

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and AFFIRMED NETWORKS, INC.,
Petitioners,

v.

LEMKO CORPORATION,
Patent Owner.

Case IPR2023-00529
U.S. Patent No. 7,653,414

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Patent Owner, Lemko Corporation (“Patent Owner” or “Lemko”), objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Microsoft Corporation and Affirmed Networks, Inc (“Petitioners”) in their Petition (Paper 3).

The Decision to Institute Trial was issued on September 26, 2023 for claims 1-8, 11-16, and 21 of U.S. Patent No. 7,653,414 (“the ’414 Patent”). *See* Paper 11. Thus, Patent Owner’s objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioners with these objections to provide notice that Patent Owner will move to exclude these exhibits as improper evidence.

I. PETITIONERS’ EVIDENCE

A. Exhibits 1013, 1014, and 1018

Lemko objects to the admissibility of the following exhibits for the reasons set forth herein:

- Ex. 1013 (Excerpt from “GSM Networks: Protocols, Terminology, and Implementation,” by Gummar Heine, Artech House Mobile Communications);
- Ex. 1014 (Excerpt from Newton’s Telecom Dictionary, 20th Edition); and
- Ex. 1018 (Excerpt from “WiMAX: Taking Wireless to the MAX” by Deepak Pareek).

Petitioners have failed to authenticate each of these Exhibits. Specifically, Petitioners have failed to establish that each Exhibit is what Petitioners claim it is. For example, Petitioners provide no testimony by someone possessing personal knowledge that these exhibits are authentic. Petitioners also provide no evidence that these exhibits fall within any of the self-authentication exceptions of FRE 902. Exhibits 1013, 1014, and 1018 are therefore inadmissible under FRE 901.

Furthermore, to the extent Petitioners attempt to rely on the date that appears on the face of each of these Exhibits to establish public accessibility of each Exhibit as a printed publication, those dates are hearsay under FRE 801 and do not fall within a hearsay exception under FRE 802 and FRE 803. This is because Petitioners have failed to authenticate any of these dates by which the respective Exhibits were allegedly publicly accessible. Exhibits 1013, 1014, and 1018 are not relevant under FRE 401 because they are not sufficiently relevant, and any relevance is outweighed by the risks of confusion, substantial danger of unfair prejudice, and/or misleading the fact finder. For example, in Exhibits 1013 and 1018, Petitioners have only provided out-of-context excerpts rather than the respective entire documents. For at least these reasons, Exhibits 1013, 1014, and 1018 are inadmissible under FRE 402 and 403.

Respectfully submitted,

Dated: October 11, 2023

/James Hannah/

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) constitutes electronic service, that service was made on the Petitioners as detailed below.

<i>Date of service</i>	October 11, 2023
<i>Manner of service</i>	Electronic Filing (mhopkins@winston.com; bshelton@winston.com; mrueckheim@winston.com; Winston-MSFT-Lemko-IPR@winston.com)
<i>Documents served</i>	PATENT OWNER'S OBJECTIONS TO EVIDENCE
<i>Persons Served</i>	WINSTON & STRAWN LLP Matthew Hopkins Barry K. Shelton Michael Rueckheim

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