

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 IPR2013-00071¹
Patent 6,218,930

Before JONI Y. CHANG, JUSTIN T. ARBES, and GLENN J. PERRY,
Administrative Patent Judges.

ARBES, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ Cases IPR2013-00385 and IPR2013-00495 have been joined with this proceeding.

On November 14, 2013, Patent Owner filed, with its reply to Petitioner Avaya Inc.'s ("Avaya") opposition to Patent Owner's motion to amend, a declaration from Dr. James Knox (Exhibit 2024). Avaya objected to portions of the declaration and sought authorization to file a motion to strike, which the Board denied. Paper 75. On December 2, 2013, Patent Owner filed a replacement declaration, also as Exhibit 2024. In the replacement declaration, Dr. Knox made various additions to his testimony in the original declaration. Patent Owner did not obtain authorization from the Board to file (in addition to serving) the replacement declaration. *See* 37 C.F.R. § 42.64(b)(2) ("The party relying on evidence to which an objection is timely served may respond to the objection by *serving* supplemental evidence within ten business days of service of the objection.") (emphasis added).

Under the particular factual circumstances of this case, we do not conclude that filing the replacement declaration is warranted at this time. Should Avaya file a motion to exclude the original declaration, and Patent Owner file an opposition along with the replacement declaration, the Board will address the merits of the replacement declaration at the end of the proceeding when the Board reviews the entire record and enters the final written decision. Accordingly, the replacement declaration will be expunged.

In consideration of the foregoing, it is hereby:

ORDERED that the copy of Exhibit 2024 filed on December 2, 2013 is expunged from the record of this proceeding.

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