

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT LLC,
Petitioner,

v.

QUANTUM IMAGING LLC,
Patent Owner.

U.S. Patent No. 8,458,028

Inter Partes Review No. IPR2023-00954

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

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**PETITIONER’S EXHIBIT LIST FOR *INTER PARTES* REVIEW OF U.S.
PATENT NO. 8,458,028**

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[Reserved]	1012
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I. INTRODUCTION

Petitioner Sony Interactive Entertainment provides this Opposition to Patent Owner Quantum Imaging LLC's Motion to Exclude (Paper 45; "Motion").

Quantum presents no proper basis to exclude six exhibits and portions of two exhibits. It instead uses its Motion to improperly argue the *weight* of these exhibits. The Motion should be denied in all respects.

II. ARGUMENT

A. The Threshold To Exclude Evidence Is High

As the moving party, Quantum "has the burden of proof to establish that it is entitled to the requested relief." (37 C.F.R. § 42.20(c).) On a motion to exclude, that burden is high given the unique nature of a Board proceeding. As the Board has noted, "[t]he policy considerations for excluding expert testimony, such as implemented by the gatekeeping framework established by the Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1973), are less compelling in bench proceedings such as inter partes reviews than in jury trials." *Fujan Newland Computer Co., Ltd. v. Hand Held Products, Inc.*, IPR2013-00595, Paper 52, at 15 (PTAB Feb. 18, 2015) (citations omitted). Rather, the "general approach" of the Board is to leverage its "administrative expertise" to "determine and assign the appropriate weight" to all evidence presented. *Pelican Biothermal, LLC v. VA-QTEC AG*, PGR2021-00085, Paper 35, 30–31 (PTAB June 16, 2023). This

approach is guided by “strong public policy” that supports making “all information filed in a non-jury, quasi-judicial administrative proceeding available to the public.” *K-40 Elecs., LLC v. Escort Inc.*, IPR2013-00203, Paper 46, 6 (PTAB Aug. 27, 2014).

B. Exhibit 1020 (the Color Excerpt) Should Not Be Excluded

Quantum argues that Exhibit 1020 should be excluded under Fed. R. Evid. (FRE) 401-03. As explained in the Reply, Exhibit 1020 provides a higher quality copy of the TerraZones storyboard from the prosecution history (Ex. 1003), which is available from the USPTO only in a rendition of poor visual quality. (Paper 30, 6 note 4.) As David Crane explained in his supplemental declaration (Ex. 1025, ¶15), and as the Board can readily confirm, pages 123-131 of the prosecution history correspond to pages BT00014845-853 of Ex. 1020 based on a visual comparison. Quantum never disputes this other than quoting Dr. Medvidovic’s *initial* thoughts on a low-resolution printed copy of Ex. 1020 provided to him at his deposition. Ex. 1020 is thus relevant under FRE 401-02 at least because it provides a more legible copy of the portions of the prosecution history relied on in Petitioner’s Reply to rebut Quantum’s positions taken in the POR. (Paper 30, 5-10.)

With respect to FRE 403, Sony submits that the Board will not be confused by this color copy of the prosecution history and can elect to rely on Ex. 1020 (or

portions of it) as appropriate to resolve any ambiguity in Ex. 1003 without prejudice to Quantum. *See Intri-Plex Techs., Inc. v. Saint-Gobain Performance Plastics Rencol Ltd.*, IPR2014-00309, Paper 83, 18 (PTAB Mar. 23, 2015).

Quantum's remaining arguments are similarly unavailing. Sony provided supplemental evidence in response to Quantum's objections to Ex. 1020. (Ex. 1028.) Ex. 1028 remains responsive to Quantum's objections to Ex. 1020, as it evidences the fact that Ex. 1020 was produced in a parallel matter pursuant to Patent L.R. 3-2(b). (*See* Paper 31 at 19; Ex. 1028.) Sony does not, however, rely on Ex. 1020's production in parallel litigation as the basis for its relevance; the Exhibit is relevant for at least the reasons described above. (Motion, 1-2.) Further, whether Ex. 1020 was publicly available is immaterial to its admissibility under FRE 401-403. (Motion, 2; FRE 401-403.) And whether the Exhibit includes duplicative content, or content not found in the prosecution history and not relied upon by Sony, does not undermine the Exhibit's relevance or admissibility in the current proceeding for the reasons discussed above. (Motion, 2-3; FRE 401-403.)

