UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FUJIAN NEWLAND COMPUTER CO., LTD.
Petitioner

v.

HAND HELD PRODUCTS, INC.
Patent Owner

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Case IPR2013-00595
Patent 7,568,628

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Before KEVIN F. TURNER, BRYAN F. MOORE, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

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

A conference call was held on May 23, 2014 between counsel for the parties and Judges Turner, Moore, and Boucher in response to Patent Owner's request to discuss a proposed motion to exclude evidence. Counsel for Patent Owner indicated that the call was being transcribed. Patent Owner is requested to file the transcript with the Board as an exhibit as soon as it is available.

During the call, Patent Owner contended that Petitioner's witness, Dr. Dennis Deppe, indicated during his deposition that he had not read the principal reference relied on by Petitioner—U.S. Patent Publication No. 2004/0190092 (Ex. 1005)—in its entirety. Patent Owner further contended that Dr. Deppe was consequently unwilling or unable to respond to questions about the reference and unwilling or unable to testify whether the teachings of certain references could be combined. In support of its contentions, Patent Owner filed, without authorization, a "rough copy" of the transcript of Dr. Deppe's deposition with exhibits (Exhibits 2005–2015). As a result of these contentions, Patent Owner argues that Dr. Deppe's declaration testimony (Ex. 1004) should be excluded. To that end, Patent Owner seeks permission to file a motion to exclude the declaration testimony of Petitioner's witness, Dr. Dennis Deppe.

Petitioner responded that Patent Owner's contentions are "harsh mischaracterizations" and that any weaknesses in Dr. Deppe's deposition testimony relate to the weight that should be afforded his deposition and declaration testimony, not to their admissibility.

The Board advised the parties that the scheduling order (Paper 16) in this proceeding sets forth a timetable for filing motions to exclude evidence, as well as for filing oppositions and replies to such motions. Both parties will have an opportunity to address the issues raised by Patent Owner on that timetable: "Once the time for taking discovery in the trial has ended, the parties will be authorized to

file motions to exclude evidence believed to be inadmissible." 77 Fed. Reg. 48,756, 48,758 (Aug. 14, 2012). At this time, we see no compelling reason to deviate from that timetable. The Board further advised Patent Owner of its unwillingness to reach a decision based on a rough deposition transcript, and advised Patent Owner to file the final transcript if and when it files a paper, in accordance with the scheduling order, that relies on Dr. Deppe's testimony as evidence. Accordingly, we order that the rough transcript, including its exhibits, be expunged. 37 C.F.R. § 42.7(a).

We take this opportunity to remind the parties that they are encouraged to communicate with each other prior to initiation of a conference call with the Board in an effort to resolve disagreements and/or to narrow the issues surrounding unresolved disagreements.

It is

ORDERED that exhibits 2005–2015 are expunged, and

FURTHER ORDERED that Patent Owner's request for authorization to file a motion to exclude, at this time, is *denied*.

PETITIONER
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