

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**QUALCOMM INC.,
Petitioner**

v.

**BANDSPEED, INC.,
Patent Owner**

**Case IPR2015-00315¹
U.S. Patent 7,477,624 B2**

**PETITIONER'S REPLY TO PATENT OWNER'S OBJECTIONS TO
EVIDENCE SUBMITTED WITH PETITIONER'S PETITION**

¹ Case IPR2015-01580 has been joined with this proceeding.

Petitioner respectfully submits this its reply to Patent Owner's Objections to Evidence Submitted with Petitioner's Petition entered on November 23, 2015 (Paper 25) ("Objections").

Petitioner understands that the Patent Trial and Appeal Board ("PTAB") generally prefers evidentiary objections and responses not be filed with the PTAB. *See, e.g., Sealed Air Corporation v. Pregis Innovative Packaging, Inc.* IPR2013-00554, Paper 16. It is unclear whether Patent Owner is seeking particular relief at this time beyond its stated objections. For example, given that Patent Owner's objections are untimely, Patent Owner's objections may seek to raise rule interpretation issues. Accordingly, Petitioner files this paper with the PTAB out of an abundance of caution.

Petitioner will meet and confer with Patent Owner and seek to independently resolve the issues discussed below with opposing counsel. Should those efforts be unsuccessful, Petitioner will seek a conference call with the PTAB regarding any remaining issues requiring the PTAB's intervention.

I. PATENT OWNER'S OBJECTIONS ARE UNTIMELY

The original petition in this trial was the vehicle that submitted Exhibits 1008-1010 and 1012 into the record, which are the subject of Patent Owner's objections. The present trial was instituted on June 11, 2015. 37 C.F.R. § 42.64(b)(1) requires that objections to evidence submitted in an IPR petition must

be made within 10 business days of the institution of the trial. Prior to November 23, 2015, however, Patent Owner failed to object to these Exhibits.

The PTAB granted joinder on November 16, 2015, based on a petition that relied solely on the evidence already of record and did not add any new exhibits to this proceeding. In such joinder circumstances, allowing objections to evidence that has been of record for months in a proceeding without objection would unfairly prejudice the parties to an original petition and provide a Patent Owner a second, unwarranted opportunity to object to evidence. Similarly, allowing untimely objections would prejudice a joining party and unnecessarily burden the PTAB. Specifically, if a timely and proper objection was raised, a joining party would have the opportunity to address such objections at the time of filing its petition.

Accordingly, Petitioner submits that the rules cannot be construed to allow objections to evidence that is already of record in a proceeding merely because a joinder petition was instituted, and the PTAB should not recognize joinder as a new opportunity to object to evidence of record. Accordingly, Patent Owner submits that the Patent Owner's objections are untimely and waived.

II. PATENT OWNER'S OBJECTIONS DO NOT COMPLY WITH 37 C.F.R § 42.64(B)(1)

Rule 42.54(b)(1) requires that objections be made with sufficient particularity to allow for correction in the form of supplemental evidence. The

present objections fail to comply with this requirement and instead are made in “laundry list” form without any specificity.

The evidence objected to includes one or more of: dictionary definitions (where the dictionary cited includes copies of the front cover, publication information, and page with the definition) and a Bluetooth Special Interest Group published standards document. Patent Owner asserts a boilerplate objection that each of these documents are (i) not properly authenticated under Fed. R. Evid. 901, (ii) hearsay under Fed. R. Evid. 801-802, (iii) irrelevant under Fed. R. Evid. 402, and (iv-1) unduly prejudicial, (iv-2) confusing the issues, (iv-3) misleading, and (iv-4) needlessly presenting cumulative evidence under Fed. R. Evid. 403.

The boiler plate objections are facially deficient and prevent Petitioner from being able to determine the true substance of Patent Owner’s objections and, to the extent necessary, any appropriate supplementation by Petitioner. For example, Patent Owner argues that certain exhibits are cumulative, without explaining as to what, and that certain documents are hearsay despite falling within exceptions to the Hearsay Rule. Further, Patent Owner indicates that the documents may need further authentication without indicating any particular issues it has with the documents even though the exhibits provide sufficient authentication and include documents that have been cited to Patent Owner in related USPTO proceedings. Thus,

Patent Owner's objections fail to provide the required sufficient particularity and should be overruled for this reason.

To the extent Patent Owner's objections are not waived and Patent Owner presents meaningful particularly during the Parties' meet and confer efforts, Petitioner is prepared to make documents available for inspection, provide declaration evidence stating that true and correct copies have been provided, and make other reasonable efforts to resolve the objections without PTAB intervention.

III. CONCLUSION

For the foregoing reasons, Petitioner asserts that the present objections to evidence are untimely and improper. Therefore, if the PTAB is eventually required to address these objections, the objections should be overruled.

Dated: December 3, 2015

Respectfully submitted,



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