

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.

IPR2023-00924
U.S. Patent No. 7,436,980

**PETITIONERS' MOTION FOR AUTHORIZATION TO COMPEL
TESTIMONY AND PRODUCTION OF DOCUMENTS
UNDER 37 C.F.R. § 42.52(A)**

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1005	Curriculum Vitae of Dr. Chandrajit Bajaj
1006	Liang Zhao, Dressed Human Modeling, Detection, and Parts Localization, The Robotics Institute, Carnegie Mellon University (2001) ("Zhao")
1007	U.S. Patent No. 6,301,370 ("Steffens")
1008	U.S. Patent No. 7,200,266 ("Ozer")
1009	Leonid Sigal, Sidharth Bhatia, Stefan Roth, Michael J. Black & Michael Isard, <i>Tracking Loose-limbed People</i> , IEEE Computer Society Conference on Computer Vision and Pattern Recognition (2004) ("TLP")
1010	Program Documents for the 2004 IEEE Computer Society Conference on Computer Vision and Pattern Recognition (2004), http://tab.computer.org/pamitc/archive/cvpr2004/index.html
1011	Adam Baumberg & David Hogg, <i>Generating Spatiotemporal Models from Examples</i> , School of Computer Studies, University of Leeds, http://www.bmva.org/bmvc/1995/bmvc-95-040.pdf ("Baumberg")
1012	Erik B. Sudderth, Alexander T. Ihler, William T. Freeman & Alan S. Willsky, <i>Non-parametric Belief Propagation</i> , IEEE Conference on Computer Vision and Pattern Recognition, (June 2003), https://www.ics.uci.edu/~ihler/papers/tr2551.pdf)
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1015	Leonid Sigal, Michael Isard, Benjamin H. Sigelman & Michael J. Black, <i>Attractive people: Assembling loose-limbed models using non-parametric belief propagation</i> , Advances in Neural Information Processing Systems 16, NIPS 1539–46 (MIT Press 2003)
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1019	M. Isard, <i>PAMPAS: Real-valued graphical models for computer vision</i> , CVPR, vol. 1, at 613–20 (2003)
1020	D. L. Alspach & H. W. Sorenson. <i>Nonlinear Bayesian estimation using Gaussian sum approximations</i> , IEEE Trans. AC, 17(4): at 439–48, (August 1972)
1021	James M. Coughlan & Sabino J. Ferreira, <i>Finding deformable shapes using loopy belief propagation</i> , ECCV 453–68 (2002)
1022	F. De la Torre & M. J. Black., <i>Robust parameterized component analysis: Theory and applications to 2D facial modeling</i> , ECCV 653–69 (2002)
1023	S. L. Lauritzen, <i>Graphical Models</i> , Chapters 1, 3, Oxford University Press, Oxford (1996)
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1025	Vladimir Pavolovic, James M. Rehg, Tat-Jen Cham & Kevin Murphy, <i>A dynamic Bayesian network approach to figure tracking using learned dynamic models</i> , Int’l. Conf. on Computer Vision at 94–101 (1999)
1026	Y. Wu, G. Hua & T. Yu, <i>Tracking articulated body by dynamic Markov network</i> , Int’l. Conf. on Computer Vision at 1094–101 (2003)
1027	Christopher Bregler & Jitendra Malik, <i>Tracking people with</i>

