

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC.

Petitioner

v.

VIDSTREAM, LLC

Patent Owner

Case IPR2017-00830
U.S. Patent No. 9,083,997
(Claims 20-35)

PATENT OWNER'S EVIDENTIARY OBJECTIONS

PURSUANT TO 37 C.F.R. § 42.64

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner, VidStream, LLC, respectfully asserts the following objections to the evidence proffered with Petitioner's Reply filed August 10, 2018 ("Reply"). These objections are being provided within five business days from the date of service of the Reply, and are thus timely pursuant to 37 C.F.R. § 42.64(b)(1). The Federal Rules of Evidence (FRE) apply to these proceedings according to the provisions of 37 C.F.R. § 42.62(a), and these rules form the basis of the objections contained herein.

Ex. Number and Petitioner Description	Objections
1034. Deposition Exhibit	<u>Relevance</u> . Fed. R. Evid. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice and/or a waste of time, particularly because this exhibit is not cited in Petitioner's Reply or in any declaration paragraph cited in Petitioner's Reply.
1035. Deposition Transcript of Dr. James Olivier	<u>Relevance</u> . Fed. R. Evid. 401-403. To the extent Petitioner relies on testimony in this exhibit concerning an opinion not rendered or reasonably related to an opinion rendered in Ex. 2008, such testimony is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403.
1036. Reply Declaration of Dr. Kevin C. Almeroth Under 37 C.F.R. § 1.68	<u>Hearsay</u> . Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters

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	<p>described therein, the statements are hearsay, for example at:</p> <ul style="list-style-type: none"> • ¶ 14 (citing Ex. 1044 and relying on Ex. 1044 as providing a purported technical definition); • ¶ 16 (citing Ex. 1046 and relying on Ex. 1046 as purportedly demonstrating that “A link has a clear meaning to those experienced with web design and HTML”); and • ¶ 16 (citing Ex. 1047 and relying on Ex. 1047 as purportedly demonstrating that “the ‘src’ attribute in an iframe tag” is not a link). <p>Petitioner has not offered evidence sufficient to demonstrate that the exhibit, or documents cited and quoted therein, fall within any exception to the rule against hearsay.</p> <p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice and a waste of time, particularly because: (1) it is inadmissible under FRE 801 and 802 as explained above, and (2) Dr. Almeroth’s reliance upon inadmissible and unreliable evidence in an attempt to demonstrate lack of novelty renders the opinions expressed therein unreliable. <i>See</i>, for example, ¶ 14 (reliance upon Ex. 1044); ¶ 16 (reliance upon Ex. 1046); ¶ 16 (reliance upon Ex.</p>

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	<p>1047); ¶¶ 16, 19, 22 (reliance upon Ex. 1010).</p> <p><u>Untimely.</u> Patent Owner also objects to Exhibit 1036 as untimely to the extent Petitioner relies upon any opinions disclosed in Exhibit 1036 that were not disclosed in Dr. Almeroth's earlier declaration, Exhibit 1007. Any such additional or supplemental opinions are untimely and unauthorized. 37 C.F.R. § 42.123.</p>
<p>1041. Certificate of Registration, Registration Number TX 7-482-555, January 18, 2012, HTML5 Mastery</p>	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is a true and correct copy of what Petitioner purports it to be.</p> <p><u>Hearsay.</u> Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay: <i>e.g.</i>, that Ex. 1041 "confirm[s] [Bradford's] publication in November 2011," that Ex. 1041 "confirm[s] [Bradford's] publication in November 2011," or that "the copy of Bradford that was submitted with its copyright registration was transferred to the Library of Congress." <i>See</i> Reply at pages 17 and 18. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and</p>

