

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner

Case IPR2015-01432
U.S. Patent No. 7,139,794 B2

**PATENT OWNER'S OBJECTIONS TO
PETITIONER'S SUPPLEMENTAL EVIDENCE
(37 C.F.R. §42.64(b)(1))**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Bradium Technologies LLC (“Bradium”) objects to Petitioner Microsoft Corporation’s (“Microsoft”) January 25, 2016 Petitioner’s Service of Supplemental Evidence in Response to Patent Owner’s Objections, for *Inter Partes* Review IPR2015-01432 of U.S. Patent No. 7,139,794, and further objects to the admissibility of the Appendices that accompanied Petitioner’s document.

Patent Owner objects to the alleged “supplemental evidence” because it is not supplemental evidence at all. Rather, Microsoft’s submission is an attempt to “correct” a flaw in Exhibit 1007 of Microsoft’s petition. The procedure for correcting such a flaw is to file a motion under 37 CFR 42.104(c), whereby Petitioner must show that the filing of Exhibit 1007 was a “clerical or typographical mistake.” The burden is on Petitioner to make this showing.

Terremark North Amer. LLC v. Joao Control & Monitoring Sys., LLC, IPR2015-01485 Paper 10 at pp. 7, 13 (P.T.A.B. Dec. 28, 2015) (denying a motion made under 37 CFR 42.104(c) because Petitioner had not made a sufficient showing to meet its burden of proof); 37 C.F.R. § 42.20(c).

Despite being expressly advised by Patent Owner of this procedure, Microsoft has sought to “supplement” its evidence in an effort to avoid having to file a motion to request permission to correct the exhibit. Patent Owner objects to

Petitioner's purported supplemental evidence because Petitioner has expressly chosen to ignore the proper procedure.

Further, since Petitioner has not followed the proper procedure, and indeed has expressly attempted to avoid doing so, the purported supplemental evidence is not relevant, and is not admissible under F.R.E. 402. Patent Owner also objects to the purported supplemental evidence under F.R.E. 403, because whatever probative value it might have is substantially outweighed by the danger of unfair prejudice and confusion, as this evidence was neither presented with the original Petition nor authorized by the Board in response to a motion to correct the petition.

Patent Owner further objects that Appendix A, which Petitioner represents is a "true copy of U.S. Patent No. 5,760,873," may not be used to support Petitioner's argument on the merits, because Petitioner has not sought or been granted authorization to file a motion under 37 CFR 42.123 to submit Appendix A as supplemental *information*.¹ See *Handi-Quilter, Inc. v. Bernina Int'l AG*, IPR2013-00364, Paper 30 at pp. 2–3 (P.T.A.B. June 12, 2014) ("Supplemental information, on the other hand, is evidence a party intends to support an argument on the merits. Such evidence may only be filed if a § 123 motion is both authorized and granted.") The deadline for filing such a motion by Petitioner has passed. 37 CFR

¹ Patent Owner also objects to Appendix B on this basis, to the extent that Petitioner attempts to use it to support Petitioner's argument on the merits.

42.123(a)(1) (request for authorization to file a § 123 motion should be made within one month of institution).

Further, Patent Owner objects to Appendix B because Petitioner has not made a showing of a “clerical or typographical mistake” via Appendix B. See 37 CFR 42.104(c). The declaration, Appendix B, asserts in conclusory fashion, without foundational explanation, that “[t]he copy [Exhibit 1007] filed on June 16, 2015 inadvertently included color markings in the margins of certain pages, including markings at columns 6, 9 and 10.” (Appendix B at ¶ 3.) Petitioner has the burden of proof, yet Exhibit B, i.e., the declaration of Ms. Hare, is silent as to, for example, how or why the markings were included, or who made the markings. Without such evidence, Petitioner cannot meet its burden of showing clerical or typographical mistake.

Dated: February 1, 2016

/Michelle Carniaux/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on February 1, 2016, the foregoing *Patent Owner's Objections to Petitioner's Supplemental Evidence* is being served via electronic mail upon the following counsel of record for Petitioner:

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