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Paper 45
Entered: April 24, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

X1 DISCOVERY, INC.,
Patent Owner.

IPR2025-00253 (Patent 7,370,035 B2)
IPR2025-00254 (Patent 10,552,490 B2)
IPR2025-00255 (Patent 9,633,139 B2)[1]

Before WILLIAM V. SAINDON, SCOTT C. MOORE, and LISA A. MURRAY, *Administrative Patent Judges.*

MURRAY, *Administrative Patent Judge*.

ORDER
Denying Motion to Strike Exhibit 2027
37 C.F.R. § 42.71(a)

On April 10, 2026, Petitioner Microsoft emailed the Board to request authorization to file a motion to strike Exhibit 2027 and related portions of

[1] The parties are not authorized to use this heading in any subsequent papers.

Patent Owner's Sur-Reply Brief in each of IPR2025-00253, IPR2025-00254, and IPR2025-00255. *See* Ex. 3005.[2] The Board authorized Petitioner to file the motion and Patent Owner to file a reply. *Id.*; Paper 42 (mot.); Paper 43 (mot. reply). Having reviewed the papers filed, we deny Petitioner's motion to strike, but limit the purposes for which Exhibit 2027 may be used.

Exhibit 2027 is a document that was introduced for the first time during the deposition of Petitioner's expert, Dr. Terveen. It purports to identify database size limits for various versions of Microsoft Entourage. Dr. Terveen was questioned about the exhibit and testified extensively about it. Consequently, the deposition transcript (Exhibit 2026), which no party has asked to have stricken from the record, would be unclear if the document being discussed by the witness were not included in the record for reference purposes. The portions of the Sur-Reply that reference Dr. Terveen's deposition testimony would be similarly unclear.

Given the fact that Patent Owner did not produce Exhibit 2027 until mid-deposition, however, we determine that its only permissible use is as a deposition exhibit, to clarify and provide context for Dr. Terveen's testimony. Our trial practice rules provide that "[a] sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." 37 C.F.R. § 42.23(b). Exhibit 2027 was submitted for the first time with Patent Owner's Sur-Reply Brief. For that reason, it may be used only as an aid to understanding Dr. Terveen's

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[2] This order refers to papers and exhibits filed in IPR2025-00254. Equivalent documents have been filed in IPR2025-00253 and IPR2025-00255.

deposition testimony and may not be used or cited separately to support Patent Owner's arguments. For example, it may not be cited as affirmative evidence of the maximum size of an Entourage database. With this limitation, Exhibit 2027 and the portions of the Sur-Reply that refer to it will remain in the record.

ORDER

Accordingly, it is:

ORDERED that Petitioner's Motion to Strike Exhibit 2027 is denied.

IPR2025-00253 (Patent 7,370,035 B2)
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