

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS,
Petitioner,

v.

BRIDGE AND POST, INC.,
Patent Owner.

Case IPR2018-00055
Patent No. 8,862,747

**PATENT OWNER'S REPLY IN SUPPORT OF
MOTION TO EXCLUDE**

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.23, Patent Owner Bridge & Post, Inc. (“Patent Owner”) hereby files this reply in support of its Motion to Exclude Exhibits 1110, 1112, 1120, 1121, 1128, and 1131 in the above-captioned matter (Paper 30).

II. ARGUMENT

A. Exhibit 1110 Should Be Excluded As Not Relevant

Petitioner argues that Exhibit 1110 is relevant because it “describes a system architecture” that is allegedly similar to claims of the ’747 Patent. *See* Paper 32, 1. Petitioner’s Opposition further argues that “Exhibit 1110 establishes the background knowledge of a person of ordinary skill regarding the provision of targeted advertisements—the same function to which the ’747 patent is directed” and it is therefore relevant. *See* Paper 32, 2. But Petitioner’s expert provides no explanation or analysis of Exhibit 1110, and Exhibit 1110 is never cited in the Petition or the Gray Declaration. *See* Paper 30, 1. Having presented no arguments or information in the Petition as to Exhibit 1110, it should be excluded. *See, e.g., Apple Inc. v. ContentGuard Holdings, LLC*, IPR2015-00448, Denial of Institution (Paper 9), 15 (PTAB July 10, 2015) (addressing improper incorporation by reference) (“Arguments and information that are not presented and developed in the Petition . . . are not entitled to consideration.”).

Further, contrary to the implication of Petitioner’s Opposition (*see* Paper 32, 2), Federal Rule of Evidence (“FRE”) 403 is not limited to exclusion where

probative value is outweighed by prejudice, and considers confusion, waste of time, and other factors. *See* FRE 403 (“unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence”). Evidence “not presented and developed in the Petition” is not relevant, and has little to no probative value, whether balanced against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

B. Exhibit 1112 Should Be Excluded As Not Relevant

In its Opposition, Petitioner argues that Exhibit 1112 is relevant because it is cited by the Gray Declaration, '747 Claim 11 recites a limitation including related functionality, “and thus a POSA’s knowledge of hashing is relevant in this proceeding.” *See* Paper 32, 2-3 (citing EX1108, ¶37). But Exhibit 1112 is never directly cited in the Petition, and the single paragraph identified by Petitioner is cited in the Petition only as part of a generic citation to twenty-four paragraphs of a background section of the Gray Declaration. *See* Paper 30, 2-3; Petition, 15. Exhibit 1112 does not become relevant to the specific grounds at issue in this proceeding by virtue of such a citation. Instead, such a citation is akin to an improper incorporation by reference, and may not be used to import arguments and evidence from the expert declaration into the Petition. *See, e.g.*, 37 C.F.R. §42.6(a)(3); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Denial of Institution (Paper 12), 7-10 (PTAB Aug. 29, 2014); *see also, e.g., Apple Inc.*,

IPR2015-00448, Paper 9, 15 (“Arguments and information that are not presented and developed in the Petition, and instead are incorporated by reference to the [Expert] Declaration, are not entitled to consideration.”). Again, FRE 403 is not limited to exclusion based on prejudice, but also considers confusion, waste of time, and other factors. Evidence “not presented and developed in the Petition” has little to no probative value when weighed against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

C. Exhibit 1120 Should Be Excluded As Not Relevant

Petitioner argues that Exhibit 1120 is relevant because it is cited by the Gray Declaration, ’747 Claim 10 recites related functionality, and “Petitioner’s obviousness theory includes argument that *Harada*’s proxy server reads on certain claim limitations.” See Paper 32, 3-4 (citing EX1108, ¶¶13, 28). But Exhibit 1120 is never directly cited in the Petition, much less in a discussion of *Harada*’s proxy server or anywhere in the Grounds, and the two paragraphs identified by Petitioner are cited in the Petition only as part of a generic citation to twenty-four paragraphs of a background section of the Gray Declaration. See Paper 30, 3-4; Petition, 15. Exhibit 1120 is not made relevant by that citation. See, e.g., 37 C.F.R. §42.6(a)(3); *Cisco Sys., Inc.*, IPR2014-00454, Paper 12, 7-10; *Apple Inc.*, IPR2015-00448, Paper 9, 15. And again, FRE 403 is not limited to exclusion where probative value is outweighed by prejudice. Evidence “not presented and developed in the

