

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT LLC,
Petitioner,

v.

QUANTUM IMAGING LLC,
Patent Owner.

Case IPR2023-00954
Patent 8,458,028

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

TABLE OF CONTENTS

A.	Petitioner admits that Exhibit 1020 is largely irrelevant.....	1
B.	Exhibits 1018-19 and 1026 must be excluded.....	2
	1. Dr. Medvidovic did not authenticate Ex.1018.	2
	2. Petitioner fails to address PO’s 403 rationale	2
	3. Petitioner offers these Exhibits for hearsay not within exceptions	3
C.	Interest of justice requires exclusion of Exhibit 1017	5

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Argentum Pharm. LLC v. Novartis AG</i> , IPR2016-01479, Paper 61 (PTAB Oct. 5, 2020).....	5
<i>Asetek Danmark v. CoolIT Sys.</i> , IPR2020-00825, Paper 50 (2021).....	5
<i>Conoco v. Dept. of Energy</i> , 99 F.3d 387 (Fed. Cir. 1996)	5
<i>Dawsey v. Olin Corp.</i> , 782 F.2d 1254 (5th. Cir. 1986).....	4
<i>Graham v. Wyeth Labs.</i> , 906 F.2d 1399 (10th. Cir. 1990).....	4
<i>Hemingway v. Ochsner Clinic</i> , 608 F.2d 1040 (5th. Cir. 1979).....	4
<i>Mylan Pharm. Inc. v. Yeda Research & Dev. Co. Ltd.</i> , IPR2015-00644, Paper 91 (PTAB Dec. 2, 2016).....	5
<i>Petersen v. Daimler Chrysler Corp.</i> , No. 1:06-CV-00108-TC, 2011 WL 13077024 (D. Utah June 2, 2011)	4
<i>Sherwin-Williams Co. v. PPG Indus., Inc.</i> , No. 2022-2059, 2024 WL 3534113 (Fed. Cir. July 25, 2024).....	3
<i>SNF S.A. v. Chevron U.S.A., Inc.</i> , IPR2022-01534 (PTAB, April 18, 2024)	3
<i>US Endodontics v. Gold Std.</i> , PGR2015-00019, Paper 54 (2016)	5
<i>Yeda Research & Dev. Co. v. Mylan Pharms. Inc.</i> , 906 F.3d 1031 (Fed. Cir. 2018)	3

Rules

Fed. R. Evid. 106	5
Fed. R. Evid. 403	3
Fed. R. Evid. 803	4
Fed. R. Evid. 807	5

PO did not use its Motion to Exclude for arguing the weight of evidence.

A. Petitioner admits that Exhibit 1020 is largely irrelevant

Petitioner does not deny that Ex.1020 contains “content not found in the prosecution history and not relied upon by Sony,” (Opp. 3), yet argues that it is relevant in its entirety. Petitioner fails to explain the relevance of this content. Out of the 36 slides in Ex.1020, Petitioner’s expert admitted that 27 (BT00014843-44, BT00014854-78) are not in the prosecution history. Petitioner now admits that it has not relied on this content—then why are they in this proceeding?

Petitioner states that by admitting Ex.1020, PO suffers “no prejudice.” Opp. 2-3. Disingenuous, notably in light of the fact that Petitioner’s expert relied on the very “content not found in the prosecution history and not relied upon by Sony,” to conclude that “[t]hese slides further corroborate the POSITA’s understanding of the TerraZones storyboard.” Ex.1025, ¶24. Given Petitioner’s inability to identify any potential relevance for these 27 slides, and in light of the opinion of Petitioner’s expert, the prejudice to PO is substantial.