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	<p>thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, (2) the document contains no information whatsoever that could demonstrate that either of Exhibit 1010 (Bradford) or Exhibit 1042 was published prior to the critical date of the '997 patent, and (3) the document contains no information whatsoever that could demonstrate that “the copy of Bradford that was submitted with its copyright registration was transferred to the Library of Congress” (Reply at 18).</p> <p><u>Untimely.</u> To the extent that Exhibit 1042 is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123; <i>see also Dropbox, Inc. v. Synchronoss Tech., Inc.</i>, IPR2016-00851, slip op. at 19 (PTAB Oct. 5, 2017) (Paper 40).</p>
1042. “HTML5 Mastery Semantics, Standards, and Styling,” by Bradford et al. (obtained from Library of Congress)	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is a true and correct copy of what Petitioner purports it to be.</p> <p><u>Hearsay.</u> Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements by Petitioner are hearsay: <i>e.g.</i>, that Exhibit</p>

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	<p>1042 represents the Library of Congress's copy of "Bradford," or that "pages 157-163 and 284 . . . of Exhibit 1042 are identical to those in Bradford's '2015 Version.'" <i>See</i> Reply at 18-19. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, (2) Petitioner has not provided any evidence or sworn testimony linking this document to any copy of "HTML5 Mastery Semantics, Standards, and Styling," by Bradford et al. obtained by the Library of Congress (or any other library) prior to the critical date of the '997 patent, (3) this document is different from Exhibit 1010 relied on in the petition, and it is also different from the document that Exhibit 1010 was excerpted from, (4) the statements contained on the first page of Exhibit 1042 fail to make a fact more or less probable than it would be without the document, and otherwise lacks relevance, and (5) Petitioner has not shown the exhibit to be prior art or otherwise a reliable reference.</p> <p>Further, Petitioner falsely alleges that Exhibit 1042 is a "copy" of "Bradford,"</p>

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	<p>which was defined in the Petition as corresponding to Exhibit 1010. <i>See</i> Reply at 18; <i>see also</i> Petition at 4-5. Petitioner and its expert asserted and relied upon Exhibit 1010, not Exhibit 1042. The order instituting trial authorizes <i>Inter Partes</i> Review only on the basis of Exhibit 1010. Exhibit 1010 and Exhibit 1042 are not identical, and Petitioner has not alleged that they are. There is no actual evidence that the document filed as Exhibit 1042 is the same document received by the United States Copyright Office (<i>see</i> Ex. 1041) or made available to persons of ordinary skill in the art in a manner sufficient to render it a “publication.” Also, there is no evidence or testimony that Exhibit 1042 is the same document as Exhibit 1010. For all these reasons, Exhibit 1042 is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403.</p> <p><u>Foundation.</u> Fed. R. Evid. 601 & 37 C.F.R. § 42.65. Petitioner has not introduced evidence sufficient to support a finding that any statement or attestation by Diedre Scott on the first page of Exhibit 1047 is based on personal knowledge. For example, Petitioner has not introduced any evidence sufficient to support a finding that Ms. Scott personally located and scanned the remainder of Exhibit 1042. Furthermore, despite the attestation found on the first page of Exhibit 1042, this attestation is not “evidence” because it fails to contain an</p>

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	<p>oath or affirmation to testify truthfully pursuant to Fed. R. Evid. 603.</p> <p><u>Untimely</u>. To the extent that Exhibit 1042 is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123; <i>see also Dropbox, Inc. v. Synchronoss Tech., Inc.</i>, IPR2016-00851, slip op. at 19 (PTAB Oct. 5, 2017) (Paper 40).</p>
1043. Declaration of Raghav Bajaj	<p><u>Hearsay</u>. Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay, for example at ¶ 5 (stating that “[t]he content of pages 157-163 and 284 of Exhibit 1010 and pages 157-163 and 284 of Exhibit 1042 is identical”).</p> <p><u>Relevance</u>. Fed. R. Evid. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice and a waste of time, particularly because: (1) FRE 801 and 802; (2) neither Petitioner nor Mr. Raghav has demonstrated that either of Exhibits 1010 or 1042 are prior art to the ’997 Patent, (3) Mr. Raghav does not compare the entirety of Exhibit 1042 to the document that Exhibit 1010 was excerpted from (indeed, that document is not relied upon by Petitioner), and (4) because Mr. Raghav does not describe his any methodology or</p>