C. The Medvidovic Textbook Exhibits (Exhibits 1018-19, 1026) Should Not Be Excluded

Exhibit 1018 is a textbook authored by Quantum's expert, Dr. Medvidovic, and Exhibits 1019 and 1026 are excerpts from that textbook. Quantum introduced this textbook in its POR and relied upon it in the POR to establish Dr.

Medvidovic's credentials as a POSITA. (Paper 23, 4; Ex. 2005, ¶18.) Quantum's attempts to now exclude that same textbook and its excerpts should be rejected.

1. *FRE 901*

Quantum moves to exclude Exhibits 1018 and 1019 under FRE 901. But these exhibits far exceed the “low bar” for authentication, which requires only a rational basis that the evidence is what it is asserted to be. *See, e.g., Advanced Micro Devices, Inc. v. Aquila Innovations, Inc.*, IPR2019-01526, Paper 37 at 99 (PTAB Mar. 10, 2021) (citing *Caterpillar Inc. v. Wirtgen Am., Inc.*, IPR2018-01091, Paper 49, 72 (PTAB Nov. 27, 2019)); *United States v. Turner*, 934 F.3d 794, 798 (8th Cir. 2019). Cases consistently confirm that prior art may be authenticated solely on the testimony of a knowledgeable witness. *Valve Corp. v. Ironburg Inventions Ltd.*, IPR2017-00858, Paper 68 at 42-43 (PTAB Feb. 28, 2019) (rejecting motion to exclude document authenticated by “person with personal knowledge of [its] publication”), *rev. in part on other grounds*, 8 F.4th 1364, 1373 (Fed. Cir. 2021).

Here, the textbook's own author has authenticated the evidence. Upon cross-examination, Dr. Medvidovic did not dispute that Ex. 1018 is “the textbook that [he] authored,” concluding that it is a “reprint” for an international edition of the textbook, and that “the excerpts that we discussed seem to match what is in the original edition [that] I am familiar with.” (Ex. 1023, 88:10-14; 170:2-19.) Dr.

Medvidovic further clarified, with respect to Exhibit 1018, that “I agree with what the book says. I co-wrote the book.” (*Id.*, 95:3-10.) And with respect to Ex. 1019, which is an excerpt of the textbook, Dr. Medvidovic did not dispute that the contents of Exhibits 1018 and 1019 were the same in relevant respects. (*Id.*, 87:21-88:14.)

2. *FRE 401-403*

Quantum further moves to exclude Exhibits 1018, 1019, and 1026 under FRE 401-402, because the materials were published after the 2002 priority date of the '028 patent. Quantum previously moved to strike these exhibits; as the Board recognized in rejecting Quantum's motion, Quantum's challenges to the textbook exhibits go to their *weight*, not their admissibility. (Paper 34, 2-3.) Quantum's motion to exclude should fail for the same reason. *See* Consolidated Trial Practice Guide (CTPG), 79 (“a motion to exclude is not a vehicle for addressing the weight to be given evidence”).

Moreover, post-dated evidence is admissible under these circumstances. As the Board recognized in a conference call with the parties, “everybody agrees” the textbook is not prior art, and “there are cases that say that ... references or books from after the priority date can be extrinsic evidence about the knowledge of skill in the art.” (Ex. 2014, 16:21-17:6.) In one such case, the Federal Circuit rejected an argument that a study (Khan 2009) published after the priority date was

inadmissible evidence in an IPR proceeding; the Federal Circuit clarified that such evidence can be relied on for “proper supporting roles,” including showing “how one with ordinary skill in the art would have understood a prior art disclosure.”

Yeda Research & Dev. Co. v. Mylan Pharms. Inc., 906 F.3d 1031, 1041 (Fed. Cir. 2018). Here, as set forth in Sony’s Reply, and supported by David Crane’s supplemental declaration, the textbook exhibits describe configurations of web browsers that were familiar to the POSITA in 2002. (Paper 30, 10; Ex. 1025, ¶¶35.¹) They demonstrate how the POSITA would have understood the disclosure of web browsers in the Angles prior art reference—squarely within the proper supporting roles specifically approved by the Federal Circuit. (*See* Paper 30, 13.)

