

February 14, 2017

Evan S. Day
EDay@perkinscoie.com
D. +1.858.720.5743**VIA E-MAIL**Chris J. Coulson
Andrews Kurth Kenyon LLP
One Broadway
New York, NY 10004-1007**Re: *Microsoft Corp. v. Bradium Technologies LLC, Inter Partes Review Proceeding*
IPR2016-00448 (United States Patent 7,908,343) Exhibit 1017**

Counsel:

This letter responds to your letter of February 9, 2017 to my colleague Chun Ng regarding the service of Exhibit 1017, the Declaration of Yonatan Lavi, in the subject *inter partes* review. Again, and as previously stated, we are willing to work with you on sealing the exhibit if there is a legitimate need to do so, although we note Bradium still has not articulated any such reason.

As an initial matter, we are concerned whether Bradium fully complied with its disclosure obligations both to the U.S. Patent and Trademark Office (“PTO”) and in the related litigation in the U.S. District Court for the District of Delaware (*Bradium Technologies, LLC v. Microsoft Corp.*, No. 15-0031-RGA, the “Delaware Litigation”) as to Mr. Lavi. For example, prior to the stay of the Delaware Litigation, Bradium did not disclose Mr. Lavi or his contact information in its February 25, 2016 Initial Disclosures or in any subsequent disclosures prior to the stay of the case. Yet Microsoft has subsequently learned that you personally had been in email and telephone contact with Mr. Lavi after the filing of the Complaint in the Delaware Litigation. Additionally, Bradium has filed Substitute Statements in Lieu of an Oath or Declaration to the PTO on at least two occasions, after you had contacted Mr. Lavi, stating that Mr. Lavi could not “be found or reached after diligent effort.” Bradium has apparently endeavored to avoid disclosing Mr. Lavi either to Microsoft or to the PTO, and we are concerned that your February 9 letter and your letter yesterday are just another attempt to keep the Court, the PTO, and the public from hearing from a co-inventor on the Bradium patents.

While your concern that Mr. Lavi’s declaration “reveals confidential corporate information” is obviously an issue that Microsoft takes seriously, your letter (filed three days after Mr. Lavi’s declaration was filed in IPR2016-00448) does not state any basis for this assertion, and you *still* have not articulated any basis for this assertion in your letter yesterday. Moreover, while Microsoft promptly requested additional information regarding the basis of your request that Microsoft immediately seek to seal Exhibit 1017 and have the public version expunged, you

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have not yet provided this information. Bradium's inability to articulate the basis of its assertion that confidential material was disclosed, despite the fact that more than a week has now passed since Microsoft filed Exhibit 1017, is inconsistent with your assertion that the public filing of Exhibit 1017 creates a risk of "prejudice" to Bradium, or any other entity.

As I noted in my February 9 email response to your February 9 letter to Mr. Ng, you stated in your letter that you wrote "on behalf of Bradium Technologies, LLC and Mr. Isaac Levanon," yet your letter does not even assert that Exhibit 1017 reveals any material about which Mr. Lavi may have owed a duty of confidentiality to either Bradium or Mr. Levanon. You stated instead that the allegedly confidential information relates to Mr. Lavi's employment with "GACentral.com, 3DVU, Ltd., and 3DVU, Inc." However, you have provided no indication that your firm represents any of these business entities, or that these business entities even still exist. As we noted previously, 3DVU, Inc. (formerly GACentral.com, Inc. and FlyOver Technologies, Inc.) is no longer in good standing with the Delaware Secretary of State, and consequently has no legal standing to challenge any breach of any alleged nondisclosure agreement (which you still have not provided, despite my immediate request on February 9).

You also have not indicated whether Andrews Kurth Kenyon represents any of the 3DVU entities, as I requested in my February 9 email response to your letter. Please state affirmatively whether these entities still legally exist and whether Andrews Kurth Kenyon represents them and is able to accept service of process on their behalf.

Your new assertion regarding alleged confidential Denso information in Paragraphs 20 and 22 of Exhibit 1017 is also unsupported and is not plausible. You do not actually identify the allegedly confidential information contained within these paragraphs, and large portions of the paragraphs of Mr. Levanon's declaration discussing the same subject matter at length are unredacted in the public version. *See, e.g.* Exhibit 2072, ¶¶ 43-47, 50-61. It is hard to see how Mr. Levanon's assertion that Denso products incorporated technology covered by the asserted patents (implying, although not showing, that the technical operation of such products practiced each claimed feature) does not disclose confidential information, but Mr. Lavi's testimony that they did not *does* disclose such confidential information. Mr. Lavi's testimony on this point also has nothing to do with Ex. 2029, which is a general licensing agreement that Microsoft never provided to Mr. Lavi.

If Bradium identifies the specific portions of Exhibit 1017 that supposedly contain confidential material and provides the information requested above and in my February 9 email, Microsoft is willing to consider re-filing the exhibit under seal and concurrently filing a redacted public version. This would not, of course, be an admission by Microsoft that any redacted information is actually confidential, but should alleviate Bradium's short-term concerns.

Chris J. Coulson
February 14, 2017
Page 3

Again, we are willing to work with you on these issues. But given the above, most notably Bradium hiding Mr. Lavi from us, the court, and the PTO, we are concerned about whether Bradium is motivated by legitimate confidentiality concerns (that it still has not identified) as opposed to Bradium's concerns regarding Mr. Lavi providing testimony that rebuts Bradium's positions in the litigation and IPRs.

Finally, we are working on the date and location of Mr. Lavi's deposition and will advise you when we have additional information. However, in view of Bradium's refusal to make its own witnesses available for more than one day, and its rejection of mutual compromises proposed by Microsoft,¹ Mr. Lavi will not be made available for more than a single seven-hour day.

Best regards,



Evan S. Day

ESD

¹ See, e.g. C. Coulson to E. Day email dated December 27, 2016 (limiting depositions of Bradium witnesses to one 7-hour day and rejecting Microsoft proposed 10-hour compromise).