

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.
VIRNETX INC.,
Patent Owner.

Case No. IPR2015-00810
U.S. Patent No. 8,868,705

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

Table of Contents

I. Introduction.....1

II. Argument1

 A. Patent Owner’s Motion is Facially Deficient.....1

 B. Exhibits 1060 and 1063-1065 Are Admissible2

 C. Exhibits 1003, 1004, 1009-1011, 1013-1035, 1037-1041, 1043-1048,
 and 1068 Are Admissible.....7

 D. Exhibit 1005 Is Admissible in Its Entirety.....9

III. Conclusion9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apple Inc. v. Smartflash LLC</i> , CBM2014-00180, Paper 50 (Sep. 25, 2015)	7
<i>Doe v. United States</i> , 976 F.2d 1071 (7th Cir. 1992), <i>cert. denied</i> 510 U.S. 812 (1993)	2
<i>Ericsson Inc. v. Intellectual Ventures I LLC</i> , IPR2014-00527, Paper 41 (May 18, 2015).....	6
<i>Google Inc. v. Intellectual Ventures II LLC</i> , IPR2014-01034, Paper 41 (Dec. 7, 2015).....	9
<i>Poole v. Textron, Inc.</i> , 192 F.R.D. 494 (D. Md. 2000)	5
<i>Samsung Electronics America, Inc. v. Smarthflash LLC</i> , CBM2014-00193, Paper 45 (Mar. 30, 2016).....	9
<i>Ultratec, Inc. v. Sorenson Commc'ns, Inc.</i> , No. 13-CV-346, 2014 WL 4829173 (W.D. Wis. Sept. 29, 2014)	5
<i>United States v. North</i> , 910 F.2d 843 (D.C. Cir. 1990) <i>cert. denied</i> 500 U.S. 941 (1991).....	2
Other Authorities	
37 C.F.R. § 42.20(c).....	1
37 C.F.R. § 42.22(a)(2).....	1
37 C.F.R. § 42.53(f)(5)	8
37 C.F.R. § 42.65	8
Fed. R. Evid. 801(c)(2)	3

Fed. R. Evid. 807*passim*
FRE 401 and 402.....7

I. Introduction

The evidence of record establishes that Exhibits 1003-1005, 1009-1011, 1013-1035, 1037-1041, 1043-1048, 1060, 1063-1065, and 1068 are admissible. Patent Owner has failed to show otherwise, and thus, its motion must be denied. *See* Paper 36 (“Mot.”).

II. Argument

A. Patent Owner's Motion is Facially Deficient

With respect to the exhibits Patent Owner seeks to exclude based on hearsay (Exs. 1060 and 1063-1065), Patent Owner's motion is facially deficient – it does not identify any specific statements in those exhibits alleged to be hearsay. Mot. at 2-3; *see* 37 C.F.R. § 42.22(a)(2). Instead, Patent Owner alleges that the exhibits “*include* out-of-court statements” without identifying them. Mot. at 2-3 (emphasis added). It is not Petitioner's burden to identify purported hearsay – Patent Owner, as the moving party, “has the burden of proof to establish that it is entitled to the requested relief.” 37 C.F.R. § 42.20(c).

Patent Owner's failure to identify the putative hearsay also is prejudicial. For example, if Patent Owner in its reply attempts to cure these deficiencies, Petitioner will have no opportunity to respond. Patent Owner's motion to exclude these exhibits should therefore be denied.

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