To the extent Quantum disputes the relevance of the textbook exhibits to this analysis, *see* Motion at 6-7, such arguments would go again to the weight of the exhibits, not to their admissibility, and are not properly the subject of a motion to exclude. *See Unified Patents, LLC v. Digimedia Tech, LLC*, IPR2022-01182, Paper 26, 42 (PTAB Jan. 12, 2024) (exclusion of post-dated exhibit unnecessary

¹ Similarly, Dr. Medvidovic testified that the POSITA *as of 2002*—with the year 2002 volunteered by Dr. Medvidovic—“may find this book useful.” (Ex. 1023, 85:12-23.)

because the Board is “well positioned to determine and assign appropriate weight to evidence presented”).

Furthermore, to the extent Quantum argues that Exhibits 1018, 1019, and 1026 include duplicative content, Sony submits that the Board is capable of utilizing the Exhibits as appropriate without undue prejudice to Quantum under FRE 403. Moreover, Quantum introduced and relied on the textbook in its POR, and its own expert acknowledged he authored the textbook and commented on it in his declaration; Quantum cannot now claim to be unduly prejudiced under FRE 403 by its consideration. (Paper 23, 4; Ex. 2005, ¶18; Ex. 1023, 88:10-14, 95:3-10, 170:2-19.)

3. *FRE 106*

Quantum further moves to exclude the textbook excerpts of Exhibit 1026 under FRE 106, apparently for omitting significant portions of the underlying textbook. This is a gross misuse of the cited rule. As is well-settled, “Rule 106 does not prohibit admission of an incomplete document. Instead, it allows the party against whom the document is introduced to place the remainder in evidence[.]” *Mylan Pharm. Inc. v. Yeda Research & Dev. Co. Ltd.*, IPR2015-00644, Paper 91, 39-40 (PTAB Dec. 2, 2016) (citing 1 Weinstein on Evidence § 106.02[1]); *see also Argentum Pharm. LLC v. Research Corp. Techs., Inc.*, IPR2016-00204, Paper 85, 48-49 (PTAB Mar. 22, 2017) (declining to exclude

exhibits because “rather than providing a basis for excluding evidence, FRE 106 is a vehicle for entry of additional evidence”); *Mobile Tech, Inc. v. Invue Sec. Prods. Inc.*, IPR2016-00892, Paper 35, 68-69 (PTAB Sept. 28, 2017) (same). FRE 106 is thus not a vehicle under which Quantum can exclude Exhibit 1026.

Moreover, Quantum does not identify any portion of the textbook that is relied upon by Sony but not included in Exhibit 1026; its “introductory pages” are neither relied upon by Sony, nor necessary to understand the exhibit or any position taken in this proceeding. In any event, as explained in the Reply (Paper 30, 10 n. 5), Exhibit 1026 is an excerpt from the textbook; the full textbook is provided as Exhibit 1018, which can supply any information allegedly missing from Exhibit 1026.

4. *FRE 801-802*

Quantum further moves to exclude Exhibits 1018, 1019, and 1026 under FRE 801-802 as inadmissible hearsay. Quantum’s objections are inapplicable, because the exhibits are not hearsay: they are not offered for the truth of the matter asserted, but instead as evidence of what they describe, and further, as evidence of the POSITA’s subjective understanding of the prior art. (FRE 801(c)(2); *see, e.g.*, Paper 30, 13 (“A POSITA in 2002 would thus have understood a web browser, such as in Angles, to teach a game application.”); Ex. 1025, ¶38; *see also* FRE 801(c) 1972 Adv. Comm. Note (“If the significance of an offered statement lies

solely in the fact that it was made . . . the statement is not hearsay.’’).) Dr. Medvidovic did not dispute this application of the textbook and testified that a POSITA as of 2002 “may find this book useful.” (*See, e.g.*, Ex. 1023, 85:12-23.) To the extent Quantum disputes Sony’s interpretation of the exhibits, that dispute goes to weight, not admissibility, and does not support a motion to exclude. (*See* CTPG, 79; *see supra Pelican Biothermal*, 30-31.)

Further, even if the textbook exhibits are *prima facie* hearsay, they nonetheless are admissible under the learned treatise exception. (FRE 803(18).) The exception is met at least because Quantum and Dr. Medvidovic established the textbook as a reliable authority, and because the statements of that textbook were called to his attention on cross-examination during his deposition in this matter. (FRE 803(18); *see generally* Ex. 1023, 81:3-127:21.) For example, Dr. Medvidovic testified that the target audience of the textbook included the POSITA as of 2002, and that such a person “may find this book useful.” (*See, e.g.*, Ex. 1023, 85:12-23.) Additionally, Quantum relied on Dr. Medvidovic’s authorship of the textbook to establish him as a POSITA. (Paper 23, 4; Ex. 2005, 18.) The statements of the textbook were further relied upon by Petitioner’s expert in his supplemental declaration. (FRE 803(18)(A); Ex. 1025, ¶¶33-42.)

