Paper No. 66
Filed: January 29, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DIRECTSTREAM, LLC,
Patent Owner.

Case No. IPR2018-01605, IPR2018-01606, IPR2018-01607
U.S. Patent No. 7,620,800 B2

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO EXCLUDE

TABLE OF CONTENTS

I. Exhibit 2101 (Huppenthal Declaration) 1

A. Huppenthal's Refusal To Answer Obfuscates Petitioner's Right to Cross-Examine. 1

B. Mr. Huppenthal's Declaration is Irrelevant 2

C. Mr. Huppenthal's Declaration Is Hearsay Not Based On Personal Knowledge.....3

II. Exhibits 2065, 2075, and 2091.....3

III. Exhibits 2066-2074, 2076, 2078-2099, 2102-2104, 2106-2107, 2110, 2113-2134, 2140-2152, 2156, 2163, 2165, and 2170 4

A. Petitioner's Objections are Timely.....4

IV. Exhibits 2112 and 2170.....5

V. Patent Owner's Response 5

TABLE OF AUTHORITIES

Page(s)

Cases

U.S. v. Reynolds,
345 U.S. 1 (1953).....2

Wi-LAN Inc. v. Sharp Elecs. Corp.,
No. 1:15-cv-00379-LSP, 10, Dkt. 490 (D. Del. Feb. 15, 2019).....5

Other Authorities

37 C.F.R. § 42.64.....4

77 Fed. Reg. 48611, 48624 (Aug. 14, 2012).....5

Exec. Order No. 13526, 75 F.R. 705 (2010).....2

I. Exhibit 2101 (Huppenthal Declaration)

A. Huppenthal's Refusal To Answer Obfuscates Petitioner's Right to Cross-Examine.

DirectStream claims that Petitioner "conducted a full cross-examination" because Mr. Huppenthal's declaration is "high-level, general testimony," but DirectStream does not get to choose Petitioner's questions. Mr. Huppenthal refused to answer legitimate, relevant, and proper questions. Thus, Petitioner's right to discovery was violated.

DirectStream claims that EX2101 "focuse[d] exclusively on the hardware make-up" of the systems and did not "specifically discuss any applications any customers ran." Opp. 2. Not so. Mr. Huppenthal repeatedly references "applications" running on SRC systems, *see*, *e.g.*, EX2101, ¶80, and an entire section is entitled "Applications," EX2101, ¶¶77-79. DirectStream also claims that questions relating to "applications that Department of Defense ('DoD') entities ran" were outside the scope, Opp. 2, and not relevant, *id.*, 4. Incorrect. By serving a declaration addressing those topics and relying on it, DirectStream "opened the door" to cross-examination.

DirectStream also argues that Mr. Huppenthal's refusal to answer questions were "based on his legal obligation to protect classified national security

information."[1] Opp. 2-3. It provides no support for such an obligation, and national security privilege can be asserted solely by the United States. *U.S. v. Reynolds*, 345 U.S. 1 (1953).

DirectStream further argues the "to cure any potential prejudice, Petitioner was granted an additional one-hour deposition," and that Petitioner "chose not to reexamine this subject." Opp. 3. But the Board's order permitting an additional hour of questions was specifically directed to other topics. *See* Paper 48, 7-8 (noting that the Panel does "not at this time compel Mr. Huppenthal to disclose such [classified] information."). And Petitioner was under no obligation to regurgitate the same questions Mr. Huppenthal previously refused to answer.

B. Mr. Huppenthal's Declaration is Irrelevant

DirectStream again contends that Petitioner failed to "explain why the testimony is not relevant." Opp. 4. To the contrary, Petitioner explained that because Mr. Huppenthal admitted that he never mapped any of the production systems discussed in his declaration to any of the challenged patents (EX1073, 106:7-112:24), *see* Mot. 4, statements in his declaration suggesting otherwise (and

[1] Patent Owner cites "Exec. Order No. 13526, 75 F.R. 705 (2010)," however this Order is inapplicable. It relates to the system by which information is formally classified and declassified and not to the assertion of privilege by the public.

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