Petition” has little to no probative value, whether balanced against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

D. Exhibit 1121 Should Be Excluded As Not Relevant

Petitioner argues that Exhibit 1121 is relevant because it is cited by the Gray Declaration and ’747 Claim 10 recites related functionality. *See* Paper 32, 4-5 (citing EX1108, ¶29). But Exhibit 1121 is not made relevant by a citation to twenty-four paragraphs of a background section of the Gray Declaration. *See* Paper 30, 3-4; Petition, 15; *see also, e.g.*, 37 C.F.R. §42.6(a)(3); *Cisco Sys., Inc.*, IPR2014-00454, Paper 12, 7-10; *Apple Inc.*, IPR2015-00448, Paper 9, 15. And as above, FRE 403 is not limited to exclusion where probative value is outweighed by prejudice. Evidence “not presented and developed in the Petition” is not relevant, and has little to no probative value, whether balanced against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

E. Exhibit 1128 Should Be Excluded As Not Relevant

Petitioner argues that Exhibit 1128 is relevant because it is cited by the Gray Declaration and one of Petitioner’s cited references teaches related functionality. *See* Paper 32, 5 (citing EX1108, ¶¶38-39). As above, Exhibit 1128 is not made relevant by a citation to twenty-four paragraphs of a Gray Declaration background section. *See* Paper 30, 5-6; Petition, 15; *see also, e.g.*, 37 C.F.R. §42.6(a)(3); *Cisco Sys., Inc.*, IPR2014-00454, Paper 12, 7-10; *Apple Inc.*, IPR2015-00448, Paper 9,

15. And under FRE 403, evidence “not presented and developed in the Petition” is not relevant, and has little to no probative value, whether balanced against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

F. Exhibit 1131 Should Be Excluded As Not Relevant

Petitioner makes similar relevancy arguments for Exhibit 1131 (Paper 32, 6 (citing EX1108, ¶29)), but here again, Exhibit 1131 is not relevant based on a single citation to twenty-four declaration paragraphs. *See* Paper 30, 5-6; Petition, 15; *see also, e.g.*, 37 C.F.R. §42.6(a)(3); *Cisco Sys., Inc.*, IPR2014-00454, Paper 12, 7-10; *see also, e.g., Apple Inc.*, IPR2015-00448, Paper 9, 15. And under FRE 403, evidence “not presented and developed in the Petition” is not relevant, and has little to no probative value, whether it is balanced against waste of time, misleading the factfinder, prejudice, or any other FRE 403 consideration.

III. CONCLUSION

For the above reasons and those in its Motion, Patent Owner respectfully requests that Exhibits 1110, 1112, 1120, 1121, 1128, and 1131 be excluded.

Dated: November 26, 2018

Respectfully submitted,

By /s/ Lauren N. Robinson
Lauren N. Robinson, Lead Counsel
Reg. No. 74,404
Denise M. De Mory (*Pro Hac Vice*)
Christina M. Finn (*Pro Hac Vice*)
Bunsow De Mory LLP
701 El Camino Real

Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
lrobinson@bdiplaw.com
ddemory@bdiplaw.com
cfinn@bdiplaw.com

Attorneys For Patent Owner

CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on November 26, 2018, a copy of the foregoing document was served by email upon the following:

Jay I. Alexander
jalexander@cov.com

Peter P. Chen
pchen@cov.com

Verizon-BridgePost-IPR@cov.com

/s/ Lauren N. Robinson

Lauren N. Robinson
Registration No. 74,404
Bunsow De Mory LLP
701 El Camino Real
Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
lrobinson@bdiplaw.com

Lead Counsel for Patent Owner