

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner

Case IPR2016-00449
U.S. Patent No. 8,924,506 B2

PAPER NO. 35

**PATENT OWNER'S OBJECTIONS TO
PETITIONER'S 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”) evidence filed on February 10, 2017 with Microsoft’s Reply to Patent Owner’s Response (Paper 31) for *Inter Partes* Review IPR2016-00449 of U.S. Patent No. 8,924,506.

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 “506 patent” means U.S. Patent No. 8,924,506. All objections under F.R.E. 802 (hearsay) apply to the extent that Petitioner relies on the exhibit(s) identified in connection with that objection for the truth of the matters asserted therein.

Patent Owner objects as follows:

Ex. 1014 (LinkedIn Page):¹ Patent Owner objected on the record at deposition to this exhibit. See Ex. 1019, 48:21-49:4. Petitioner did not offer evidence to cure the objections during the deposition, and the parties did not stipulate to waive 37 C.F.R. 42.64(a) on the deposition record.

Patent Owner further objects to any portion of Exhibit 1016 (Michalson reply declaration), e.g., Paragraph 11 of Exhibit 1016, and Paper 31 that relies on or refers to Exhibit 1014.

¹ This exhibit was marked as Exhibit 1015 at the deposition of Mr. Levanon. Ex. 1019, 48:21-49:10.

Ex. 1015 (Wikipedia):² Patent Owner objected on the record at deposition to this exhibit. See Ex. 1018, 62:17-64:12. Petitioner did not offer evidence to cure the objections during the deposition, and the parties did not stipulate to waive 37 C.F.R. 42.64(a) on the deposition record.

Ex. 1016 (Michalson Declaration):

Patent Owner objects to Exhibit 1016 under 37 C.F.R. §§ 42.6(a)(3) and 42.24(c) 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). Paragraphs 1–7, 31, 133 and 163–165 of Exhibit 1016 are not cited or discussed in Petitioner’s reply.

Patent Owner further objects to Exhibit 1016 under 37 C.F.R. § 42.23 to the extent that it presents 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.

Patent Owner objects to this exhibit under F.R.E. 702. Dr. Michalson purports to testify as an expert without a showing that the foundational

² This exhibit was marked as Exhibit 1014 at the deposition of Dr. Agouris. Ex. 1018, 62:17-24.

requirements of F.R.E. 702 are satisfied. Dr. Michalson purports to construe claims terms regarding “remote computer” and “fixed byte size” without explaining the bases on which he reaches his conclusions. *E.g.*, Ex. 1016, ¶¶ 148, 149.

Exhibit 1017 (Declaration of Yonatan Lavi, with Exhibits A–F):

Patent Owner objects to the declaration of Mr. Lavi (Ex. 1017) to the extent that Mr. Lavi is not made available for deposition in the United States. *See* 37 C.F.R. 42.53; *Square, Inc. v. REM Holdings 3, LLC*, Case No. IPR2014-00312, Paper 37 (PTAB, Dec. 9, 2014) (Order) (declarant residing outside of the United States required to travel to the United States for deposition).

Patent Owner objects to Exhibit 1017 as containing 3DVU and third-party confidential information regarding which Mr. Lavi, as a former employee, is subject to confidentiality obligations.

Patent Owner objects to Exhibit 1017 under 37 C.F.R. §§ 42.6(a)(3) and 42.24(c) and as not relevant and prejudicial under F.R.E. 402 and 403. *See, e.g.*, Exhibit 1017, Paragraphs 41-42, 44-45.

Patent Owner objects to this exhibit under F.R.E. 602 and 701. Petitioner has not introduced evidence sufficient to support a finding that Mr. Lavi has personal knowledge of the subject matter of his testimony. The subject matter of the declaration is not limited to testimony that is (a) rationally based on Mr. Lavi’s

perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact issue; and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702. For example, Mr. Lavi purports to opine on what was generally known or known in the industry without foundation. See, e.g., Exhibit 1017, Paragraphs 16, 23, 37-38.

Patent Owner objects to this exhibit under F.R.E. 702. Mr. Lavi's testimony encompasses material covered by F.R.E. 702 without a showing that the foundational requirements of F.R.E. 702 are satisfied. Mr. Lavi purports to interpret claim terms without explaining his bases and reasoning for doing so or from what perspective he is interpreting the claims.

Patent Owner objects to Exhibit 1017 and Exhibits A through E to Exhibit 1017 to the extent they are not referenced or explained in Petitioner's reply as not relevant and prejudicial under F.R.E 402 and 403 and as an improper attempt to circumvent the reply page limit. See 37 C.F.R. §§ 42.22(a)(2) and 42.104(b)(4). Paragraphs 1-6, 13-15, 17-19, 38-45 and Exhibits B, C, E and F of Exhibit 1017 are not cited or discussed in Petitioner's reply.

Patent Owner objects to Exhibits B and D-F of Exhibit 1017 under 37 C.F.R. §§ 42.6(a)(3) and 42.24(c) and as not relevant and prejudicial under F.R.E. 402 and 403 in the manner used by Petitioner, and on grounds of hearsay under F.R.E. 801 and 802. Patent Owner objects to Exhibit B under F.R.E. 901 because

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