Under FRE 803(18), statements in learned treatises are admissible under FRE 803(18) “to the extent they have been relied upon by an expert witness in the

formulation of his ... direct testimony or if they have been called to his ... attention during cross-examination.” *Fisher v. United States*, 78 Fed. Cl. 710, 714 (Fed. Cl. 2007) (citing Matthew Bender 1–6 Fed. Evid. Practice Guide § 6.06(18)). To the extent the Board admits Exhibits 1018, 1019, and/or 1026 under the learned treatise exception, and not as non-hearsay statements, it should permit at least the portions of the exhibits corresponding to native pages 116-19 (including Figures 4-19) and 595-96 to be admitted. (See Ex. 1025, ¶¶33-42; Ex. 1023, 81:3-127:21.)

Furthermore, even if these documents were *prima facie* hearsay, they would also be admissible under at least the residual exception established in FRE 807.² As to factor (1) of this exception, the textbook exhibits have “equivalent guarantees of trustworthiness” at least because their author, Dr. Medvidovic, endorsed the content of the exhibits under oath in his deposition, explaining: “I agree with what the book says. I co-wrote the book.” (Ex. 1023, 95:7-96:1.) As noted above, Dr. Medvidovic, having reviewed Ex. 1018 at his deposition, did not

² Sony analyzes Exhibits 1018, 1019, and 1026 under the old four-factor test set forth in FRE 807. See, e.g., 7 Annotated Patent Digest § 44:106. On December 1, 2019, however, FRE 807 was amended into a two-factor test. Fed. R. Evid. 807(a). Because the two-factor test is encompassed by the older four-factor test, the same conclusion would be reached under the two-factor test.

dispute that it is “the textbook that [he] authored,” and that the excerpts discussed in his deposition (later cited in Sony’s Reply) “seem to match what is in the original edition [that] I am familiar with.” (Ex. 1023, 88:10-14; 170:2-19.) If Quantum believed the trustworthiness of the textbook exhibits was at issue, it had the opportunity on redirect examination to question Dr. Medvidovic based on his cross-examination testimony. Moreover, Quantum introduced the textbook in its POR, and endorsed its trustworthiness by relying upon it to establish Dr. Medvidovic’s credentials as a POSITA. (Paper 23, 4; Ex. 2005, ¶18.)

As to factors (2), (3), and (4), the textbook exhibits are offered as evidence of the POSITA’s understanding of the prior art, a material fact in this dispute. The textbook exhibits are more probative on this point at least because, as set forth in Sony’s Reply, the textbook exhibits directly undercut Quantum’s positions (supported by Dr. Medvidovic) regarding the POSITA’s understanding of the prior art. (*See, e.g.*, Paper 30, 10-15.) As such, admitting Exhibits 1018, 1019, and 1026 serves both the purposes of these rules and the interests of justice.

D. Exhibits 1017 and 1027 (Dictionary Excerpts) Should Not Be Excluded

Quantum moves to exclude Exhibits 1017 and 1027 under FRE 106 and 37 C.F.R. § 42.104(b)(5). As a threshold matter, Ex. 1017 is an excerpt from the same Microsoft Computer Dictionary that Quantum relied upon in the POR. *See*

Ex. 2007; Ex. 2008. Quantum's position makes no sense, because it asks the Board to rely upon an exhibit that it also seeks to exclude.

Notwithstanding this inconsistency, Quantum moves to exclude Exhibits 1017 and 1027 under 37 C.F.R. § 42.104(b)(5). First, the admissibility of exhibits submitted in a PTAB proceeding is governed by the Federal Rules of Evidence. 37 C.F.R. § 42.62(a); *Sipnet EU S.R.O. v. Straight Path IP Group, Inc.*, IPR2013-00246, Paper 63 (PTAB Oct. 9, 2014) (party moving to exclude must establish that the material sought to be excluded is inadmissible under the Federal Rules of Evidence (citing 37 C.F.R. §§ 42.20(c), 42.62(a))). To the extent that 37 C.F.R. § 42.104(b)(5) even applies to the admissibility of Exhibits 1017 and 1027, the rule does not require exclusion of the challenged evidence. *See, e.g., Google Inc. v. Intellectual Ventures II LLC*, IPR2014-01031, Paper 41, at 13-14 (PTAB Dec. 7, 2015) (noting that the rule is “merely permissive” and “does not mandate the exclusion of evidence that is not directly cited in a Petition”).

