

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Sipnet EU S.R.O.,

Petitioner

v.

Straight Path IP Group, Inc.,

Patent Owner

Case No. IPR2013-00246

U.S. Patent No. 6,108,704

Before KALYAN K. DESHPANDE, THOMAS L. GIANNETTI, and TRENTON
A. WARD, *Administrative Patent Judges*.

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

May 6, 2014

In accordance with 37 C.F.R. § 42.64(b)(1), Straight Path IP Group, Inc. (“Patent Owner”) hereby submits the following objections to Exhibit 1017, Exhibit 1018, Exhibit 1019, Exhibit 1020, Exhibit 1021, and Exhibit 1023, as provided by Sipnet EU S.R.O. (“Petitioner”) in its Reply to Patent Owner’s Response Pursuant to 37 C.F.R. § 42.23 (“Reply,” Paper No. 33).

Pursuant to 37 C.F.R. § 42.62(a), Patent Owner’s objections below apply the Federal Rules of Evidence (“FRE”).

Patent Owner objects to Exhibits 1017-1021 and Exhibit 1023 for the following reasons:

A. Exhibits 1017-1019 and Any Reference To or Reliance Thereon

Exhibits 1017-1019¹ are objected to as being in violation of 37 C.F.R. § 42.123(b)² (“Late Submission of Supplemental Information”); FRE 401, FRE 402 (“Test for

¹ Exhibit 1017 is a declaration of a former consultant for Decisions Systems Plus, Inc. (Yuri Kolesnikov), Exhibit 1018 is a declaration of a paralegal for Petitioner’s counsel (Leslie Ehrlich), and Exhibit 1019 is a compilation of screenshots from a digital CD-ROM guide (Windows NT 3.5 User Guide).

² See *EMC Corporation v. Personal Web Technologies, LLC*, IPR2013-00082, Paper No. 41 at 4 (June 19, 2013) (noting that submitter of supplemental evidence

Relevant Evidence”); FRE 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); and FRE 801, FRE 802 (“Exclusions from Hearsay”).

1. Exhibits 1017-1019 are objected under FRE 401, FRE 402, FRE 403, and 37 C.F.R. § 42.123(b) as being not relevant to establishing the publication or public availability of Exhibit 1004, alleged prior art “WINS.” Petitioner has submitted Exhibits 1017-1019 in response to Patent Owner’s January 30 Response (Paper No. 30), which stated, “Petitioner has been unable to establish that WINS (Exhibit 1004) was a publicly available reference, despite several requests for supplemental evidence from Patent Owner.”³ As noted in Patent Owner’s Response, the WINS reference is a specific manual discussing the Microsoft Windows NT 3.5 system labeled “For Distribution Only With a New PC.”⁴

Petitioner initially attempted to establish the publication of Exhibit 1004 via Exhibit 1005, a Wikipedia webpage. After Patent Owner objected to the

may rely on the supplemental evidence only for the issues raised by previous evidentiary objections).

³ Patent Owner’s Response Pursuant to 37 C.F.R. § 42.120 (“Response”), Paper No. 30 at 54.

⁴ Response, Paper No. 30 at 55; Ex. 1004 at 1.

admissibility of Exhibit 1005, Petitioner served Patent Owner with several documents that discussed the Microsoft Windows NT 3.5 server product, but did not refer to the manual submitted as Exhibit 1004. Petitioner then submitted Exhibits 1017-1019⁵ in another attempt to demonstrate the public availability of Exhibit 1004. These exhibits suffered from the same deficiency as Petitioner's previous submissions, and only discussed the Microsoft server product and a CD-ROM that was distributed with the server product. To date, Petitioner has not submitted documents that establish the public availability of Exhibit 1004 as required by Federal Circuit precedent.⁶ Exhibits 1017-1019 do not refer to the manual submitted by Petitioner as Exhibit 1004, the "WINS" alleged prior art.

⁵ Exhibits 1017-1019 were originally served on Patent Owner as Exhibits 1016-1018 on November 27, 2013.

⁶ *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 865-66 (Fed. Cir. 2010) (absent evidence as to "the source publication, or public accessibility of either manual," documents associated with a publicly available computer product could not be considered publicly available prior art); *see also Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330 (Fed. Cir. 2004) (publication must be established with specific evidence of actual availability, despite "general practice" to make such documents available).

Patent Owner therefore respectfully submits that Exhibits 1017-1019 are in violation of FRE 401, FRE 402, FRE 403, and 37 C.F.R. § 42.123(b) as being irrelevant, prejudicial and confusing evidence, and impermissible supplemental evidence for failing to establish the public availability of Exhibit 1004.

2. Exhibits 1017-1019 are further objected to as being impermissible hearsay under FRE 801 and 802. The submitted Exhibits merely discuss the CD-ROM that came with the server product, and not actually the submitted manual, Exhibit 1004. Exhibits 1017-1019 have been offered to establish the public availability of Exhibit 1004, but are out of court statements offered for the truth of the matter therein and constitute impermissible hearsay.

B. Exhibits 1020-1021 and Any Reference To or Reliance Thereon

Exhibits 1020-1021⁷ are objected to as being in violation of 37 C.F.R. § 42.123(b), FRE 401, 402, and 403 as being impermissible supplemental evidence and not relevant to the proceeding. These submitted articles do not establish the public availability of Exhibit 1004 or its release date, and are therefore irrelevant, prejudicial, and confusing to this proceeding.

C. Exhibit 1023 and Any Reference To or Reliance Thereon

⁷ Exhibit 1020 is an evaluation of the LAN Server and NT Server, and Exhibit 1021 is an article discussing Microsoft's "Solution Server Program."

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