

IPR2019-01279
U.S. Patent No. 8,510,407 B1

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO HOLDING COMPANY, INC.,
LENOVO (UNITED STATES) INC., and
MOTOROLA MOBILITY LLC,
Petitioners,

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner.

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PATENT OWNER DODOTS LICENSING SOLUTIONS, LLC'S

MOTION TO STRIKE

Pursuant to the Order entered by the Board on September 1, 2020 (“Order”), Patent Owner DoDots Licensing Solutions, LLC hereby moves to strike the evidence and argument submitted with Petitioners’ Reply relating to the prior art status of Berg.

The Board’s precedential decision in *Hulu, LLC v. Sound View Innovs., LLC*, IPR2018-01039, Paper 29 (PTAB Dec. 20, 2019) explains the limited ways in which a Petitioner can supplement the evidence and argument that it submitted with its Petition:

(1) in a reply to a patent owner preliminary response; (2) in a reply to the patent owner response; and (3) in a motion to file supplemental information. 37 C.F.R. §§ 42.108(c), 42.23, 42.123. As to the first two opportunities, the evidence must be responsive to the prior briefing. 37 C.F.R. § 42.23 (“A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, or patent owner response.”). As to the third, the supplemental information must be relevant to a claim for which trial was instituted and, if the submission occurs after one month from institution, the petitioner must show good cause as to “why the supplemental information reasonably could not have been obtained earlier, and that consideration of the supplemental information would be in the interests-of-justice.” 37 C.F.R. § 42.123.

Hulu at 14.

As pointed out in the Order, Petitioners concede that Berg's prior art status was not discussed in Patent Owner's Response. Order at 2. As such, the new evidence and argument submitted by Petitioners with their Reply is not responsive to the prior briefing. Unless the evidence and argument are stricken, Patent Owner will be put to the task of submitting rebuttal evidence and argument in its sur-reply and also will need to address the issue in its demonstrative exhibits and at trial (assuming that the Board holds oral argument). This would be a needless expense and a waste of the Board's time given that the new evidence and argument is so clearly improper.

As discussed above, the proper procedure for Petitioners to have followed if they wanted to submit new evidence and argument would have been for them to have requested permission to file supplemental information. They haven't done that, and it is far too late for them to do that now.

Accordingly, Patent Owner respectfully requests that the Board grant Patent Owner's motion to strike.

Respectfully submitted,

By: /s/ Lewis E. Hudnell, III
Lewis E. Hudnell, III
Reg. No. 51,185
(Special Counsel to Progress LLP)

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Hudnell Law Group P.C.
800 W. El Camino Real
Suite 180
Mountain View, CA 94040
T: 650-564-7720
F: 347-772-3034
lewis@hudnelllaw.com

Lead Counsel for Patent Owner

Perry Goldberg (*pro hac vice*)
Progress LLP
11620 Wilshire Blvd., Suite 900
Los Angeles, CA 90025
T: 310-697-7201
goldberg@progressllp.com

Back-Up Counsel for Patent Owner

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CERTIFICATE OF SERVICE

I certify that the foregoing **PATENT OWNER DODOTS LICENSING**

SOLUTIONS, LLC'S MOTION TO STRIKE was served on September 2, 2020

on the Petitioner by filing this document through the Patent Review Processing

System as well as e-mailing a copy to jalemanni@kilpatricktownsend.com,

smoore@kilpatricktownsend.com, taludlam@kilpatricktownsend.com, and

MMeyer@kilpatricktownsend.com.

By: /s/ Lewis E. Hudnell, III

Lewis E. Hudnell, III

Reg. No. 51,185

(Special Counsel to Progress LLP)

Hudnell Law Group P.C.

800 W. El Camino Real

Suite 180

Mountain View, CA 94040

T; 650-564-7720

F: 347-772-3034

lewis@hudnelllaw.com

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