

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC., and SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

SUMMIT 6 LLC,
Patent Owner.

Case IPR2015-00806¹
Patent 7,765,482 B2

Before HOWARD B. BLANKENSHIP, GEORGIANNA W. BRADEN, and
KERRY BEGLEY, *Administrative Patent Judges*.

BEGLEY, *Administrative Patent Judge*.

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

¹ Samsung Electronics Co., Ltd., who filed a Petition in IPR2016-00029, has been joined as a petitioner in the instant proceeding.

On April 13, 2016, a conference call was held between counsel for the respective parties and Judges Begley and Braden. Petitioner, who provided a court reporter for the call, will file a transcript of the call when it is available. The purpose of the call was to discuss Petitioner's request that Patent Owner's Motion for Observations on the Cross Examination of Gary L. Frazier (Paper 52) be expunged.

As explained in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756 (Aug. 14, 2012) ("Practice Guide") and the Scheduling Order (Paper 20) in this proceeding, a motion for observation provides a party with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Practice Guide, 77 Fed. Reg. at 48,767–69; Paper 20, 4. The observation must be a concise statement of the relevance of identified testimony to an identified argument or portion of an exhibit. *See* Practice Guide, 77 Fed. Reg. at 48,767–69; Paper 20, 4. "An observation . . . is not an opportunity to raise new issues, re-argue issues, or pursue objections." Practice Guide, 77 Fed. Reg. at 48,768. To that end, "[e]ach observation should be in the following form: In exhibit __, on page __, lines __, the witness testified __. This testimony is relevant to the __ on page __ of __. The testimony is relevant because __." *Id.* "The Board may refuse entry of excessively long or argumentative observations . . ." *Id.*

During the call, Petitioner argued that Patent Owner's Motion should be expunged because it fails to comply with the guidelines in the Practice Guide and other cases of the Board. Specifically, according to Petitioner, the Motion contains improper argument and summarizes broad sections of

Dr. Frazier’s testimony in a manner that mischaracterizes his testimony. Patent Owner contested Petitioner’s position, contending that the Motion complies with the relevant guidance provided by the Board. In addition, Patent Owner argued that expunging the Motion is not appropriate, because the observations are not evidence and are only a vehicle to direct to the Board’s attention the most relevant excerpts of Dr. Frazier’s testimony.

Based on the parties’ arguments during the call and our review of Patent Owner’s Motion, we agree with Patent Owner that the Motion is consistent with the guidance, including the format, provided in our Trial Practice Guide. We are not persuaded that the Motion is “excessively . . . argumentative” such that expunging the Motion would be warranted. *See id.* Moreover, regarding the Motion’s citations to Dr. Frazier’s testimony, the Motion often quotes or includes narrow citations to the testimony, and lengthy citations to the testimony are followed by more specific citations to support more specific statements within the same observation. *See, e.g.,* Paper 52, 1–2 (observation 2); *see generally id.* In addition, Petitioner has the opportunity to address any alleged mischaracterization of Dr. Frazier’s testimony, as well as any other allegedly improper statement in the Motion, in a response to Patent Owner’s Motion.

ORDER

Accordingly, it is:

ORDERED that Petitioner’s request that Patent Owner’s Motion for Observations on the Cross Examination of Gary L. Frazier (Paper 52) be expunged is *denied*.

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