

Case IPR2023-01003
Patent No. 9,226,090

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

EIGHT KHZ, LLC,
Patent Owner.

Case IPR2023-01003
Patent 9,226,090

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

I. META MISUSES MOTION TO STRIKE FOR SUBSTANCE

Meta sought a motion to strike, not further briefing, and veered off course by improperly addressing the weight and substance of PO's Sur-Reply arguments. "A motion to strike may be appropriate when a party believes the Board should disregard arguments or late-filed evidence [], whereas further briefing may be more appropriate when the party wishes to address the proper weight the Board should give to the arguments." CTPG, 80. In its Motion, Meta attempts to rehabilitate its expert's credibility—a central issue—by falsely claiming "Dr. Kyriakakis' opinions have not changed." Mot. 1. Moreover, focusing on the strength of PO's arguments, Meta argues, under the guise of a motion to strike, that Dr. Kyriakakis's testimony—the sole evidence PO cited for the 5 sentences in question—fails to support PO's arguments: "Dr. Kyriakakis' cited transcript itself does not support [PO's] theories." *Id.*, 1-2. Meta's substantive arguments regarding the weight of Dr. Kyriakakis's testimony have no place in a motion to strike and are improper.

Meta argues the absence of citation to Exs.2029-30 in PO's Sur-Reply confirms PO's awareness of their improper inclusion in the record. Mot. 1. *First*, PO adhered to numerous Board decisions holding that inclusion of the deposition exhibits was proper "for the limited purpose of allowing the Board to understand the context of the cross[]." Sur-Reply, v, note i (citing 4 cases). Notably, Meta never argued against PO's cross-examination of Dr. Kyriakakis on Exs.2029-30, nor

moved to exclude/strike any portion of his testimony for exceeding the cross's proper scope. It cannot: Neither the CTPG nor the Board's decisions prohibit testing an expert's direct testimony by introducing exhibits at deposition, even if they are not of record. In such cases, "a party should be able to submit those exhibits with the transcript, so the Board has the full context available to evaluate the testimony." IPR2020-00349, Paper 53, 12. *Second*, by not moving to strike Exs.2029-30, Meta concedes they are not "late-filed evidence" and are properly on record.

II. PO RESPONDED TO META'S REPLY ARGUMENTS

The 5 sentences in question respond to Meta's Reply arguments and are relevant for judging Dr. Kyriakakis's credibility. In his supplemental declaration, Dr. Kyriakakis contradicted his earlier opinions, maintaining PHOSITAs know that externalization and binaural synthesis do not require HRTF-processing¹ and that localizing sound away from and proximate to a listener can be achieved with stereo sound. *See, e.g.*, Ex.1055, ¶¶6, 8, 14, 30, 35. Citing Dr. Kyriakakis, Meta argued that "externalization without HRTF ... was also known in the industry." Reply, 8. Meta's Reply further addressed Dr. Kyriakakis's credibility, (*Id.*, 12-14), and charged Dr. Begault with inconsistency, (*Id.*, 7-9). During deposition, PO simply tested Dr.

¹ This contradicts his earlier testimony in the case. *See* Ex.1003, ¶55; Ex.2016, 127:2-128:22 (explaining binaural synthesis *requires* HRTFs); 134:20-149:5 (providing examples involving HRTFs to synthesize new binaural sound from input binaural sound).

Kyriakakis's testimony, giving him a chance to explain how his supposedly "well-known" opinion among PHOSITAs is rejected by other experts.

While arguing relevance in a motion to strike is improper, Meta repeatedly claims that the excerpts from Exs.2029-30 used during Dr. Kyriakakis's deposition are unrelated to this IPR. Mot. 2-3. However, the '090, '179, and '509 Patents all deal with binaural synthesis and externalization, with experts offering *general opinions—~~independent of any single patent~~*—on topics like binaural sound, HRTF-processing, stereo sound, and SLPs. The science underlying these patents is identical, making Dr. Kyriakakis's disagreement with other scientists on these foundational concepts a direct blow to his credibility. Furthermore, these terms are found throughout the claims of the patents and/or their specifications, which also share similar content. Notably, the '090 Patent's international class code, H04S 7/00, is also a primary classification for the other two patents.

Meta faults PO for not filing Exs.2029-30 with POR or challenging Dr. Kyriakakis earlier. Mot. 1, 3. While PO had argued against Dr. Kyriakakis's credibility, (POR, 5-35), his opinions of binaural synthesis and externalization did not shift until his supplemental declaration (*supra*, n.1); thus, PO could not have presented this point sooner. Furthermore, PO has not relied on Exs.2029-30 for any substantive argument; they were only used during the deposition to challenge Dr. Kyriakakis on his changing opinions regarding PHOSITAs' knowledge.

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Date: October 7, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2024, I caused a true and correct copy of the foregoing Patent Owner's Opposition to Petitioner's Motion to Strike to be served via electronic mail at PH-Meta-Eight-KHZ-IPR@paulhastings.com upon the following attorneys of record for the Petitioner:

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