

Paper No. 24
Date: August 22, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOURSQUARE LABS, INC.,
Petitioner,

v.

BOARDACTIVE CORPORATION,
Patent Owner.

IPR2023-00919

U.S. Patent No. 10,692,108 B1

**REPLY TO PATENT OWNER'S OPPOSITION TO MOTION TO
EXCLUDE**
37 C.F.R. § 42.64(c)

REPLY TO PATENT OWNER'S OPPOSITION TO MOTION TO EXCLUDE

Patent Owner argues that its Exhibits 2002, 2003, and 2004 should not be excluded because “[t]hey do relate to GSM.” Paper 22, 1 (“OPP.”). Patent Owner slips an attachment into its opposition in a belated attempt to remediate the shortcomings of its earlier evidence. But that attachment is likewise unauthenticated and inadmissible as irrelevant or otherwise prejudicial outweighing its probative value under Federal Rules of Evidence 901 and 401-403. Nevertheless, Patent Owner misses the mark by failing to establish that its exhibits are probative on a fact of consequence to this proceeding.

Patent Owner argues that Exhibit 2002 should be admitted because it pertains to why Adharapurapu would allegedly not work with GSM. However, Patent Owner’s arguments, even considering the questionable reliance on Attachment A, do not establish Adharapurapu as dependent on GSM. Even assuming *arguendo* the accuracy of Patent Owner’s facts, because Patent Owner has failed to establish Adharapurapu as constrained to GSM, let alone to GSM teachings well out-of-date by the time of Adharapurapu or as otherwise relevant to this proceeding, those facts for which Exhibit 2002 are offered are not of consequence to the proceeding. Moreover, for similar reasons, even if relevant, Exhibit 2002 has such tenuous and undemonstrated probative value compared with its high ability to mislead that it should be deemed to be inadmissible.

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Patent Owner argues that Exhibit 2003 is relevant despite its self-deprecating statements that it “shall not be implemented” and it is unapproved simply because it was an available document. Yet, Patent Owner relied on Exhibit 2003 to assert that it would have led to implementation of the prior art in a manner that would not work. Thus, Patent Owner’s reasons for offering this Exhibit 2003 critically depends on speculation that the ordinary artisan would have actually implemented an unapproved and affirmatively forbidden draft architecture. This sort of speculation is not a legitimate use of Exhibit 2003, and whether or not Exhibit 2003 could have some relevance in another proceeding or for another purpose is inconsequential here. Patent Owner further extrapolates its speculation by attempting to rely on some unidentified “previously released standard” to remedy the failings of Exhibit 2003. OPP., 5. However, it would have been unreasonable for the ordinary artisan to have gone directly against the instructions of Exhibit 2003 to blindly implement its teachings and to do so in a manner which allegedly disrupts the clear intent of Adharapurapu. Even taken dramatically in favor of Patent Owner’s facts, the relevance of Exhibit 2003 for Patent Owner’s proffered reasons is insufficient. On similar basis, if considered relevant, the speculative nature of the reliance on Exhibit 2003 drives exceedingly low probative value in light of its high potential to mislead.

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Patent Owner asserts that Exhibit 2004 is somehow relevant because it is directed to the public availability of Exhibit 2003. However, merely being available does not make documents relevant. Rather, relevance must be tied to the probative value of a fact of consequence. Because Patent Owner has failed to address any fact of consequence with Exhibit 2004, it is not relevant to this proceeding and therefore, inadmissible. Yet, if deemed relevant, its nature to mislead outweighs its probative value because the date of availability of other documents does not add value to this proceeding.

Accordingly, Patent Owner has failed to sufficiently rebut the admissibility and/or sufficient probativeness of its Exhibits 2002, 2003, and 2004 to this proceeding.

I. CONCLUSION

Patent Owner's Exhibits 2002-2004 are misdirected and do not concern facts of consequence to this proceeding. Any relevance thereof is outweighed by their significant potential to mislead, based on their proffered use by Patent Owner. Foursquare respectfully requests exclusion of each of Exhibits 2002, 2003, and 2004.

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Respectfully submitted,

Date: August 22, 2024

/ Steven D. Shipe /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on this 22nd day of August 2024, I caused a true and correct copy of the foregoing REPLY TO PATENT OWNER'S OPPOSITION TO MOTION TO EXCLUDE in IPR2023-00919 to be served on Patent Owner via electronic mail at the following addresses of record:

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