

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRYCER, LLC, and BRYCER MANAGEMENT, INC.,
Petitioners

v.

TEGRIS, INC.,
Patent Owner.

Case No. IPR2023-01196
Patent No. 11,126,966

Before KAREN I. SWEENEY, *Trial Paralegal*

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Tegriss, Inc. (“Patent Owner”) objects as follows to the admissibility of evidence submitted by Petitioners Brycer, LLC, and Brycer Management, Inc., (“Petitioners”) during the preliminary proceeding. Patent Owner further objects to any effort by Petitioners to submit new evidence or argument in reply to these objections or otherwise that it could have presented earlier, e.g. to support Petitioner’s case alleging unpatentability.

Evidence	Objections
EX1003 Declaration of Richard MacInnes	37 C.F.R. § 42.65: The exhibit contains expert testimony that does not adequately disclose underlying facts or data on which the opinion is based, as discussed further below. FRE 402: The exhibit includes information that is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 702/703/705: The exhibit contains statements and opinions that are not admissible. The exhibit failed to adequately identify facts or data supporting the witness’s opinions and conclusory testimony. The exhibit failed to demonstrate that the witness has sufficient experience with systems for managing the inspection and maintenance of fire hydrants or emergency or life-safety equipment, knowledge of the requirements for their inspection and maintenance, or experience with fire hydrant management software or

	other similar life-safety assets. EX1003, ¶¶ 9-14; <i>See also</i>, EX1004. The exhibit failed to demonstrate that the witness possessed the knowledge and experience of a POSA. For this reason, among others, the witness's opinions regarding the knowledge of a POSA in 2007 should be excluded or otherwise given little weight, if any. <i>See Kyocera Senco Indus. Tools, Inc. v. ITC</i>, 22 F.4th 1369, 1376-1377 (Fed. Cir. 2022) (“To offer expert testimony from the perspective of a skilled artisan in a patent case—like for claim construction, validity, or infringement—a witness must at least have ordinary skill in the art. Without that skill, the witness' opinions are neither relevant nor reliable.”); <i>see also</i> Patent Owner Preliminary Response, p. 4. The exhibit is not the product of reliable principles and methods and fails to reliably apply the principles and methods of the facts of the case. The exhibit contains opinions for which the factual bases have not been adequately disclosed, including numerous broad and/or conclusory statements made without sufficient analysis, citation to evidence, or explanation. <i>See</i>, Ex. 1003 ¶¶ 69-70, 103, 106-150, and 158-164, 167, 177-182, 195; <i>see also</i> Patent Owner Preliminary Response, pp. 16-18 and 28-29. The exhibit failed to reliably apply the correct legal standard to the facts of the case. The witness failed to construe limitations in the challenged claims (including “fire hydrant management software”), failed to address recited limitations therein in his analysis related to alleged obviousness, failed to adequately explain the differences between the claims and the prior art, and improperly asserts “common sense” to supply missing limitations. <i>See</i>, Ex. 1003 ¶¶ 65-69, 72-102, 141-256; <i>see also</i> Patent Owner Preliminary Response, p. 16-18 and 28. The exhibit fails to sufficiently consider the prosecution history, which shows the claims were allowed after amended to be limited to fire hydrant management software. Ex. 1003 ¶¶ 48-49; <i>see also</i> Patent Owner Preliminary Response, p. 6-9 and 13 and EX1002 pp. 627-629. The exhibit appears to contain
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	statements that are not the witness's opinions, as portions of the declaration are substantially the same as the Petition itself. <i>See</i>, Exhibit A FRE 802: Statements included in the exhibit from other sources are inadmissible hearsay.
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Date: February 7, 2024

Respectfully submitted,

/Chris Perque/
Chris Perque
Reg. No. 37,696
Fisher Boyles LLP

/John Boyd/
John Boyd
Reg. No. 38,055
Fisher Boyles LLP

Exhibit A: EX1003 MacInnes Report/Petition Comparison Table

The following table provides examples of copying between EX1003 and the Petition but is not exhaustive of all portions of those documents that support the conclusion that certain statements in the declaration do not represent opinions of the declarant.

EX 1003: MacInnes Report	Petition
¶80: As in Figure 3, above, client computers 305 “run web browsing applications that retrieve and display the [JOM’s] web pages” which are “retrieve[d] ... over a global computer network 199 such as the Internet” by “mak[ing] a request over the Internet 199 to a web server 320,” which are “operative to implement the front-end software” to “display information to users operating a web browser” and “provide notifications in a known manner usually via email.” Ex. 1005 at [0065]-[0067]. Application servers 330, coupled to web servers 320 and database servers 340, are “operative to implement the application software” which “contains the logic that is used to determine which web pages are presented to the user and how to respond to the user’s actions,” “contains the necessary logic necessary to process the user’s transaction and provide the	pp. 30-31: In Figure 3, client computers 305 (which may be, <i>e.g.</i>, inspector and reviewer computers) “run web browsing applications that retrieve and display the [JOM’s] web pages” which are “retrieve[d] ... over a global computer network 199 such as the Internet” by “mak[ing] a request over Internet 199 to a web server 320.” EX1005, [0065]; EX1003 ¶155. Key discloses (i) web servers 320 “operative to implement the <i>front-end software</i>” to “display information to users operating a web browser” and “provide notifications in a known manner usually via email” (ii) application servers 330, coupled to web servers 320 and database servers 340, are “operative to implement the <i>application software</i>” which “contains the logic that is used to determine which web pages are presented to the user and how respond to the user’s actions,” “contains the necessary logic

