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 No. 6,772,215

PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

I. Exhibit 1010 is not contemporaneous evidence of Seo

The patent application that issued as Seo was filed on December 31, 1998 and claimed priority to a Korean application filed on August 20, 1998. (Exhibit 1002.) Exhibit 1010 has an alleged date of April 1999. Broadcom assumes that Seo (a) created an improvement upon IS707.2 and (b) only the improvement of Seo was incorporated into Exhibit 1010. But Broadcom has not shown that Seo was incorporated – let alone considered – during the drafting of Exhibit 1010. At best, the significant changes between Exhibit 1010 and Seo highlight deficiencies of Seo. Thus, Exhibit 1010 does not evidence the disclosure of Seo. Because Broadcom has not shown that Exhibit 1010 is a manifestation of Seo, Exhibit 1010 is not contemporaneous evidence of Seo, and therefore must be excluded.

Dr. Akl's testimony is consistent with Patent Owner's position. Dr. Akl never testified that he relied on the disclosure of Exhibit 1010 to determine the meaning of any terms. Nor did he identify any terms or sections of Exhibit 1002 – including Figure 4 – whose understanding was premised on Exhibit 1010. Indeed, Dr. Akl did not rely on Exhibit 1010 for his opinions in his declaration, and in fact, he testified that Exhibit 1010 could not be used to interpret Seo. (Exhibit 1012, Akl Dep. at 197:4-23.) Furthermore, that Dr. Akl may have read Exhibit 1010 before drafting his declaration does not justify Broadcom's intentional withholding of this reference from its petition.

II. Petitioner waived its invalidity position with respect to Exhibit 1010.

Broadcom did not include Exhibit 1010 in its petition because it contends that "Seo anticipates the challenged claims on its own." (Paper No. 58 at 4.) But that contention is incorrect. Broadcom has admitted that Exhibit 1010 – which postdates the '215 patent – cannot be invalidating prior art. (Paper No. 49 at 9 n3.) Broadcom also argues that it is using Exhibit 1010 to define the term "exist." (Paper No. 58 at 4.) But the '215 patent is clear that the fields FIRST and LAST either include a sequence number or are "00." (Seo at 2:10-16.) Broadcom's use of Exhibit 1010 to attempt to show that the values of the FIRST and LAST fields in Seo are not limited to zero and non-zero values belies the clear disclosure of Seo and should be rejected.

III. Exhibit 1010's probative value is substantially outweighed by unfair prejudice and confusing the issues, and thus should be excluded.

Broadcom assumes that the differences between the disclosures of Exhibit 1010 and Seo illustrate solely the disclosure of Seo. Therein lies the highly prejudicial value of Exhibit 1010. Broadcom has not shown that Exhibit 1010 is based, in any part, on Seo. Nor has Broadcom shown the committee members and entities responsible for Exhibit 1010 considered Seo when drafting Exhibit 1010. In short, Broadcom erroneously infers that the complete disclosure of Exhibit 1010 reflects the disclosure of Seo, when, Exhibit 1010 may show the deficiencies in

Seo. Under these circumstances, Exhibit 1010 should be excluded. FED. R. CIV. P. 403.

IV. Exhibit 1010 should be excluded as inadmissible hearsay and should be excluded.

Broadcom contends that Exhibit 1010 is contemporaneous evidence showing how a person of ordinary skill in the art would interpret the Seo disclosure. And to do so, Broadcom is attempting to use the alleged April 1999 date of Exhibit 1010 as evidence that Exhibit 1010 is contemporaneous with Seo. In other words, Broadcom is attempting to prove that Exhibit 1010 was published in April 1999, which is impermissible hearsay. Because Broadcom puts forth no independent evidence relating to the alleged April 1999 publication date of Exhibit 1010, Exhibit 1010 should be excluded as impermissible hearsay.

For these reasons, Patent Owner's Motion to exclude Exhibit 1010 should be granted, and ¶ 7 of Dr. Bims' declaration (Ex. 1013), which relies on Exhibit 1010, should be excluded and stricken from the record.

Respectfully submitted,

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