

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
PETITIONER,

v.

GOTV STREAMING, LLC,
PATENT OWNER.

CASE IPR2023-00757
PATENT 8,989,715

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO
EXCLUDE EVIDENCE (PAPER 31)
37 C.F.R. § 42.23(a)

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2002	GALAZZO, Timeline from 1G to 5G: A Brief History on Cell Phones (Sept. 21, 2020), <i>available at</i> https://www.cengn.ca/information-centre/innovation/timeline-from-1g-to-5g-a-brief-history-on-cell-phones/
2003	Cingular MEdia Mall Games and Motorola Page (March 23, 2006), <i>available at</i> https://web.archive.org/web/20060323054853/http://www-xl.cingularextras.com/fuel/enduser/portal/endUserHTMLDir?c1=3&dc=0 and https://web.archive.org/web/20060323054841/http://www-xl.cingularextras.com/fuel/enduser/portal/endUserHTMLSelectPhone?makeName=motorola&dc=0
2004	Suite, Definition & Meaning - Merriam-Webster, <i>available at</i> https://www.merriam-webster.com/dictionary/suite
2005	U.S. Patent No. 7,380,205 to Bezrukov et al. (filed Oct. 28, 2003)
2006	TUTENEL ET AL., Rule-Based Layout Solving and Its Application to Procedural Interior Generation, Netherlands Organization for Scientific Research and the Netherlands ICT Research and Innovation Authority (2009)
2007	KRÖNER, Adaptive Layout of Dynamic Web Pages, Deutsches Forschungszentrum für Künstliche Intelligenz GmbH (2000)
2008	Scheduling Order, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Feb 14, 2023) (Doc. 62)
2009	Klausner Decisions re Motions to Stay Pending IPR, Docket Navigator (generated June 8, 2023)
2010	Order Granting Stipulated Stay Pending IPR, <i>Flexstent, LLC v. Abbott Labs.</i> , No. 5-18-cv-02479 (C.D. Cal. Oct. 18, 2019) (Doc.77)

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2011	Order Denying Renewed Stipulated Stay Pending IPR, <i>Shenzhen Gooloo E-Commerce Co., Ltd. v. Pilot, Inc.</i> , No. 2-22-cv-02219 (C.D. Cal. Jan. 12, 2023) (Doc. 95)
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2013	Klausner Time to Trial in Patent Cases, Docket Navigator (generated June 8, 2023)
2014	U.S. District Court—Judicial Caseload Profile for Central California from Federal Court Management Statistics—Profiles (Mar. 31, 2023), <i>available at</i> https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2023.pdf
2015	Order Denying Netflix's Motions, including for Invalidity under § 101, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued May 24, 2023) (Doc. 109)
2016	Order re Scheduling Conference, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. issued Feb. 13, 2023) (Doc. 61)
2017	Excerpts from Redacted and De-designated Corrected Declaration of Dr. John Villasenor Regarding Invalidity of U.S. Patent Nos. 8,989,715; 8,478,245; and 8,103,865, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , 2:22-cv-07556 (C.D. Cal. served June 23, 2023)
2018	Declaration of Joshua S. Wyde regarding authentication of exhibits (Aug. 10, 2023)
2019	Excerpts from Trial Transcript Day 2, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 18, 2023)
2020	Excerpts from Trial Transcript Day 3, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 19, 2023)
2021	Defendant Netflix, Inc.'s Notice of Motion and Rule 50(a) Motion for Judgment as a Matter of Law, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 19, 2023) (Dkt. 389)

No.	Brief Description
2022	Declaration of Mr. Stuart Lipoff
2023	Generate, Free On-Line Dictionary of Computing, <i>available at</i> https://foldoc.org/generate (last updated June 15, 1995).
2024	Output, TechTerms.com; The Computer Dictionary, <i>available at</i> https://techterms.com/definition/output (last updated December 12, 2006)
2025	From, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/from (last visited December 12, 2023)
2026	Customized, Merriam-Webster.com Dictionary, <i>available at</i> https://www.merriam-webster.com/dictionary/customized (last visited Jan. 05, 2024)
2027	Application-Specific, Wiktionary, <i>available at</i> https://en.wiktionary.org/wiki/application-specific (last visited Dec. 15, 2023)
2028	Excerpt from 10-K statement filed by Netflix with the Securities and Exchange Commission (Jan. 26, 2023)
2029	Excerpt from Netflix Women In Tech Event - UI Engineering - August 2018, Jessica Berglund, Netflix UI engineer, 22:43–23:02, <i>available at</i> https://www.youtube.com/watch?v=YpIGejJiaBo
2030	Ethan Kao Deposition Designations Video, <i>GoTV Streaming, LLC v. Netflix, Inc.</i> , No. 2:22-cv-07556 (C.D. Cal. Oct. 19, 2023) (Dkt. 413-13)
2031	Deposition of Dr. Benjamin Bederson (Jan. 10, 2024)
2032	Second Declaration of Joshua S. Wyde regarding authentication of exhibits (Jan. 26, 2024)

I. Petitioner’s Relevancy Objections Should Be Denied as Weight Objections¹

Petitioner seeks to exclude Exhibits 2023–27 (“Exhibits”) as having no relevancy under FRE 401–02. Paper 31, Motion to Exclude (“MTE”) at 1.

