

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION,
NETAPP INC. AND
HUAWEI TECHNOLOGIES CO., LTD.
Petitioners,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner.

Case IPR2014-01209
Patent 7,051,147

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 CFR § 42.64(B)(1)**

Pursuant to 37 C.F.R. § 42.64, Patent Owner submits the following objections to certain evidence relied upon by Petitioner in its Reply Brief.

I. Objections to Exhibits 1224, 1225, and 1226

Patent Owner objects to exhibits 1224, 1225, and 1226 under FRE 401 and 402 on the grounds that they are irrelevant. Preliminary infringement allegations are irrelevant and it is improper to construe claims with respect to accused instrumentalities, which appears to be the purpose of these exhibits. Furthermore, exhibit 1226 is not alleged to be prior art nor alleged to relate to instituted prior art.

Patent Owner further objects to exhibits 1224, 1225, and 1226 because, if they were otherwise relevant, they would constitute unauthorized supplemental information that does not comply with the requirements of 37 C.F.R. § 42.123. Furthermore, these exhibits are not responsive to any allegation made in Patent Owner's response, and are therefore improper under 37 C.F.R. § 42.23(b). To the extent that Petitioners intend to rely on an analogy between these exhibits and the alleged prior art, such arguments, or any other arguments based on these exhibits, should have been made in the original petition, as required by 37 C.F.R. § 42.23(a).

II. Objections to Exhibit 1227

Patent Owner objects to exhibit 1227 under 37 CFR § 42.53 because it constitutes uncompelled direct testimony that has not been submitted in the form of an affidavit.

To the extent that exhibit 1227 constitutes the testimony of a lay witness, Patent Owner objects to this exhibit under FRE 602 because Petitioners have failed to provide evidence sufficient to show that the unknown declarant has personal knowledge of the facts disclosed therein. Exhibit 1227 purports to be the result of a survey and presumably contains data obtained from sources other than the unknown declarant.

To the extent that exhibit 1227 constitutes expert testimony, Patent Owner objects to this exhibit under FRE 703 because the evidence supporting the opinions of the unknown declarant has not been disclosed. Exhibit 1227 purports to be the result of a survey and it does not disclose the underlying data, the methodology used to obtain it or any methodology used to validate the data. Furthermore, Petitioners have failed to provide evidence sufficient to show that the unknown declarant is qualified as an expert to make the assertions contained in this exhibit.

Patent Owner objects to exhibit 1227 under FRE 802 because it constitutes inadmissible hearsay that does not fall under an exception. Petitioner is relying on exhibit 1227 for the truth of the matters asserted in the exhibit, which are purported

to constitute the unsworn testimony of unidentified third parties. Patent Owner further objects to exhibit 1227 as inadmissible hearsay because it appears to constitute hearsay testimony by Intellectual Property Insurance Service Corporation regarding the unsworn testimony of the American Intellectual Property Law Association, which is itself inadmissible hearsay.

Petitioner further objects to exhibit 1227 under FRE 901 because Petitioner has not produced evidence sufficient to authenticate this exhibit. Moreover, this exhibit appears to have been altered by an unknown declarant.

III. Objections to Exhibit 1230

Patent Owner objects to exhibit 1230 under 37 C.F.R. § 42.53 because it constitutes uncompelled direct testimony that has not been submitted in the form of an affidavit.

Patent Owner objects to Exhibit 1230 under FRE 401 and 402 on the grounds that it is irrelevant. Exhibit 1230 purports to be a document from December 2002, which is well after any relevant time period. Furthermore, exhibit 1230 is cited with respect to CMD Technologies, and thus does not relate to a ground that was instituted in this *inter partes* review proceeding.

Patent Owner further objects to exhibit 1230 under FRE 802 on the grounds that it constitutes inadmissible hearsay that does not fall under an exception. Petitioners' rely on exhibit 1230 for the truth of the matters asserted, namely that

“[d]espite its superior performance as a networked storage topology in SANs and storage fabric applications, Fibre Channel has not seen wide adoption as a native hard drive interface.”

Petitioner further objects to exhibit 1230 under FRE 901 because Petitioner has not produced evidence sufficient to authenticate this exhibit.

Dated: August 28, 2015

Respectfully submitted,

/John L. Adair/

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Registration No. 48,828

Counsel for Patent Owner

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