

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

AUTEL U.S. INC. and AUTEL INTELLIGENT TECHNOLOGY CO. LTD.

Petitioners

v.

BOSCH AUTOMOTIVE SERVICE SOLUTIONS LLC

Patent Owner

Case IPR2014-00183

Patent No. 6,904,796

PATENT OWNER'S RESPONSE TO MOTION TO EXCLUDE

Patent Owner, BOSCH AUTOMOTIVE SERVICE SOLUTIONS LLC.,
submits this Response to Petitioner's Motion to Exclude Patent Owner's Exhibit
2031.

Respectfully submitted,

BOSCH AUTOMOTIVE SERVICE
SOLUTIONS LLC

By: /Timothy M. McCarthy/

Timothy M. McCarthy
Reg. No. 42,855
CLARK HILL PLC
150 N. Michigan Ave., 27th Fl.
Chicago, Illinois 60601
tmccarthy@clarkhill.com
tel 312-985-5561

John E. Berg
CLARK HILL PLC
500 Woodward Ave. Suite 3500
Detroit, Michigan 48226
jberg@clarkhill.com
tel 313-965-8417

Patent Owner submitted a Second Declaration of Michael Nranian, Exhibit 2031. The declaration states “All statements herein made of my knowledge are true, and all statements herein made based on information and belief and believe to be true.” Exhibit 2013 at ¶ 2. Petitioner objected that this declaration is not an affidavit.

This affirmation meets the standard of 28 U.S.C. Section 1746. That statute suggests a form of language but notes that affirmation need only be in “substantially” the form suggest. The language used in Mr. Nranian’s Second Declaration is substantially similar to the form required by the statute.

Please note that Petitioner does not suggest any suspicious circumstances to Mr. Nranian’s Second Declaration, or that the circumstances of execution of the declaration indicate untrustworthiness. Petitioner appears to object solely to the fact that the affirmation does not exactly track the language of Section 1746. (Please note, however, that Patent Owner did not actually say so in its objection, Exhibit 2031, which does not refer to Section 1746.) Accordingly, the Board should find that the affirmation substantially complies with the statute and deny the Motion to Exclude.

In the event that the Board disagrees, Patent Owner requests leave to submit an amendment to Exhibit 2031, signed by Mr. Nranian, stating “I, Michael Nranian, declare under penalty of perjury under the laws of the United States of

America that the statements may in my Second Declaration, executed by me on October 8, 2014, are true and correct.” (copy attached) This amendment is not the submission of new and additional evidence, but is instead the correction of a technical error and, in the interests of justice, the Board should allow this submission and deny the Motion to Exclude. There is no prejudice to Petitioner in allowing this submission, as Patent Owner does not introduce any substantive change in Mr. Nranian’s opinion. *See T-Mobile USA, Inc. v. Mobile Telecommunications Technologies, LLC*, IPR2015-00015, Paper 7 (November 3, 2014) at 5.

In a different context, the Board has ruled that to meet the “interests of justice” standard for additional discovery, “more than a ‘mere possibility’ or ‘mere allegation that something useful [to the proceeding] will be found.’” *Apple, Inc. v. Achates Reference Publishing, Inc.*, IPR2013-00080, Paper No. 18 at 4 (April 3, 2013). In the present matter, Patent Owner does not seek additional discovery, but notes that admission into evidence of Mr. Nranian’s Second Declaration will be most definitely be useful to the proceeding, not merely possible.

Similarly, in *Garmin International, Inc. v. Cuozzo Speed Technologies LLC*, IPR2012-00001, Paper No. 26 (March 5, 2013), the Board stated, also in the context of additional discovery, that the “interests of justice” standard required a party to show “beyond speculation that in fact something useful will be

uncovered.” *Id.* at 6. In the view of the Board, “useful” means “favorable in substantive value to a contention of the party.” *Id.* at 7. In the present matter, Patent Owner does not seek additional discovery, but it is beyond speculation that Mr. Nranian’s Second Declaration is favorable in substantive value to Patent Owner’s contentions with respect to its Contingent Motion to Amend.

Accordingly, Patent Owner requests that the Board find the Second Declaration of Michael Nranian to be in substantial compliance with the statute, or, alternatively, to permit the submission of the attached correction.

Respectfully submitted,

BOSCH AUTOMOTIVE SERVICE
SOLUTIONS LLC

By: /Timothy M. McCarthy/

Timothy M. McCarthy
Reg. No. 42,855
CLARK HILL PLC
150 N. Michigan Ave., 27th Fl.
Chicago, Illinois 60601
tmccarthy@clarkhill.com
tel 312-985-5561

John E. Berg
CLARK HILL PLC
500 Woodward Ave. Suite 3500
Detroit, Michigan 48226
jberg@clarkhill.com
tel 313-965-8417

Certificate of Service

I served the foregoing Patent Owner's Response to Motion to Exclude on the following counsel by email on November 12, 2014:

John G. Smith
Reg. No. 33,818
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Washington, DC 20005-1209
Email: Autel00183@dbr.com

Zhun Lu
Reg. No. 53,242
Drinker Biddle & Reath LLP
222 Delaware Ave., Ste. 1410
Wilmington, DE 19801-1621
Email: Autel00183@dbr.com

s/Timothy M. McCarthy/

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.