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1029	Cristian Sminchisescu & Bill Triggs, <i>Covariance scaled sampling for monocular 3D body tracking</i> , IEEE Computer Society Conference on Computer Vision and Pattern Recognition, vol. 1, at 447–54 (2001)
1030	John MacCormick & Michael Isard, <i>Partitioned sampling, articulated objects, and interface-quality hand tracking</i> , European Conference on Computer Vision (2), at 3–19 (2000)
1031	Yacov Hel-Or & Michael Werman, <i>Constraint Fusion for Recognition and Localization of Articulated Objects</i> , International Journal of Computer Vision 19(1), at 5–28 (1996)
1032	Y. Weiss & W. T. Freeman, <i>Correctness of belief propagation in Gaussian graphical models of arbitrary topology</i> , Neural Comp., 13:2173–2200 (2001)
1033	M. Fischler & R. Elschlager, <i>The representation and matching of pictorial structures</i> , IEEE. Trans. Computers, 22(1):67–92 (1973)
1034	M. Burl, M. Weber & P. Perona, <i>A probabilistic approach to object recognition using local photometry and global geometry</i> , European Conference on Computer Vision at 628–41 (1998)
1035	P. Felzenszwalb & D. Huttenlocher, <i>Efficient matching of pictorial structures</i> , IEEE Computer Society Conference on Computer Vision and Pattern Recognition, Vol. 2, at 66–73 (2000)
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1037	Andrew Blake & Michael Isard, <i>Active Contours</i> , Chapters 7, 8, Springer-Verlag (1998)
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1039	A. R. Tilley, <i>The Measure of Man and Woman: Human Factors in Design</i> H.D. Associates (1993)
1040	Paul Viola & Michael Jones, <i>Rapid Object Detection using a Boosted Cascade of Simple Features</i> , Conference on Computer Vision and Pattern Recognition (2001)
1041	Hedvig Sidenbladh & Michael J. Black, <i>Learning Statistics Learning the Statistics of People in Images and Video</i> , International Journal of Computer Vision 54 (1/2/3), at 183–209 (2003)
1042	Jonathan S. Yedidia, William T. Freeman & Yair Weiss, <i>Generalized Belief Propagation</i> , Advances in Neural Info. Proc. Sys. 13, at 689–95 (2000)
1043	<i>VideoLabs, Inc. et al v. Meta Platforms, Inc. et al</i> , Case No. 1-22-cv-00680, Dkt. 15 (D. Del. Aug. 29, 2022)
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Unless otherwise indicated, all emphasis added.

On May 24, 2023, Meta Platforms, Inc.; Instagram, Inc.; WhatsApp LLC; Meta Platforms Technologies, LLC; and GIPHY, Inc. (collectively, “Petitioners”) filed a petition for *Inter Partes* Review (“IPR”) of claims 1-16 (“Challenged Claims”) of U.S. 7,436,980 (“’980 Patent,” Exhibit 1001) based on four grounds. Paper 3. On December 6, 2023, the Board instituted trial for all Challenged Claims on Grounds I–III. Paper 11. The Board also instituted on Ground IV, but noted that Petitioners had not demonstrated a reasonable likelihood of showing that the reference titled “Tracking Loose-limbed People” (“TLP,” Exhibit 1009) was prior art to the ’980 Patent and, thus, had not shown a reasonable likelihood of prevailing on obviousness of claim 1 based on TLP. Paper 11 at 56.

On January 8, 2024, Petitioners sought, and the Board granted, permission to file a Motion for Authorization to Compel Discovery and Production of Documents pursuant to 37 C.F.R. § 42.52(a)—including to issue subpoenas pursuant to 35 U.S.C. § 24 and file any testimony or documents produced therefrom—to address the public availability of TLP before May 27, 2004, the earliest claimed priority date of the ’980 Patent. The existence of information supporting the public availability of TLP before May 27, 2004 is based on strong circumstantial evidence, including: TLP itself; the knowledge of its authors; the knowledge of the inventors of the ’980 Patent; the provisional application of the ’980 Patent (Exhibit 1003); and the Declaration of Dr. Chandrajit Bajaj (Exhibit

1004). Petitioners have taken all reasonable efforts to obtain this evidence and continue to do so, but expect that a subpoena or motion to compel may be necessary. Petitioners make this request for discovery at the earliest and least burdensome opportunity in this proceeding and expect that this request will not significantly impact the current schedule.

I. STATEMENT OF MATERIAL FACTS UNDER 37 C.F.R. § 42.22(C)

1. The '980 Patent issued on October 14, 2008 identifying Leonid Sigal, Ying Zhu, and Dorin Comaniciu ("980 Inventors") as inventors. Ex. 1001.

2. The '980 Inventors, as "Assignor," assigned the entire right, title, and interest in the '980 Patent (Serial No. 11/135,210) to Siemens Corporate Research Inc. as "Assignee" in 2005. *See* Ex. 1044 at 3.

3. As part of the assignment, the '980 Inventors agreed to "carry out in good faith the intent and purpose of this assignment," including communicating to the Assignee "all facts known . . . to said improvements and the history thereof" and, when requested, to "generally do everything possible which said Assignee, its successors, assigns or legal representatives shall consider desirable for . . . maintaining proper patent protection" *See* Ex. 1044 at 3-7.

