

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. 7,436,980

Case IPR2023-00924

**PETITIONERS' OBJECTIONS TO
PATENT OWNER'S SUPPLEMENTAL INFORMATION**

Petitioners' Objections to PO's Supplemental Information

Pursuant to 37 C.F.R. § 42.64(b)(1) and as permitted by the Board's July 3, 2024 Order (Paper 41), Petitioners Meta Platforms, Inc.; Instagram, Inc.; WhatsApp LLC; Meta Platforms Technologies, LLC; and Giphy, Inc. (collectively, "Petitioners") submit the following objections to certain supplemental information filed by Patent Owner VL Collective IP LLC ("Patent Owner") with Patent Owner's July 24, 2024 Sur-Reply (Paper 44) in the foregoing *inter partes* review proceeding, IPR2023-00924, of U.S. Patent No. 7,436,980 ("980 Patent"). These objections apply equally to Patent Owner's reliance on these exhibits in any subsequently filed documents. These objections are timely filed and served according to the schedule set forth by the Board. *See* Paper 41 at 5.

I. CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS**A. Exhibit 2007—Supplemental Declaration of Eli Saber, Ph.D. in Support of Patent Owner's Sur-Reply**

Petitioners objects to Exhibit 2007 under the Federal Rules of Evidence ("FRE") 702(a) because the declarant is not an expert. *See* Ex2007, Section II.

Petitioners also object under FRE 401–403, FRE 702(b)–(d), FRE 703, and 37 C.F.R. § 42.65 to Exhibit 2007, Sections VI (Claim Construction), VII (Priority Date of the '980 Patent), and VIII (Dr. Bajaj Does Not Show that Any Challenged Claim Would Have Been Obvious), including subsections VIII.A through VIII.D, because the declarant has not based his testimony on sufficient facts or data, reliably applied the principles and methods to the facts of the case or provided testimony that

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is the product of reliable principles and methods. For example, and without limitation, Petitioners specifically object under at least FRE 403 and FRE 702–703 to Exhibit 2007, ¶¶ 24–29 for providing expert claim construction as to the meaning of certain terms that departs from Patent Owner's representations in district court and Exhibit 2007, ¶¶ 8–23 for providing expert claim construction that does not respond to arguments raised in Petitioners' Reply (Paper 32) or the Supplemental Declaration of Chandrajit Bajaj, Ph.D. in Support of Petitioners' Reply (Exhibit 1052). *See* 37 C.F.R. § 42.23(b); Paper 41 at 2 (noting “Board authorized Patent Owner to submit a declaration from Dr. Saber and granted permission for Patent Owner to increase the word count limit for Patent Owner's Sur-Reply by 2,000 words to address issues raised by Petitioner[s] in Petitioner[s'] Reply”—***not*** other additional exhibits).

Petitioners object under FRE 401–403 and FRE 702–703 to Exhibit 2007, Sections VI, VII, and VIII (including subsections VIII.A through VIII.D) as relying on inadmissible evidence that an expert in the particular field would not reasonably rely on, including the other exhibits objected to below. Relatedly, Petitioners object under FRE 802 to the extent that the declarant relied on hearsay statements from the below-referenced exhibits in these Sections.

Petitioners additionally object to all portions of Exhibit 2007 that are not cited to and expressly discussed in Patent Owner's Sur-Reply, as well as discussions of

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any other exhibits (*e.g.*, Ex2007, ¶ 70 (discussing what a POSITA would understand with respect to PAMPAS, Ex1019)), as such portions are irrelevant under FRE 401–403 and may not be incorporated by reference per 37 C.F.R. § 42.6(a)(3). To the extent Patent Owner attempts to rely on any such uncited and/or undiscussed portions of Exhibit 2007, such incorporation by reference is impermissible. 37 C.F.R. § 42.6(a)(3).

B. Exhibits 2009 and 2010—Identified Respectively by Patent Owner as “2004-02-13 Email” and “2003-11-17 Email”

Petitioners object to Exhibits 2009 and 2010 under FRE 401, 402, and 403 as irrelevant, unfairly prejudicial, confusing the issues, wasting time, and/or presenting cumulative evidence.

Petitioners further object to these Exhibits 2009 and 2010 under FRE 801 and 802 as inadmissible hearsay not falling within any recognized exception—to the extent Patent Owner relies on these exhibits for the truth of the matter asserted. For example, Exhibit 2007 and Patent Owner's Sur-Reply attempts to rely on Exhibits 2009 and 2010 as demonstrating the knowledge of a POSITA and “confirm[ing]” the purported peer review process for the 2004 CVPR submissions to conclude that “TLP was not publicly available or publicly disseminated.” *See* Paper 44 at 26; Ex2007, ¶¶ 61–64. Petitioners object to Exhibit 2009 under FRE 901 as Patent Owner has failed to show that this document is authentic or self-authenticated under FRE 902.

Date: July 29, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on July 29, 2024, via electronic mail to counsel of record for the Patent Owner at the following:

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