

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUJITSU NETWORK COMMUNICATIONS, INC.,
Petitioner,

v.

CAPELLA PHOTONICS, INC.,
Patent Owner.

Case IPR2015-00726
Patent RE42,368 E

Before JOSIAH C. COCKS, KALYAN K. DESHPANDE, and
JAMES A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On December 11, 2015, Patent Owner submitted an email to the Board seeking “guidance” with respect to its effort to obtain discovery from Petitioner of “notes, comments, and edits that the late Dr. Drabik made with regard to his draft declarations and all documents he reviewed in preparing them.” Ex. 2039. In response, the Board informed Patent Owner that it understood Patent Owner to request authorization to file a motion for additional discovery, and that no motion was authorized at that time. *Id.* On December 30, 2015, Patent Owner proceeded to file a document purporting to be a “Request for Rehearing of the Board’s Order Denying Authorization to Move for Discovery.” Paper 24. In substance, the document filed by Patent Owner is a motion for discovery which was not authorized. Accordingly, Paper 24 submitted by Patent Owner is expunged.

The circumstances concerning the death of Dr. Drabik are discussed in detail in our decision granting Petitioner’s Motion to File Supplemental Information (Paper 19) and our decision denying Patent Owner’s Request for Rehearing of that decision (Paper 23). The Board has explained repeatedly to Patent Owner that, although the panel relied on Dr. Drabik’s Declaration in instituting trial, “going forward, the panel will not consider the content of that Declaration as a part of any Final Written Decision.” Paper 19, 4–5; Paper 23, 4. We understand Petitioner no longer relies on the declaration testimony of the late Dr. Drabik, and thus evidence concerning that testimony is not directly related to factual assertions now advanced by any party in this proceeding. Accordingly, any discovery sought by Patent Owner concerning any declaration of the late Dr. Drabik is not relevant to this proceeding, and Patent Owner’s requests for

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authorization to otherwise obtain or compel such discovery have been denied.

Order

It is

ORDERED that Paper 24 submitted by Patent Owner is expunged.

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