOLOGY TEXAS LLC,<sup>1</sup>  
Petitioner,

v.

NETLIST, INC.,  
Patent Owner.

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IPR2022-00996  
Patent 11,016,918 B2

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Before PATRICK M. BOUCHER, JON M. JURGOVAN, and  
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

ORDER

Denying Patent Owner's Motion to Submit Supplemental Information  
*37 C.F.R. § 42.123(b)*

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<sup>1</sup> Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC filed a motion for joinder and a petition in IPR2023-00406 and have been joined as petitioners in this proceeding. *See* Paper 26.

On October 4, 2023, Patent Owner submitted an authorized Motion to Submit Supplemental Information (Paper 43, “Mot.”) pursuant to 37 C.F.R. § 42.123(b). On October 11, 2023, Petitioner submitted an Opposition (Paper 45, “Opp.”) to Petitioner’s Motion. On October 18, 2023, Patent Owner filed its Reply (Paper 46) to Petitioner’s Opposition. For the reasons below, we deny Patent Owner’s Motion.

The testimony Patent Owner seeks to admit into the record is from joined Petitioner Micron’s corporate representative, Mr. Boe Holbrook, under Fed.R.Civ.P. 30(b)(6) from a deposition taken in parallel litigation. Mot. 1. Mr. Holbrook was to testify as to all facts and circumstances related to non-infringement of U.S. Patent No. 11,016,918 (“the ’918 patent”). *Id.* Patent Owner seeks to admit testimony to the effect that Mr. Holbrook, who is not an expert in FBDIMMs<sup>2</sup> but who Patent Owner contends is a person of ordinary skill in the art, testified that there is a difference between encoded data and data signals in terms of controlling memory devices on a module. *Id.* at 3; *see also* Reply 1–2. Patent Owner further argues that Mr. Holbrook’s testimony corroborates that “form factor” in the context of the ’918 patent means the shape of the module, and not how information is passed (we presume between the memory module and memory controller). Mot. 4.

Petitioner argues that it was not given notice of Mr. Holbrook’s deposition and did not have an opportunity to question the witness, that Micron is limited to an “understudy” role in this proceeding, that Patent Owner never sought discovery from Micron in this proceeding, and that we

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<sup>2</sup> Fully-Buffered Dual In-Line Memory Modules.

previously advised Patent Owner that no new evidence may be entered and that we would likely deny any such future requests from Patent Owner.

Opp. 1.

Petitioner further argues that Patent Owner failed to show that Mr. Holbrook’s testimony is relevant to a claim at issue in this proceeding under 37 C.F.R. 42.123(a)(2). Opp. 1–3. Petitioner contends that Patent Owner seeks construction of the term “signals” but argues that the Federal Circuit has not identified extrinsic factual testimony of a non-expert witness as relevant to claim construction. *Id.* at 2. Petitioner also argues Mr. Holbrook’s testimony is not relevant in this proceeding because there is no inconsistency with any position taken by any Petitioner, including Micron. *Id.* at 2. Petitioner further argues that Mr. Holbrook was never asked about the meaning of the disputed claims, nor was he designated on that topic. *Id.* Mr. Holbrook also testified, when asked whether an AMB<sup>3</sup> for an FBDIMM uses encoded data as opposed to data signals, that he would not know and that AMB and FBDIMM was not his area of expertise. *Id.* at 2–3.

We agree with Petitioner that the proffered testimony is not relevant in this proceeding. The claims of the ’918 patent” recite “power, data, address and control signals” (*see, e.g.*, claim 1) but do not recite anything to do with encoding. And Patent Owner does not argue that the encoded data received by an FBDIMM AMB do not contain data, address, and control signals. Patent Owner’s argument is thus to the format of the data, address, and control signals, not their content. Furthermore, Mr. Holbrook has not

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<sup>3</sup> Advanced Memory Buffer.

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been shown to be qualified to testify as to claim construction, and in any case, he testified as to non-infringement concerning DDR5<sup>4</sup> modules, not patentability of the modules as at issue in this proceeding. We agree with Petitioner that this testimony would be of little probative value and is substantially outweighed by unfair prejudice, delay, and wasting time. FRE 403.

Petitioner also contends that Patent Owner's testimony comes too late in this proceeding to be considered. Opp. 5. We agree. Patent Owner's Motion is the first mention of "form factor" in relation to "the shape of the module, not how information is passed," in this proceeding, and would present a new issue that has not been fully briefed. Patent Owner does not satisfactorily explain why it did not seek to depose Mr. Holbrook in this proceeding or why it did not depose Mr. Holbrook earlier.

Patent Owner has not shown that consideration of the supplemental information would be in the interests of justice, as required under 37 C.F.R. § 42.123(b) at this late stage of the proceeding.

## I. ORDER

Accordingly, it is:

ORDERED that Patent Owner's Motion to Submit Supplemental Information is *denied*.

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<sup>4</sup> Double Data Rate, 5<sup>th</sup> Generation.

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