Filed on behalf of ABB, Inc.

By: Richard D. Mc Leod (Reg. No. 46,921)
Rick.mcleod@klarquist.com
Michael D. Jones (Reg. No. 41,879)
michael.jones@klarquist.com
Klarquist Sparkman LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

ABB, INC.
Petitioner

v.

ROY-G-BIV CORPORATION
Patent Owner

_____

Trial No. IPR2013-00062 (joined with IPR2013-00282)
Patent 6,516,236 B1

_____

**ABB'S OPPOSITION TO PATENT
OWNER'S MOTION TO EXCLUDE EVIDENCE**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

Rules

I.   INTRODUCTION

ABB timely submits this Opposition to Patent Owner's Motion to Exclude Evidence (Paper #59). RGB moved to exclude: "(1) arguments raised for the first time in ABB's reply ("Reply"); (2) new alleged grounds of un-patentability outside of the scope of the initial Petition and Institution Decision ("I.D."); and (3) the expert testimony of Dr. Papanikolopoulos ("Dr. P.") and portions of Dr. Voyles' declaration…" For at least the reasons set forth below, RGB's motion should be denied in its entirety.

II.   DISCUSSION

RGB's motion to exclude makes clear that it either misunderstands the technology, misunderstood ABB's reply, or is seeking to obfuscate the issues.

A.   RGB's Motion Is Improper

As they Board has stated, a motion to exclude should be directed at the admissibility of evidence, not the sufficiency of evidence, credibility of witnesses, or whether new arguments may have been raised in a reply. *Avaya, Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00071, Paper 75, Dec. 2, 2013 ("a motion to strike or motion to exclude is not the proper mechanism for raising the issue of whether a reply or reply evidence is beyond the proper scope permitted

under the rules" -- citing Rules of Practice, 77 Fed. Reg. at 48633 and Office

Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012)).

Thus, RGB's Motion is improper on its face, and should be denied.

B.   ABB's Reply Responded To The Issues Raised By RGB

ABB has not raised new arguments or new grounds of unpatentability; it

responded to the assertions made in RGB's papers.

RGB did not provide persuasive evidence supporting its interpretation of the

claims in its preliminary, primary, or supplemental responses. Rather, RGB

appears to have been reduced to the two pronged argument that: 1) the claimed

functions and component code include only "executable" functions/code, and 2)

the prior art does not teach executable functions associated with one another by

executable code. Accordingly, ABB's reply pointed out that, with respect to the

first prong of RGB's argument:

> However, "computer code" encompasses more than executable machine
> language, rather it includes any form of control flow, including visual
> programming constructs. (Ex. 1130, ¶¶ 21-22, 39; Ex. 1132, ¶ 55-56; 236
> Patent, Fig. 1A, "Visual Basic").
> …
> However, the term "function" encompasses more than executable machine
> language instructions. Rather, "function" broadly encompasses "in-line"
> functions, constructs in scripting languages, interpreted languages, and also

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase
Smarter legal research.