First, Petitioner’s says that “Patent Owner attempts to rely on these definitions as extrinsic evidence in support of its claim construction positions,” MTE 1 (citing Paper 21 (“POR”) at 16, 29); however, it is more precise to say that Patent Owner is relying upon its expert, Mr. Stuart Lipoff, P.E., who cited these Exhibits when explaining his opinion regarding how a POSITA would understand the meaning of Limitations 1[c-d]/9[c-d]/17[c-d] (where compiled content is generated in part from execution of said application and then that compiled content is transmitted to a wireless device) and Limitations 1[b]/9[b]/17[b] (where the custom configuration configures a plurality of rendering blocks to render content in a manner customized to an application). POR 16, 29 (citing Ex. 2022 ¶¶116–17, 121 (in turn, citing Exs. 2023–27)).² And Mr. Lipoff explicitly stated in his report that “I have

¹ Where Petitioner did not object to exhibits individually, *cf.* § 42.64(c) (requiring objections in exhibit order, implying addressing exhibits separately), Patent Owner’s opposition similarly addresses the exhibits collectively.

² Patent Owner did also directly cite Ex. 2025 for the proposition that ***Petitioner and the Board were correct*** that “‘from’ can mean ‘the starting point,’ ‘the cause of,’ or ‘basis for.’” POR 29.

approached my validity analysis from the perspective of a person of ordinary skill in the art *as of the effective priority date of the Patent-at-Issue.*” Ex. 2022 ¶41 (emphasis added). Therefore, it is clear that Mr. Lipoff’s expert opinion that that the definitions from sources with dates after the effective priority date are still relevant to what a POSITA understood as of the effective date.

Petitioner seems to be advocating for a rule that any definition from after the effective priority date are *per se* irrelevant. See, e.g., MTE 3 (“They ***cannot be*** credible evidence of how a POSITA would have understood those terms . . .”) (emphasis added). This is not the case. *Amphastar Pharms., Inc. v. Aegis Therapeutics, LLC*, IPR2021-01324-43, at 72–73 (PTAB Feb. 9, 2023) (“We agree with Patent Owner that ‘[n]o bright line rule prohibits the consideration of post-priority date evidence.’”). That some documents “post-date [the] patent application does not render them irrelevant or [an expert’s] reliance on them unreasonable. Those limitations go to the weight the [decision maker] should afford [the expert’s] testimony rather than to its admissibility.” *Baxter Int’l, Inc. v. CareFusion Corp.*, No. 15-cv-09986, 2021 WL 428822, at *2 (N.D. Ill. Feb. 8, 2021) (Doc. 330).

Indeed, the PTAB often cites modern dictionaries when construing claim terms from older patents. See, e.g., *Amazon.com, Inc. v. Swarm Tech. LLC*, IPR2022-00633-36, at 15 & 8 n.2 (PTAB Aug. 28, 2023) (citing January 19, 2023, dictionary.com definition regarding a patent “filed before March 16, 2013”);

LinkedIn Corp. v. eBuddy Techs. B.V., IPR2022-00165-40, 12 & 7 n.2 (PTAB June 30, 2023) (citing June 23, 2022, dictionary.com definition regarding a patent with priority date of June 21, 2011); *Packers Plus Energy Servs. Inc. v. Baker Hughes Oilfield Ops., Inc.*, IPR2016-01099, at 12 & 8 n.2 (PTAB Dec. 12, 2019) (citing November 5, 2019, merriamwebster.com definition regarding a patent with “a filing date prior to March 16, 2013”); *Vivint, Inc. v. SB IP Holdings LLC*, IPR2022-01365-8, at 13 & 9 n.10 (PTAB Apr. 26, 2023) (citing undated <https://ahdictionary.com> screenshot regarding a patent with a filing date prior to March 16, 2013).

If Petitioner believed the terms had different meanings as of the effective priority date, then Petitioner was free to question the accuracy and limitations of the documents with the familiar tools of “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993) (citation omitted) (explaining the “traditional and appropriate” means of attacking admissible evidence an opposing party feels is “shaky”); *accord Baxter*, 2021 WL 428822, at *2.

