

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DAEDALUS BLUE, LLC,
Patent Owner.

IPR2021-00831
Patent 8,671,132 B2

Before SALLY C. MEDLEY, HYUN J. JUNG, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On July 1, 2022, a conference call was held involving counsel for the respective parties and Judges Medley, Peslak, and Jung.¹ The purpose of the conference call was for Patent Owner to seek authorization to file, as an exhibit in the proceeding, a “claim construction technical tutorial from related litigation.” Ex. 2030, 7:22–8:1. Petitioner opposed.

During the conference call, Patent Owner explained that the technical tutorial is relevant to the parties’ dispute over the meaning of the claim term “plurality of clients.” *Id.* at 8:14–9:3. In particular, Patent Owner asserts that a statement made in the technical tutorial is inconsistent with Petitioner’s assertions made in the Petitioner Reply. *See, e.g.*, Patent Owner Sur-reply (Paper 38, 4–5 “Sur-reply”). Patent Owner acknowledged that it has known of the technical tutorial since October, 2021 and that it became aware of the alleged inconsistency once Petitioner filed its Reply on May 26, 2022. Ex. 2030, 8:7–9:5. Petitioner argued that the technical tutorial is a document that was never filed in the district court, but served only as an educational tool to the judge. *Id.* at 12:13–16. Petitioner further argued that there is no inconsistency with the statement made in the technical tutorial that the Patent Owner’s Sur-reply quotes and Petitioner’s claim construction position. *Id.* at 11:19–24.

The time for filing substantive papers and exhibits has passed. Papers 18, 28. The hearing in this proceeding is scheduled for August 10, 2022. Paper 39. Patent Owner’s request to file, as an exhibit, the technical tutorial is late. Ex. 2030, 8:21–24. A late filing will be excused “on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.” 37 C.F.R. § 42.5(c)(3). Patent Owner

¹ A transcript of the conference call is of record. Ex. 2030.

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became aware of the technical tutorial in October, 2021, and knew about Petitioner’s alleged inconsistent statements made regarding the technical tutorial since May 26, 2022. Ex. 2030, 8:7–9:5. Patent Owner failed to explain sufficiently why it would be in the interests of justice to file the technical tutorial. Only one statement from the technical tutorial is purportedly relevant to claim construction and we have before us that statement. Sur-reply 4–5. Moreover, according to Patent Owner, “even without that tutorial, the intrinsic record shows that the claimed ‘plurality of clients’ are clients in a networked environment.” *Id.* No sufficient reason was provided for belatedly filing the entire tutorial as an exhibit for us to resolve the issues before us. Ex. 2030, 10:23–11:16.

Accordingly, for all of the above reasons, it is:

ORDERED that Patent Owner’s request to file the technical tutorial as an exhibit is *denied*.

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