Petitioner requests the Board to rely on “portions” of Ex.1020 “as appropriate to resolve any ambiguity in Ex. 1003.” Opp. 2-3. Although Petitioner fails to specifically identify those “portions,” Petitioner’s request is curious: why did Petitioner not submit the portions it taught are relevant in the first place? Admitting Ex.1020 would encourage parties to file exhibits with substantially irrelevant

content, and then burdening the Board with requests to rely only on portions of the those exhibits “as appropriate.” Petitioner’s request that the Board should separate appropriate from inappropriate is unwarranted. Further, during deposition, Mr. Crane testified solely based on reviewing pages 123-131 of the prosecution history—at no point did he complain that the alleged “low resolution” or black/white nature of images preventing him from testifying accurately. For example, he testified—without trouble—that page 123 depicts a web browser as a game application and Cronos Demo is also a game application shown to be initiated on page 125. Ex.2016, 66:5-71:3.

B. Exhibits 1018-19 and 1026 must be excluded

1. Dr. Medvidovic did not authenticate Ex.1018.

“I haven’t seen this before, but it seems like it’s a -- on the inside, it’s a reprint of my textbook. Maybe not complete[.]” Ex.1023, 82:2-6. “I’ve already told you I have never seen this. I don’t know what this edition is. And it is not for sale in this country, so I cannot comment on that.” *Id.*, 83:15-20. “I know nothing about this version of the book, other than the fact that it appears to be shorter, page-count-wise, than the U.S. edition of my book. But I can’t comment on it beyond that because this is the first time I’ve seen it.” *Id.*, 85:4-11.

2. Petitioner fails to address PO’s 403 rationale

Any FRE 403 analysis boils down to balancing potential relevance against prejudice. PO argued that the risk of unfair prejudice and confusion between the functionalities of web browsers in 2002, (Ex.2023, 78:3-81:1), and the more specific “anti-pattern” browsers, (*Id.*, 136:14-137:9), depicted in these purportedly 2009-published documents substantially outweighs any potential relevance.¹ Mot. 6-7 (citing *Sherwin-Williams*). PO’s argument stands un rebutted.

These exhibits have little probative value regarding PHOSITAs’ state of mind in 2002 since the authors didn't start writing them until years after the priority date. Ex.1023, 86:1-2. Petitioner’s reliance on *Yeda Research* is misplaced. There, Khan 2009 study “began two years before the priority date of the [] patents;” thus, Khan 2009 is “probative” of PHOSITA’s state of mind. The Board’s relevance analysis in similar cases also hinges on the time gap between priority date and the publication date. *SNF S.A. v. Chevron U.S.A., Inc.*, IPR2022-01534, Paper 46, 42 (PTAB, April 18, 2024) (“Exhibit 2004 ‘was prepared at nearly the same time as the priority date [], having been prepared for a conference that took place four months after the [priority date].’”). Here, with minimal probative value and a substantial risk of prejudice, excluding Exs. 1018-19 and 1026 is a clear application of FRE 403.

3. Petitioner offers these Exhibits for hearsay not within exceptions

¹ One example is manifested in Mr. Crane’s testimony. *E.g.*, Ex.1025, ¶34.

Petitioner states it never offered these exhibits to prove the truth of the matter asserted but only as “evidence of the POSITA’s subjective understanding of the prior art.” Opp. 8. False. PO listed examples where Petitioner offers the Exhibits for the truth of the matter asserted—without any reference to PHOSITA. *E.g.*, Mot. 9-10.

Petitioner argues that these exhibits are admissible under FRE 803(18). Incorrect; Petitioner has not established the book is a reliable authority. “In doing so, the expert must do more than testify that it is a prestigious work; the expert must testify that the work itself is a reliable authority or that it constitutes a learned treatise.” *Petersen v. Daimler Chrysler Corp.*, 2011 WL 13077024, *2 (D. Utah June 2, 2011) (citing *Graham v. Wyeth Labs.*, 906 F.2d 1399, 1412 (10th.Cir.1990)); *Hemingway v. Ochsner Clinic*, 608 F.2d 1040, 1047 (5th.Cir.1979) (The document is not reliable authority absent “testimony that recognized this document as a reliable authority.”). Mr. Crane offered no opinion about the authoritative status of the book, because he was “provided a portion of that textbook and asked to form an opinion.” Ex.2016, 77:8-21. Nor did Dr. Medvidovic—indeed he testified “[t]here may well be things [in the book] that I would disagree with today Things have changed.” Ex.1023, 95:12-22. “Had [Petitioner] desired to” invoke FRE 803(18), it “had merely to ... have Dr. [Medvidovic] or one of their own [] experts identify the articles as authoritative.” *Dawsey v. Olin Corp.*, 782 F.2d 1254, 1264 (5th.Cir.1986). Petitioner did so for the Microsoft Dictionary. Ex.1023, 40:25-41:9.

