

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioners,

v.

DSS TECHNOLOGY MANAGEMENT, INC.,
Patent Owner.

Case: IPR2015-00373
U.S. Patent No. 6,128,290

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

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Pursuant to 37 C.F.R. § 42.23, Patent Owner DSS Technology Management, Inc. (“Patent Owner”) hereby opposes Petitioner Apple, Inc.’s (“Petitioner”) Motion to Exclude Evidence.

Petitioner filed a Motion to Exclude on the following grounds:

- I. Exhibits 2003-2008, 2012-2014, and 2017:
 - (1) Hearsay under Federal Rules of Evidence (“FRE”) 801;
 - (2) Irrelevance under FRE 401;
- II. Exhibit 2011:
 - (1) Hearsay under FRE 801.

The Board should deny Petitioner’s Motion to Exclude in its entirety for the reasons that follow.

I. Exhibits 2003-2008, 2011-2014, and 2017 Should Not Be Excluded As Hearsay

A. Exhibits 2003-2008, 2011-2014 and 2017 Are Not Hearsay

Exhibits 2003-2008, 2011-2014, and 2017 are admissible because they are not hearsay. FRE 801(c) defines “hearsay” as a statement that “a party offers in evidence to prove the truth of the matter asserted in the statement.” Fed. R. Evid. 801(c). It is well established, however, that “[i]f the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of

anything asserted, and the statement is not hearsay.” Fed. R. Evid. 801 Advisory Committee’s Notes on Proposed Rules (citing *Emich Motors Corp. v. General Motors Corp.*, 181 F.2d 70 (7th Cir. 1950)).

In its Motion to Exclude, Petitioner failed to recognize that Exhibits 2003-2008, 2011-2014, and 2017 serve a non-hearsay purpose. Patent Owner offered Exhibits 2003-2008, 2011-2014, and 2017 for what they describe to a person of ordinary skill in the art (“POSITA”), and not for the truth of the matter asserted therein. The law is well established that the Board will not exclude evidence that is proffered to show what a POSITA would have known about the relevant field of art. *See Liberty Mut. Ins. Co. Petitioner*, CBM2012-00010, Final Decision (P.T.A.B. Feb. 24, 2014) (“We further agree with Liberty that the articles that are Exhibits 1025-1034 and 1036 serve a non-hearsay purpose for which they can be admitted—namely to show what one with ordinary skill in the art would have known about technical features and developments in the pertinent art.”). Furthermore, Exhibits 2003-2008, 2011-2014, and 2017 are not hearsay because they provide context for the testimony of an expert witness Mr. Dezmelyk and, therefore, can assist the Board in assessing Mr. Dezmelyk’s credibility.

At least for these reasons, Petitioner’s motion to exclude Exhibits 2003-2008, 2011-2014, and 2017 as hearsay under FRE 801 is improper and should be denied.

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