

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED and
ZYXEL COMMUNICATIONS CORPORATION,

Petitioner,

v.

UNM RAINFOREST INNOVATIONS,

Patent Owner.

Case IPR2021-00375

Patent No. 8,265,096 B2

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

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I. INTRODUCTION

P.O.'s motion to exclude Dr. Roy's Declaration in support of the Petition (Ex. 1002, "Dr. Roy's Petition Declaration") should be denied for at least the following reasons.

At the threshold, P.O. failed to identify the objections to Dr. Roy's declaration in the record, which is required under 37 C.F.R. § 42.64(c). Furthermore, P.O. failed to timely file an objection under 37 C.F.R. § 42.64(b)(1), as necessary to preserve its objection. As such, P.O. waived its objection, as the PTAB has confirmed in numerous analogous decisions.

In addition, P.O.'s objection to Dr. Roy's Petition Declaration is based on the similarity of Dr. Roy's Petition Declaration to a declaration submitted by Dr. Robert Akl in an IPR proceeding to which Qualcomm sought joinder. The substance of Dr. Roy's Petition Declaration is largely the same as Dr. Akl's declaration because that is what the joinder rules require, and Dr. Roy confirmed that he had read and agreed with Dr. Akl's opinions. In addition, although P.O.'s arguments to Dr. Roy's Petition Declaration are meritless, at most they go to weight, not admissibility, of the challenged evidence.

II. P.O.’S CHALLENGE TO DR. ROY’S PETITION DECLARATION (EX. 1002) SHOULD BE REJECTED

A. P.O. Failed to Identify an Objection in the Record to Dr. Roy’s Petition Declaration

Under 37 C.F.R. § 42.64(c), “A motion to exclude evidence ... **must** identify the objections in the record” *Id.* (emphasis added); *see also GoPro, Inc. v. Contour IP Holdings LLC*, IPR2015-01080, Paper 55 at 8 (PTAB Oct. 26, 2016), *vacated on other grounds*, 908 F.3d 690 (Fed. Cir. 2018) (“The motion must identify the objections in the record in order and must explain the objections.”) (citing 37 C.F.R. § 42.64(c)).

P.O.’s motion to exclude Dr. Roy’s Petition Declaration fails to satisfy this burden and should be denied for this reason alone. Mot. at 1-13 (failing to identify any objection in the record to Dr. Roy’s Petition Declaration); *Cardiovascular Sys., Inc. v. Shockwave Medical, Inc.*, IPR2019-00408, Paper 70 at 52 (PTAB July 20, 2020) (“Here, Petitioner does not identify the portion of the record where its objection to Exhibits 2178-2180 were originally made.... [W]e deny Petitioner’s Motion to Exclude Exhibits 2178-2180.”).

B. P.O. Failed to Timely Object to Dr. Roy’s Petition Declaration

Under 37 C.F.R. § 42.64(b)(1), “[a]ny objection to evidence submitted during a preliminary proceeding **must** be filed within ten business days of the institution of the trial.” *Id.* (emphasis added). In addition, the filed objection must “must identify

the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.” *Id.*

This proceeding was instituted on July 19, 2021. Paper 14 at 1. Accordingly, UNM was required to file any objection to Dr. Roy’s Petition Declaration no later than July 27, 2021. However, UNM did not file an objection to Dr. Roy’s Petition Declaration¹ until December 16, 2021 — more than four months too late. *See* Paper 31 at 1.

P.O.’s failure to timely object to Dr. Roy’s Petition Declaration mandates denial. *See Les Ateliers Beau-Roc Inc. v. Air Power Sys. Co., LLC*, IPR2020-01702, Paper 32 at 58 (PTAB Apr. 18, 2022) (“[B]ecause Patent Owner failed to file timely objections, Patent Owner’s motion to exclude evidence under § 42.64 is denied.”); *Cardiovascular Sys.*, IPR2019-00408, Paper 70 at 52 (“The failure to raise an objection at the appropriate time, results in a waiver of the objection.”); *Growlerwerks, Inc. v. Drink Tanks Corp.*, IPR2017-00262, Paper 24 at 64 (PTAB Feb. 21, 2018) (denying patent owner’s motion to exclude evidence for failure to timely object, observing that “[b]y not timely objecting to Exhibit 1025, Patent

¹ UNM incorrectly filed its objections paper to Dr. Roy’s Petition Declaration as a “motion to exclude,” but the substance of that paper was an objection. *See* Papers 31, 39.

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