4. Some or all prior assignees of the '980 Patent are obligated, when requested, to assist Patent Owner, presently VL Collective IP LLC ("PO"), to "generally do everything possible which said Assignee, its successors, assigns or

legal representatives shall consider desirable . . . for maintaining proper patent protection” *Id.* at 3; *see also* Ex. 1047 at 2 (¶ 1); Ex. 1045.

II. PERSONS AND ENTITIES FROM WHOM DISCOVERY AND PRODUCTION MAY BE SOUGHT

Petitioners identify and request authorization to compel discovery and production of documents from the following persons and entities: (1) Leonid Sigal—first-named author of TLP and first-named inventor of the ’980 Patent; (2) Sidharth Bhatia, Stefan Roth, Michael Black, and Michael Isard—other named authors of TLP—((1) and (2) together, “TLP Authors”); (3) Ying Zhu and Dorin Comaniciu—other ’980 Patent Inventors; and (4) prior assignees of the ’980 Patent including, for example, Siemens Corp., Siemens Corp. Research, Inc., and/or Siemens Medical Solutions USA, Inc. (all together, “TLP Discovery Parties”).¹

III. THE REQUESTED DISCOVERY IS IN THE INTEREST OF JUSTICE

Additional discovery may be permitted where it is “necessary in the interest of justice.” 35 U.S.C. § 316(a)(5)(B); 37 C.F.R. § 42.52. The Board applies the five *Garmin* factors to determine whether a discovery request is in the “interest of

¹ Petitioners have used reasonable efforts to contact these persons and entities. *Infra* Section III.C. Should those efforts fail, and the Board authorizes Petitioners to issue subpoenas, Petitioners may do so with additional counsel to avoid any potential conflicts with respect to certain TLP Discovery Parties.

justice.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6-7 (Mar. 5, 2013). All five factors favor the Board granting Petitioners’ request.

A. Petitioners’ Current Evidence Tends to Show, Beyond Speculation, that the TLP Discovery Parties Have Information that TLP Was Publicly Available Before May 27, 2004

First, the provisional application to the ’980 Patent identifies TLP as a reference. Ex. 1003 at 12 (reference [2] listing “L. Sigal, S. Bhatia, S. Roth, M. J. Black, and M. Isard, Tracking Loose-limbed People, *CVPR*, 2004”). The provisional application not only contains identical or near identical disclosures as TLP, for example a discussion about “[e]ach directed edge between components i and j has an associated potential function $\psi_{ij}(\mathbf{X}_i, \mathbf{X}_j)$ that encodes the compatibility between pairs of node states” (*compare* Ex. 1009 at 3 *with* Ex. 1003 at 6), but also explicit discussions of TLP. *E.g.*, Ex. 1003 at 5, 6, and 9 (citing and discussing reference [2], which is TLP). Because the provisional application cites and discusses TLP, the ’980 Inventors (who are also listed on the provisional application) have information about TLP’s public availability before the provisional application was filed on May 27, 2004. Indeed, inventors Ying Zhu and Dorin Comaniciu are not authors of TLP, which strongly demonstrates that TLP was made publicly available—*including to them*—before May 27, 2004. Prior assignees should have similar evidence.

Second, Petitioners investigated the public availability of TLP through

research with ResearchGate, an online repository for scientists and researchers to publicly share papers. Although ResearchGate was founded in 2008, its platform allows journal articles and academic papers, among other things, of any age to be uploaded by authors and contributors. The ResearchGate webpage for TLP indicates that TLP Author Michael Black uploaded TLP on or around March 2, 2014. *See* https://www.researchgate.net/publication/4082208_Tracking_loose-limbed_people. Said webpage further indicates that, upon uploading, Michael Black specified a public availability date for TLP of January 2004.² *Id.*

Third, the provisional application confirms that TLP was part of CVPR 2004. Ex. 1003 at 12. CVPR is an IEEE Computer Society Conference on Computer Vision and Pattern Recognition. CVPR 2004 took place from June 27 to July 2, 2004. *See* Ex. 1010. CVPR 2004's "Call for Papers" identifies important dates, including a "Paper registration (with abstract)" deadline of November 14, 2003 and a "Submission of full paper" deadline of November 19, 2003. Ex. 1048. "Notification of paper acceptance" was March 2, 2004. *Id.* TLP was available as part of Volume 1 of CVPR 2004, which suggests that TLP went through the paper registration process identified above and was publicly available and circulated amongst conference goers.

