

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Juniper Networks, Inc., Ruckus Wireless, Inc., Brocade Communication
Systems, Inc. and Netgear, Inc.,

Petitioners

v.

ChriMar Systems, Inc.,

Patent Owner

Case No. IPR2016-01399

U.S. Patent No. 8,902,760

Petitioners' Opposition to Chrimar's Motion to Exclude

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

	<u>Page</u>
I. CHRIMAR'S HEARSAY OBJECTIONS ARE WITHOUT MERIT.....	2
II. CHRIMAR'S NON-EVIDENTIARY OBJECTIONS ARE IMPROPER ..	3
III. REPLY EXHIBITS DIRECTLY REBUT CHRIMAR'S RESPONSE.....	4

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ariosa Diagnostics v. Verinata Health, Inc.</i> , 805 F.3d 1359 (Fed. Cir. 2015)	6
<i>Biomarin Pharm. Inc. v. Genzyme Therapeutic Products Ltd. P'ship</i> , IPR2013-00537, Paper No. 79 (PTAB Feb. 23, 2015).....	2
<i>Corning Inc. v. DSM IP Assets B.V.</i> , IPR2013-00052, Paper No. 88 (PTAB May 1, 2014)	6, 7
<i>Ford Motor Co. v. Paice LLC & The Abell Foundation, Inc.</i> , IPR2014-00579, Paper 45 (PTAB Sept. 28, 2015).....	4, 5, 6, 12
<i>Johnson Controls, Inc. v. Wildcat Licensing WI, LLC</i> , IPR2014-00304, Paper 44 (PTAB June 22, 2014)	13
<i>Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.</i> , Case No. CBM2012-00002, Paper 66, slip op. (PTAB Jan. 23, 2014)	4
<i>MaxLinear, Inc. v. Cresta Tech. Corp.</i> , IPR2015-00594, Paper No. 90 (PTAB Aug. 15, 2016).....	7
<i>Medtronic, Inc. v. NuVasive, Inc.</i> , IPR2014-00087, Paper 44 (PTAB Apr. 3, 2015)	15
<i>Micron Tech., Inc. v. Innovative Memory Sys., Inc.</i> , IPR2016-00320, Paper 40 (PTAB June 5, 2017)	14
<i>Microsoft Corp. v. Proxyconn, Inc.</i> , IPR2012-00026; IPR2013-00109, Paper No. 66 (PTAB Nov. 1, 2013)	14
<i>Nestle Purina PetCare Co. v. Oil-Dri Corp. of Am.</i> , IPR2015-00737, Paper No. 37 (PTAB June 20, 2016)	7
<i>Nintendo of Am., Inc. v. iLife Techs., Inc.</i> , IPR2015-00115, Paper 39 (PTAB Apr. 28, 2015)	3, 4

..

IPR2016-01399 Petitioners' Opposition to Chrimar's Motion to Exclude
U.S. Patent No. 8,902,760

Petroleum Geo-Services Inc. v. WesternGeco LLC,
IPR2014-01475, Paper 18 (PTAB Mar. 17, 2015)15

Preston v. Marathon Oil Co.,
684 F.3d 1276 (Fed. Cir. 2012)14

Toshiba Corp. v. Optical Devices, LLC,
IPR2014-01447, Paper No. 34 (PTAB Mar. 9, 2016)7, 8

Statutes

35 U.S.C. §102(a)7

35 U.S.C. §102(e)7

Rules

Fed. R. Evid. 7032

Fed. R. Evid. 803(6).....3

Fed. R. Evid. 803(8).....2

Other Authorities

37 C.F.R. § 42.23(b)5

37 C.F.R. § 42.641

Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012).....1, 4

...

A motion to exclude preserves timely *evidentiary* objections. 37 C.F.R. § 42.64(c). In its Objections (Paper 36), Chrimar included certain evidentiary objections based on the Federal Rules of Evidence. Of those objections, Chrimar's Motion (Paper 45) addresses only hearsay. As explained below, Chrimar's hearsay objections are without merit and should be denied.

Chrimar's remaining non-evidentiary objections are not proper under 37 C.F.R. § 42.64. In particular, Chrimar's argument that Petitioners' Reply Exhibits are "untimely" evidence offered to "supplement" Petitioners' arguments after the Petition was filed is *not* an evidentiary objection. *See* Paper 45, 1-9. Chrimar's Motion to Exclude (except for the hearsay section) is also improper under Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012) because it presents non-evidentiary arguments about the timeliness of Petitioners' submission of certain exhibits with its Reply (Paper 33). Chrimar argues that Exhibits 1021-1044 (herein, "Reply Exhibits") should be excluded because they relate to arguments that should have been made in the Petition.¹ This is a procedurally flawed attack on the sufficiency of the Petition, rather than a proper preservation of evidentiary objections. Also, Chrimar overlooks that the law allows Petitioners to rely on

¹ Chrimar's motion does not present argument for Exs. 1030, 1043, 1044, and 1046 (except to request exclusion of testimony based on the Reply Exhibits).

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.