

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

U.S. Patent No. 7,266,682

Case IPR2023-00923

**SUPPLEMENTAL DECLARATION OF SYLVIA D. HALL-ELLIS, Ph.D.
RELATING TO PACKETCABLE (EX1007)**

I. INTRODUCTION

1. My name is Sylvia D. Hall-Ellis. I have been retained as an expert by Petitioners Meta Platforms, Inc., Instagram, Inc., WhatsApp LLC, Meta Platforms Technologies LLC, and GIPHY, Inc. (“Petitioners”) in this proceeding before the the United States Patent and Trademark Office (“USPTO”).

2. I have written this declaration at the request of the Petitioners to provide my expert opinion regarding the authenticity and public availability of a publication. My declaration sets forth my opinions in detail and provides the basis for my opinions regarding the authenticity and public availability of this publication. If called to testify in the above-captioned proceeding, I will testify regarding the opinions and bases set forth below.

3. I reserve the right to supplement or amend my opinions, and bases for them, in response to any additional evidence, testimony, discovery, argument, and/or other additional information that may be provided to me after the date of this declaration.

4. I am being compensated for my time spent working on this matter at my normal consulting rate of \$350 per hour, plus reimbursement for any additional reasonable expenses. My compensation is not in any way tied to the content of this declaration, the substance of my opinions, or the outcome of this proceeding. I have no other interests in this proceeding or with any of the parties.

5. All the materials that I considered and relied upon are discussed explicitly in this declaration.

II. QUALIFICATIONS

6. I am currently an Adjunct Professor in the School of Information at San José State University

7. A detailed overview of my qualifications is provided in EX1010 at paragraphs 6–10. My qualifications are also explained in more detail in my *curriculum vitae*, which is included as Appendix 1 in previously submitted EX1010.

III. PRELIMINARIES

A. Scope of Declaration and Legal Standards

8. I am not an attorney and will not offer opinions on the law. I am, however, rendering my expert opinion on the authenticity of the documents referenced herein and on when and how each of these documents was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising ordinary diligence, could have located the documents by January 18, 2000.

9. I am informed by Petitioners' counsel that a printed publication qualifies as publicly accessible as of the date it was disseminated or otherwise made available such that a person interested in and ordinarily skilled in the relevant subject

matter could locate it through the exercise of ordinary diligence.

10. While I understand that the determination of public accessibility under the foregoing standard rests on a case-by-case analysis of the facts particular to an individual publication, I also understand that a printed publication is rendered “publicly accessible” if it is cataloged and indexed by a library such that a person interested in the relevant subject matter could locate it (*i.e.*, I understand that cataloging and indexing by a library is sufficient, though there are other ways that a printed publication may qualify as publicly accessible). One manner of sufficient indexing is indexing according to subject matter category. I understand that the cataloging and indexing by a single library of a single instance of a particular printed publication is sufficient, even if the single library is in a foreign country. I understand that, even if access to a library is restricted, a printed publication that has been cataloged and indexed therein is publicly accessible so long as a presumption is raised that the portion of the public concerned with the relevant subject matter would know of the printed publication. I also understand that the cataloging and indexing of information that would guide a person interested in the relevant subject matter to the printed publication, such as the cataloging and indexing of an abstract for the printed publication, is sufficient to render the printed publication publicly accessible.

11. I understand that routine business practices, such as general library cataloging and indexing practices, can be used to establish an approximate date on

which a printed publication became publicly accessible.

12. Copyright law protects original works for creators and authors. Copyright law in the United States has changed since the Article I, Section 8 of the Constitution granted Congress the power to provide protection to authors' creative works.¹ Since 1870 the copyright functions were part of the Library of Congress. In 1897 the U.S. Copyright Office was established as a department in the Library of Congress. The *Copyright Act of 1976* (Public Law 94-553) extends federal copyright protection to all works published and unpublished as soon as they are fixed in a tangible form.² The *1998 Digital Millennium Copyright Act* (Public Law 105-304) extends copyright protection regarding the Internet and global connectivity. The current governing administrative manual for registrations and recordings, the *Compendium of U. S. Copyright Office Practices*, third edition,³ was adopted in 2021.