² Petitioners anticipate including this information in their forthcoming Motion to Submit Supplemental Information on January 18, 2024.

The TLP Authors who likely all attended CVPR 2004 should be in possession of evidence confirming the public availability of TLP. As paper submission was accepted electronically, the TLP Authors may have emails confirming date of submission and/or date(s) of public dissemination of TLP in advance of the conference. Although Petitioners believe the information submitted with its Petition is sufficient to establish the public availability of TLP as a prior art printed publication, Petitioners seek additional evidence to supplement the evidence already of record and respond to any future arguments PO may make.

B. Petitioners Do Not Seek Litigation Positions or Underlying Bases

Petitioners' request is directed solely towards the public availability of TLP before May 27, 2004. Petitioners do not seek PO's litigation positions.

C. Petitioners Are Unlikely to Obtain the Sought-After Evidence Absent Discovery from the TLP Discovery Parties

Petitioners have made all reasonable efforts to locate additional evidence showing the public availability of TLP before May 27, 2004. Petitioners have repeatedly contacted Leonid Sigal and received no response. Petitioners additionally made efforts (and continue to make efforts) to contact the other TLP Authors (Sidharth Bhatia, Stefan Roth, Michael Black, and Michael Isard), and similarly, Petitioners made efforts (and continue to make efforts) to contact the other '980 Inventors (Ying Zhu and Dorin Comaniciu) without success, even though all three '980 Inventors are obligated to help maintain proper patent

protection of the '980 Patent. *Supra* Section I. In sum, Petitioners' many attempts to contact these individuals and locate additional evidence showing the public availability of TLP before May 27, 2004 have been met without success.

Compelled discovery should be granted where third parties will not willingly provide documents or testimony that cannot otherwise be obtained voluntarily. *See Google LLC v. IPA Technologies, Inc.*, IPR2019-00730, Paper 55 at 3, 9 (Apr. 14, 2020) (granting Petitioner's requests for invention disclosures submitted by or identifying the named inventors and employment agreements of named inventors).

D. The Instructions Are Easily Understandable

Petitioners' discovery request is limited and straight forward; they would not include substantial or superfluous definitions or instructions. They would simply request documents (such as conference brochures or emails) and/or testimony sufficient to show the public availability or accessibility, including by publication, posting, distribution, or other hardcopy or electronic dissemination, of the paper entitled 'Tracking Loose-limbed People' before May 27, 2004.

E. The Discovery Request Is Not Overly Burdensome to Answer

Petitioners' discovery requests will not burden the TLP Discovery Parties, either financially or from a human resources perspective. Petitioners are not asking for "all" information or "every document." Rather, Petitioners seek documents and/or testimony "sufficient to show" the date of public availability of TLP.

Petitioners' single request is narrowly tailored and may be satisfied by the production of a small number of documents or a declaration in lieu of testimony.

Petitioners make their request for discovery at the earliest and least burdensome opportunity: once this issue became ripe for resolution. Once the Board instituted on Ground IV and stated Petitioners "ha[d] not shown a reasonable likelihood of showing that TLP is prior art to the '980 patent," despite the evidence submitted with the Petition, this issue became ripe. Paper 11 at 56. Petitioners then acted diligently in seeking the requested discovery. Indeed, the Board's decisions in other cases confirm that Petitioners' request is timely. *See Google, LLC v. IPA Technologies, Inc.*, IPR2019-00730, Paper 55 at 2-4 (Apr. 14, 2020) (granting Petitioner's request for additional discovery almost seven months *after* institution of trial); *Marvell Semiconductor, Inc. v. Intellectual Ventures I LLC*, IPR2014-00552, Paper 29 at 1-3 (Feb. 11, 2015) (granting *post-institution* motion to compel testimony and production).

Granting Petitioners' motion will not adversely impact the schedule of this proceeding. *See* Paper 12. The requested discovery is narrowly-tailored to address one issue: the public availability of TLP. PO will have the opportunity to address any evidentiary concerns with TLP in subsequent objections to evidence or a Motion to Exclude. Indeed, a Motion to Exclude is the correct mechanism to address any of PO's remaining concerns and the deadline for Motions to Exclude is

August 14, 2024—approximately seven months away. Paper 12 at 11.

