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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND APPLE INC.,
Petitioner
v.

IXI IP, LLC
Patent Owner

Case No. IPR2015-01444
Patent 7,039,033

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
RELIED UPON IN THE REPLY**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner IXI IP, LLC respectfully asserts the following objections to the evidence proffered with the Petitioner's Reply to Patent Owner's Response of June 21, 2016. The Federal Rules of Evidence ("FRE") apply to these proceedings according to the provisions of 37 C.F.R. § 42.62(a), and these rules form the basis of the objections contained herein. These objections are being filed within five business days from the date Petitioner's Reply and its accompanying evidence were served on Patent Owner.

II. PATENT OWNER'S OBJECTIONS TO EXHIBITS 1016, AND 1017

A. Exhibits 1016 and 1017 Are Inadmissible Pursuant To 37 C.F.R. § 42.123(b)

Exhibit 1016 is inadmissible because Petitioner has failed to seek authorization to file a motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(b). Once a trial has been instituted, a party may file a motion to submit supplemental information. 37 C.F.R. § 42.123(a). However, "[a] party seeking to submit supplemental information more than one month after the date the trial is instituted, must request authorization to file a motion to submit the information." 37 C.F.R. § 42.123(b). The motion to submit supplemental information must show: (1) "why the supplemental information reasonably could not have been obtained earlier," and (2) "that consideration of the supplemental information would be in the interests-of-justice." *Id.*

In particular, Petitioner alleges that Exhibit 1016 demonstrates that Marchand's JINI technology is plug and play and sufficient to load and execute software. Paper 18 at 24. Additionally, Petitioner alleges that Exhibit 1017 demonstrates that webpage access for browsing the internet is a well-known functionality of a laptop. Paper 18 at 21. Petitioner was or should have been aware of these references before the Petition was filed, yet, Petitioner chose not to rely on Exhibits 1016 and 1017 in the Petition. Rather, Petitioner now, having been shown the flaws in its analysis, attempts to rehabilitate its arguments by improperly relying on new evidence not previously asserted.

Petitioner has failed to file a motion to submit Exhibits 1016 or 1017, let alone seek the Board's authorization to file such motion. Petitioner has not and cannot demonstrate why the belated Exhibits 1016 and 1017 "reasonably could not have been obtained earlier." *Id.* Furthermore, Petitioner has not demonstrated "that consideration of the supplemental information would be in the interests-of-justice," particularly in light of its inexcusable delay in submitting those exhibits. 37 C.F.R. § 42.123(b).

Accordingly, Exhibits 1016 and 1017 should be excluded because Petitioner has failed to seek the Board's authorization to file a motion to submit these exhibits pursuant to 37 C.F.R. § 42.123(b).

B. Exhibit 1016 Is Not Authenticated

Notwithstanding the impropriety of the newly added evidence, Exhibit 1016 is not properly authenticated. As a proponent of the evidence, Petitioner bears the burden of establishing that the proffered evidence, Exhibit 1016 meets the requirements of FRE 901. But Petitioner has failed to provide any evidence to support a finding that Exhibit 1016 is what Petitioner claims it is, and thus, is inadmissible.

Petitioner has failed to offer sufficient evidence to establish the authenticity of Exhibit 1016. Petitioner provides no evidence identifying specifically from where Exhibits 1016 was obtained or when, if at all, Exhibit 1016 was published or otherwise publicly available. Petitioner also fails to provide testimonial evidence from any witness having personal knowledge of Exhibit 1016 to establish its authenticity. Nor does Petitioner point to any characteristics of the document to support and establish its authenticity pursuant to FRE 901.

C. Exhibit 1016 Constitutes Hearsay

To the extent Petitioner relies on the date information appearing on Exhibit 1016 to argue that the contents of the document were publicly available as of a particular date, the information constitutes inadmissible hearsay. Petitioner attempts to rely on Exhibit 1016 without explaining when or if the exhibit was published or otherwise publicly available. Petitioner cannot rely on the date

information appearing on Exhibit 1016 to prove the truth of the matter being asserted; namely, that the contents of the document were publicly available, as of a particular date, because Petitioner has not shown that a hearsay exception applies. As such, Patent Owner objects under FRE 801 and 802.

D. Exhibits 1016 and 1017 Are Not Relevant

Exhibits 1016 and 1017 are not relevant and thus are inadmissible under FRE 402. Exhibits 1016 and 1017 were, or should have been, known to Petitioner at the time of filing the Petition, but Petitioner did not consider them relevant enough to *cite* them. Now, in the Reply, Petitioner relies on Exhibit 1016 to allege that Marchand's JINI technology is plug and play and sufficient to load and execute software. Paper 18 at 24. However, Petitioner provides no explanation regarding how or why this references demonstrates that Marchand's JINI technology is plug and play and sufficient to load and execute software. Petitioner simply cites to Exhibit 1016 without providing any analysis regarding how its teachings relate to Marchand or to the '033 Patent.

Similarly, Petitioner, for the first time in the Reply, relies on Exhibit 1017 to allege that webpage access for browsing the internet is a well-known functionality of a laptop. Paper 18 at 21. Petitioner points to no evidence and provides no analysis to suggest that this proposition in anyway relates to the '033 Patent or the cited prior art.

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