

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,
Petitioner,

v.

DigiMedia Tech, LLC,
Patent Owner.

Case IPR2022-01182
Patent 6,473,532

PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Merriam-Webster's Dictionary, "detail," <i>available at</i> https://www.merriam-webster.com/dictionary/detail
2002	Merriam-Webster's Dictionary, "separate," <i>available at</i> 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, <i>available at</i> 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, <i>available at</i> https://www.researchgate.net/publication/327743831_Activity_Based_Human_Emotion_Recognition_in_video
2005	Merriam-Webster's Dictionary, "detail," captured by Internet Archive Wayback Machine, May 29, 2006, <i>available at</i> https://web.archive.org/web/20060529102042/https://www.merriam-webster.com/dictionary/detail
2006	Merriam-Webster's Dictionary, "separate," captured by Internet Archive Wayback Machine, Dec. 23, 2005, <i>available at</i> https://web.archive.org/web/20051223182403/https://www.merriam-webster.com/dictionary/separate
2007	Webster's New Universal Unabridged Dictionary (Barnes and Noble Books 1992) (1989)
2008	Declaration of Meg Cogburn dated Oct. 6 2023

I. INTRODUCTION

Patent Owner DigiMedia Tech, LLC (DigiMedia) respectfully submits this opposition to Petitioner’s Motion to Exclude evidence, Paper 19. Petitioner moves to exclude four exhibits under F.R.E. 401, 402, and 403 for essentially the same reasons—that the evidence are either undated or post-date the priority date of the challenged patent, so that they are supposedly irrelevant to any issues. And after arguing the exhibits are irrelevant, Petitioner simply asserts, without analysis, that the Board would be in such danger of unfair prejudice and confusion of the issues as to outweigh whatever probative value they have. The Petitioner’s repetitive and conclusory arguments discount the Board’s sophistication and fail to carry its burden to show the evidence should be excluded.

II. ARGUMENT

As the moving party, Petitioner “has the burden of proof to establish that it is entitled to the requested relief.” 37 C.F.R. § 42.20(c).

Petitioner’s evidentiary challenges all present the oft-asserted trio of objections based on relevance, Rules 401 through 403. Evidence is relevant and generally admissible if it has “any tendency to make a fact more or less probable” and that fact has some “consequence” to the action. F.R.E. 401, 402. But even relevant evidence “may”—not *must*—be excluded where “its probative value is

substantially outweighed by a danger” of unfair prejudice or confusing the issues.¹

“‘Unfair prejudice’ ... means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” Rule 403 Advisory Committee Note; *see also* 22A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 5216 (2d ed. 1995) (noting that “writers have found it difficult to distinguish [the] countervailing harm [of “confusing the issues”] from others in Rule 403”).

The Board’s “general approach” when a party challenges the admissibility—and particularly the relevance—of evidence was outlined in the *Corning* case: “[T]he Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to evidence presented,” such that the Board can simply assign little or no weight to evidence, “[r]ather than excluding” it. *Pelican Biothermal, LLC v. VA-Q-TEC AG*, PGR2021-00085, Paper 35, 30–31 (June 16, 2023) (citing *Corning Inc. v. DSM IP Assets B.V.*, IPR2013-00053, Paper 66, 19 (May 1, 2014)) (explaining that “public policy” and pragmatic reasons guide to Board to the “better course” admitting instead of excluding such

¹ There are other dangers addressed by Rule 403, but Petitioner does not raise them with respect to these exhibits.

evidence).² Thus, there is “little danger of unfair prejudice” or confusion when the Board is the fact-finder. *Intri-Plex Techs., Inc. v. Saint-Gobain Performance Plastics Rencol Ltd.*, IPR2014-00309, Paper 83, 17 (Mar. 23, 2015) (denying exclusion under FRE 403).

First, the Petitioner argues that the dictionary definitions of the words *detail* and *separate* in **Exhibits 2001 and 2002** are irrelevant because the Merriam-Webster’s Dictionary websites that comprise the exhibits are dated 2023, rather than around the 2000 invention date. Notably, Petitioner does *not* argue—or cite any evidence to suggest—that the meanings of these common words have changed since the date of invention.

