

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Duration Media LLC
Petitioner,

v.

Rich Media Club LLC
Patent Owner.

Case IPR2023-00953
U.S. Patent 11,443,329

**PATENT OWNER'S REPLY IN SUPPORT OF OPPOSITION TO MOTION
TO EXCLUDE**

I. Exhibits 1038-1040 about the Purported Alenty System Remain Hearsay and the Statements in Exhibits 1038-1040 Cannot Be Accepted As True

Exhibits 1038-40 about the Alenty system remain hearsay. Petitioner relies on FRE 803(18) “Statements in Learned Treatises, Periodicals, or Pamphlets” but this rule does not mean that all statements that appear in any publication, periodical or pamphlet automatically overcome hearsay. Instead, FRE 803(18) requires that “the publication is established as a reliable authority by the expert’s admission or testimony, by another expert’s testimony, or by judicial notice.”

Neither Madansky (nor Smedley) anywhere mention any periodical that Exhibit 1038, 1039 or 1040 are from. (Smedley nowhere mentions Exhibits 1038, 1039 or 1040.)

Petitioner’s opposition to this motion now discusses Exhibit 1039 and 1040, but even there makes no mention of what purported periodical Exhibit 1038 is from. With respect to Exhibits 1039 and 1040, Petitioner’s statements in its opposition to the motion to exclude are not enough. Madansky’s declarations nowhere testified about JDN (what the Opposition brief now calls “Le Journal du Net”) or AdExchanger, including what they are, whether they are reliable, etc. Madansky’s declaration does not say anything about what Exhibit 1038 is. Nor is there any deposition testimony that can satisfy FRE 803(18).

Instead, Madansky calls Exhibit 1039 a “September 2008 press release.” Ex 1026 ¶11. Madansky calls Exhibit 1040 a “2014 press release on the sale of Alenty to App Nexus...” Ex1026 ¶11. No expert anywhere establishes either JDN or AdExchanger as a reliable authority. The statements in these documents remain hearsay and cannot be accepted as true.

II. These Exhibits Remain Hearsay: Exhibits 1032, 1033, 1041, 1042, 1043, 1044, 1045, 1046, 1048, 1049, 1050, 1051, 1052, 1054, 1055, 1056

Petitioner makes no effort to argue that these exhibits are not hearsay.

III. New References/Arguments on Reply and Incorporation by Reference

With respect to Petitioner’s 8-9 new references in its Reply and the many new opinions in the Reply declarations from Smedley and Madansky, and the exhibits incorporated by reference, Patent Owner filed its motion to exclude in an abundance of caution to preserve the record and to ensure that it did not waive any of its proper objections. If the sur-reply is procedurally sufficient, Patent Owner will rely on that and will withdraw these portions of its motion to exclude.

Dated: May 22, 2024

Respectfully submitted,

/Ragnar Olson/

Ragnar Olson

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that on May 22, 2024, a complete and correct copy of the foregoing PATENT OWNER'S REPLY IN SUPPORT OF OPPOSITION TO MOTION TO EXCLUDE was served via electronic mail on the following counsel of record for Petitioner:

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