

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT LLC,
Petitioner,

v.

QUANTUM IMAGING LLC,
Patent Owner.

IPR2023-00996
Patent 10,991,165

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

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I. INTRODUCTION

Patent Owner Quantum Imaging, LLC ("Quantum") submits this Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude Evidence. The relevant authorities point the Board toward granting Quantum's Motion to Exclude.

II. REPLY TO SONY'S ARGUMENTS

A. The Alleged PSO Manual (Exhibit 1008) is inadmissible.

Sony failed to address the relevant authorities supporting Quantum's motion. Examples are two cases in which the Board excluded exhibits for lack of authentication under FRE 901. *See TRW Automotive U.S. LLC v. Magna Electronics Inc.*, IPR2014-01348 Paper 25 at 12 (PTAB January 15, 2016) (holding alleged prior art publication not self-authenticating, evidence of authenticity insufficient). Like Sony, the petitioner had attempted to supplement authentication of exhibits in its reply. The Board found the "maneuver" improper, excluding it for lacking authentication. *See Riverbed Technology, Inc. v. Realtime Data LLC*, IPR2016-00978, Paper 67 at 41 (PTAB October 30, 2017) (excluding exhibit/portions of expert declaration for failure to authenticate under FRE 901). Like Mr. Crane, Mr. Harry, and Ms. Hudgins, the witness in *Riverbed* failed to show sufficiently that the document is what it is claimed it to be. Sony mistakenly relied on *Advanced Micro Devices, Inc. v. Aquila Innovations, Inc.*, IPR2019-01526, Paper 37 (PTAB Mar. 10, 2021). Unlike Quantum, the patent owner in *Advanced Micro* failed to object during

the deposition of the expert testifying about the exhibit, which was determined to be self-authenticating under FRE 901(b)(4). Sony's reliance on *Valve Corp. v. Ironburg Inventions Ltd.*, IPR2017-00858, Paper 68 at 42-43 (PTAB Feb. 28, 2019), is similarly misplaced. Not only was the movant's objection untimely, but the exhibit was authenticated by "a person with personal knowledge of the publication."

Sony's legal authorities actually support excluding the copyright notice in Exhibit 1008 as hearsay. *See Valve Corp. v. Ironburg Inventions Ltd.*, IPR2017-00858, Paper 68 at 42-43 (PTAB Feb. 28, 2019) (holding petitioner could not rely on date printed on publication because "marking is hearsay"); *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2016-00103, Paper 35 at 19 (PTAB May 8, 2017) (finding exhibits with date evidence on covers to be hearsay but proven to fall within business records exception of FRE 803(6)).; and *L-3 Communications Holdings, Inc. v. Power Survey, LLC*, IPR2014-00836, Paper 68 at 30 (PTAB Nov. 23, 2015) (rejecting that copyright notice in manual was not hearsay but determining declarant proved business records exception).

B. Mr. Harry's Declaration (Exhibit 1011) is inadmissible.

Sony's argument that Exhibit 1011 is lay opinion testimony contradicts FRE 701 and relevant caselaw. All of the "modern trend" cases relied upon by Sony involve business owners providing opinions from personal knowledge about their own businesses. Such persons were prohibited from testifying under Rule 701 where

their particularized knowledge of the business does not stem from holding an internal position in their company. "Outsiders" were required to be qualified as experts. *Autoforge, Inc. v. Am. Axle & Mfg., Inc.*, 2008 WL 65603 at *7 (W.D. Pa Jan. 4, 2008) addressed whether the President of a company was qualified to offer lay opinion testimony. The court held much of the so-called lay witness' testimony inadmissible because it lacked proper foundation, was speculative in nature and amounted to "a proffer by [the company] of an expert in lay witness clothing." At *8. Therefore, Mr. Harry lacks the personal knowledge required as a fact witness, lacks the proper foundation and particularized knowledge within his own business to qualify as a proper lay opinion witness, and lacks the education and expertise to qualify as an expert. Furthermore, Exhibit 1011 contains statements that are inadmissible hearsay. Sony's effort to introduce them under FRE Rule 807 is equally unavailing. Neither of the requirements is satisfied. For example, statements by third-party video game industry magazines and on-line articles satisfy neither the guarantees of trustworthiness nor the requisite probative value.

C. Mr. Crane's Declaration (Exhibit 1004) is inadmissible.

The cited caselaw directs that Exhibit 1004 is inadmissible under the Code of Federal Regulations. Sec. 42.104(b)(5) references the Board's authority to completely exclude exhibits where a party has "failed to state its relevance or to identify specific portions of the evidence that support the challenge." Sony relies on

Power Integrations, Inc. v. Fairchild Semiconductor Int'l., Inc., 711 F.3d 1348 (Fed. Cir. 2013), reversing admission of expert testimony into evidence, because expert testimony must be the "product of reliable principles and methods" applied to "sufficient facts or data" under FRE 702. *Id. at 1373*. The Court found that "while an expert's data need not be admissible, the data cannot be derived from an unreliable source." Reasoning that FRE 703 "cannot be used as a backdoor to get the evidence" admitted, the Court excluded the expert opinion "derived from unreliable data and built on speculation." *Id. at 1374*.

In both *Sipnet EU S.R.O. v. Straight Path IP Group, Inc.*, IPR2013-00246, Paper 63, 2 (PTAB Oct. 9, 2014), and *Google Inc. v. Intellectual Ventures II LLC*, IPR1014-01031, Paper 41, 13-14 (PTAB Dec. 7, 2015), the Board emphasized the expert's personal experience and observation of publication and dissemination and the reliability of the circumstance and/or dates of publication that appear on the face of its publications. The *Google* Board required the party offering the declaration to establish "sufficient evidence of authenticity to support a prima facie case that the item is genuine." Thus, the issue is not merely whether it is probative or procedurally adequate but whether it is personally authenticated. Here, Mr. Crane has no personal knowledge about the person who supplied Exhibit 1008 or the facts relating to its publication at the time in question. Consequently, Exhibit 2004 is inadmissible.

D. Ms. Hudgin's Declaration (Exhibit 1024) is inadmissible.

According to 37 C.F.R. Sec. 42.64 (b)(2), Sony had 10 days after Quantum's objection to Exhibit 1008 to provide supplemental evidence addressing the objection and supporting admissibility. Months after the time to file supplemental evidence had passed, Sony relied upon the Board's Order in Paper 23 as permission to introduce Exhibit 1024 as support for Exhibit 1008 with its Reply Brief. Referencing *Hulu LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29, pp12-16 (PTAB Dec. 20, 2019), the Board remarked that "[t]here may be opportunities for Petitioner to introduce the Sakuta declaration during the trial." Paper 23 did not offer an opportunity to circumvent the requirements of Sec. 42.64 or to offer a different declarant to cure Sony's failure to submit evidence in response to Quantum's objections.

III. CONCLUSION

The authorities and facts point the Board in one direction: granting Quantum's motion and excluding Sony's Exhibits 1004 (or paragraphs therein), 1008, 1011, 1017, and 1024.

Date: September 3, 2024

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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:

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