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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.
Petitioner

v.

PRESIDENT & FELLOWS OF HARVARD COLLEGE
Patent Owner

Case No. IPR2017-00664
U.S. Patent 8,334,016

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner hereby objects to the following evidence submitted by Petitioner with its Reply filed in IPR2017-00664 on January 30, 2018. These objections are being timely filed pursuant to 37 C.F.R. § 42.64(b)(1).

Patent Owner objects to Exhibits 1064 and 1067 on the ground that Petitioner has failed to establish the relevance of these exhibits pursuant to FRE 401-402 as Petitioner fails to demonstrate that either exhibit is prior art under pre-AIA § 102.

Patent Owner objects to Exhibits 1061 and 1064-1071 pursuant to FRE 401-402 as Petitioner's Reply neither cites to nor discusses these exhibits. Patent Owner additionally objects to Exhibits 1061 and 1064-1071 as an improper incorporation by reference pursuant to 37 C.F.R. §42.6(a)(3) because they are only cited in the Dr. Banerjee's Reply Declaration (Exhibit 1060). *See e.g., Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 7-9 (PTAB August 29, 2014) (informative) (holding that using footnotes in a petition to refer to portions of another document, without sufficient explanation of those portions, amounts to incorporation by reference); *citing DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999) (Incorporation "by reference amounts to a self-help increase in the length of the [] brief[,] and "is a pointless imposition on the court's time. A brief

must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.”)

Patent Owner also objects to Exhibit 1067 pursuant to FRE 401-402 as the Petitioner’s Reply does not specifically cite to any paragraph of Dr. Banerjee’s Reply Declaration (Exhibit 1060) that refers to this exhibit. *See Dominion Dealer Solutions, LLC v. Autoalert, Inc.*, IPR2013-00225, Paper 15 at 4 (PTAB Oct. 10, 2013) (It is Petitioner’s responsibility “to explain specific evidence that support its arguments, not the Board’s responsibility to search the record and piece together what may support Petitioner’s arguments.”).

Patent Owner objects to Exhibits 1061 and 1064-1071 on the ground of lack of foundation as Petitioner has failed to provided sufficient explanation of what each exhibit is or what it allegedly shows as none of these exhibits have been cited or discussed in the Petition. Additionally, Patent Owner objects to Exhibit 1067 on the ground of lack of foundation as Petitioner’s Reply does not cite to any paragraph of Dr. Banerjee’s Reply Declaration (Exhibit 1060) that refers to this exhibit.

Paragraphs 1-4, 21-74, 79, 90, 94-96, and 100 of Dr. Banerjee’s Reply Declaration (Exhibit 1060) do not appear to have been cited in Petitioner’s Reply. Patent Owner objects to the admission of uncited portions of Exhibit 1060 in Petitioner’s Reply pursuant to FRE 401-402 on the ground that Dr. Banerjee’s

Reply Declaration is an omnibus declaration directed to three proceedings (IPR2017-00662, -00663, and -00664) involving two different patents (U.S. Patent Nos. 6,969,539 and 8,334,016). *See Dominion Dealer Solutions, LLC v. Autoalert, Inc.*, IPR2013-00225, Paper 15 at 4 (PTAB Oct. 10, 2013) (It is Petitioner’s responsibility “to explain specific evidence that support its arguments, not the Board’s responsibility to search the record and piece together what may support Petitioner’s arguments.”) and *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,763 (Aug. 14, 2012) (Petitioners should “avoid submitting a repository of all the information that a judge could possibly consider, and instead focus on concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence of record.”).

Patent Owner reserves the right to present further objections to these or additional exhibits submitted by Petitioner, as allowed by the applicable rules or other authority.

Dated: February 6, 2018

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2018, a true and accurate copy of this paper, PATENT OWNER'S OBJECTIONS TO EVIDENCE, was served on the following counsel for Petitioner via email:

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Dated: February 6, 2018

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