

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.; INSTAGRAM, INC.; WHATSAPP LLC; META
PLATFORMS TECHNOLOGIES, LLC; AND GIPHY, INC.

Petitioners

v.

VL COLLECTIVE IP LLC

Patent Owner

Case IPR2023-00923
U.S. Patent 7,266,682

**PATENT OWNER'S SUR-REPLY IN SUPPORT OF
PATENT OWNER'S PRELIMINARY RESPONSE**

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I. Petitioners’ Reply Is Improper and Should Be Disregarded

The Board denied Petitioners’ request to submit supplemental information and permitted a reply “limited to the issue of whether *the Petition* sufficiently shows that Exhibits 1005 and 1007 are printed publications.” Paper 13 at 2-4 (emphasis added). Yet Petitioners’ Reply includes supplemental information and evidence that are not in the Petition, including URLs to multiple new webpages and documents, new metadata for documents and links, and new assertions about their declarant’s “personal knowledge,” “diligence,” and knowledge of a POSITA. Reply at 1-3. The Reply makes new arguments based on the new evidence rather than addressing “whether *the Petition* sufficiently shows” public accessibility, thus it is improper and should be disregarded. Paper 13 at 2-4 (emphasis added); 37 C.F.R. § 42.23(b).

II. Petitioners Fail to Meet their Burden Under *Hulu* for Handley

“[T]he petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 12-13 (PTAB Dec. 20, 2019) (Precedential). Petitioners fail to show that the Petition satisfies this standard. Reference to Dr. Houh’s “personal knowledge,” Reply at 1, is insufficient because the Petition neither discusses nor cites Houh’s alleged knowledge, Pet. at 4, and Houh’s declaration discloses no such personal knowledge. EX1003 at 27. Petitioners cite *no evidence* to support the assertion that COMPUTER NETWORKS was

a “publicly disseminated commercial journal by a well-known publisher (Elsevier)” that published Handley “on February 11, 1999 corresponding to Volume 31, Issue 3 at pages 191-204.” Reply at 1; Pet. at 4. Petitioners are unclear whether the alleged publication was in print or online, and they fail to show either. That other articles from COMPUTER NETWORKS have been relied on by the Board in other proceedings does not help Petitioners, as public accessibility was not challenged in those proceedings and so the issue was not analyzed by the Board. In all cases, the Petition cites *no evidence* that Handley was published in COMPUTER NETWORKS. *Id.* Petitioners’ newly cited URLs and new argument that “[d]iligence would [] lead to the publisher and first author website,” Reply at 1 n.1, were not included in the Petition, thus they cannot be used to satisfy *Hulu*. Petitioners cite “no evidence that the ordinarily skilled artisan would know” of the URLs, and “[t]he record is devoid of any evidence” that, *before* the priority date, a diligent search would have led to them. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1349-50 (Fed. Cir. 2016).

Petitioners’ new theory that “a POSITA exercising reasonable diligence would [] have located *Handley* online,” Reply at 2, is based on new evidence, including “metadata,” an allegedly “indexed FTP server,” convoluted instructions for locating the FTP, and an Internet Archive page, *see id.*, all of which cannot be used to satisfy *Hulu* because none was cited in the Petition. Pet. at 4. Petitioners cite metadata of the native PDF file “Ex. 1005 – Handley et al..pdf” that was purportedly

downloaded from “the URL provided” but cite *no evidence* that the actual URL (*i.e.*, the complete web location for accessing the PDF) or the newly cited links and path to reach the FTP server (starting from Crowcroft’s Cambridge website) were accessible *before* the priority date. Petitioners also cite *no evidence* that the FTP was “indexed in a meaningful way” to enable a POSITA to locate Handley. *SRI Int’l, Inc. v. Internet Sec. Sys.*, 511 F.3d 1186, 1196-97 (Fed. Cir. 2008) (emphasis added).

III. Petitioners Fail to Meet their Burden Under *Hulu* for PacketCable

“[T]here is no presumption ... in favor of finding a reference to be a printed publication.” *Hulu*, IPR2018-01039, Paper 29 at 16. Petitioners cite *no evidence* of how the relevant public would have been able to locate and access PacketCable *before* the priority date. *Hulu*, IPR2018-01039, Paper 29 at 13; *Blue Calypso*, 815 F.3d at 1349-50 (no inference that reference was locatable before critical date). The Petition cites no evidence, Pet. at 5, and the Reply cites only the current CableLabs website (as of 2023). The dates on PacketCable, even if admissible, are insufficient to demonstrate public accessibility. *Nobel Biocare Servs. AG v. Intradent USA, Inc.*, 903 F.3d 1365, 1376 (Fed. Cir. 2018) (date on face of reference “not dispositive of the date of public accessibility.”); *Lincoln Elec. Co. v. Harbor Freight Tools USA, Inc.*, 2018 WL 10809987, at *11 (N.D. Ohio Aug. 15, 2018) (copyright and revision dates insufficient) (citing *Blue Calypso*, 815 F.3d at 1349); *Navico Inc. v. Garmin Int’l, Inc.*, 2017 WL 3750252, at *3 (E.D. Tex. July 28, 2017) (similar)).

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Patent No. 7,266,682

Dated: October 20, 2023

By: /Christine E. Lehman/

Christine E. Lehman

PTO Reg. No. 38,535

Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Patent Owner's Sur-Reply in Support of Patent Owner's Preliminary Response complies with the 3-page limit set by the Board (Paper 13 at 2, 4), as well as the type-volume limits of 37 C.F.R. § 42.24 and consists of 768 words, excluding the table of contents, certificate of service, and this certificate of compliance. The undersigned has relied on the word count feature of the word-processing system used to prepare this paper (Microsoft Word).

Dated: October 20, 2023

Respectfully submitted,

/Christine E. Lehman/

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Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S SUR-REPLY IN SUPPORT OF PATENT OWNER'S PRELIMINARY RESPONSE** was served on October 20, 2023, via electronic mail to Meta_VideoLabs@kirkland.com, as agreed to by counsel for Petitioners, upon the following counsel:

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