

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., QUANTUM CORP.
and ORACLE CORP.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner

Case IPR2014-01544¹
Patent 7,051,147

**CONSOLIDATED PETITIONERS' OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

¹ Case IPR2015-00852 has been joined with this proceeding

TABLE OF CONTENTS

I. Introduction 1

II. Statement of Relief Requested 1

III. Reasons Why Patent Owner’s Motion to Exclude Should Be Denied 1

 A. Summary of Reasons 1

 B. The Motion Fails Because Patent Owner Did Not Object to The Evidence Sought to be Excluded 1

 C. FRE 403 and The Rule of Completeness (FRE 106) are Inapplicable to the Present Proceeding 5

 D. The Motion to Exclude Addresses the Weight of the Evidence, Not the Admissibility 7

 E. Patent Owner’s Allegations of Mischaracterization are Baseless 8

IV. Conclusion 12

TABLE OF AUTHORITIES

Cases

<i>Neste Oil Oyj v. Reg Synthetic Fuels, LLC.,</i> IPR2013-00578, Paper 53 (PTAB 2013).....	6
<i>Stryker v. Karl Storz Endoscopy-America, Inc.,</i> IPR2015-00677, Paper 13 (PTAB 2015).....	6
<i>Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.,</i> CBM2012-00002, Paper 66 (PTAB 2014).....	7, 8
<i>Hayward Industries, Inc. v. Pentair Water Pool and Spa, Inc.,</i> IPR2013-00285, Paper 31 (PTAB 2014).....	7
<i>Avaya Inc., v. Network-1 Security Solutions, Inc.,</i> IPR2013-00071, Paper 75 (PTAB 2013).....	7
<i>Bloomberg, Inc., et. al. v. Markets-Alert Pty Ltd.,</i> CBM2013-00005, Paper 56 (PTAB 2013).....	8

Rules

37 C.F.R. § 42.23.....	1
37 C.F.R. § 42.64.....	1, 2, 5

I. Introduction

Patent Owner filed a Motion to Exclude on September 22, 2015 (“Motion,” Paper 38). Petitioners submit this opposition under 37 C.F.R. § 42.23. As explained below, Patent Owner’s Motion should be denied because it is procedurally deficient and is an improper sur-reply to Petitioners’ Reply Brief.

II. Statement of Relief Requested

Petitioners request that Patent Owner’s Motion to Exclude be denied.

III. Reasons Why Patent Owner’s Motion to Exclude Should Be Denied

A. Summary of Reasons

The Motion should be denied because it is procedurally deficient. Specifically, the Motion (i) relies on evidence objections that do not exist in the record, (ii) cites to inapplicable rules in the Rules of Federal Evidence, and (iii) addresses the *weight* of the evidence rather than the *admissibility* of the evidence. Further, even if the Board reaches the substance of the Motion, Patent Owner’s allegations of testimony mischaracterization are baseless.

B. The Motion Fails Because Patent Owner Did Not Object to The Evidence Sought to be Excluded

Patent Owner moves to exclude portions of Exhibit 1025—the deposition transcript of its own expert witness—under Rule 403 of the Federal Rules of Evidence (FRE 403). Motion at 6 and 8. Patent Owner’s Motion, however, fails to meet the procedural requirements of 37 C.F.R. § 42.64.

Under 37 C.F.R. § 42.64(a), a party wishing to challenge the admissibility of deposition evidence must object to the evidence “during the deposition.” The objecting party preserves the objection by filing a motion to exclude the evidence. 37 C.F.R. § 42.64(c). The motion to exclude “must identify the objections in the record in order and must explain the objections.” *Id.* Patent Owner's Motion fails to meet each of these requirements.

In more detail, Patent Owner cites to FRE 403 in an attempt to exclude two portions of the deposition transcript contained in Exhibit 1025—lines 129:16-17 (Objection #1) and lines 112:16-25 (Objection #2). Motion at 2, 6, 8. The Motion fails, however, to identify any objection under FRE 403 in the record, as required by 37 C.F.R. § 42.64(c). Instead, the Motion includes a generic statement that “Patent Owner's objections to questions at the deposition were made on the record during the deposition.” Motion at 1. This statement rings hollow because Patent Owner *did not actually object to the testimony sought to be excluded*.

In that regard, the portions of the deposition transcript quoted in the Motion reveal that Patent Owner did not object under FRE 403 during the deposition to the testimony sought to be excluded or to the question that prompted the testimony sought to be excluded. The relevant portions of the deposition transcript are provided below, with the evidence sought to be excluded underlined:

8 Q. (BY MR. GAUDET) And is that because of the

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