

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 EVIDENCE
(37 C.F.R. §42.64(b)(1))**

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Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Bradium Technologies LLC (“Bradium”) objects to the admissibility of the following exhibits that accompanied Petitioner Microsoft Corporation’s (“Microsoft”) June 24, 2016 Reply to Patent Owner’s Response (Paper No. 27).

In this paper, a reference to “F.R.E.” means the Federal Rules of Evidence, a reference to “C.F.R.” means the Code of Federal Regulations, and “794 patent” means U.S. Patent No. 7,139,794. All objections under F.R.E. 802 (hearsay) apply to the extent that Petitioner rely on the exhibit(s) identified in connection with that objection for the truth of the matters asserted therein.

Patent Owner objects as follows:

I. Exhibit 1015¹ (“Michalson Declaration”)

Patent Owner objects to Exhibit 1015 under 37 C.F.R. §§ 42.6(a)(3) and 42.24(a)(1)(i) as not relevant and prejudicial under F.R.E. 402 and 403 to the extent that the Declaration includes material that is not sufficiently referenced and explained, or not referenced or explained at all, in the Petition, in an attempt to circumvent the 5600-word limit for replies to patent owner responses. *See* 37 C.F.R. § 42.24(c)(1). Petitioner fails to cite, reference, or explain large portions of

¹ Petitioner cites to “Ex. 1013” throughout its reply, but Bradium herein uses reference to “Ex. 1015” as per Petitioner’s updated exhibit list and the Board filing. Petitioner’s Reply to Patent Owner’s Response (Paper No. 27) at iv.

Dr. Michalson's 91-page declaration, including the following 95 paragraphs. *E.g.*, Ex. 1015 ¶¶ 32–45, 49–110, 140–44, 153–54, 158–60, 165–70, 184–86. Exhibit 1015 ¶ 3 in particular is an improper attempt to incorporate by reference Exhibit 1008 and its appendices into the Petition and into Exhibit 1015. *See* 37 C.F.R. § 42.22(a)(2).

Patent Owner further objects to Exhibit 1015 under 37 C.F.R. § 1.4 as improperly using an s-signature, “//William R Michalson/,” where no exception to the handwritten signature requirement exists, failing to comply with the Board's signature requirement. *See* 37 C.F.R. § 42.6(a)(4) (“Documents must be signed in accordance with §§ 1.33 and 11.18(a) of this title”); 37 C.F.R. § 11.18(a) (referring to compliance with 37 C.F.R. § 1.4(d)). Petitioner submitted a properly signed declaration in the first Michalson Declaration (Ex. 1008) but has failed to do so here.

Patent Owner further objects to Exhibit 1015 and its accompanying appendices under 37 C.F.R. § 42.23 to the extent that they present evidence and arguments available to Petitioner at the time the Petition was filed. *See also* 37 C.F.R. § 42.22(a)(2). A reply may only respond to arguments raised in the corresponding opposition or patent owner response. 37 C.F.R. § 42.23. For example, Dr. Michalson raises new arguments based on new references that were

not included with the Petition, 1015EE and 1015FF, at, e.g., ¶¶ 10, 17, 46, 48, 65, 67, 82, 153.

Patent Owner further objects to Exhibit 1015 under 37 C.F.R. §§ 42.6(a)(3) and 42.24(a)(1)(i) to the extent that Exhibit 1015 is an improper attempt to include Appendices EE through FF, which are insufficiently referenced and explained, or not referenced and explained at all, in the Petition or Reply.

A. Exhibit 1015, Appendix EE (U.S. Patent No. 5,161,866 to DeJong)

Patent Owner objects to Exhibit 1015EE under 37 C.F.R. §§ 42.6(a)(3) and 42.24(a)(1)(i) as not relevant and prejudicial under F.R.E. 402 and 403 because it is not referenced or explained at all in the Petition. *See* 37 C.F.R. §§ 42.22(a)(2) and 42.104(b)(4).

Bradium objects to Exhibit 1015EE as new evidence through which Petitioner improperly raises new issues in reply. *See* 37 C.F.R. § 42.23(b); Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (August 14, 2012)(stating “a reply that raises a new issue or belatedly presents evidence will not be considered” and “Examples of indications that new evidence has been raised in a reply include...new evidence that could have been presented in a prior filing.”).

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