

Filed on behalf of: Software Rights Archive, LLC

Paper \_\_\_\_\_

By: Martin M. Zoltick, Lead Counsel  
Nancy J. Linck, Back-up Counsel  
Soumya P. Panda, Back-up Counsel  
Rothwell, Figg, Ernst & Manbeck, P.C.  
607 14<sup>th</sup> St., N.W., Suite 800  
Washington, DC 20005  
Telephone: 202-783-6040  
Facsimile: 202-783-6031  
E-mail: mzoltick@rfem.com  
nlinck@rfem.com  
spanda@rfem.com

Filed: September 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

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

v.

SOFTWARE RIGHTS ARCHIVE, LLC  
Patent Owner

---

Case IPR2013-00480  
Patent 5,832,494

---

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

**TABLE OF CONTENTS**

**Contents**

I. Introduction .....1

II. Legal Standard .....1

III. Fox Reply Declaration (Ex. 1028) .....2

IV. Identical Reply Declarations in Corresponding *Inter Partes Review*  
Proceedings .....9

V. Conclusion .....9

**TABLE OF AUTHORITIES**

**Cases**

*Corning Incorporated v. DSM IP Assets B.V.*,  
IPR2013-00047 (PTAB May 1, 2014).....3

*Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*,  
CBM2012-00002 (PTAB January 23, 2014).....1

*The Scotts Company LLC v. Encap, LLC* ,  
IPR2013-00110 (PTAB June 24, 2014).....3

**Rules**

37 C.F.R. § 42.23(b) .....2, 3

## **I. Introduction**

Patent Owner seeks to exclude evidence submitted in support of Petitioners' reply (Paper No. 40), filed on September 5, 2014. Particularly, Petitioner's reply was accompanied with a 267 page reply declaration (Ex. 1028) that presents evidence and/or arguments for the first time. Admission of this evidence unduly prejudices Patent Owner since the statute (35 U.S.C.) and rules (37 C.F.R. 42) do not permit Patent Owner to submit a reply rebutting this inadmissible evidence.<sup>1</sup>

## **II. Legal Standard**

A motion to exclude evidence must explain why the cited evidence is not admissible. *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00002, paper 66, at 61 (PTAB January 23, 2014) (citing 77 Fed. Reg. 48765, 48767 (Aug. 14, 2012)). The motion to exclude evidence must also: (a) identify where in the record the objection originally was made; (b) identify where in the record the evidence sought to be excluded was relied upon by an opponent; (c) address objections to Exhibits in numerical order; and (d) explain each objection. *Id.*

---

<sup>1</sup> Patent Owner's Motion to Exclude is in compliance with the Board's order clarifying that a motion to exclude that seeks to strike a reply would be improper. IPR2013-00481, Paper 41, at FN 1 (September 12, 2014).

Furthermore, under 37 C.F.R. § 42.23(b), a “reply may only respond to arguments raised in the ... patent owner response.” The accompanying comments clarify that “[r]eply evidence ... must be *responsive* and *not merely new evidence* that could have been presented earlier to support the movant’s motion.” 77 Fed. Reg. 48612, 48620 (Aug. 14, 2012). Additionally, indications of new evidence include “evidence necessary to make out a prima facie case of patentability ..., and ... evidence that could have been presented in a prior filing.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (August 14, 2012).

### III. Fox Reply Declaration (Ex. 1028)

In reply to Patent Owner’s response to the petition (Paper No. 31), Petitioners submitted the reply declaration of Edward Fox, Ph.D. (Ex. 1028)(hereinafter “Reply Dec.”). Patent Owner timely served on September 12, 2014 the following objections on Petitioners for Ex. 1028:<sup>2</sup>

Evidence Submitted by Petitioners	Patent Owner’s Objections
Exhibit 1028 (Fox Reply Declaration)	Paragraphs 269, 272, 273, 275-276, 278-281, 285, 286, 288, 290, 292, 293, 296-299 -- new

<sup>2</sup> Patent Owner is providing the objections made of record, but is not seeking exclusion of each paragraph of the Reply Dec. to which an objection was made.

The particular paragraphs of the Reply Dec. that Patent Owner seeks to exclude are stated in more detail below.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.