

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.,
LINKEDIN CORP.,
and
TWITTER, INC.,
Petitioners

v.

SOFTWARE RIGHTS ARCHIVES, LLC
Patent Owner

U. S. Patent No. 5,832,494

Title: METHOD AND APPARATUS FOR INDEXING, SEARCHING
AND DISPLAYING DATA

Inter Partes Review No. 2013-00479

**PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO
EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64**

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I. INTRODUCTION.

The “Motion to Exclude Evidence” filed by the patent owner (Paper 44 (“Motion”)) is procedurally improper and should be rejected. The Board recently advised the patent owner that a motion to exclude is an inappropriate vehicle to argue that material submitted by a petitioner in a reply is allegedly “new.”¹ The patent owner, ignoring the Board’s guidance, brought the present motion anyway.

The patent owner’s motion, even if it was procedurally proper, fails because the evidence it seeks to exclude falls within the permissible scope of a reply. The challenged evidence responds to arguments and opinions raised in the patent owners’ Response and the extensive accompanying expert declaration from the patent owner’s expert, Dr. Jacobs.

The patent owner fixates on the length of the Petitioner’s reply papers, but ignores that those papers responded to hundreds of pages of arguments and more than 1,100 pages of evidence from Dr. Jacobs (including over 700 pages of declaration evidence and over 400 pages of deposition testimony).² The patent

¹ See IPR2013-00481, Paper 41, at 2 n.1 (P.T.A.B. Sept. 12, 2014).

² See IPR2013-00478, Exs. 2113, 1032, 1033; IPR2013-00479, Exs. 2113, 1234, 1235; IPR2013-00480, Exs. 2113, 1029, 1030; IPR2013-00481, Exs. 2113, 1034, 1035. The Board has coordinated the proceedings in *Inter Partes* Review numbers IPR2013-00478, -479, -480, and -481.

owner's complaint about the length of Dr. Fox's reply declaration also ignores the fact that it consolidates all of his rebuttal testimony for all four of the related IPR proceedings. Only a portion of Dr. Fox's consolidated reply declaration specifically relates to the present case, and only a smaller portion still is challenged in the present Motion.

For these reasons, and as discussed more fully below, the patent owner's Motion should be denied in its entirety.

II. PATENT OWNER'S MOTION IS PROCEDURALLY IMPROPER.

The patent owner's Motion argues that the challenged evidence should be excluded because it allegedly raises "new" arguments and/or arguments that could have been presented with Petitioners' original Petitions. (Motion, *passim*.) The Board has repeatedly explained that a complaint about allegedly "new" material on reply is not a proper basis for a motion to exclude evidence. *Vibrant Media v. Gen. Elec. Co.*, IPR2013-00172, Paper 50 (Final Written Decision), at 41-42 (P.T.A.B. Jul. 28, 2014); *Kyocera Corp. v. Softview LLC*, IPR2013-00007, IPR2013-000256, Paper 51 (Final Written Decision), at 34 (P.T.A.B. Mar. 27, 2014); *Liberty Mutual Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00002, Paper 66 (Final Written Decision), at 62 (P.T.A.B. Jan. 23, 2014) ("*Liberty Mutual I*"); *Liberty Mutual Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00003, Paper 78 (Final Written Decision), at 68-69 (P.T.A.B. Feb. 11, 2014) ("*Liberty Mutual II*"); *Corning Inc. v. DSM IP Assets*, IPR2013-00047, Paper 84 (Final Written Decision), at 7 n.3

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