Quantum further moves to exclude Exhibits 1017 and 1027 under FRE 106. For the same reasons discussed above for Exhibit 1026, FRE 106 does not provide for the exclusion of an allegedly incomplete document and is unavailable as a mechanism to exclude Exhibits 1017 and 1018. *See supra* Section II.C.3.

E. The Crane Declarations (Exhibits 1004, 1025) Should Not Be Excluded

Quantum seeks to exclude the portions of Ex. 1025 discussing Exhibits 1020 and 1018 under FRE 403. But Quantum merely cites back to sections of its Motion to Exclude discussing Exhibits 1020 and 1018 without providing any additional legal authority or analysis supporting the specific exclusion of Ex. 1025. (Motion, 13-15.) As discussed above, both Ex. 1020 and Ex. 1018 are relevant and admissible. *See supra* Sections II.B, C.

Quantum also seeks to exclude specific portions of Ex. 1004 under 37 C.F.R. § 42.104(b)(5). This objection fails for the reasons stated above. *See supra* Section II.D.

Quantum seeks to exclude specific portions of Ex. 1004 under FRE 901 and 902. This argument is unavailing. As discussed above, the authentication requirement set forth in FRE 901 is a “low bar” and requires only a rational basis that the evidence is what it is asserted to be. *See supra* Section C.1.

Mr. Crane has the requisite qualifications and personal knowledge to authenticate the prior art under FRE 901 and 902. In accordance with FRE 703, Mr. Crane properly based his opinion on facts and data that he had personally observed and that would have been reasonable for an expert in his field to rely on in forming an opinion. Mr. Crane is a world-renowned video game designer and game industry pioneer, with a background in the industry dating back more than 40

years. (*See* Ex. 1004, ¶¶7-20.) Mr. Crane confirmed in his deposition that he, like “all of” his coworkers, was using Shockwave in 1995, and that he has an understanding of both the Shockwave and Flash program. (Ex. 2009, 195:6-9: “I was using Shockwave in 1995, as were all of the other people working with me at Skyworks Technologies . . . My recollection is that they are very carefully curated”; 196:24-197:4: “Do you have a general understanding of how Flash operated?” “I do.” “But do you have an understanding of how Shockwave operated?” “I am an expert in that.”) Mr. Crane confirmed that his personal observation of Shockwave and Flash, as a user of both programs in 1995, was that Shockwave was a plug-in for viewing multimedia and video games in webpages, and that Macromedia followed Shockwave with Flash. (*Id.* at 197:8-199:15.)

Quantum focuses on the fact that Mr. Crane did not personally have knowledge of the “evidence’s creation, authorship, or any other required foundational aspect of the evidence” under FRE 602. (Motion, 14-15.) This is a red herring. First, the personal knowledge standard articulated under FRE 602 does not apply to expert testimony, which falls under the purview of FRE 703. (FRE 602.) Second, FRE 602 does not require that any witness, expert or otherwise, have knowledge of the “creation or authorship” of the evidence. (*Id.*)

Quantum also argues that there is no foundation for admission of the statements and images cited in paragraphs 66-68 and 70-72 of Mr. Crane’s

declaration. The facts and data underlying an expert's testimony do not need to be independently admissible. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F. 3d 1348, 1373 (Fed. Cir. 2013); *see also L-3 Commc'ns Holdings, Inc. v. Power Survey, LLC*, IPR2014-00836, Paper 68 at 30 (PTAB Nov. 23, 2015).

F. Dr. Medvidovic's Deposition Transcript (Ex. 1023) Should Not Be Excluded

Finally, Quantum next attempts to exclude portions of Dr. Medvidovic's deposition transcript (Ex. 1023). But the cited portions reveal only that Quantum objects to Ex. 1023 on the basis that Exhibits 1018, 1019, and 1020 were not originally filed as exhibits. (Ex. 1023, 81:3-15; 86:13-87:7; 147:19-148:9.) Quantum fails to cite to any rules of evidence whatsoever mandating their exclusion on this basis.

III. CONCLUSION

For the reasons set forth above, Petitioner requests that the Board deny Patent Owner's Motion to Exclude the evidence identified above.

IPR2023-00954

Dated: August 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that the attached PETITIONER'S OPPOSITION TO
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