Roy Falik

From: Best, Timothy P. <TBest@gibsondunn.com>
Sent: Wednesday, October 11, 2023 10:25 AM
To: Brian Eutermoser
Cc: Russell Blythe; Mikaela Stone; *** Webroot-Sophos; OpenText-IPR/PGR
Subject: RE: IPR2023-00731, 732

CAUTION: MAIL FROM OUTSIDE THE FIRM

Hi Brian,

With respect to Sophos's good cause argument, we will address only what the Board has specifically requested in its October 10th email. That is, Sophos did not earlier request permission to file a Reply as Sophos has been diligently working to gather the additional evidence further establishing Li as a prior art reference to the '243 and '932 patents. This work included locating and reaching out to co-authors, drafting declarations, working with librarian experts, and engaging library search firms to locate additional evidence. Sophos did not request permission to file a Reply until it had exhausted its resources and substantively finalized the evidence it intends to present to the Board.

Sophos intends to present the following evidence to the Board to establish Li as a prior art reference:

1. The declaration of librarian expert Dr. Mary K. Bolin establishing the date of public availability of Li;
2. The declaration of Cristina Abad, a co-author of Li, testifying as to her knowledge of the publication and public availability of Li, and addressing additional evidence establishing Li as a prior art reference; and
3. The declaration of Dr. Morley Mao, a co-author of a publication that cites to Li prior to the critical date, testifying as to her knowledge of the public availability of Li, and testifying that Li was locatable before the critical date.

As for logistics, Sophos would propose requesting from the Board five pages for a Reply and the same for any Sur-Reply from Webroot. We would propose a Reply deadline within three business days of the Board's authorization and any Sur-Reply seven business days thereafter.

Regards,
Tim

Timothy P. Best
Partner

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TBest@gibsondunn.com

GIBSON DUNN
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197

From: Brian Eutermoser <BEutermoser@KSLAW.com>
Sent: Tuesday, October 10, 2023 4:00 PM
To: Best, Timothy P. <TBest@gibsondunn.com>
Cc: Russell Blythe <RBlythe@KSLAW.com>; Mikaela Stone <Mikaela.Stone@KSLAW.com>; *** Webroot-Sophos <Webroot-Sophos@gibsondunn.com>; OpenText-IPR/PGR <OpenText-IPR-PGR@KSLAW.com>
Subject: RE: IPR2023-00731, 732

IPR2023-00732
Open Text Inc. EX-2017

[WARNING: External Email]

Hi Tim,

Please let us know what "good cause" argument Sophos intends to include in its email to the Board, what additional evidence Sophos intends to offer with any reply, and what page limits and schedule Sophos intends to propose for any reply and surreply.

Thanks,
Brian

From: Best, Timothy P. <TBest@gibsondunn.com>
Sent: Tuesday, October 10, 2023 9:05 AM
To: Brian Eutermoser <BEutermoser@KSLAW.com>
Cc: Russell Blythe <RBlythe@KSLAW.com>; Mikaela Stone <Mikaela.Stone@KSLAW.com>; *** Webroot-Sophos <Webroot-Sophos@gibsondunn.com>
Subject: FW: IPR2023-00731, 732

CAUTION: MAIL FROM OUTSIDE THE FIRM

Brian,

Pursuant to the Board's October 10th email, below, and Sophos's briefing filed on October 6th, please indicate whether Patent Owner opposes Sophos's request for permission to file a Reply to the POPR to provide additional evidence of the public availability of the Li Reference.

If Patent Owner opposes Sophos's request, please provide your availability for a conference should the Board request one.

Thanks,
Tim

Timothy P. Best
Partner

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GIBSON DUNN
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From: Trials <Trials@USPTO.GOV>
Sent: Tuesday, October 10, 2023 6:41 AM
To: Hershkowitz, Benjamin <BHershkowitz@gibsondunn.com>; Best, Timothy P. <TBest@gibsondunn.com>
Cc: Brian Eutermoser <BEutermoser@KSLAW.com>; Russell Blythe <RBlythe@KSLAW.com>; Mikaela Stone <Mikaela.Stone@KSLAW.com>; Trials <Trials@USPTO.GOV>
Subject: IPR2023-00731, 732

[WARNING: External Email]

Counsel,

From the Board –

Petitioner's Motion to Dismiss filed in IPR2023-00731 and -00732 (Paper 18) briefs an unauthorized issue and will be expunged. Our Order (Paper 17) authorized Petitioner to file a Motion to Dismiss but did not authorize Petitioner to brief a request to file a Reply to the POPRs in these cases. *See* Paper 17; Paper 18, 1, 4-5. "A motion will not be entered without Board authorization." 37 C.F.R. § 42.20(b).

Petitioner has **one business day** from receipt of this email to refile a revised motion to dismiss that removes all briefing of its request to file a Reply to the POPRs. The revised motion must not change or expand upon its reasoning for requesting dismissal, and may only excise the unauthorized briefing from its original motion. The revised motion also should remove "Exhibit A" as an attachment. Petitioner may file the document as a numbered exhibit in the 1001-1999 range. *See* 37 C.F.R. § 42.63 ("All evidence must be filed in the form of an exhibit.").

This order does not preclude Petitioner from separately emailing the Board to request authorization to file a Reply to the POPR. Such an email should certify that the parties have met and conferred on the issue and state whether Patent Owner opposes the request, as well as succinctly "make a showing of good cause." *See* 37 C.F.R. § 42.108(c). This "good cause" showing should briefly address Petitioner's approximately two month delay in making this request, from the filing of the POPR. The email may not contain substantive argument or any attachments.

In light of the approaching deadline to institute in these cases, Patent Owner's opposition deadline to Petitioner's motion remains Friday, October 13, 2023. We anticipate no prejudice to Patent Owner in maintaining this deadline, as Petitioner's briefing on the issue of dismissal should not change.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

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