Filed on behalf of TQ Delta, LLC
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.,
Petitioner,
v.

TQ DELTA, LLC,
Patent Owner.

Case IPR2016-01160
Patent No. 8,611,404

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

Exhibits 1007, 1008, 1010, 1011, 1012, 1014, 1015, 1016, and 1019 and Paragraphs 21-23, 25-28, and 147-249 of Exhibit 1003 should be excluded.

Petitioner does not dispute that Exhibits 1007, 1008, 1010, 1011, 1012, 1014, 1015, and 1016 are inadmissible hearsay **and** have not been authenticated. For this reason alone, the Board should grant Patent Owner's Motion to Exclude with respect to those exhibits.

The only basis for exclusion that Petitioner does dispute is relevance. In its Motion, Patent Owner submitted that Exhibits 1007, 1008, 1010, 1011, 1012, 1014, 1015, and 1016 and Paragraphs 21-23, 25-28, and 147-249 of Exhibit 1003 should be excluded as irrelevant because they were submitted in support of a ground upon which trial was not instituted.[1] In its Opposition, Petitioner argues that the challenged exhibits are relevant and should not be excluded because "public policy dictates preserving the record." Paper No. 30 at 1. In particular, Petitioner argues that there is a "strong public interest" in making the challenged exhibits available to the public because the exhibits are "relied on not only in support of the non-instituted grounds," but are "relied upon throughout the

[1] Patent Owner also argued that Ex. 1019 should be excluded as irrelevant because it was submitted in response to Patent Owner's objections to Ex. 1009 and Patent Owner does not seek to exclude Ex. 1009.

Petition" to "illustrate the state of the art" and "explain the relevant technology." *Id*. Petitioner further argues that excluding the exhibits would render the record incomplete and "disservice to the public" by denying it access to the exhibits. *Id*. at 2.

Petitioner's arguments have no merit. First, the challenged exhibits are not "relied upon throughout the Petition" to "illustrate the state of the art" and "explain the relevant technology." Rather, they are relied upon solely to support Petitioner's arguments relating to the ground upon which the Board did not institute, *i.e.*, Ground 2 – alleged invalidity over T1E1.4/97-161R1, T1E1.4/97-319, and the 1995 ADSL Standard. *See* Pet. at 14-20, 28-29, and 46-58.[2] Indeed, the Petition does not point to any of the challenged exhibits in its arguments in support of Ground 1 – the ground on which the Board did institute. Moreover, Exhibits 1007 and 1008 are two of the references relied upon in Ground 2, and Exhibits 1010, 1012, 1014, 1015, and 1016 were relied upon solely to support

[2] The one exception is Exhibit 1019, which was submitted as supplemental evidence and, thus, is not cited in the Petition. Petitioner's Opposition does not address Patent Owner's arguments as to why Exhibit 1019 should be excluded. *See* Paper No. 25 at 8; Paper No. 30. Therefore, for at least that reason, the Board should exclude Exhibit 1019.

Petitioner's unsuccessful attempt to establish that Exhibits 1007 and 1008 are printed publications under 35 U.S.C. § 102. *See* Pet. at 14-20. As such, the challenged exhibits simply are not relevant to this proceeding, and, thus, should be excluded under Fed. R. Evid. 402.

Second, excluding the challenged exhibits as inadmissible would not "disservice the public" or prevent the public from accessing the exhibits. Petitioner seems to confuse "excluding" an exhibit with "expunging" or "sealing" an exhibit. Excluded exhibits are still part of the publicly accessible record – they just are not considered by the Board in rendering a final decision. As just one example, in *Toshiba Corp. v. Optical Devices, LLC,* IPR2014-01447, Paper No. 34, at 43-47 (P.T.A.B. Mar. 9, 2016) the Board excluded Exhibits 1015 and 1016 and stated that it would not consider those exhibits, yet those exhibits can still be accessed on Docket Navigator for that proceeding. Moreover, even if Board did "expunge" challenged exhibits from the publicly available record in granting a motion to exclude, the public still would be able to determine what those exhibits were from the objections to evidence, briefing on the motion to exclude, and final written decision, which are all filed, and maintained, as part of the public record.

Accordingly, Petitioner's argument that a decision to exclude the challenged exhibits would deny the public access to the exhibits – and thus would conflict

with public policy – is baseless. For similar reasons, the case law Petitioner cites in support of its argument does not support denial of Patent Owner's Motion to Exclude.

For at least the foregoing reasons and those provided in Patent Owner's Motion to Exclude (Paper No. 25), Patent Owner respectfully requests that the Board exclude from the record the evidence discussed above.

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Respectfully submitted,

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