

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT AND TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.

Petitioner

v.

VILOX TECHNOLOGIES, LLC.

Patent Owner

Case IPR2018-00044

Patent No. 7,302,423

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

UNDER 37 C.F.R. § 42.64(c)

Patent Owner requests exclusion of the Declaration of Dr. Philip Greenspun, Exhibit 1013, and USP 6,452,597 to Goldberg et al. (*Goldberg*), Exhibit 1014.

Patent Owner objected to the inclusion of Exhibits 1013 and 1014 in a September 28, 2018 Objection to Evidence.

Specifically, Patent Owner objected to this evidence under the Federal Rules of Evidence, Rule 403 – Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons, which states:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

In its Opposition to Patent Owner's Motion to Amend (*Opposition*), Paper 42, Petitioner asserts that proposed claims 26 and 27 are obvious over the references initially cited in the Petition, yet, as explained herein, in the *Opposition*, **Petitioner admits** that *Goldberg* provides no additional teachings over that provided in the initially-cited references.

Patent Owner asserts that consideration of Exhibits 1013 and 1014 would unfairly prejudice Patent Owner, confuse the issues, produce undue delay, waste time of Patent Owner and the Panel, and needlessly present cumulative evidence.

Declaration of Dr. Philip Greenspun

Exhibit 1013, Declaration of Dr. Philip Greenspun, states that proposed claims 26 and 27 “would be taught by *Maloney* and *Bertram* or *Excel* and *Bertram*. Ex. 1013, ¶ 13. Yet beginning with paragraph 14, Exhibit 1013 discusses how *Goldberg* allegedly teaches limitations of proposed claims 26 and 27. Since petitioner’s expert has stated unequivocally that the limitations of proposed claims 26 and 27 are taught by the references cited in the Petition, the addition of *Goldberg* can only be viewed as needlessly presenting cumulative evidence. Furthermore, responding to the issues raised in Exhibit 1013 will and has wasted time and will and has confused the issue as to the patentability of proposed claims 26 and 27. Thus, Exhibit 1013 is not admissible and must be excluded.

Goldberg

Petitioner’s Opposition to Patent Owner’s Motion to Amend (*Opposition*) cites *Goldberg*, Exhibit 1014. Petitioner relied on *Goldberg* when opposing proposed claims 26 and 27.

On pages 13 and 14 of the *Opposition*, Petitioner asserts that proposed claims 26 and 27 are invalid as obvious based on references already present in the record. Specifically, Petitioner asserts that proposed claims 26 and 27 are obvious

over the combination of *Maloney, Bertram, and Kanevsky*, and are obvious over the combination of *Excel 2000 Bible, Bertram and Kanevsky*:

Bertram itself teaches the amended limitations of proposed claims 26 and 27. ... Thus, proposed claims 26 and 27 are also unpatentable over the previously-cited combinations of Maloney, Bertram, and Kanevsky and Excel, Bertram, and Kanevsky, [and] the Board should not grant the motion to amend as to those proposed claims.

See *Opposition*, pages 13 –14.

Yet on pages 14 - 18 of the *Opposition*, Petitioner needlessly adds *Goldberg* to the combination of *Maloney, Bertram, and Kanevsky* and needlessly adds *Goldberg* to the combination of *Excel 2000 Bible, Bertram, and Kanevsky*. Since Petitioner asserts that proposed claims 26 and 27 are obvious over the references initially cited in the Petition while admitting that *Goldberg* provides no additional teachings over those provided in the initially-cited references, adding *Goldberg* needlessly presents cumulative evidence, confuses the issues and wastes time. Thus, *Goldberg* is not admissible, and must be excluded.

Respectfully submitted,

Dated: November 5, 2018

/s/ John K. Harrop

John K. Harrop

Counsel for Patent Owner

Vilox Technologies, LLC

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