

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,

Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,

Patent Owner.

Case No. IPR2016-01897

Patent No. 9,253,239 B2

**PETITIONER'S MOTION TO WITHDRAW MOTION FOR
AUTHORIZATION TO TAKE ADDITIONAL DISCOVERY**

Pursuant to the Board's authorization given via e-mail with the parties on August 15, 2017, Petitioner Microsoft Corporation respectfully requests that its Motion for Authorization to Take Additional Discovery filed on July 14, 2017 (Paper 23) be withdrawn. The additional discovery for which Petitioner sought authorization is no longer needed in view of Patent Owner's Response and evidence submitted therewith, and Patent Owner's further agreement that it will not challenge the prior art status of U.S. Patent No. 6,728,960 to Loomans or otherwise rely on any declaration of either Mr. Isaac Levanon or Mr. Yonatan Lavi in this proceeding. *See* attached Exhibit A.

As indicated in the electronic correspondence with the Board on August 14, 2017, Patent Owner does not oppose this motion.

Dated: August 15, 2017

Respectfully submitted,

/Patrick J. McKeever/

Back-up Counsel

Patrick J. McKeever, Reg. No. 66,019

Lead Counsel

Chun M. Ng, Reg. No. 36,878

Back-up Counsel

Matthew C. Bernstein, *Pro Hac Vice*

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Evan S. Day, Reg. No. 75,992

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing
PETITIONER’S MOTION TO WITHDRAW MOTION FOR AUTHORIZATION
TO TAKE ADDITIONAL DISCOVERY has been served in its entirety this 15th
day of August, 2017, by electronic mail on Patent Owner via its attorneys of
record:

| LEAD COUNSEL | BACK-UP COUNSEL |
|---|---|
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Dated: August 15, 2017

Respectfully submitted,

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From: [Zachary, Michael](#)
To: [Bernstein, Matthew C. \(SDO\)](#)
Cc: [Day, Evan S. \(SDO\)](#); [Coulson, Chris](#)
Subject: RE: Bradium "239 IPR"
Date: Friday, August 11, 2017 11:11:26 AM

Matt,

We are okay with this (i.e., confirmed): Bradium will not take the position that Loomans is not prior art? Can you also please confirm that Bradium will not otherwise rely on any Lavi or Levanon declaration in the 239 IPR proceeding

Thanks.

Michael

From: Bernstein, Matthew C. (Perkins Coie) [MBernstein@perkinscoie.com]
Sent: Friday, August 11, 2017 9:06 AM
To: Zachary, Michael
Cc: Day, Evan S. (Perkins Coie); Coulson, Chris
Subject: RE: Bradium '239 IPR

Michael,

Microsoft is considering the below request.

One issue has come up. Microsoft is concerned that Bradium may attempt to argue at the oral hearing or elsewhere that Loomans is not prior art because of prior invention by Lavi and Levanon, and Bradium may attempt to use the declaration purportedly signed by both Lavi and Levanon during prosecution to support this. While Microsoft believes Bradium waived this argument by not addressing it in its Patent Owner Response, Bradium's Patent Owner Response does contain the statement that "Patent Owner maintains its position that Loomans is not prior art."

Can you please confirm that for purposes of the 239 IPR proceeding, Bradium will not take the position that Loomans is not prior art? Can you also please confirm that Bradium will not otherwise rely on any Lavi or Levanon declaration in the 239 IPR proceeding? Assuming you confirm these things, Microsoft will withdraw the motion to depose Lavi.

If you could let us know this morning, that would be great, as our client is traveling today.

Best,

Matt

Matthew Bernstein | Perkins Coie LLP
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From: Zachary, Michael [mailto:MZachary@andrewskurthkenyon.com]
Sent: Thursday, August 10, 2017 5:01 PM
To: Bernstein, Matthew C. (SDO)
Cc: Day, Evan S. (SDO); Coulson, Chris
Subject: Bradium '239 IPR

Matt,

Since it is clear from Bradium's Patent Owner response filed in connection with the above IPR that Bradium does not rely on either Mr. Levanon's testimony or on any evidence of secondary considerations, we believe that Microsoft's motion seeking approval to take the deposition testimony of Mr. Lavi in connection with the IPR is pointless. Please let us know if Microsoft will agree to withdraw the motion. Since Bradium's response to the motion is due on Monday, we would appreciate hearing from you by tomorrow in order to avoid needless motion practice.

Regards,

Michael

Michael N. Zachary
Partner

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