13. The registration process is outlined in Chapter 200 of the *Compendium of U. S. Copyright Office Practices*, third edition.⁴ To register a claim for copyright, the applicant (creator, publisher, or agent) must submit the application, deposit

¹ <https://www.copyright.gov/timeline/>

² https://www.copyright.gov/timeline/timeline_1950-2000.html

³ <https://www.copyright.gov/comp3/>

⁴ <https://www.copyright.gov/comp3/chap200/ch200-registration-process.pdf>

copy(ies), and a filing fee. Together these items are the primary source of information for the claim (Sections 202.3 and 204). The Copyright Office encourages timely submission of the application on paper, electronically, mail or commercial carrier (e.g., Federal Express or United Parcel Service), through a courier, or hand delivery. The application and copies of the work are assigned to a Registration Specialist (Section 206) who reviews and recommends the issuance of a copyright (Section 209). Despite timely filing of an application for copyright, the Copyright Office receives more applications annually than can be processed. Therefore, an application may wait several weeks for review. Information provided by the Copyright Office in 2019 indicated that the average waiting time for applications filed online is three to six months, while those filed on paper average six months.⁵ Consequently, an application filed later in the calendar year may not be reviewed and issued a copyright until early the following year.

B. Persons of ordinary skill in the art.

14. I am told by Petitioners' counsel that the subject matter of this proceeding relates to data transmission, and specifically, a method and system for transmitting data from a transmitter to a receiver.

⁵ <https://copyright.gov/registration/docs/processing-times-faqs/april-1-2019-september-30-2019.pdf>

15. I have been informed by Petitioners' counsel that a "person of ordinary skill in the art at the time of the invention" ("POSITA") is a hypothetical person who is presumed to be familiar with the relevant field and its literature at the time of the inventions. This hypothetical person is also a person of ordinary creativity, capable of understanding the scientific principles applicable to the pertinent field.

16. I have been informed by Petitioners' counsel that Petitioners contend that persons of ordinary skill in this subject matter or art would have had a Bachelor's degree in computer science, electrical engineering, or a related field, and two years of experience; or by obtaining a Master's degree in electrical engineering or a related field, but having only one to two years of experience; or by having no formal education but experience in network data transmission and computer networking of at least eight years. Additional education might compensate for less experience, and vice-versa.

17. Regardless of whether Petitioners' or Patent Owner's definition of a person of ordinary skill in the art is used, it is my opinion that such a person would have been engaged in research, learning, study, and practice in the field, and formal instruction so that bibliographic resources relevant to his or her research would be familiar. Before January 18, 2000, such a person would have had access to a vast array of long-established print resources in data transmission and computer networking as well as to a rich set of online resources providing indexing

information, abstracts, and full text services.

IV. DOCUMENT 1: EXHIBIT 1007 (“PACKETCABLE”)

18. Exhibit 1007 is a document titled *PacketCable™ 1.0 Architecture Framework Technical Report* prepared by the Cable Television Laboratories staff. The document is identified as PKT-TR-ARCH-V01-991201 (as shown on the cover of Exhibit 1007) and the “Document Status Sheet” (as indicated on page 3 of Exhibit 1007). The “Document Status Sheet” indicates a December 1, 1999, release date.

19. Exhibit 1007 is a true and accurate copy of the document titled *PacketCable™ 1.0 Architecture Framework Technical Report* that was and issued “... for the benefit of the cable industry” (page 1). The technical report is available from the Cable Television website.⁶ I obtained the document filed as Exhibit 1007 from the Cable Television website. Specifically, the text of the document titled *PacketCable™ 1.0 Architecture Framework Technical Report* is complete; no pages are missing, and the text on each page appears to flow seamlessly from one page to the next; further, there are no visible alterations to the document. Exhibit 1007 was found within the custody of the issuing agency – a place where, if authentic, a copy of this federal document would likely be.

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<https://community.cablelabs.com/wiki/plugins/servlet/cablelabs/alfresco/download?id=bddae471-01dd-43c8-8e59-d6547fcf4ffd>

20. Exhibit 1007 is a true and correct copy in a condition that creates no suspicion about its authenticity. Based on the date recorded in the document, it is my opinion that the document titled *PacketCable™ 1.0 Architecture Framework Technical Report* was available to the public by at least December 1, 1999.

V. SUMMARY OF OPINIONS

21. In view of the foregoing, it is my opinion that the publication described above were publicly available no later than the corresponding date listed in the table below:

Exhibit	Publication	Publicly Available Date
1007	Cable Television Laboratories, Inc. <i>PacketCable™ 1.0 Architecture Framework Technical Report</i> . Document PKT-TR-ARCH-V01-991201. Louisville, CO: Cable Television Laboratories, c1999.	December 1, 1999

22. In signing this Declaration, I recognize that the Declaration will be filed as evidence in a case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required of me, I will appear for cross-examination within the United States during the time allotted for cross-examination.

23. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be

true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1034 of Title 18 of the United States Code.

DATED: January 17, 2024

By: 
Sylvia D. Hall-Ellis, Ph.D.