

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC., ARUBA NETWORKS, INC.,
HEWLETT PACKARD ENTERPRISE COMPANY, and HP, INC.,
Petitioner,

v.

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2016-00768
Patent 5,659,891¹

Before MEREDITH C. PETRAVICK, SCOTT A. DANIELS, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

ORDER
Expunging Demonstrative Exhibits
37 C.F.R. § 42.7

Pursuant to 37 C.F.R. § 42.70(b), Patent Owner filed demonstrative exhibits for the oral argument, held June 20, 2017. Ex. 2016. Petitioners timely filed objections to the demonstratives. Paper 45. In particular,

¹ Case IPR2016-00766 has been joined with the instant proceeding.

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Petitioners “object to slides 14 and 23–25 on the basis that they contain new argument and evidence not presented or cited in Patent Owner’s Corrected Response (Paper 42).” Paper 45, 1. For example, Petitioners argues that slide 24 references “Dr. Min” and includes an annotated figure never discussed or cited in Patent Owner’s Corrected Response. *Id.* at 2.

Petitioners state “Patent Owner contends that this material is supported by its Corrected Response (Paper 42) at 22; Ex. 2011 ¶¶ 49-51, 130, Appendix F; and Ex. 2005.” Paper 45, 2. Patent Owner confirmed that this statement was correct during oral argument.

Parties are not permitted to raise new arguments or evidence at oral hearing. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). Demonstrative exhibits are intended to be visual aids to assist a party in making its oral presentation. *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case No. IPR2013-00033, slip op. at 3, (PTAB Oct. 23, 2013) (Paper 118). Demonstrative exhibits are not evidence, and as such, the exhibits cannot add new evidence to the record of the proceeding. *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case No. IPR2013-00041, slip op. at 2 (PTAB Jan. 27, 2014) (Paper 65). Demonstrative exhibits are not an opportunity for additional briefing. *Id.* at 3. Arguments that have not been made previously cannot be made at the trial hearing and, thus, cannot be in a demonstrative exhibit. *Id.* Similarly, the exhibits cannot rely on evidence that, although it is in the record, was not specifically discussed in any substantive paper before the Board. *Id.*

Upon review of the record, we are persuaded by Petitioners that slides 14 and 23–25 contain new argument and evidence not presented or cited in

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Patent Owner's Corrected Response. *See* Paper 45, 2–3. For example, slide 24 states “Dr. Min shows multiple band edges” and reproduces a figure that appears to be from paragraph 38 of a declaration of Dr. Paul. S. Min. The declaration of Dr. Min appears in the record as Exhibit 2005. Patent Owner, however, does not cite to Exhibit 2005 or otherwise mention Dr. Min's testimony on page 22 of the Patent Owner's Corrected Response (Paper 42).

Exhibit 2011 is a declaration of Dr. Jay P. Kesan, which does refer to Dr. Min's declaration, for example in paragraph 130. Dr. Min's declaration also appears as Appendix F of Exhibit 2011. Ex. 2011, 164–193. Patent Owner, however, does not cite to paragraph 130 or Appendix F of Exhibit 2011 on page 22 of the Patent Owner's Corrected Response. *See* Paper 42, 22. Further, even if the Patent Owner's Corrected Response cited to paragraphs of Dr. Kesan's declaration that rely upon Dr. Min's declaration, such would amount to improper incorporation by reference. “Arguments must not be incorporated by reference from one document into another document.” 37 C.F.R. § 42.6(a)(3); *Cisco Systems, Inc. v. C-Cation Techs., LLC*, IPR2014-00454, slip op. at 10 (PTAB, Aug. 29, 2014) (Paper 12) (informative).

Given the above, we sustain Petitioners' objection to Patent Owner's demonstrative exhibits (Paper 45) and we expunge Patent Owner's demonstrative exhibits (Ex. 2016) from the record. 37 C.F.R. § 42.7. Patent Owner may refile slides 1–13, 15–22, and 26–49 of Exhibit 2016 as another exhibit, no later than July 7, 2017.

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It is:

ORDERED that Petitioner's objection to Patent Owner's demonstrative exhibits (Paper 45) is sustained;

FURTHER ORDERED that Exhibit 2016 is expunged from the record; and

FURTHER ORDERED that Patent Owner may refile slides 1–13, 15–22, and 26–49 of Exhibit 2016 as another exhibit, no later than July 7, 2017.

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