

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner

v.

TQ DELTA, LLC,
Patent Owner

Case IPR2016-01466
Patent No. 8,611,404

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE**

Pursuant to 37 C.F.R. § 42.23, Cisco Systems Inc., (“Petitioner”) hereby opposes TQ Delta, LLC’s (“Patent Owner”) Motion to Exclude (Paper 25 “Mot. Excl.”) Exhibit 1012. The Board should deny TQ Delta’s Motion to Exclude in its entirety for the reasons that follow.

I. The Board Should Not Exclude Exhibit 1012 under Fed. R. Evid. 402

TQ Delta’s arguments pertaining to the alleged inadmissibility of Exhibit 1012 (Declaration of Dr. Kiaei) as irrelevant under Fed. R. Evid. 402 are unavailing.

As movant, TQ Delta has the burden of showing that an exhibit is not admissible under the Federal Rules of Evidence. 37 C.F.R. § 42.20(c). Rule 401 dictates that evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence.” Fed. R. Evid. 401. Both the Federal Circuit and the Board have recognized that there is a “low threshold for relevancy.” *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1407 (Fed. Cir. 1997); *Laird Techs., Inc. v. GrafTech Int’l Holdings, Inc.*, IPR2014-00025, Paper 45 at 44 (PTAB Mar. 25, 2015).

a. Paragraphs 1-3, 8-16, and 25 of Exhibit 1012 are relevant.

TQ Delta argues that Paragraphs 1-3, 8-16, and 25 of Exhibit 1012 are not relevant under Fed. R. Evid. 402 because “Petitioner’s Reply for this proceeding does not cite to those paragraphs.” Mot. Excl. at 3. This argument misses the

point. The evidence in Paragraphs 1-3 and 15-16 of Exhibit 1012 establishes that Dr. Kiaei's testimony is responsive to certain assertions made by Dr. Chrissan in his Declaration, thus providing context for his testimony. The evidence at Paragraph 25 of Exhibit 1012 establishes that Dr. Kiaei submitted his testimony under oath. Accordingly, the evidence in Paragraphs 1-3, 15-16, and 25 is relevant for establishing the context of Dr. Kiaei's testimony and for assessing the credibility of his testimony.

Moreover, although the testimony at Paragraphs 8-13 more directly pertains to related IPR2016-01760, it should not be excluded because "there is a strong public policy for making all information filed in an administrative proceeding available to the public." *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00010, Paper 59 at 40 (PTAB February 24, 2014). Where the Board does not need to rely on challenged testimony, the motion to exclude is dismissed as moot. *See, e.g., CoreLogic, Inc. v. Boundary Sols., Inc.*, IPR2015-00219, Paper 48 at 12 (PTAB May 19, 2016).

Therefore, Paragraphs 1-3, 8-16, and 25 of Exhibit 1012 should not be excluded.

b. TQ Delta's arguments regarding Paragraphs 4-7, 17-21, and 23-24 of Exhibit 1012 do not address their admissibility under the rules of evidence.

TQ Delta's arguments that Paragraphs 4-7, 17-21, and 23-24 of Exhibit 1012

“constitute new evidence,” fail to address the admissibility of the evidence under FRE 402. Mot. Excl. at 3-9. TQ Delta's principle argument is that the evidence was not introduced with the petition, ignoring the fact that “[t]he purpose of the trial in an inter parties review proceeding is to give the parties an opportunity to build a record by introducing evidence.” *Genzyme Therapeutic Prods. v. Biomarin Pharm.*, 825 F.3d 1360, 1367 (Fed. Cir. 2016).

Therefore, because TQ Delta's arguments do not explain how or why the “newness” of the evidence allegedly relates to its relevancy, TQ Delta has failed to meet its burden under 37 C.F.R. § 42.20(c). The exhibits should not be excluded.

c. Paragraphs 4-7, 17-21, and 23-24 of Exhibit 1012 are relevant.

Petitioner's evidence in Paragraphs 4-7, 17-21, and 23-24 is relevant to arguments raised in the Patent Owner Response (Paper 11, “Response”). The evidence's relevancy to specific issues and arguments is identified below.

Dr. Kiaei's testimony in Exhibit 1012 at Paragraphs 4-7 is relevant to TQ Delta's newly proposed constructions of the terms “synchronization signal” and “parameter(s) associated with the full power mode operation.” Response at 17-22.

Dr. Kiaei's testimony at Paragraphs 17-18 in Exhibit 1012 is relevant to arguments raised by TQ Delta regarding prior art synchronization signals. This testimony evidences what persons of ordinary skill in the art understood regarding

these signals. Response at 17-18, 38-45.

Dr. Kiaei's testimony at Paragraphs 19-21 in Exhibit 1012 is relevant to arguments raised by TQ Delta regarding activating circuitry in Bowie during low power mode. This testimony evidences what persons of ordinary skill in the art understood at the time. Response at 52-54.

Dr. Kiaei's testimony at Paragraphs 23 and 24 in Exhibit 1012 is relevant to TQ Delta's argument regarding the compatibility of the prior art. This testimony evidences what persons of ordinary skill in the art understood at the time. Response at 55-57.

In sum, the evidence in Paragraphs 4-7, 17-21, and 23-24 of Exhibit 1012 is relevant to arguments raised in TQ Delta's Response and relevant to the state of the art. *See* Rules of Practice for Trials before the Patent Trial and Appeal Board, 77 Fed. Reg. 48,612, 48,620 (Aug. 14, 2014); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins.*, CBM2012-00010, Paper 59 (PTAB Feb. 24, 2014) ("The law is well established that the Board will not exclude evidence that is proffered to show what a [person of ordinary skill in the art] would have known about the relevant field of art.").

Therefore, for the reasons set forth above, the Board should deny TQ Delta's Motion to Exclude Exhibit 1012 under Fed. R. Evid. 402. *See Kyocera Corp. v. Softview LLC*, IPR2013-00007, Paper 51 at 34 (PTAB March 27, 2014) (a motion

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