Petitioners believe Leonid Sigal and Michael Black are U.S. citizens currently residing in Canada and Germany, respectively. *See* 37 C.F.R. § 42.52(b); Ex. 1003 at 2 (listing Mr. Sigal as “Citizen: USA”); Ex. 1046 at 1 (listing citizenship for Mr. Black as “US”). As such, obtaining discovery from Mr. Sigal and Mr. Black is readily possible. A court may issue a subpoena directed to a U.S. national who is in a foreign country if the particular testimony is “necessary in the interest of justice” and “it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.” 28 U.S.C. § 1783(a); *Klesch & Co. Ltd. v. Liberty Media Corp.*, 217 F.R.D. 517, 525 (D. Colo. 2003) (§ 1783 subpoena issued to U.S. citizen in Germany); *Cadence Design Sys., Inc. v. Pounce Consulting, Inc.*, No. 19-05404, 2019 WL 11504668 at *4 (C.D. Cal. Sept. 26, 2019).

Compelling discovery from Mr. Sigal and Mr. Black under 28 U.S.C. § 1783 is not anticipated to take more than the ordinary process for serving subpoenas; travel costs associated for each deponent may be avoided if documents are sent electronically and testimony occurs virtually. Moreover, § 1783(b) specifically provides that service of the subpoena “shall be effected in accordance with the provisions of the Federal Rules of Civil Procedure relating to service of process on

a person in a foreign country.” Rule 4(f) provides the procedure for serving an individual in a foreign country, which includes “by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). Here, courts have recognized that service by “other means” includes by email. *See, e.g., Grp. One Ltd. v. GTE GmbH*, 523 F. Supp. 3d 323, 342-44 (E.D.N.Y. 2021) (service by email to party in Germany acceptable under Rule 4(f)(3) because no requirement to attempt service through Hague Convention first); *Blackbird Cap. LLC v. Worth Grp. Cap., LLC*, No. 2:21-cv-00037, 2022 WL 464234, at *2 (D. Utah Feb. 15, 2022) (authorizing service by email to individual in Canada, noting “Hague Convention does not expressly prohibit service by email”).

IV. CONCLUSION

Petitioners request the Board’s authorization to serve or cause to be served subpoenas or motions to compel on the TLP Discovery Parties.

January 16, 2024

Respectfully submitted,

/s/ Jennifer R. Bush

W. Todd Baker (No. 45,265)
todd.baker@kirkland.com
Postal and Hand-Delivery Address:
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
T: (202) 389-5000
F: (202) 389-5200

Ellisen Shelton Turner (No. 54,503)
ellisen.turner@kirkland.com
Postal and Hand-Delivery Address:
KIRKLAND & ELLIS LLP
2049 Century Park East, 37th Floor
Los Angeles, CA 90067
T: (310) 552-4200
F: (310) 552-5900

Jonathan D. Brit (No. 75,646)
jonathan.brit@kirkland.com
Postal and Hand-Delivery Address:
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
T: (212) 390-4209
F: (212) 446-4900

Jennifer R. Bush (No. 50,784)
jbush@fenwick.com
Postal and Hand-Delivery Address:
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Telephone: (650) 988-8500

Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on January 16, 2024, via electronic mail to counsel of record for the Patent Owner at the following:

Christine E. Lehman (Reg. No. 38,535)
clehman@reichmanjorgensen.com
Philip J. Eklem (Reg. No. 76,490)
peklem@reichmanjorgensen.com
REICHMAN JORGENSEN LEHMAN
& FELDBERG LLP
1909 K Street, NW, Suite 800
Washington, DC 20006

Jaime F. Cardenas-Navia
jcardenas-navia@reichmanjorgensen.com
Michael Matulewicz-Crowley (Reg. No. 72,220)
mmatulewicz-crowley@reichmanjorgensen.com
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
400 Madison Avenue, Suite 14D
New York, NY 10017

RJ_VideoLabs-Facebook@reichmanjorgensen.com

/s/ Jennifer R. Bush
Jennifer R. Bush
(No. 50,784)