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 REPLY TO MOTION TO EXCLUDE EVIDENCE

On May 5, 2023, Petitioner timely objected to Patent Owner's Exhibits 2001, 2002, 2003, and 2004. Paper 11. Patent Owner did not respond to those objections.

On Sept. 29, 2023, Petitioner filed a Motion to Exclude Evidence (Paper 19, "Motion to Exclude"), seeking the exclusion of the entirety of Exhibits 2001, 2002, 2003, and 2004. The Federal Rules of Evidence (FRE) govern the admissibility of evidence in *inter partes* review proceedings.. As established in Petitioner's Motion to Exclude, the challenged exhibits are in violation of FRE 401, 402, and 403 as irrelevant, prejudicial, and confusing.

On Oct. 6, 2023, Patent Owner filed an Opposition to the Motion to Exclude (Paper 20, "Opposition") and, for the first time, filed supplemental evidence, Exhibits 2005-2008. Patent Owner's submission of supplemental evidence was untimely and improper. Furthermore, Patent Owner's Opposition fails to rebut the clear basis for exclusion set forth in the Motion to Exclude. Accordingly, Exhibits 2001-2008 should be excluded from the record.

I. Exhibits 2005-2008: Untimely and Improper Supplemental Evidence

Patent Owner's submission of supplemental evidence was untimely and improper. The Board's Trial Rules clearly establish that "[t]he party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the

objection." 37 C.F.R. § 42.62(b)(2) ("Supplemental Evidence"). Petitioner's objections on May 5, 2023 set a 10 day window for Patent Owner to respond with supplemental evidence. Patent Owner failed to respond to the objections. Now, **Patent Owner introduces its supplemental evidence, Exhibits 2005-2008, more than 5 months after the objections were raised**. Patent Owner ignores the Board's rules and does not offer any explanation or justification as to why these untimely exhibits should now be considered. Accordingly, Exhibits 2005-20008 should be excluded from the record.

II. Exhibits 2001-2002

Petitioner moved to exclude the dictionary definitions set forth in Exhibits 2001 and 2002 because, among other reasons, they are dated in 2023, 23 years after the 2000 invention date. Paper 19, 2-4. Patent Owner argues that "Petitioner does not argue—or cite any evidence to suggest—that the meanings of these common words have changed since the date of invention." Opposition, 5. Contrary to Patent Owner's arguments, Petitioner does not bear the burden to establish the relevancy and applicability of the evidence introduced by Patent Owner. Given the 23-year gap between the evidence and the question at issue, Patent Owner needed to explain and establish the relevance and applicability of the evidence it introduced. Yet, Patent Owner failed to do so.

Instead, Patent Owner attempts to belatedly introduce two new dictionary exhibits, Ex. 2005 and Ex. 2006, along with its argument that the definitions did not materially change during the time in question. Opposition, 5. However, the two new exhibits, Exhibits 2005 and 2006, are also not from the time of the invention, as Ex. 2005 purports to be from May 29, 2006 and Ex. 2006 purports to be from Dec. 23, 2005.

Patent Owner's only attempt to support the relevance of Exhibits 2001 and 2002 is to offer the following conclusory statement about the definitions: "there is no reason to believe that they have materially changed in the years since the invention date." Opposition, 6. Patent Owner fails to offer any explanation as to why an ordinary artisan would have the same understanding about a term 23 years before the publication of Exhibits 2001 and 2002. Accordingly, Exhibits 2001 and 2002 are 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, these exhibits 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. Exhibits 2003-2004

In the Motion to Exclude, Petitioner identified that Exhibit 2003 is undated. Patent Owner concedes this point. Opposition, 7. Similarly, Patent Owner agreed that Exhibit 2004 post-dates the invention. *Id*. Patent Owner's only argument to support Exhibits 2003 and 2004 is that it 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." Yet, Patent Owner fails to offer any explanation as to how an undated document (Exhibit 2003) or a document from seventeen years after the invention (Exhibit 2004) can inform an inquiry concerning an ordinary artisan's understanding at the time of the invention.

Therefore, Exhibits 2003-2004 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.

IV. CONCLUSION

For the foregoing reasons, Exhibits 2001-2004 do not meet the threshold for admissibility and should be excluded from the record. Additionally, Exhibits 2005-2008 should be excluded as untimely and improper submissions.

Date: October 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing **PETITIONER'S REPLY TO MOTION TO EXCLUDE EVIDENCE** was served on October 13, 2023, via email directed to counsel of record for Patent Owner at the following:

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Dated: October 13, 2023 By: /Trenton A. Ward/
Trenton A. Ward