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	<p>steps he took to confirm the statements in his declaration.</p> <p><u>Opinion Testimony by Lay Witness.</u> Fed. R. Evid. 701(c). This exhibit contains impermissible expert opinion testimony by a lay witness to the extent that the opinions expressed therein require scientific, technical, or other specialized knowledge within the scope of Rule 702; for example, at ¶ 5 (stating that “[t]he content of pages 157-163 and 284 of Exhibit 1010 and pages 157-163 and 284 of Exhibit 1042 is identical”). Neither Petitioner nor Mr. Bajaj has established that he is qualified to offer opinion testimony as to the content of documents, or what steps he undertook to form opinions about such documents.</p> <p><u>Foundation.</u> Fed. R. Evid. 601 & 37 C.F.R. § 42.65. Petitioner has not introduced evidence sufficient to support a finding that Mr. Bajaj has personal knowledge of the matters asserted. For example, Petitioner has not introduced evidence sufficient to support a finding that Mr. Bajaj has sufficient personal knowledge of the contents of Exhibits 1010 and 1042.</p> <p><u>Untimely.</u> To the extent that Exhibit 1042 is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123; <i>see also Dropbox, Inc. v. Synchronoss Tech., Inc.</i>, IPR2016-00851, slip op. at 19 (PTAB Oct. 5, 2017) (Paper 40).</p>

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1044. Microsoft Computer Dictionary (excerpts)	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is a true and correct copy of what Petitioner purports it to be.</p> <p><u>Hearsay.</u> Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay: <i>e.g.</i>, that certain terms have a definition in a technical dictionary. <i>See</i> Reply at 4, and Exhibit 1036 at ¶ 14. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, and (2) Petitioner has not shown the exhibit to be prior art or otherwise a reliable reference.</p> <p><u>Untimely.</u> To the extent that Exhibit 1044 is relied upon to support the grounds for rejection, Petitioner's submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.</p>
1046. HTML a tag, https://www.w3schools.com/tags/tag_a.asp	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this</p>

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	<p>exhibit is a true and correct copy of what Petitioner purports it to be.</p> <p><u>Hearsay</u>. Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay: <i>e.g.</i>, that “A link has a clear meaning to those experienced with web design and HTML: it is an anchor tag, i.e., an ‘<a>’ tag with an ‘href’ attribute that specifies the URL of the page that the link goes to.” <i>See</i> Exhibit 1036 at ¶ 16. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance</u>. Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, and (2) Petitioner has not shown the exhibit to be prior art or otherwise a reliable reference.</p> <p><u>Untimely</u>. To the extent that Exhibit 1046 is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.</p>
1047. HTML iframe tag, https://www.w3schools.com/ tags/tag_iframe.as	<p><u>Authentication</u>. Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this</p>

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	<p>exhibit is a true and correct copy of what Petitioner purports it to be.</p> <p><u>Hearsay</u>. Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay: <i>e.g.</i>, that “a POSITA would not have interpreted a value in a ‘src’ attribute of an iframe tag to correspond to a ‘link,’” and that “[i]f the href attribute is not present, the <a> tag is not a hyperlink.” See Exhibit 1036 at ¶ 16. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance</u>. Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, and (2) Petitioner has not shown the exhibit to be prior art or otherwise a reliable reference.</p> <p><u>Untimely</u>. To the extent that Exhibit 1047 is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.</p>

Dated: August 17, 2018

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/Eagle H. Robinson/

Eagle H. Robinson (Reg. No. 61,361)

Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on August 17, 2018, complete copies of VidStream LLC's Evidentiary Objections Pursuant to 37 C.F.R. § 42.64 were served on the following:

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via email (by consent), as follows:

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