UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,

Petitioner,

v.

DIGIMEDIA TECH, LLC,

Patent Owner.

U.S. Patent No. 6,473,532
Case No. IPR2022-01182

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Unified Patents, LLC submits the following objections to the exhibits filed by Patent Owner DigiMedia Tech, LLC on April 28, 2023, with Patent Owner's Response (Paper 10, "POR"). Petitioner's objections apply equally to Patent Owner's reliance on these exhibits in any subsequently-filed documents, and Petitioner's objections to a particular exhibit apply to any other exhibits relying upon the objected-to exhibit. These objections are timely, having been filed within five business days of service of evidence to which the objection is directed. 37 C.F.R. § 42.64(b)(1). Petitioner may file a motion to exclude, pursuant to 37 C.F.R. § 42.64(c), that would request that the Board deny the admission and consideration of the objected to documents.

Petitioner objects to the following exhibits:

PATENT OWNER'S EXHIBITS	
2001	Merriam-Webster's Dictionary, "detail," *available at* https://www.merriam-webster.com/dictionary/detail
2002	Merriam-Webster's Dictionary, "separate," *available at* https://www.merriam-webster.com/dictionary/separate
2003	Image Processing in MATLAB – Fourier Analysis and Filtering of Images, Laboratory No. 3 Solutions, ECE 447, Fall Course, School of Electrical and Computer Engineering, Rutgers University, *available at* https://web.ece.ucsb.edu/Faculty/Rabiner/ece259/image_processing_labs/lab3_solution.pdf.
2004	R. Santhoshkumar, et al., "Activity Based Human Emotion Recognition in video," International Journal of Pure and Applied

PATENT OWNER'S EXHIBITS	
	Mathematics, Vol. 117, No. 15, 2017, p. 1185, *available at* https://www.researchgate.net/publication/327743831_Activity_Based_Human_Emotion_Recognition_in_video

I. Exhibit 2001

Petitioner objects to Exhibit 2001 under Federal Rules of Evidence ("FRE") 401, 402, and 403 as irrelevant, prejudicial, and confusing. Patent Owner cites Exhibit 2001, a Merriam-Webster's Dictionary entry for the term "detail" bearing a copyright date of 2023, in an attempt to show the ordinary and plain meaning of the claim term. POR, 11. Patent Owner fails to provide any evidence or argument as to how a 2023 definition is relevant to an IPR challenging a patent with a claimed priority date of January 23, 2000. *Compare* Exhibit 1001 ("'532 patent"), p. 1, *with* Exhibit 2001, 15. For example, Patent Owner has not produced any explanation or evidence sufficient to support a finding that the definition in Exhibit 2001 is the same as would have been understood by a person of ordinary skill in the art at the time of the invention. Thus, Exhibit 2001 is irrelevant, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc).

Petitioner also objects to Exhibit 2001 as constituting hearsay under FRE 801 that is inadmissible under FRE 802, as Patent Owner appears to be attempting to rely on this document for the truth of the matter asserted within it.

Finally, Petitioner objects to this exhibit under FRE 901(a) as being an unauthenticated document that is not self-authenticating under FRE 902, and Patent Owner has not submitted any authenticating declaration explaining what the exhibit is, how it was acquired, or how it was made.

II. Exhibit 2002

Petitioner objects to Exhibit 2002 under FRE 401, 402, and 403 as irrelevant, prejudicial, and confusing. Patent Owner cites Exhibit 2002, a Merriam-Webster's Dictionary entry for the term "separate" bearing a copyright date of 2023, in an attempt to show the ordinary and plain meaning of the claim term. POR, 15. Patent Owner fails to provide any evidence or argument as to how a 2023 definition is relevant to an IPR challenging a patent with a claimed priority date of January 23, 2000. *Compare* Exhibit 1001, p. 1, *with* Exhibit 2002, 17. Thus, Exhibit 2002 is irrelevant, prejudicial, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . to a person of ordinary skill in the art in question at the time of the invention." *Phillips* at 1313.

Petitioner also objects to Exhibit 2002 as constituting hearsay under FRE

801 that is inadmissible under FRE 802, as Patent Owner appears to be attempting to rely on this document for the truth of the matter asserted within it.

Finally, Petitioner objects to this exhibit under FRE 901(a) as being an unauthenticated document that is not self-authenticating under FRE 902, and Patent Owner has not submitted any authenticating declaration explaining what the exhibit is, how it was acquired, or how it was made.

III. Exhibit 2003

Petitioner objects to Exhibit 2003 under FRE 401, 402, and 403 as irrelevant, prejudicial, and confusing. Patent Owner cited Exhibit 2003 to support its construction of the claimed "spatially and temporally separating . . . details of said frames." POR, 12-13. Exhibit 2003 is not dated and Patent Owner offers no evidence or argument to establish the date of this document. Thus, Exhibit 2003 is irrelevant, prejudicial, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . to a person of ordinary skill in the art in question at the time of the invention." *Phillips* at 1313.

Petitioner also objects to Exhibit 2003 as constituting hearsay under FRE 801 that is inadmissible under FRE 802, as Patent Owner appears to be attempting to rely on this document for the truth of the matter asserted within it.

Finally, Petitioner objects to this exhibit under FRE 901(a) as being an

unauthenticated document that is not self-authenticating under FRE 902, and Patent Owner has not submitted any authenticating declaration explaining what the exhibit is, how it was acquired, or how it was made.

IV. Exhibit 2004

Petitioner objects to Exhibit 2004 under FRE 401, 402, and 403 as irrelevant, prejudicial, and confusing. Patent Owner cited Exhibit 2004, a journal article dated 2017, to support its construction of the claimed "spatially and temporally separating . . . details of said frames." POR, 14-15. Patent Owner fails to provide any evidence or argument as to how a 2017 article is relevant to an IPR challenging a patent with a claimed priority date of January 23, 2000. . *Compare* Exhibit 1001, p. 1, *with* Exhibit 2004, 1185. Thus, Exhibit 2004 is irrelevant, prejudicial, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . to a person of ordinary skill in the art in question at the time of the invention."[1] *Phillips* at 1313.

[1] Footnote 3 of the POR alleged that "Richard Almond, *Open CV Processing 2 - Absolute Difference*, VIMEO (June 4, 2009), https://vimeo.com/4998215" provides additional context for Exhibit 2004. As Patent Owner has admitted, the vimeo.com webpage postdates the '532 patent and therefore has the same defect as Exhibit 2004.

Petitioner also objects to Exhibit 2004 as constituting hearsay under FRE 801 that is inadmissible under FRE 802, as Patent Owner appears to be attempting to rely on this document for the truth of the matter asserted within it.

Finally, Petitioner objects to this exhibit under FRE 901(a) as being an unauthenticated document that is not self-authenticating under FRE 902, and Patent Owner has not submitted any authenticating declaration explaining what the exhibit is, how it was acquired, or how it was made.

Date: May 5, 2023

Respectfully submitted,

/Trenton A. Ward/
Trenton A. Ward
Reg. No. 59,157

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing **PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS** was served on May 5, 2023, via email directed to counsel of record for Patent Owner at the following:

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Dated: May 5, 2023

By: /Lisa C. Hines/
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