

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CLOUDFLARE, INC.,
Petitioner,

v.

SABLE NETWORKS, INC.,
Patent Owner.

IPR2021-00909
Patent 8,243,593 B2

Before STACEY G. WHITE, GARTH D. BAER, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

DIRBA, *Administrative Patent Judge*.

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

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On February 10, 2022, a telephone conference call was held between respective counsel for the parties and Judges White, Baer, and Dirba. Petitioner requested this call to discuss a dispute between the parties regarding the deposition of one of Petitioner's declarants.

Specifically, Ms. Elizabeth Rosenberg provided a declaration testifying that one of Petitioner's asserted prior art references, the Four-Steps Whitepaper (Ex. 1006), was archived by the Wayback Machine on a particular date (*id.* at i–ii). At the time of her declaration, Ms. Rosenberg was a Records Request Professor at the Internet Archive, a third-party. *Id.* ¶ 1. According to Petitioner, Ms. Rosenberg has since been promoted to a different position and is no longer available to sit for a deposition in this proceeding. When Patent Owner requested Ms. Rosenberg's deposition, Petitioner responded that Ms. Rosenberg is not available for deposition and concurrently provided Patent Owner with another declaration by a different Internet Archive employee (Mr. Butler) along with that employee's availability for a deposition.

We informed the parties that, under these circumstances, we authorize Petitioner to substitute Ms. Rosenberg's declaration with Mr. Butler's declaration, provided that Mr. Butler's declaration is identical in all relevant respects (i.e., other than the declarant's name, job title, and location).

It is so ORDERED.

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