Petitioner says that the definitions in the Exhibits have “minimal probative value on the ultimate issues of invalidity,” and only addresses Exhibit 2025, containing definitions of the word “from,” and even notes “the word ‘from’ . . . appears in the claim limitation.” MTE 3. First, “minimal probative value” clears

FRE 401’s low hurdle that merely requires “**any** tendency to make a fact more or less probable” (emphasis added). Second, given that “[a] claim must be construed before determining its validity,” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 997 n.7 (Fed. Cir. 1995) (*en banc*), *aff’d*, 517 U.S. 370 (1996), the meaning of “from” in the limitation **could not be more important**, and evidence as to its meaning is the opposite of “minimal[ly] probative.” Indeed, what “from” in the limitation means is a strongly contested and important issue in this case, *see, e.g.*, POR 19–21; Reply 13; Sur-Reply 5, and Petitioner even filed its own dictionary definition of the term, Ex. 1028.

Petitioner also objects because “[t]he word ‘from’ is sufficiently clear on its face [so] that the Board did not and does not need extrinsic evidence to understand its meaning.” MTE 3. That is merely Petitioner’s claim construction argument—to which Patent Owner disagrees—and the Board will decide who is correct. But Petitioner’s opinion regarding whether the Board “needs extrinsic evidence” is no basis to **exclude** Ex. 1025, or any of the Exhibits, from the Board’s consideration who can, for example, decide on its own if the meaning of “from” has changed since 2007. *See, e.g., Amphastar*, IPR2021-01324-43, at 72–73 (“On this record we do not find that there is sufficient cause to exclude the challenged exhibits, because any consideration by the Board of these exhibits has taken into account their alleged post-priority date status.”).

II. Petitioner’s Omnibus FRE 403 Objection Is Unsupported, and/or Inapplicable, and the Board Should Not Exercise Its Discretion to Exclude under this Basis

Alternatively, Petitioner argues that, even if relevant, every Exhibit will create “unfair prejudice and potential confusion” that will substantially outweigh the relevancy. MTE 4 (citing FRE 403).

First, Petitioner does not say what prejudice it is facing or how the Board will be confused. As the moving party, Petitioner has the burden of proof to establish it is entitled to the relief it requests, here excluding the Exhibits, by a preponderance of the evidence. 37 C.F.R. §§ 42.20(c); 42.1(d). Such a completely unsupported statement fails to meet Petitioner’s burden.

Second, the PTAB and Federal Circuit have recognized FRE 403’s “unfair prejudice” relates to juries, and because “portions of the Federal Rules of Evidence relating to . . . juries . . . shall not apply” to PTAB proceedings, § 42.62(b), Petitioner’s objection is not applicable here. *See Trend Micro Inc. v. Cupp Computing AS*, IPR2019-00765-30, at 4–5 (PTAB Aug. 25, 2020) (citing *Schultz v. Butcher*, 24 F.3d 626, 631 (4th Cir. 1994) (noting “unfair prejudice” is inapplicable to non-jury trials)) and *Gulf States Utilities Co. v. Ecodyne Corp.*, 635 F.2d 517, 519 (5th Cir. 1981) (same)). Indeed, exclusion of evidence on grounds of “prejudice” makes little sense because the Court has to see the putatively prejudicial evidence in order to rule. *Id.* (citing Wright & Miller, 22A FED. PRAC.

& PROC. EVID. § 5213 (2d ed.)).

Finally, Rule 403 is permissive: “The court *may* exclude relevant evidence” (emphasis added). Given that (1) “[i]t is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces of evidence,” *Liberty Mut. Ins. Co v. Progressive Casualty Ins. Co.*, CBM2012-00010-59, at 40 (PTAB Feb. 24, 2014); (2) that this is a non-jury trial; (3) that Petitioner has enunciated no reason it is prejudiced, or the Board will be confused; and (4) the evidence is relevant to claim constructions the Board may need to make, the Panel should decline to discretionarily exclude the Exhibits.

III. Petitioner’s “Weight” Request Is Inappropriate and Petitioner’s Argument Should Be Ignored

Petitioner asks the Board, should the Board not exclude the Exhibits, to ascribe less weight to the Exhibits. MTE 4. The PTAB is clear that “[a] motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents.” TPG 79 (Nov. 2019). As such, Petitioner’s request for relief that the Exhibits “should be ascribed substantially less weight” should be denied and Petitioner’s argument should be disregarded.

Dated: July 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the twenty-third day of July, 2024, a complete and entire copy of the foregoing “PATENT OWNER’S OPPOSITION TO PETITIONER’S MOTION TO EXCLUDE EVIDENCE (PAPER 31),” including exhibits, if any, was served on the date below on the following counsel of record via email per Petitioner’s consent to electronic service. *See* Paper 2 at 79.

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