UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC., and COX COMMUNICATIONS, INC.,
Petitioners

v.

C-CATION TECHNOLOGIES, LLC,
Patent Owner

CASE IPR2015-00635[1]
Patent 5,563,883

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE EVIDENCE

[1] Cox Communications, Inc., who filed a Petition in IPR2015-01796, has been joined as a petitioner in this proceeding.

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I. INTRODUCTION

C-Cation submits this Reply in response to the Petitioners' Opposition ("Opposition") (Paper 46) to C-Cation's Motion to Exclude Evidence (Paper 43). To the extent that C-Cation does not specifically address an argument of Petitioners here, C-Cation rests on its motion.

II. ARGUMENT

A. Exhibits 1005-1007 and 1010 Are Not Admissible Under Fed. R. Evid. 803(16) Because They Have Not Been Authenticated

Exhibits 1005-1007 are the MPT Specifications that Petitioners contend are prior art. C-Cation objected to these exhibits not with respect to what they disclose, but rather with respect to Petitioner's reliance on the truth of assertions in them, *i.e.*, that they were "published." For that purpose, they are hearsay. C-Cation also objected to Exhibit 1010 because it is offered only to prove the truth of assertions regarding the alleged publication of the MPT Specifications.

Petitioners rely solely on the ancient documents exception to the hearsay rule, Fed. R. Evid. 803(16), to establish admissibility, but have failed to meet the authentication requirement under that rule for each exhibit.

1. Exhibits 1005-1007 and 1010 Are Neither Self-Authenticating Under Fed. R. Evid. 902(5) Nor Authenticated as Public Records Under Fed. R. Evid. 901(b)(7)(B)

Petitioners rely on the unsworn certificates of Ms. Julia Fraser to establish that the "Radiocommunications Agency" was a "public authority" under Rule

902(5) and to authenticate Exhibits 1005-1007 and 1010 under Rule 901(b)(7)(B). "In determining whether a matter is authentic, a court only may consider evidence that is itself admissible." 31 CHARLES ALLEN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND PROCEDURE § 7104 (2d ed.).

Here, the Fraser certificates are not admissible testimony because they do not comply with the Board's rules. *See* 37 C.F.R. § 42.53(a) ("Uncompelled direct testimony must be submitted in the form of an affidavit."); 37 C.F.R. § 42.2 ("Affidavit means affidavit or declaration under § 1.68 of this chapter."); *see also* 37 C.F.R. § 1.68 (declarant must be "warned that willful false statements and the like are punishable by fine or imprisonment, or both"). Pursuant to 28 U.S.C. § 1746, an unsworn declaration executed outside the United States may be used instead of an affidavit, but must include the following statement by the witness: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct." The Fraser certificates do not include this statement.

The Fraser certificates also do not comply with Rule 902(3), which requires purported foreign public documents to be accompanied by "a final certification that certifies the genuineness of the signature and official position of the signer or attester."

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