

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SOFTWARE RIGHTS ARCHIVES, LLC
Patent Owner

Case No. IPR2013-00480
Patent No. 5,832,494

**PETITIONERS' OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

The Board should deny Patent Owner’s Motion to Exclude Evidence because it is meritless. All four allegedly “new” arguments are proper reply testimony under the Board’s rules—not new at all—and Patent Owner has not been prejudiced by them. In addition, the Board should deny Patent Owner’s Motion because it is procedurally improper.

II. ARGUMENT

A. Patent Owner’s Motion to Exclude is procedurally improper.

“Challenging evidence as being improper reply evidence through a motion to exclude is now disfavored. . . . *A motion to exclude [on the basis of “new” evidence] may not be permitted in future cases.*” *Corning Inc. v. DSM IP Assets*, IPR2013-00047, Paper 84 (Final Written Decision), at 7 n.3 (P.T.A.B. May 1, 2014) (emphasis added). Accordingly, the Board has repeatedly denied motions to exclude where the patent owner alleged that reply evidence or a reply argument was “new,” on the ground that such motions are procedurally improper.¹

¹ See, e.g., *Vibrant Media v. Gen. Elec. Co.*, IPR2013-00172, Paper 50 (Final Written Decision), at 41-42 (P.T.A.B. Jul. 28, 2014) (denying a patent owner’s motion to exclude a declaration submitted in support of the petitioner’s reply); *Kyocera Corp. v. Softview LLC*, IPR2013-00007, IPR2013-000256, Paper 51

Indeed, the Board specifically warned Patent Owner against filing such a motion in this case. While addressing another submission by Patent Owner, the Board admonished that “[a] motion to exclude seeking to strike a reply for violating 37 C.F.R. § 42.23(b) . . . would be improper.” IPR2013-00481, Paper 41, at 2 n.1 (P.T.A.B. Sept. 12, 2014). Patent Owner, however, then filed this Motion to Exclude under 37 C.F.R. § 42.23(b). *See* Mot. at 2. Patent Owner asserts that the Motion “is in compliance with the Board’s order,” (Mot. at 1 n.1), but does not explain how, and that assertion appears to be false. Thus, the Board should deny Patent Owner’s Motion as procedurally improper.²

(Final Written Decision), at 34 (P.T.A.B. Mar. 27, 2014) (same); *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) (denying a patent owner’s motion to exclude publications and a declaration submitted in support of the petitioner’s reply).

² Patent Owner also requests that if the Board excludes any paragraphs in Dr. Fox’s reply declaration in this case, the Board should also “exclude the identical paragraphs in the reply declarations submitted in” other *inter partes* proceedings. Mot. at 9. This request, too, is plainly improper. As explained above, there is no basis to exclude any of the evidence challenged in the Motion. But even if there

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