

Filed on behalf of Patent Owner Network-1 Security Solutions, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

NETWORK-1 SECURITY SOLUTIONS, INC.  
Patent Owner

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Case IPR2013-00071<sup>1</sup>  
Patent 6,218,930

Administrative Patent Judges Joni Y. Chang, Justin T. Arbes, and Glenn J. Perry

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**PATENT OWNER'S OPPOSITION TO  
AVAYA'S MOTION TO EXCLUDE**

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<sup>1</sup> IPR2013-00385 and IPR2013-00495 have been joined with this proceeding.

In its Motion, Avaya makes two types of arguments:

- evidentiary arguments as to why five categories of paragraphs of Dr. Knox's 2<sup>nd</sup> Declaration should be excluded (addressed in Section I below); and
- arguments relating to why the entire declaration should be excluded because it allegedly extends the Reply page limit (addressed in Section II below).

**I. Section I: The challenged paragraphs should not be excluded.**

**A. The paragraphs not specifically cited in Network-1's Reply should not be excluded.**

Avaya argues that each paragraph not specifically cited in Network-1's Reply is inadmissible as irrelevant under Federal Rule of Evidence 401. Mot. at 2, 4-5. These paragraphs fall into three sub-categories.

Sub-category 1 includes 12 organizational paragraphs that provide structure to the declaration (§§227-229; 242; 246; 259 -260; 283; 300; 301; 315; 327), *e.g.*:

<p>283. In this section, I:</p> <ul style="list-style-type: none"><li>(a) provide a background of Woodmas; and</li><li>(b) demonstrate that Woodmas does not disclose amended elements of the proposed claims.</li></ul>
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Ex. N1-2024, §283. Such organizational paragraphs are regularly included in expert declarations and not cited in the corresponding briefs, as illustrated by comparing these challenged paragraphs with the corresponding uncited organizational paragraphs in Avaya's own expert declarations. For example, paragraph 315 of Dr. Knox's Declaration:

315. I understand that Avaya also contends that the proposed new claims are not obvious over Matsuno and De Nicolo in view of Chang. Opp. at 12-13. I respectfully disagree with Avaya for the following four reasons.

(Ex. N1-2024) parallels uncited Paragraph 15 of Dr. Zimmerman's Declaration:

15. I understand that Dr. Knox has taken the position that the current provided by the low voltage power supply  $V_2$  is sufficient to operate the access devices that Matsuno discloses. See Knox Declaration (N1-2015) at ¶ 21. For at least the reasons set forth below, I do not agree with that opinion.

Ex. AV-1041; *see id.* ¶¶66-67.

Sub-category 2 includes substantive paragraphs that are relevant under the controlling test set forth in Federal Rule of Evidence 401 (¶¶230-231; 241; 243; 244-245; 247; 248; 249; 267-282; 284-291; 293; 298-299; 302; 316; 328-335). Under Rule 401, “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Avaya does not apply this controlling standard to the paragraphs it moves to exclude because doing so would demonstrate that such evidence is relevant. Comparing the facts in Network-1's Reply (which Avaya does not dispute are of consequence) with the evidence in the challenged paragraphs demonstrates that the challenged evidence has a “tendency to make [the facts in the Reply] more or less probable,” as shown in the following examples, including those specifically called-out by Avaya:

<u>facts of consequence (from Reply)</u>	<u>evidence from challenged paragraph</u>
<p>“‘the voltage’ in the proposed new step refers to, and is the same as, the ‘‘voltage level’ in the prior step.”</p> <p>Reply at 2.</p>	<p>“‘the voltage’ in the proposed determining step refers to, and means the same thing as, the sensed ‘voltage level’ in the prior sensing step.” ¶243.</p>
<p>“the system disclosed in Matsuno determines whether local power is being supplied based on whether the contract breaker points (8) are opened or closed.” Reply at 4.</p>	<p>“all that Matsuno determines based on the sensed voltage (or voltage level) is whether (a) the contact breaker points (8) are on or off, and (b) as a result, whether the local power supply is being supplied.”</p> <p>¶267 (called-out by Avaya, Mot. at 5)</p>
<p>“If a device that cannot accept power (<i>e.g.</i>, a device with a Bob Smith termination which is ‘unable to support remote power feed’ (‘930, 3:7-11)) is connected and if local power stops, then the Matsuno circuitry would still send high power to the device even though it is not capable of accepting remote</p>	<p>“if an access device with a resistive termination (such as a Bob Smith termination) that cannot accept phantom remote power is connected to the subscriber line disclosed in Matsuno and the local power stops, then contact breaker points (8) will turn on and remote power will be delivered to an access device that is not capable of accepting remote power.”</p>

power.” Reply at 4.	¶269 (called-out by Avaya, Mot. at 5)
“Over 950 references have been identified in the various proceedings. ... Distinguishing each would be time and cost prohibitive.” Reply at 5.	“for the minimum of 917 references identified in the various proceedings, it would take me 9170 hours to address the known references (or almost 4 ½ years, working full time 40 hours a week, 50 weeks a year).” ¶269 (called-out by Avaya, Mot. at 5).

Avaya does not (and cannot) dispute that the evidence from these challenged paragraphs (on the right) tend to make the facts of consequence (on the left) more probable and, as a result, is relevant under Rule 401. The other paragraphs in this category (¶¶230-231; 241; 244-245; 247; 248; 249; 268; 270-282; 284-291; 293; 298-299; 302; 316; 328-335) lay the necessary foundation for the cited paragraphs in the declaration and either directly support or build support for positions taken and arguments made in the Reply and are therefore relevant.

Sub-category 3 includes four paragraphs from Dr. Knox’s Declaration that were inadvertently cited using incorrect paragraph numbers in the Reply. Dr. Knox’s 2<sup>nd</sup> Declaration was originally numbered starting with Paragraph 1 but was renumbered to start with Paragraph 219 to continue the numbering from his first declaration. *See* Ex. N1-2024 ¶220. In doing so, however, the paragraphs in

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