

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
Patent No. 7,139,794 B2

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Microsoft Corporation (“Microsoft”) hereby timely objects to the evidence introduced for the first time by Patent Owner, Bradium Technologies LLC (“Bradium”) at the August 5, 2016 deposition of Prof. William R. Michalson, and filed on August 10, 2016. The objections are based on 37 C.F.R. Part 42, and the relevant portions of Federal Rules of Evidence (“FRE”) that are applicable to IPR proceedings under 37 C.F.R. § 42.62. During the deposition testimony of Prof. Michalson, Microsoft objected to Bradium’s untimely use of such exhibits in this proceeding, and to the testimony obtained during the deposition related to such exhibits. Procedurally, Patent Owner Bradium is prohibited from submitting new evidence subsequent to filing of the Patent Owner Response (by Due Date 2) without first obtaining authorization from PTAB. 35 U.S.C. § 316(a)(8); 37 C.F.R. §§ 42.122 and 42.20.

Microsoft’s specific objections to Bradium’s exhibits are:

1. Exhibit 2002 (identified by Bradium as “DATA VISUALIZATION TECHNIQUES (John Wiley & Sons Ltd., C. Bajaj, Ed.), Page Proofs, including Chapter 1, Bajaj, C., Visualization Paradigms”) should be excluded for at least the following reasons: Bradium’s attempted introduction of this exhibit is untimely and irrelevant because it was not introduced in any substantive paper by Bradium and is an improper attempt to introduce new evidence, raise new issues or re-argue issues that

Bradium waived by failing to include them in its Patent Owner Response (see Paper 17 (Scheduling Order) at 3); the exhibit is not admissible under FRE 703 because it has not been relied upon by any expert in forming any opinion; the exhibit constitutes hearsay under FRE 801, 802, and 805; the exhibit lacks authentication under FRE 901, 902, and 903; the exhibit should also be excluded pursuant to FRE 401-403 because it is not relevant, and any probative value is substantially outweighed by unfair prejudice to Microsoft because Bradium unduly delayed disclosing the exhibits.

2. Exhibit 2003 (identified by Bradium as “Bajaj, C. & Schikore, D., Topology Preserving Data Simplification with Error Bounds (Preprint)”) should be excluded for at least the following reasons: Bradium’s attempted introduction of this exhibit is untimely and irrelevant because it was not introduced in any substantive paper by Bradium and is an improper attempt to introduce new evidence, raise new issues or re-argue issues that Bradium waived by failing to include them in its Patent Owner Response (see Paper 17 (Scheduling Order) at 3); the exhibit is not admissible under FRE 703 because it has not been relied upon by any expert in forming any opinion; the exhibit constitutes hearsay under FRE 801, 802, and 805; the exhibit lacks authentication under FRE 901, 902,

and 903; the exhibit should also be excluded pursuant to FRE 401-403 because it is not relevant, and any probative value is substantially outweighed by unfair prejudice to Microsoft because Bradium unduly delayed disclosing the exhibits. .

3. Exhibit 2004 (identified by Bradium as “Expert Report of William R. Michalson, *Visteon Global Techs., Inc. v. Garmin Int’l, Inc.*, 10-cv-10578, D.I. 157-2, dated Sept. 29, 2002 (Excerpt)”) should be excluded for at least the following reasons: Bradium’s attempted introduction of this exhibit is untimely and irrelevant because it was not introduced in any substantive paper by Bradium and is an improper attempt to introduce new evidence, raise new issues or re-argue issues that Bradium waived by failing to include them in its Patent Owner Response (*see* Paper 17 (Scheduling Order) at 3); the exhibit is not admissible under FRE 703 because it has not been relied upon by any expert in forming any opinion in this case; the exhibit constitutes hearsay under FRE 801, 802, and 805; the exhibit is incomplete and misleading; the exhibit should also be excluded pursuant to FRE 401-403 because it is not relevant, and any probative value is substantially outweighed by unfair prejudice to Microsoft because Bradium unduly delayed disclosing the exhibits. .

4. Exhibit 2005 (identified by Bradium as “Maguire, et al., EOGRAPHICAL INFORMATION SYSTEMS, Vol. 1, Chapter 2, Coppock, J. and Rhind, D, *The History of GIS* (Excerpt)”) should be excluded for at least the following reasons: Bradium’s attempted introduction of this exhibit is untimely and irrelevant because it was not introduced in any substantive paper by Bradium and is an improper attempt to introduce new evidence, raise new issues or re-argue issues that Bradium waived by failing to include them in its Patent Owner Response (see Paper 17 (Scheduling Order) at 3); the exhibit is not admissible under FRE 703 because it has not been relied upon by any expert in forming any opinion; the exhibit constitutes hearsay under FRE 801, 802, and 805; should also be excluded pursuant to FRE 401-403 because it is not relevant, and any probative value is substantially outweighed by unfair prejudice to Microsoft because Bradium unduly delayed disclosing the exhibits.
5. Exhibit 2006 (identified by Bradium as “Declaration of William Michalson, PH.D, Under Armor Inc. v Adidas AG, IPR2015-00700, Exhibit 2002, dated Nov. 16, 2015 (Excerpt)”) should be excluded for at least the following reasons: Bradium’s attempted introduction of this exhibit is untimely and irrelevant because it was not introduced in any

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