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 MOTION TO EXCLUDE EVIDENCE

Petitioner submits this motion pursuant to 37 C.F.R. §§ 42.62 and 42.64(c) and in accordance with Due Date 5 of the Revised Scheduling Order (Paper 8). Petitioner requests exclusion of the entirety of Exhibits 2001, 2002, 2003, and 2004. Petitioner timely objected to all of these exhibits through written Objections to Evidence, submitted on May 5, 2023 (Paper 11).

Specifically, Petitioner moves to exclude 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 Mathematics, Vol. 117, No. 15, 2017, p. 1185, *available at* https://www.researchgate.net/publication/327743831_Activity_Based_Human_Emotion_Recognition_in_video

The Federal Rules of Evidence (FRE) govern the admissibility of evidence in *inter partes* review proceedings. 37 C.F.R. § 42.62. As shown herein, the challenged exhibits are in violation of FRE 401, 402, and 403 as irrelevant,

prejudicial, and confusing. Accordingly, the Board should exclude the objected-to exhibits in their entirety for the reasons that follow.

I. Exhibit 2001

The Federal Rules of Evidence apply to this proceeding. See 37 C.F.R. § 42.62. The Board may exercise its discretion to exclude evidence entirely, or alternatively, may decline to consider evidence. *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 79, 3 (PTAB Aug. 9, 2013). According to FRE 401 "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FRE 401. "Relevancy is not an inherent characteristic of any item of evidence." FRE 401 Notes of Advisory Committee. "The standard of probability under the rule is 'more probable than it would be without the evidence.'" *Id*. According to FRE 402, "[i]rrelevant evidence is not admissible." FRE 402. FRE 403 adds that relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." FRE 403.

Petitioner moves to exclude 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. Patent Owner Response ("POR")(Paper 10), 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, almost twenty-three years earlier. *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 almost twenty-three years earlier. Thus, Exhibit 2001 is irrelevant, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). Therefore, Exhibit 2001 should be excluded as lacking relevance to any issue in this proceeding, because any minimal probative value of this exhibit is substantially outweighed at least by a danger of confusing the issues. *See* FRE 403.

II. Exhibit 2002

Petitioner moves to exclude 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, almost twenty-three years earlier. *Compare* Exhibit 2001, p. 1, *with* Exhibit 2002, 17. Similar to Exhibit 2001, Exhibit 2002 is irrelevant, prejudicial, confusing, and would be improperly considered in the evaluation of "the ordinary and customary meaning of a claim term . . . at the time of the invention." *Phillips* at 1313. Therefore, Exhibit 2002 should be excluded as lacking relevance to any issue in this proceeding, because any minimal probative value of this exhibit is substantially outweighed at least by a danger of confusing the issues. *See* FRE 403.

III. Exhibit 2003

Petitioner moves to exclude 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. Therefore, similar to Exhibits 2001-2002, Exhibit 2003 should be excluded as lacking relevance to any issue in this proceeding, because any minimal probative value of this exhibit is substantially outweighed at least by a danger of confusing the issues. *See* FRE 403.

IV. Exhibit 2004

Petitioner moves to exclude 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, almost seventeen years earlier. *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. Therefore, similar to

[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

Exhibit 2001-2003, Exhibit 2004 should be excluded as lacking relevance to any issue in this proceeding, because any minimal probative value of this exhibit is substantially outweighed at least by a danger of confusing the issues. *See* FRE 403.

V. CONCLUSION

For the foregoing reasons, Exhibits 2001, 2002, 2003, and 2004 do not meet the threshold for admissibility and should be excluded from the record.

Date: September 29, 2023

Respectfully submitted,

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

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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.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing **PETITIONER'S MOTION TO EXCLUDE** was served on September 29, 2023, via email directed to counsel of record for Patent Owner at the following:

Warren J. Thomas
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Lawrence A. Aaronson
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Dated: September 29, 2023

By: */s/* Trenton A. Ward
Trenton A. Ward