Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

BLACKBERRY LTD.,
Patent Owner.

Case No. IPR2017-01620
U.S. Patent No. 8,489,868 B2

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Patent Owner BlackBerry Limited ("Patent Owner"), hereby submits the following objections to Petitioner Google Inc.'s ("Petitioner") Exhibits 1002, 1008, 1009, 1016, 1020, 1024, 1028, and 1031-1037, and any reference thereto/reliance thereon, without limitation. Patent Owner's objections below apply the Federal Rules of Evidence ("F.R.E") as required by 37 C.F.R. § 42.62. These objections address evidentiary deficiencies in the materials submitted by Petitioner with its Petition on June 16, 2017.

The following objections apply to Exhibits 1002, 1008, 1009, 1016, 1020, 1024, 1028, and 1031-1037 as they are actually presented by Petitioner, in the context of Petitioner's June 16, 2017 Petition (Paper 1) and not in the context of any other substantive argument on the merits of the instituted grounds in this proceeding. Patent Owner expressly objects to any other purported use of these Exhibits, including as substantive evidence in this proceeding, which would be untimely and improper under the applicable rules, and Patent Owner expressly asserts, reserves and does not waive any other objections that would be applicable in such a context.

I. Objections to Exhibit 1002, and Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 702 ("Testimony by Expert Witnesses"); F.R.E. 403 ("Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons"); and 37 C.F.R. § 42.61 ("Admissibility").

Patent Owner objects to the use of Exhibit 1002 under F.R.E. 702 and 37 C.F.R. § 42.61. Exhibit 1002 is the Declaration of Dr. Patrick D. McDaniel in support of the Petition. Exhibit 1002 purports to provide expert testimony in this matter, but fails—in many key respects—to establish the basis for Dr. McDaniel's opinions. For example, Dr. McDaniel offers only conclusory statements in support of his opinions regarding technical features that were purportedly "well known" at the time of the alleged invention. *See, e.g.*, Ex. 1002, ¶¶21-47. Dr. McDaniel also offers only conclusory statements in support of his opinions that a POSITA would have understood Lin to inherently satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶132-200. Similarly, Dr. McDaniel offers only conclusory statements in support of his opinions that it would have been obvious for a POSITA to combine elements from Garst with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶201-11. Likewise, Dr. McDaniel offers only conclusory statements in support of his opinion that it would have been obvious for a POSITA to combine elements from Davis with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶212-218. Dr. McDaniel also offers only conclusory statements in support of his opinion that it

would have been obvious for a POSITA to combine elements from Chang with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶219-227. Dr. McDaniel further offers only conclusory statements in support of his opinion that it would have been obvious for a POSITA to combine elements from Sibert with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶228-34. Dr. McDaniel further offers only conclusory statements in support of his opinion that it would have been obvious for a POSITA to combine elements from Wong-Insley with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶235-40. Dr. McDaniel further offers only conclusory statements in support of his opinion that it would have been obvious for a POSITA to combine elements from Haddock with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶241-46. Dr. McDaniel further offers only conclusory statements in support of his opinion that it would have been obvious for a POSITA to combine elements from Gong with Lin so as to satisfy certain claims. *See, e.g.*, Ex. 1002, ¶¶241-68.

Such conclusory statements without reference to the underlying basis for Dr. McDaniel's opinion is not proper testimony under F.R.E. 702 and should be excluded. Accordingly, permitting reliance on this document in the Petition or other submissions by Petitioner would be misleading and unfairly prejudicial to Patent Owner (F.R.E. 403).

II. Objections to Exhibits 1008, 1009, 1016, 1020, 1024, 1028, and 1031-1037, and Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 901 ("Authenticating or Identifying Evidence"); F.R.E. 1002 ("Requirement of the Original"); F.R.E. 1003 ("Admissibility of Duplicates"); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 403 ("Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons"); and 37 C.F.R. § 42.61 ("Admissibility").

Patent Owner objects to the use of Exhibits 1008, 1009, 1016, 1020, 1024, 1028, and 1031-1037 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Petitioner fails to provide the authentication required for these documents, and the Exhibits are not self-authenticating under F.R.E. 902.

Patent Owner further objects to Exhibits 1008, 1009, 1016, 1020, 1024, 1028, and 1031-1037 as including impermissible hearsay under F.R.E. 801 and 802 to the extent to which the out of court statements therein are offered for the truth of the matters asserted and constitute impermissible hearsay for which Petitioner has not demonstrated any exception or exclusion to the rule against hearsay. For example, Petitioner relies on the truth of out of court statements made in Exhibits 1016 and 1033-1037 to support its argument that the Gong reference was "published and publicly available" prior to the priority date of the '868 patent, but has not demonstrated that any exception or exclusion to the rule against hearsay applies. Pet. 4. Accordingly, permitting reliance on this document in the Petition

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