

STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FORD MOTOR COMPANY  
Petitioner,

v.

PAICE LLC & ABELL FOUNDATION, INC.  
Patent Owner.

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U.S. Patent No. 7,104,347 to Severinsky et al.

IPR Case No.: IPR2014-00579

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**PETITIONER'S OPPOSITION TO  
PATENT OWNER'S MOTION TO EXCLUDE**

**Table of Contents**

I. Introduction..... 1

II. Paice’s Motion is procedurally improper and should be denied .....2

III. The evidence and testimony were properly presented in response to arguments and evidence raised in Paice’s Response.....3

IV. Paice’s arguments about the sufficiency of Ford’s Petition have no place in a “Motion to Exclude,” were waived when not raised in either of Paice’s two Patent Owner Responses, and have no merit.....5

V. Conclusion .....6

Certificate of Service .....7

**Table of Authorities**

**Cases**

*ABB, Inc. v. Roy-G-BIV Corp.*,  
IPR2013-00063 .....2

*Amkor Technology Inc. v. Tessera Inc.*,  
IPR2013-00242 .....2

*Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*,  
CBM2012-00002 .....6

*St. Jude Medical v. University of Michigan Board of Regents*,  
IPR2013-00041 .....5

*Vibrant Media, Inc. v. General Electric Co.*,  
IPR2013-00170 ..... 1, 2, 5

**Statutes**

37 C.F.R. § 42.64(c) .....1

## I. Introduction

Petitioner Ford Motor Company (“Ford”) hereby opposes Patent Owner Paice LLC’s (“Paice”) Motion to Exclude. (Paper 34, “Motion.”)

As an initial matter, Paice was required under 37 C.F.R. § 42.64(c) to identify why the evidence it seeks to exclude is inadmissible “*e.g.*, based on relevance or hearsay.” *Vibrant Media, Inc. v. General Electric Co.*, IPR2013-00170, Paper 56 at 31. Paice’s Motion does not identify an evidentiary basis for exclusion but instead alleges that certain exhibits and testimony are “new evidence” that are “clearly outside the scope of Ford’s reply under 37 C.F.R. § 42.23.” (Motion at 5.) But a motion to exclude is not a proper mechanism for these arguments. IPR2013-00170, Paper 56 at 31. The present Motion is therefore improper and should be denied.

Even if “new evidence” arguments can be raised in a motion to exclude, Paice’s Motion should be denied because the challenged exhibit and testimony are rebuttal evidence responding to arguments and evidence raised within Paice’s January 21, 2015 response. (Paper 20, “Response.”)

Finally, as explained in Section IV, below, because Paice is attempting to use this “Motion to Exclude” to file an improper, *de facto* sur-reply, Ford asks the Board to expunge it from the record.

## II. Paice's Motion is procedurally improper and should be denied

The Board has stated a “motion to exclude is not a mechanism to argue that a reply contains new arguments or relies on evidence necessary to make out a prima facie case.” *Vibrant Media, Inc. v. General Electric Co.*, IPR2013-00170, Paper 56 at 31. But this is the stated basis for Paice's Motion, which asserts: “Ford is trying to use their Reply to insert new evidence and arguments that could have (and should have) been presented in the petition.” (Motion at 5.)

If Paice believes the new evidence is “outside the scope of Ford's reply,” (*id.*) the proper course of action would have been to seek leave from the Board to file a motion to strike. *ABB, Inc. v. Roy-G-BIV Corp.*, IPR2013-00063, Paper 71 at 14 (“If an issue arises regarding whether a reply argument or evidence in support of a reply exceeds the scope of a proper reply, the parties should contact the Board to discuss the issue.”); *See also Amkor Technology Inc. v. Tessera Inc.*, IPR2013-00242, Paper 122 at 2. (Patent Owner granted leave to argue in a motion to strike that “an expert declaration submitted with the reply, go[es] beyond the proper scope permitted for a reply.”)

Because Paice's Motion fails to identify an evidentiary basis for exclusion, it should be denied.

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