UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BROADCOM CORPORATION
Petitioner

v.

WI-FI ONE, LLC
Patent Owner

Case IPR2013-00601
Patent 6,772,215

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

In accordance with 37 C.F.R. § 42.64, Patent Owner moves to exclude certain evidence as described in detail below. Pursuant to 37 C.F.R. § 42.64, Patent Owner timely served its objections to the exhibits below on Broadcom on October 7, 2014. *See* Exhibit No. 2023.

I. **Exhibit 1010.**

Exhibit 1010 is an excerpt from a document allegedly dated April 1999, and entitled "TIA/EIA Interim Standard; Data Service Options for Wideband Spread Spectrum Systems," TIA/EIA/IS-707-A (Revision of TIA/EIA/IS-707). Broadcom alleges that this document is "contemporaneous evidence of how a person of ordinary skill in the art would understand Seo's disclosure of the circumstances in which certain fields exist and those circumstances in which they do not exist." (Paper No. 49, n3 at 9.) Not so. This exhibit should be excluded for multiple reasons.

First, Exhibit 1010 is dated April 1999, which postdates both the December 31, 1998 filing date of Seo (Exhibit 1002) and the August 20, 1998 filing date of the Korean priority application to Seo. Broadcom has not shown how Exhibit 1010, which is dated 4-8 months after Seo, is contemporaneous evidence of how one of ordinary skill in the art would interpret Seo. Furthermore, any probative value of Exhibit 1010 is substantially outweighed by a danger of unfair prejudice and confusing the issues. FED. R. EVID. 403. Second, Broadcom has not shown

why Exhibit 1010 could not have been included in its petition, and therefore Broadcom waived the right to base its invalidity position on Exhibit 1010. Third, Exhibit 1010 does not respond to any argument raised by Patent Owner in its response. 37 C.F.R. § 42.23(b). Instead, Broadcom has lain behind the log and sprung Exhibit 1010 on the Patent Owner in its reply, precluding the Patent Owner from meaningfully responding to this exhibit. Fourth, Exhibit 1010 is not relevant to any issue in this case, is not helpful to the Board, and wastes judicial resources. FED. R. EVID. 401, 403. Fifth, Exhibit 1010 has not been authenticated, and Broadcom has not put forth any evidence linking Exhibit 1010 to the February 1998 version of IS-707.2 referenced in Seo (Exhibit 1002). FED. R. EVID. 901. Indeed, the April 1999 date of Exhibit 1010 evidences that Exhibit 1010 does not reflect the February 1998 version of IS-707.2. Finally, Exhibit 1010 is inadmissible hearsay since Broadcom is attempting to prove the truth of the matter asserted in Exhibit 1010, including its alleged publication date. FED. R. EVID. 801, 802. *See e.g., Hilgraeve, Inc. v. Symantec Corp.*, 271 F. Supp. 2d 964, 974-75 (E.D. Mich. 2003) (noting that copyright dates and other dates on a document are hearsay when offered to prove the truth of the matter asserted, such as that the document was publicly available as of that date). Accordingly, Exhibit 1010 should be stricken.

II. ¶ 7 of Exhibit 1013.

In ¶ 7 of his rebuttal expert declaration (Exhibit 1013), Dr. Bims opines as to his understanding of the disclosure of Seo (Exhibit 1002). For the same reasons above as to Exhibit 1010, ¶ 7 of Exhibit 1013 should be stricken. Specifically, by choosing not to include Exhibit 1010 in his opening declaration, Dr. Bims waived any testimony concerning this exhibit in his reply declaration, and therefore this testimony does not respond to an argument raised in Patent Owner's response. Furthermore because Exhibit 1010 is inadmissible, this testimony is not relevant to any issue in the case, is not helpful to the Board, and waste judicial resources. Accordingly, this testimony should be stricken.

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