

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EASTMAN KODAK COMPANY, AGFA CORPORATION,
ESKO SOFTWARE BVBA, and HEIDELBERG, USA
Petitioners

v.

CTP INNOVATIONS, LLC
Patent Owner

Case IPR2014-00788
Patent 6,738,155

PATENT OWNER'S SECOND MOTION TO EXCLUDE EVIDENCE

Filed on behalf of CTP Innovations, LLC

By: W. Edward Ramage (Lead Counsel)
Reg No. 50,810
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
Baker Donelson Center
211 Commerce Street, Suite 800
Nashville, Tennessee 37201
Tel: (615) 726-5771
Fax: (615) 744-5771
Email: eramage@bakerdonelson.com

TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES | iii |
| I. INTRODUCTION | 1 |
| II. OBJECTIONS | 2 |
| III. ARGUMENT..... | 2 |
| A. The Board Should Exclude Apogee (Ex. 1007)..... | 2 |
| B. The Board Should Exclude Suetens' Declarations (Exs. 1022 & 1024)..... | 5 |
| C. The Board Should Exclude Jahn's Declaration (Ex. 1023)..... | 13 |
| CERTIFICATE OF SERVICE | 17 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| CASES | |
| <i>Amini Innov. Corp. v. Anthony Cal., Inc.</i> , 2006 U.S. Dist. LEXIS 100800 (C.D. Cal. Sept. 21, 2006) (Attach. A)..... | 5 |
| <i>Handi Quilter et al. v. Bernina</i> , IPR2013-00364, slip op..... | 11, 13 |
| <i>In re Cronyn</i> , 890 F.2d 1158 (Fed. Cir. 1989) | 2 |
| <i>Mitsubishi Plastics v. Celgard</i> , IPR2014-00524, slip. op..... | 10, 13 |
| <i>Nordock Inc. v. Sys. Inc.</i> , 2013 U.S. Dist. LEXIS 34661 (E.D. Wis. Mar. 13, 2013) (Attach. B)..... | 5 |
| <i>Palo Alto v. Juniper</i> , IPR2013-00369, slip. op. | 10, 13 |
| OTHER AUTHORITIES | |
| 37 C.F.R. §§ 42.62 and 42.64 | 1 |
| 37 C.F.R. § 42.123(b) | 11, 14 |
| 2 Melville B. Nimmer & David Nimmer, <i>Nimmer on Copyright</i> § 7.16[D] | 4 |
| FRE 401 | 12, 15 |
| FRE 401, 402, and 403 | 13 |
| FRE 402..... | 10 |
| FRE 402, 403, and 802 | 5 |
| FRE 403..... | 15 |
| FRE 602..... | 12 |
| FRE 801..... | 15 |

| | |
|--------------------------|----|
| FRE 801 and 802..... | 12 |
| FRE 802..... | 15 |
| FRE 803(6) and 901 | 10 |
| Rule 30(b)(6)..... | 11 |
| www.agfahome.com..... | 6 |

I. INTRODUCTION

CTP Innovations, LLC (“Patent Owner”), pursuant to 37 C.F.R. §§ 42.62 and 42.64, respectfully moves to exclude the following exhibits from the record and the Board’s consideration in this proceeding: (1) the AGFA Apogee: The PDF-based Production System brochure (“Apogee”) (Ex. 1007 and Attachment A to Exhibit 1022); (2) the Declaration of Johan Suetens and attachments (Exhibit 1022); (3) the Declaration of Michael Jahn (Ex. 1023); and (4) the Supplemental Declaration of Johan Suetens (Ex. 1024).

Petitioners bear the burden to show that Apogee was published prior to the earliest effective filing date of the subject patent. As shown by Suetens’ testimony at his deposition, neither Apogee on its face nor Suetens’ Declaration proves that Apogee was published prior to the earliest effective filing date. For those reasons, Patent Owner filed its Motion to Exclude (Paper 18) (“First Motion to Exclude”).

Petitioners chose to treat the First Motion to Exclude as objections to Apogee and Mr. Suetens’ Declaration. In a Trojan-horse attempt to cure the fatal flaw in Apogee’s admissibility, they submitted to Patent Owner and later filed with their reply Mr. Jahn’s Declaration and Mr. Suetens’ Supplemental Declaration. The latest filed declarations, however, do not demonstrate that Apogee was published prior to the effective filing date and, for that reason alone, should be excluded. Moreover, further basis for exclusion of the declarations exists because

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.