

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

PARUS HOLDINGS, INC.,
Patent Owner.

Case No. IPR2020-00686
U.S. Patent No. 7,076,431

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

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77 Fed. Reg. at 48,7582

I. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.64, the Board’s Scheduling Order (Paper No. 10), and the Federal Rules of Evidence, Patent Owner Parus Holdings, Inc. (“Patent Owner”) hereby moves to exclude the Supplemental Declaration of Dr. Loren Terveen (Ex. 1040), which was submitted with Petitioner’s Reply to Patent Owner’s Response filed on March 24, 2021 (Paper No. 19.), in its entirety. In the alternative, Patent Owner moves to exclude §§ II.A-D of Exhibit 1040. Patent Owner moves to exclude this exhibit on the grounds articulated by C.F.R § 42.23(b); 37 C.F.R § 42.123(b); and 37 C.F.R. § 42.6(a)(3).

Patent Owner timely objected to Dr. Loren Terveen’s supplemental declaration within five business days of service of Ex. 1040 on March 31, 2021 (Paper No. 20). Petitioner never responded to Patent Owner’s objections. Parus asks the Board to exclude it as evidence in this evidentiary hearing on the grounds articulated by C.F.R § 42.23(b); 37 C.F.R § 42.123(b); and 37 C.F.R. § 42.6(a)(3).

II. ARGUMENT

A motion to exclude relates to the admissibility of evidence as governed by the Federal Rules of Evidence. *Legend3D, Inc. v. Prime Focus Creative Servs. Can. Inc.*, IPR2016-00806, Paper 73 at 8–9 (PTAB Sept. 18, 2017); *see also* 37 C.F.R. § 42.62 (applying the Federal Rules of Evidence to *inter partes* reviews); 37 C.F.R. § 42.64; Office Patent Trial Practice Guide (“Guide”), 77 Fed. Reg. 48,756 (Aug. 14,

2012). As stated in the Guide, parties may submit motions to exclude regarding evidence “believed to be inadmissible.” Guide, 77 Fed. Reg. at 48,758. A motion to exclude “must explain why the evidence is not admissible (e.g., relevance or hearsay).” *Id.*, at 48,767.

A. 37 C.F.R § 42.23(b) – Identified Sections of Exhibit 1040 do not Respond to Arguments Raised in the POR and Should Be Excluded

Patent Owner moves to exclude §§ II.A-D of the Supplemental Declaration of Dr. Loren Terveen (Exhibit 1040) on the ground that “[t]his exhibit contains information and testimony which does not respond to arguments raised in the Patent Owner’s response.” Sections II.A-D of Exhibit 1040 do not respond to or provide any link to any arguments from the POR. As such, Parus requests that §§ II.A-D of Exhibit 1040 be excluded under 37 C.F.R § 42.23(b). Parus timely objected to these unresponsive arguments. Petitioner failed to respond.

1. Section II.A of Exhibit 1040 should be excluded because it does not respond to arguments raised in the POR

Neither Dr. Terveen nor Apple provide any link between § II.A of Dr. Terveen’s supplemental declaration and the POR. Section II.A of Exhibit 1040 describes a “two-step speech recognition process” that is purportedly described in both the ’431 and Ladd. (Ex. 1040, ¶¶ 2-9). In this section, which is comprised of eight paragraphs, Dr. Terveen does not cite to or respond to any arguments Parus raised in its POR. (Ex. 1040, ¶¶ 2-9). In using this section of Dr. Terveen’s

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