

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACTUAL INC.,
Petitioner,

v.

LOCATA LBS LLC,
Patent Owner.

Case IPR2015-00224
Patent 6,259,381 B1

Before RAMA G. ELLURU, JO-ANNE M. KOKOSKI, and ROBERT J.
WEINSCHENK, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

ORDER
Petitioner's Motion to Strike
Patent Owner's Objections to Petitioner's Evidence
37 C.F.R. § 42.5(a)

On September 1, 2015, with Board authorization, Petitioner filed a Motion to Strike Patent Owner's Objections to Petitioner's Evidence. Paper 17 ("Mot."). Patent Owner filed an Opposition to the Motion. Paper 18 ("Opp."). Having reviewed the Motion and Opposition, we grant Petitioner's Motion.

On August 13, 2015, Patent Owner filed Objections to Petitioner's Evidence, setting forth its objections to Petitioner's Exhibit 1007, the Declaration of Michael S. Braasch ("Braasch Declaration"). Paper 14. According to Patent Owner, Dr. Braasch "admitted during his deposition that the opinions he presents in the Braasch Decl[aration] are not based on sufficient facts or data, are not the product of reliable principles and method, and are not reliably applied to the facts of this proceeding." *Id.* at 1.

Petitioner argues that Patent Owner's objections are untimely, citing 37 C.F.R. § 42.64(b)(1), which requires that any objection to evidence submitted during a preliminary proceeding (such as the Braasch Declaration) must be served within ten business days of the institution of the trial. Mot. 2. Patent Owner responds that its objections did not arise until Dr. Braasch's deposition, and that "Section 42.64(b)(1) can only be met if the bases for objection are facially apparent in the evidence." Opp. 2.

In this case, the Braasch Declaration was submitted with the Petition. Any objections to the Braasch Declaration, therefore, must have been served within ten business days of the decision instituting trial. 37 C.F.R. § 42.64(b)(1). Trial was instituted on May 14, 2015; as a consequence, Patent Owner's objections were almost three months late, and Patent Owner did not request that the Board waive or suspend the timing requirement prior to serving the late objections. Further, the alleged deficiencies in the

Braasch Declaration should be addressed within the context of the weight given the testimony in view of Patent Owner's cross-examination of Dr. Braasch, as Patent Owner argues in the Patent Owner Response. *See* Opp. at 4 ("Locata properly addressed its substantive argument in its response, where it demonstrated the lack of merit in Dr. Braasch's testimony with reference to Exhibit 2016, the official transcript of Dr. Braasch's deposition, to which Petitioner has not objected."); *see also Parrot S.A. v. Drone Techs., Inc.*, Case IPR2014-00730, slip op. at 27–28 (PTAB Oct. 20, 2015) (Paper 27) (dismissing Motion to Exclude declaration submitted with Petition as untimely because Patent Owner served objections more than three months after trial institution); *Seoul Semiconductor Co., Ltd. v. Enplas Corporation*, Case IPR2014-00605, slip op. at 15–16 (PTAB Sept. 15, 2015) (Paper 56) (dismissing Motion to Exclude declaration submitted with Petition as untimely because Patent Owner's objections were served almost seven months after trial institution).

It is therefore

ORDERED that Petitioner's Motion to Strike Patent Owner's Objections to Petitioner's Evidence is *granted*; and

FURTHER ORDERED that Paper 14 and Exhibit 2017 are expunged from the record.

IPR2015-00224
Patent 6,354,008 B1

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