Turning to FRE 807, Petitioner fails to show that the hearsay statements are “more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” Petitioner claims the hearsay statements are probative of PHOSITA’s knowledge in 2002. “But the best evidence” is a document from 2002 or earlier. *Asetek Danmark v. CoolIT Sys.*, IPR2020-00825, Paper 50, 45-46 (2021). Petitioner “made no showing that that it could not have produced, through reasonable efforts, evidence that is more probative on the point” than a 2009-book. *US Endodontics v. Gold Std.*, PGR2015-00019, Paper 54, 40-41 (2016) (citing *Conoco v. Dept. of Energy*, 99 F.3d 387, 392 (Fed.Cir.1996)).

C. Interest of justice requires exclusion of Exhibit 1017

Petitioner’s citation to *Mylan* is inapplicable. Opp. 7-8. In *Mylan*, although patent owner did not file the exhibit in its entirety, “[PO] has made the Mid-Year Tracker available to Petitioners and stated that Petitioners may use the document in this proceeding.” IPR2015-00644, Paper 91, 40 (Dec. 2, 2016). Similarly, in *Argentum*, the exhibits “were already admitted in their entirety.” IPR2016-01479, Paper 61, 48-49 (Oct. 5, 2020). Here PO prepared and filed Ex.2015, including excerpts of Microsoft Dictionary, which should have been admitted under FRE 106. Should the Board decide not to exclude Ex. 1017, PO respectfully requests the Board’s leave to rely on Ex.2015 during the oral hearing in the interest of justice.

Date: September 3, 2024

Respectfully submitted,

/Erick Robinson/

Erick Robinson, Esq. (Reg. No. 51,354)

Jayne Partridge (Reg. No. 39,011)

Jayne C. Piana (Reg. No. 48,424)

Patrick M. Dunn (Reg. No. 70,474)

Homayoon Rafatijo (Reg. No. 80,870)

BOCHNER PLLC

24 Greenway Plaza, Suite 1800

Houston, TX 77046

Tel: (646) 971-0685

Fax: (646) 343-9672

Marc Brockhaus (Reg. No. 40,923)

Douglas Sorocco (Reg. No. 43,145)

Ann Robl (Reg. No. 71,541)

DUNLAP CODDING P.C.

609 W. Sheridan Avenue

Oklahoma City, OK 73102

mbrockhaus@dunlapcoddington.com

dsorocco@dunlapcoddington.com

arobl@dunlapcoddington.com

Tel: (405) 607-8610

Attorneys for Quantum Imaging LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, I caused a true and correct copy of the foregoing Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude to be served via electronic mail to Sony-Quantum-IPR@mofo.com upon the following attorneys of record for the Petitioner:

Alex S. Yap (Reg. No. 60,609)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017-3543
Tel: (213) 892-5200
Fax: (213) 892-5454
Email: AYap@mofo.com

Bryan Blumenkopf (Reg. No. 73,282)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017-3543
Tel: (213) 892-5200
Fax: (213) 892-5454
Email: BBlumen@mofo.com

Mehran Arjomand (Reg. No. 48,231)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017-3543
Tel: (213) 892-5200
Fax: (213) 892-5454
Email: MArjomand@mofo.com

Date: September 3, 2024

Respectfully submitted,

/Erick Robinson/

Erick Robinson, Esq. (Reg. No. 51,354)

BOCHNER PLLC

24 Greenway Plaza, Suite 1800

Houston, TX 77046

Tel: (646) 971-0685

Fax: (646) 343-9672

Attorneys for Quantum Imaging LLC