

[REDACTED]

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before The Honorable Bryan F. Moore
Administrative Law Judge

In the Matter of

CERTAIN ACTIVE MATRIX
ORGANIC LIGHT-EMITTING DIODE
DISPLAY PANELS AND MODULES
FOR MOBILE DEVICES, AND
COMPONENTS THEREOF

Investigation No. 337-TA-1351

RESPONDENT MIANYANG BOE'S MOTION IN LIMINE NO. 2:

**TO STRIKE PORTIONS OF TESTIMONY REGARDING U.S. PATENT
NO. 7,414,599 IN THE DIRECT WITNESS STATEMENT OF SDC'S
EXPERT DR. FONTECCHIO**

Pursuant to 19 C.F.R. § 210.15 and Ground Rule 11.3, Respondent Mianyang BOE Optoelectronics Co., Ltd. ("BOE" or "Respondent") hereby moves *in limine* to strike and preclude portions of testimony in the Direct Witness Statement of Samsung Display Co., Ltd.'s ("SDC" or "Complainant") expert Dr. Adam Fontecchio.

Ground Rule 5.1 Certification

Pursuant to Ground Rule 5.1, Respondent Mianyang BOE certifies that it has met and conferred regarding the content of this motion. Complainant Samsung Display Co. Ltd. ("SDC") indicated that it would oppose the motion and Staff has indicated that he will take a position after reviewing the papers.

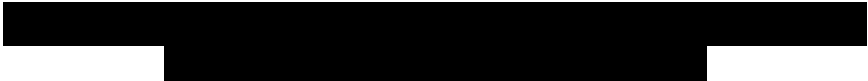


TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	2
A. The ALJ Should Strike Dr. Fontecchio’s New Opinion That [REDACTED] [REDACTED] Is Representative Of [REDACTED] (Ex. 1 at Q85, 88, 94 and Q177-179, Q184-193, Q197-199, and Q205-209)	2
B. The ALJ Should Strike Dr. Fontecchio’s New Theory That [REDACTED] [REDACTED] Is Representative Of SDC’s [REDACTED] Domestic Industry Products (Ex. 1 at Q394-405)	6
C. The ALJ Should Strike Dr. Fontecchio’s New Allegation That Dr. Foty’s Opinions That Sakamoto Invalidates Claim 7 Are Inconsistent with His Position with Respect to BOE’s Redesigns (Ex. 6 at Q130-131)	9
III. CONCLUSION	10



TABLE OF EXHIBITS

Ex. No.	Exhibit Description
1	Direct Witness Statement of Dr. Fontecchio, CX-1629C-NCT
2	Joint Stipulation Regarding Representative Products, EDIS ID No. 808453
3	Excerpts of Initial Expert Report of Dr. Fontecchio, CX-1327C-NCT, CX-1328C-NCT, CX-1331C-NCT, CX-1340C-NCT-PSC
4	U.S. Patent No. 7,414,599, JX-0001
5	Excerpts of Rebuttal Expert Report of Dr. Foty, CX-3972C
6	Rebuttal Witness Statement of Dr. Fontecchio, CX-1242C-NCT
7	Excerpts of Rebuttal Expert Report of Dr. Fontecchio, CX-1341C-PSC_NCT, CX-1342C-PSC_NCT

[REDACTED]

Pursuant to 19 C.F.R. § 210.15 and Ground Rule 11.3, Respondent Mianyang BOE Optoelectronics Co., Ltd. (“BOE”) moves *in limine* to strike portions of the Witness Statements of Samsung Display Co., Ltd.’s (“SDC”) expert, Dr. Fontecchio, (**Ex. 1**) containing opinions that are both new and inconsistent with the parties’ stipulation concerning representative products.

I. INTRODUCTION

Pursuant to the schedule the ALJ set in Order No. 11, on November 13, 2023 SDC and BOE filed a Joint Stipulation Regarding Representative Products. EDIS ID No. 808453 (“Representative Product Stipulation”) (for convenience, attached as **Ex. 2**). With respect to U.S. Patent No. 7,414,599 (the “’599 Patent”) the parties agreed [REDACTED]. The parties agreed to a single “representative” product for each group of accused and domestic industry products.

The Representative Product Stipulation allowed the parties to simplify the dispute. If SDC met its burden to prove that a representative product practiced a claim, then each of the corresponding products in that group would also be deemed to practice that claim. If SDC failed to prove that a representative product practiced a claim, then none of the corresponding products in that group would be found to practice that claim.

The parties agreed on [REDACTED] because many of the [REDACTED] products operated differently with respect to the asserted ’599 Patent claims. For example, BOE agreed that the accused [REDACTED] was representative of the accused [REDACTED] but not representative of [REDACTED].

In his Witness Statement, however, Dr. Fontecchio did not consider whether each of the [REDACTED] representative products practiced the claims of the ’599 Patent. Instead, he addressed only [REDACTED] of the [REDACTED] representative accused products [REDACTED] and [REDACTED] of the [REDACTED] representative DI products

[REDACTED]

[REDACTED] and then opined they were representative of *all* of the accused and domestic industry products. This was not only a new opinion not disclosed in his expert report, but it contradicts the parties' stipulation.

Thus, BOE respectfully requests that the ALJ strike Dr. Fontecchio's opinions that products in groups that do not correspond to the representative products he addressed practice the '599 Patent's claims. *See* G.R. 9 (expert reports "shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor") and G.R. 13.6.6 (limiting an "expert's testimony at the trial... in accordance with the scope of the expert's report(s) and deposition testimony"); *see also Certain Flash Memory Chips*, Inv. No. 337-TA-893, Order No. 41, 2014 WL 5386815, at *2 (Sept. 25, 2014) (striking portions of expert witness statement not disclosed in expert report); *Certain Video Analytics Software*, Inv. No. 337-TA-795, Order No. 33, 2012 WL 2930760, at *1 (July 16, 2012) (same).

II. ARGUMENT

A. The ALJ Should Strike Dr. Fontecchio's New Opinion That [REDACTED] Is Representative Of [REDACTED] (Ex. 1 at Q85, 88, 94 and Q177-179, Q184-193, Q197-199, and Q205-209)

The Representative Product Stipulation divided the BOE products accused of infringing the '599 Patent into [REDACTED]. The parties agreed that [REDACTED] is representative of [REDACTED] and that it was *not* representative of the other accused products [REDACTED]:

[REDACTED]

Ex. 2 at 3.

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