

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
Patent 8,924,506

**PATENT OWNER BRADIUM TECHNOLOGIES LLC'S
MOTION TO EXCLUDE EVIDENCE**

Paper No. 44

Contents

I.	Exhibit 1015 (Wikipedia)	1
II.	Exhibit 1017 (Lavi Declaration with Exhibits A–F), and Exhibit 1016 (Michalson declaration) to the extent it relies on exhibit 1017.....	2
III.	Exhibit 1020 (Purported Stylistic 2300 Technical Reference Guide).....	7
IV.	Exhibit 1022.....	8
V.	Exhibit 1023.....	9
VI.	Exhibits 1027, 1028, 1029, 1031	10
VII.	Exhibit 1030 (Hearsay Use of May 2000 Microsoft Article).....	11
VIII.	Exhibit 2078 (Redirect Testimony of Dr. Michalson)	12
	A. Leading Questions	12
	B. Lack of Foundation	14

TABLE OF AUTHORITIES

Page(s)

Cases

<i>HTC Corp., et al. v. NFC Tech., LLC</i> , IPR2014-01198, Paper 41 (P.T.A.B. Nov. 6, 2015).....	2, 5, 6
<i>John’s Lone Star Distrib., Inc. v. Thermolife Int’l, Inc.</i> , IPR2014-01201, Paper 31 (P.T.A.B. May 13, 2015)	6
<i>Square, Inc. v. REM Holdings 3, LLC</i> , IPR2014-00312, Paper 37 (P.T.A.B. Dec. 9, 2014)	2
<i>Stine v. Marathon Oil Co.</i> , 976 F.2d 254 (5th Cir. 1992)	12

Other Authorities

37 C.F.R. § 42.5(a).....	6
37 C.F.R. § 42.6(e).....	1
37 C.F.R. § 42.12(a) & (b).....	2, 6
37 C.F.R. § 42.51(b)(1)(ii).....	5
37 C.F.R. § 42.51(b)(2)(i).....	5
37 C.F.R. § 42.53	2
37 C.F.R. § 42.53(b)(2).....	5
37 C.F.R. § 42.53(b)(3).....	5
37 C.F.R. § 42.53(d)(2).....	3
37 C.F.R. § 42.53(d)(4).....	3
37 C.F.R. § 42.53(g)	5
37 C.F.R. § 42.62(a).....	1, 7, 9, 10
37 C.F.R. § 42.64(a).....	<i>passim</i>

37 C.F.R. § 42.64(c).....	1
F.R.E. 602	15
F.R.E. 611(c).....	12
F.R.E. 701(a).....	15
F.R.E. 702(b).....	15
F.R.E. 801	<i>passim</i>
F.R.E. 801(d)(2)	12
F.R.E 802	<i>passim</i>
F.R.E 803(6).....	9, 10, 11
F.R.E. 901	1
OFFICE PATENT TRIAL PRACTICE GUIDE, 77 Fed. Reg. 48756 (Aug. 14, 2012)	5

Pursuant to the Board’s Scheduling Order dated July 27, 2016 (Paper 10); the Stipulation to Modify Due Dates 4 (Paper 36); and 37 C.F.R. § 42.64(c), Patent Owner Bradium Technologies LLC (“Bradium”) respectfully submits this Motion to Exclude Petitioner Microsoft’s evidence.¹

I. EXHIBIT 1015 (WIKIPEDIA)²

Exhibit 1015 should be excluded as unauthenticated hearsay. The exhibit should be excluded under F.R.E. 901 because no authenticating information was provided at the deposition at which this exhibit was first used. 37 C.F.R. § 42.64(a). The exhibit should also be excluded as hearsay under 37 C.F.R. § 42.62(a) and F.R.E. 801 & 802 to the extent that Petitioner relies on the exhibit for the truth of what it states, and Petitioner has not shown that a hearsay exception applies.

Patent Owner objected on the record at the January 13, 2017 deposition in which this exhibit was introduced by Petitioner’s counsel for the first time. *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. Petitioner’s attempt to cure the deficiencies in the exhibit via a declaration submitted on March 6, 2017 does not conform with the rules.

¹ In this motion, “F.R.E.” refers to the Federal Rules of Evidence, which generally apply to this proceeding. 37 C.F.R. 42.62(a).

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

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