Those definitions have *not* materially changed in that time. Exhibits 2005 and 2006 are captures of the pages from the Merriam-Webster online dictionary from much closer to the invention date. Ex. 2005 (definition of “detail” captured May 29, 2006); Ex. 2006 (definition of “separate” captured Dec. 23, 2005). They

² See also *K-40 Electronics, LLC v. Escort Inc.*, IPR2013-00203, Paper 46, 6 (Aug. 27, 2014) (Ward, J.) (“There is a strong public policy for making all information filed in a non-jury, quasi-judicial administrative proceeding available to the public, especially in an [IPR] which determines the patentability of claim in an issued patent.”).

show that the definitions of *detail* and *separate* did not change in the Mirriam-Webster dictionary between 2006 and 2023. And a different dictionary that *predates* the patent includes definitions that are similar to those cited in DigiMedia’s original exhibits. Ex. 2007, 5, 7 (highlighting similar definitions in 1992 Webster dictionary).

In any case, Petitioner cites no authority for its proposition that party cannot rely on a dictionary definition unless it “*is the same* as would have been understood by a person of ordinary skill in the art at the time of the invention.” Paper 19, 3. The Federal Circuit has explained, “[d]ictionaries ... *may always be relied on* ... to determine the meaning of the claim terms ‘so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.’” *Kopykake Enterprises, Inc. v. Lucks Co.*, 264 F.3d 1377, 1382 (Fed. Cir. 2001) (emphasis added). Here, the cited definitions do not contradict anything in the patent, and there is no reason to believe that they have materially changed in the years since the invention date.

Exhibits 2003 and 2004 should not be excluded for similar reasons. First, DigiMedia’s brief emphasized that these documents were cited and used to explain and “illustrate” the “effect” of using the patented technology, not as evidence of the level of skill in the art at the time of the invention. Paper 10, 12–13, 13 n.2, 14–15 (“These examples merely illustrate the different *spatial* and *temporal* separations

of frames that can be performed, consistent with the description and use of those terms in the ‘532 patent.”). That Exhibits 2003 and 2004 are undated or post-date the invention does not remove their relevance because they are evidence of the state of the art *with* the invention. Petitioner uses these exhibits not as substantive extrinsic evidence of any claim term’s meaning, but merely examples to help visualize the use of the techniques taught and claimed by the patent. The Board can appropriately weigh this evidence without excluding it. *See Resi Media, LLC v. BoxCast Inc.*, IPR2022-00067, 45 (Apr. 12, 2023) (Cygan, J.) (“The date of a document (or lack thereof) goes to the weight to be given to evidence, rather than its admissibility.”).

Finally, Petitioner’s Reply to the Patent Owner’s Response also illustrates why the Board should not exclude any post-priority date documents here. In its Reply, Petitioner argued its view of the significance and applicability of each exhibit (on the merits), including arguing that they should be given little if any weight. *E.g.*, Paper 12, 5. But the authority Petitioner cites in its Reply to support its weight argument is an order *denying* the a motion to exclude (by the same petitioner) similarly post-invention dated materials. *Id.* (citing *Unified Patents, LLC v. DivX, LLC*, IPR2019-01379, Paper 52, 56-57 (Feb. 8, 2021) (denying

motion to exclude, finding exhibits “meet the threshold for relevance” even if their timing “diminishes” the weight)).³

The Board should deny the motion to exclude in full.

Respectfully submitted,

/Warren Thomas/

Warren J. Thomas (Reg. No. 70,581)

³ Petitioner’s argument to exclude under Rule 403 also “lacks particularity as to the potential unfair prejudice [or confusion of issues] posed by admission of these particular Exhibits,” which further weighs in favor of denying the motion under that basis. *See Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, IPR2021-00880, Paper 89, 20 (Nov. 9, 2022) (denying motion to exclude).

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4) and consent of the Petitioner, I certify that on October 6, 2023, a copy of Patent Owner's Opposition to Petitioner's Motion to Exclude was served on the counsel of record by email to:

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