

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVAYA INC., DELL INC., SONY CORPORATION OF AMERICA,
and HEWLETT-PACKARD CO.
Petitioners

v.

NETWORK-1 SECURITY SOLUTIONS, INC.
Patent Owner

CASE IPR2013-00071
U.S. Patent No. 6,218,930

Before the Honorable Joni Y. Chang, Justin T. Arbes, and Glenn J. Perry

**PETITIONER AVAYA INC.'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Exhibit N1-2024 (Second Declaration of Dr. James Knox) was submitted by the Patent Owner Network-1 Security Solutions LLC in support of its Reply to Petitioner Avaya's Opposition to the Patent Owner's Motion to Amend. Petitioner Avaya hereby objects to Exhibit N1-2024. The following objections are timely as they are being served within five business days of the service date of the objected-to evidence, as required under 37 C.F.R. 42.64(b)(1). The bases for the objections are as follows:

- Exhibit N1-2024 is objected to under 37 C.F.R. § 42.23(b) because “[r]eple evidence ... must be responsive and not merely new evidence that could have been presented earlier to support the movant’s motion.” 77 Fed. Reg. 48620 (Aug. 14, 2012). Portions of Knox’s declaration – including ¶¶ 248-252, 259-266, 281-282, 284-297, 311-314 and 331-335 – are new evidence that could have been presented in the declaration filed with Patent Owner’s motion to amend.
- Exhibit N1-2024 is objected to as it contains new evidence that does not “only respond to arguments raised in the corresponding opposition . . .,” as provided for under 37 C.F.R. § 42.23(b). Paragraphs 271 – 280 introduce new evidence of Matsuno’s disclosure of a “low level current,” which was not an issue raised in Avaya’s Opposition to the Motion to Amend.

- Exhibit N1-2024 is inadmissible under Federal Rule of Evidence 401 because Patent Owner does not rely on portions of Dr. Knox's declaration – including ¶¶ 219-223, 227-231, 241-249, 259-260, 267-291, 298-302, 315-316, 327-335 – in its reply brief.
- Exhibit N1-2024 is inadmissible under Federal Rule of Evidence 702 because Dr. Knox is not qualified to express an opinion about U.S. Patent Law. (See ¶¶ 230-232, 242-245, 300, 310, 315, 335, headings for Paragraphs II(A)(1), II(A)(2), III, IV, V, V(A), V(B) and VI).
- Exhibit N1-2024 is inadmissible under Federal Rule of Evidence 702 because Dr. Knox is not qualified to express an opinion about efficient and cost-effective alternatives to district court litigation. (See ¶¶ 331-334).
- Exhibit N1-2024 is inadmissible under Federal Rule of Evidence 602 because Dr. Knox provides testimony – including at ¶¶ 326, 328, 331 and 333-335 – on subject matter that is outside the scope of his personal knowledge.
- Exhibit N1-2024 contains inadmissible hearsay. (See ¶ 326).
- Exhibit N1-2024 is objected to for violating 37 C.F.R. § 42.6(A)(III) because it fails to comply with proper formatting requirements. (See single spacing of block quotes throughout declaration, single spacing of appendix text).

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)

I hereby certify that on this 21st day of November 2013, a true and correct copy of the foregoing “PETITIONER AVAYA INC.’S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)” was served, by electronic mail, upon the following:

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Respectfully submitted,

November 21, 2013

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