UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVER INFORMATION INC., AND IPEVO, INC.
Petitioner

v.

PATHWAY INNOVATIONS AND TECHNOLOGIES, INC.
Patent Owner

CASE: IPR2017-02108
U.S. PATENT NO. 8,508,751

PATENT OWNER'S MOTION TO EXCLUDE EXPERT EVIDENCE

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I. INTRODUCTION

Patent Owner Pathway Innovations & Technologies, Inc. ("Patent Owner") respectfully moves to exclude the First Declaration (Ex. 1020) and Second Declaration (Ex. 1025) of Dr. Vijay K. Madisetti, in their entireties, submitted by Petitioner in support of its Petition (Paper 3) and Opposition to Patent Owner's Motion to Amend (Paper 17). Patent Owner further moves to bar Petitioners from using or citing to the above-noted Madisetti Declarations ("Madisetti Decs.") at any hearing or oral argument in this proceeding.

While the Board is generally reluctant to exclude evidence, the Madisetti Decs. are not credible and contain nothing more than "expertized" attorney argument and fail to provide the required articulated reasoning as to how his supposed opinions were reached. As clearly shown by a side-by-side visual comparison of the First Declaration with the Petition, Dr. Madisetti simply repeats virtually all the same conclusory arguments, word-for-word, of the Petition without any particularized reasoning or explanation. *See* Exhibit A; *see also* Ex. 2001. Accordingly, the First Declaration should be excluded as conclusory and unsupported. 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."). *See Heart Failure Techs., LLC v. CardioKinetix, Inc.*, IPR2013-00184, Paper 12 (PTAB 2013) (noting that the petitioner must provide "some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness.") (*citing KSR Int'l Co. v. Teleflex Inc*. 550 U.S. 398, 418 (2007)).

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner previously objected to the First Declaration in its Preliminary Response, and then again in its Response. Paper 6 at 17-18; Paper 11 at 18-20. For ease of reference, Patent Owner submits a side-by-side comparison of the First Declaration and the Petition, attached hereto as Exhibit A.

The Second Declaration of Dr. Madisetti is no better. In creating his Second Declaration, Dr. Madisetti testified that he followed a "very similar" process to that of the word-for-word First Declaration. Ex. 2006 at 26:18-23. Moreover, Dr. Madisetti was unable to answer questions regarding his Declarations without having those Declarations in front of him and reading from such, and is incredulously evasive when confronted with simple general questions involving, for example, the definition of capturing. *See, e.g.,* Ex. 2006 at 7:10-12 ("Q. Okay. What does the word 'capturing' mean to you? A. It means capturing. Q. Okay. Can you provide a definition of capturing that doesn't use the word 'capturing'? [objection lodged.] [A.] I'm quite comfortable with capturing. Q. So you can't answer that question? [objection lodged.] [A.] No. I felt that capturing captures -- capturing is a good description of the term 'capturing.' So it captures a still image.")

Lastly, Dr. Madisetti does not qualify as one of ordinary skill in the art

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