

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

POLARIS WIRELESS, INC.
Petitioner,

v.

TRUEPOSITION, INC.
Patent Owner

Case IPR2013-00323
Patent 7,783,299

Before JAMESON LEE, JONI Y. CHANG, and MICHAEL W. KIM,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

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

Introduction

A telephone conference was held on June 18, 2014. The participants of the call were respective counsel for the parties and Judges Lee, Chang, and Kim. The

parties had a dispute regarding Patent Owner's Motion for Observations on Cross-Examination of Petitioner's reply declarant, reached resolution on how to resolve the dispute, and wanted to seek the Board's permission to carry out the resolution.

Specifically, the parties agreed to have the Patent Owner file, by June 19, 2014, a Revised Motion for Observations on Cross-Examination of Petitioner's reply declarant, limited to 15 pages, to replace the Motion for Observations filed on June 9, 2014 (Paper 41), which was 27 pages in length, and to authorize the Petitioner to file a response, limited to 15 pages, to the Revised Motion for Observations within one week of filing of the Revised Motion for Observations.

The parties also sought to have expunged the Motion for Observations filed on June 9, 2014, and inquired as to any required format for a response to the Motion for Observations.

Discussion

We explained that the page limit for a Motion for Observations is 15. It is unusual for a proper Motion for Observations on Cross-Examination to exceed 15 pages. It should not contain arguments. As noted in the Scheduling Order (Paper 10), observations on cross-examination provide a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness. Each observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit, and *should not exceed one short paragraph*. An observation is not an opportunity to raise new issues, to re-argue issues, or to pursue objections.

Each observation should be in the following form:

In exhibit __, on page __, lines __, the witness testified __. That testimony is relevant to the ____ [stated or argued] on page __, lines __ of _____. The testimony is relevant because _____.

The explanation of relevance should not be elaborate or argumentative. As noted above, each observation should not exceed one short paragraph. The Board may decline consideration or entry of excessively long or argumentative observations.

During a recess in the conference call, we reviewed the Patent Owner's already-filed Motion for Observations (Paper 41) and found that it contains elaborate explanations which are argumentative, which are improper.

In most instances, the pertinent cross-examination testimony should be reproduced in the observation directed to that testimony rather than merely referenced by page and line number of an exhibit. The point is to avoid misidentification. In a situation where the pertinent cross-examination testimony is relatively short, the pertinent cross-examination testimony should be reproduced in the observation directed to that testimony rather than merely referenced by page and line number. If, however, the pertinent testimony is relatively long such that its reproduction would cause the entire observation to exceed one short paragraph, a brief summary with specific reference to the testimony by page, line, and exhibit numbers would be acceptable. A party must be careful not to use the space created by not reproducing the text of the pertinent testimony to present arguments.

With regard to a response to a motion for observations, no particular format is required. But the response to each observation should not be argumentative. An excessively long or argumentative response may not be considered. There is not always a need for a response, if the motion for observations is not argumentative and merely identifies evidence to be considered together with particular cross-examination testimony.

Order

It is

ORDERED that Patent Owner may file a Revised Motion for Observations on Cross-Examination of Petitioner's reply declarant by June 20, 2014, and Petitioner may file a response to the revised motion by June 25, 2014, with the revised motion limited to 10 pages and the response limited to 5 pages; and

FURTHER ORDERED that Patent Owner's revised motion should state that it replaces the motion filed on June 9, 2014 (Paper 41), which is withdrawn; and

FURTHER ORDERED that a decision on whether to expunge the first motion (Paper 41) is deferred until after filing of the revised motion.

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