

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 No. 8,924,506 B2

---

**PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

**Paper No. 42**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ARGUMENT .....	1
A.	Bradium's Exhibits 2016-2018, 2021, 2030, 2032, 2035-2036, 2039, 2044-2049, 2051-2053, and 2063 Should be Excluded .....	1
1.	<i>The Challenged Exhibits</i> .....	2
2.	<i>The Challenged Exhibits are Inadmissible as Hearsay</i> .....	4
3.	<i>Challenged Exhibits are Incomplete and Misleading</i> .....	6
III.	Conclusion .....	6

## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence, Petitioner Microsoft Corporation (“Microsoft” or “Petitioner”) hereby submits its Motion to Exclude inadmissible evidence proffered by Patent Owner Bradium Technologies, LLC (“Bradium”) (Exhibits 2016-2018, 2021, 2030, 2032, 2035-2036, 2039, 2044-2049, 2051-2053, 2059, and 2063). Microsoft filed timely objections to these exhibits on November 18, 2016 (Paper 19). Bradium’s arguments for secondary indicia of non-obviousness, instead of presenting legally competent evidence, attempt to corroborate the interested testimony of Bradium’s co-owner Isaac Levanon (Ex. 2004) with inadmissible hearsay, including several press releases or reports generated at the direction of Mr. Levanon himself.

## II. ARGUMENT

### A. **Bradium’s Exhibits 2016-2018, 2021, 2030, 2032, 2035-2036, 2039, 2044-2049, 2051-2053, and 2063 Should be Excluded**

The contents of Exhibits 2016-2018, 2021, 2030, 2032, 2035-2036, 2039, 2044-2049, 2051-2053, 2059, and 2063 are inadmissible as hearsay. Federal Rule of Evidence (FRE) 802. The challenged exhibits meet FRE 801’s definition of hearsay as each is being offered by Bradium for the truth of the matter asserted therein. Many of the challenged exhibits are not only hearsay, but hearsay within hearsay. FRE 801, 805. Because Bradium cannot establish any exceptions to the hearsay rule for the challenged exhibits, they are inadmissible. FRE 801-03, 805.

**1. *The Challenged Exhibits***

**a. Third-Party Statistics Webpages (Exhibits 2016-2017)**

Exhibits 2016 and 2017 are simply printouts of webpages purporting to contain statistics about Microsoft Research and Development expenses, without  
5 any disclosure of the underlying sources. Paper 19, ¶¶ 1-2. For example, Ex. 2017 contains a disclaimer reading “source information for logged in users only,” but Bradium failed to provide any such source information. Bradium’s expert does not rely on these webpage printouts, nor does Bradium itself even provide any explanation of what they are other than an attorney declaration stating that the  
10 exhibits were retrieved from a particular internet location on a particular date. Bradium cites these exhibits as evidence of the truth of the matter asserted (i.e. Microsoft’s R&D spending patterns). Paper 16 at 57.

As for Exhibit 2018, it is not even clear from either the exhibit itself or the Patent Owner Response what this exhibit is, but it appears to simply be a  
15 fragmentary excerpt of an internet search result, again without an accompanying copy of the actual linked document, without which the short excerpt makes no sense. Paper 19, ¶ 3. Nevertheless, Bradium cites the short excerpt as evidence of the truth of the matter asserted, specifically that Frost and Sullivan allegedly offered “praise” for 3DVU. Paper 16 at 57-58. The hyperlink contained in

Bradium's attorney declaration (Ex. 2060, ¶ 7) shows that the page is simply a search result linking to a report which Bradium chose not to submit.

**b.** 3DVU Press Releases (Exhibits 2021, 2030, 2032, 2039, 2044-2049, and 2063)

5

Bradium also cites various press releases (and website reprints of press releases) in support of its arguments for secondary indicia of non-obviousness. *See generally* Paper 16 at 6, 55-61. For example, Bradium cites 3DVU's own press releases, rather than independent evidence, as evidence that 3DVU received certain awards (Paper 16 at 6, citing Ex. 2021), as evidence that 3DVU licensed "the technology of the '506 patent" (Paper 16 at 6, citing Ex. 2030, 2032), and in support of its assertions (supported by no other evidence) that 3DVU's Navi2Go navigation product became a "bestseller." Paper 16 at 60-61, citing Ex. 2048. Microsoft objected to these exhibits in Paper 19, ¶¶ 4-5, 10-16, and 21.

10

15

**c.** C.E. Unterberg Towbin Reports (Exs. 2035, 2036)

Mr. Levanon's declaration (Ex. 2004)- but not the petition itself- cites Exs. 2035 and 2036, which are purportedly unsworn third-party analyses prepared at Mr. Levanon's request by an investment banker hired by Mr. Levanon. Paper 19, ¶¶ 8-9. The purported relevance of these documents is not explained in either Paper 16 or Ex. 2004, but these documents appear to have been prepared in order

20

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.