Paper _____

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION and MICROSOFT MOBILE, INC.,
Petitioners

v.

GLOBAL TOUCH SOLUTIONS, LLC
Patent Owner

_____

Case IPR2015-01149
Patent No. 7,329,970 B2

_____

PATENT OWNER'S MOTION FOR OBSERVATIONS REGARDING CROSS EXAMATION OF DR. MARK HORENSTEIN

Pursuant to the Scheduling Order (Paper 13) of November 17, 2015, and the Notice of Stipulation to Extend Due Date 4 (Paper 22) of June 15, 2016, Patent Owner Global Touch Solutions, LLC, respectfully submits this Motion for Observations regarding Cross Examination of Dr. Mark Horenstein. Specifically, Patent Owner submits that observations of Dr. Horenstein's conduct and answers on cross-examination reflect on his lack of credibility as a witness. To properly understand the nature of Dr. Horenstein's testimony, it is at first necessary to understand that in response to Patent Owner's objection to evidence, Petitioners served but did not file supplemental Declarations that attempt to address the basis of Patent Owner's objection – that each and every Declaration filed by Petitioners in the captioned proceeding has lacked the proper jurat, and is not the affidavit required by Rule 53. Patent Owner has moved to exclude that Declaration on that basis.

The supplemental declaration filed by Petitioners reflects an attempt to cure the inadmissibility, but falls short in more than one respect – it asserts "all statements made on information and belief are true" – a statement clearly beyond the ability of the Declarant to assert with any reliability. It also offers, as the only safeguard of trustworthiness and reliability, the statement that if he has offered willful false statements, he recognizes that they are punishable as provided in

"Section 1101 of Title 18" of the U.S. Code. To the best of undersigned counsel's knowledge, no such provision exists.

Whether the errors are those of counsel or those of the witness who adopted counsel's testimony without question, they reflect a witness who declined to pay due attention to testimony and has a disregard for that testimony. This is nowhere more clearly reflected than in paragraph 6 of the Reply Declaration, Exhibit 1020, where the witness refers to one aspect of the reference, identified as reference character 520, when he intended to refer to a completely different aspect of the reference. The witness testified that the error would have been obvious to anyone reading the Declaration, but he failed to notice it when he "executed" the Exhibit 1020 (execution was not by signature, but by affixation of a graphic text by an individual) and again when the supplemental Declaration was provided in response to Patent Owner's Objection to Evidence. (For ease of reference, the Supplemental Declaration was identified in the proceeding as Exhibit 2008). The necessary implication is that if it would have been obvious to anyone reading the Declaration, and the expert witness did not notice the error the first time the Reply Declaration (Exhibit 1020) was prepared or the second time, when the supplemental evidence was prepared and served, Horenstein did not read it on either occasion.

CITATIONS TO TESTIMONY

Observation 1: In Exhibit 2007, at 80:5-7, regarding Dr. Horenstein's Second Declaration (Exhibit 1020), Dr. Horenstein testified "I think it would be obvious to anyone reading paragraph seven that the first instance of number 520 is a typo and should be 516." This is relevant to Dr. Horenstein's credibility and the weight to be given to his testimony because Dr. Horenstein did not acknowledge this error upon signing the Second Declaration (Exhibit 1020) on June 1, 2016, or upon re-signing the Second Declaration (Exhibit 2008) on June 9, 2016, indicating he did not read either declaration.

Observation 2: In Exhibit 2007, at 92:4-6, regarding Dr. Horenstein's Second Declaration (Exhibit 1020), Dr. Horenstein testified "In my mind, this is in context, it is an obvious typographical error that anyone could identify upon reading the document[.]" This is relevant to Dr. Horenstein's credibility and the weight to be given to his testimony because Dr. Horenstein did not acknowledge this error upon signing the Second Declaration (Exhibit 1020) on June 1, 2016, or upon re-signing the Second Declaration (Exhibit 2008) on June 9, 2016, indicating he did not read either declaration.

Observation 3: In Exhibit 2007, at 97:21-98:1, regarding whether Dr. Horenstein knew about the error of paragraph 7 of Dr. Horenstein's Second Declaration (Exhibit 1020) by June 9, 2016, Dr. Horenstein testified "Apparently

not because I signed the documents on June 9th with the boiler plate clause added." This is relevant to Dr. Horenstein's credibility and the weight to be given to his testimony because Dr. Horenstein did not acknowledge this error upon signing the Second Declaration (Exhibit 1020) on June 1, 2016, or upon re-signing the Second Declaration (Exhibit 2008) on June 9, 2016, indicating he did not read either declaration.

Observation 4: In Exhibit 2007, at 37:11-12, regarding the jurat added to the Second Declaration (Exhibit 2008), Dr. Horenstein testified that the jurat "to me what appears to be a standard boiler plate paragraph[.]" Similarly, in Exhibit 2007, at 38:2-3; 38:11-16; 97:21-98:1; 104:12-13; 104:18-19; 105:22-106:1; 137:3-4; and 139:21-22, Dr. Horenstein testified that he views the jurat as merely "boiler plate" language. This is relevant to Dr. Horenstein's credibility and the weight to be given to his testimony because this testimony indicates the lack of meaning given to the jurat by Dr. Horenstein.

Observation 5: In Exhibit 2007, at 131:10-14, regarding the scope of Patent Owner's expert's testimony, Dr. Horenstein testifies that Patent Owner's expert did not testify about adjusting sensitivity of a touch sensor: "Did he talk about adjusting the sensitivity of the touch sensor in any fashion? MR. MURPHY: Object to form. THE WITNESS: No. In paragraph four I offer the remedy of adjusting the sensitivity." This is relevant to the timeliness of the arguments

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