associated updates and any notifications,” and are described “in greater detail” in Figure 4. Ex. 1005 at [0068]. Database servers 340 are “operative to store and retrieve information from a database 350.”	necessary to process the user’s transaction and provide the associated updates and any notifications” and are described “in greater detail” in Figure 4, and (iii) database servers 340 “operative to store and retrieve information from a database 350.”
¶107: the prior art teaches the claimed configurations, and a POSITA would have found obvious the claims. For example, as I explain in my declaration and evidenced by Key, Chauhan, Sweeney, McKinney and the other prior art I discuss, it was well known in the art and obvious to a POSITA: • to provide a web-based asset management system and method for monitoring and inspecting for compliance various assets (such as fire hydrants, boilers, pressure vessels, elevators, sprinkler systems, amusement parks, fire pumps, construction assets, utilities and the like); • that the system and method provides controlled access for viewing and data entry/manipulation (e.g., via a username and password), including updating status, to various user classes (including asset owners, asset inspectors and jurisdictional/authority reviewers/approvers); • that the data for each asset is stored in a central database and accessible	p. 22-23: The prior art teaches the claimed configurations, and a POSA would have found the claims obvious. Indeed, as shown herein, it was well known and obvious to a POSA, for example: (i) to provide a web-based asset management system and method for monitoring and inspecting for compliance various assets (such as fire hydrants, boilers, pressure vessels, elevators, sprinkler systems, amusement parks, fire pumps, construction assets, utilities, etc.); (ii) that the system and method provides controlled access for viewing and data entry (e.g., via a username and password), including updating status, to various user classes (including asset owners, asset inspectors and jurisdictional/authority reviewers/approvers); (iii) that the data for each asset is stored in a centralized database and accessible in real time;

in real time; • that the system and method provides relevant standard notices and reports to the various users including, <i>e.g.</i>, notifying the owner of upcoming inspections and deadlines and the approval authority of inspection status and compliance or violations; • that the owner can select particular qualified/certified inspectors within the particular jurisdiction in which the asset resides; • that the system and method provides inspection templates to guide the inspector through the asset-inspection process resulting in an inspection report provided to the jurisdictional/authority reviewers/approvers for review including with any code violations; and • that the system and method should provide compliance reporting and management throughout the entire life cycle to all relevant stakeholders such that the stakeholders can keep apprised of necessary events and status and take any needed actions as a result.	(iv) that the system and method provides relevant standard notices and reports to the various users including, <i>e.g.</i>, notifying the owner of upcoming inspections and deadlines and the approval authority of inspection status and compliance or violations; (v) that the owner can select particular qualified/certified inspectors within the particular jurisdiction in which the asset resides; (vi) that the system and method provides inspection templates to guide the inspector through the asset-inspection process resulting in an inspection report provided to the jurisdictional/authority reviewers/approvers for review including with any code violations; and (vii) that the system and method should provide compliance reporting and management throughout the entire life cycle to all relevant stakeholders.
¶113: Chauhan discloses a “UtilityCenter” that “is an integrated GIS suite of applications that manages information across the entire utility” and that “the primary data” for the UtilityCenter is “stored	p. 15: Chauhan discloses a “UtilityCenter™ [that] is an integrated GIS suite of applications that manages information across the entire utility” and with “[t]he primary data ... stored in a Microsoft SQL Server® database”

in a Microsoft SQL Server® database.”	p. 24: For example, Chauhan discloses a “UtilityCenter™ [that] is an integrated GIS [geographic information system] suite of applications that manages information across the entire utility” (EX1016, [0039]-[0042],
¶138: Lloyd’150 further demonstrates the need and desirability to ensure compliance through monitoring, testing and reporting of various fire/life safety systems: • Lloyd’150 recognized that “[t]here is a need for such a [fire/life safety] system to verify compliance of the entire fire/life safety system, particularly with respect to operational criteria such as fire/life safety codes and associated industry standards.” • Lloyd’150 identified the known National Fire Protection Association (“NFPA”) standard and codes, among others, including testing and maintenance required to be performed at set intervals. • Lloyd’150 recognized that “full compliance with these standards/codes is paramount to ensure that in the event of a fire, water-based fire protection systems perform as designed.” • Lloyd’150 also recognized that “there is a need for a system and method capable of notifying insurers, property management companies, building/structure owners or other	p. 27: Lloyd’150 demonstrates the need and desirability—as was well known in the art—to ensure compliance through monitoring, testing and reporting of various fire/life safety systems: (i) it recognized that “[t]here is a need for such a [fire/life safety] system to verify compliance of the entire fire/life safety system, particular with respect to operational criteria such as fire/life safety codes and associated industry standards,” (ii) it noted known National Fire Protection Association (“NFPA”) standard and codes, among others, including testing and maintenance required to be performed at set intervals, (iii) it recognized that “full compliance with these standards/codes is paramount to ensure that in the event of a fire, water-based fire protection systems perform as designed,” and (iv) it recognized that “there is a need for a system and method capable of notifying insurers, property management companies, building/structure owners or other interested parties of any

interested entities of any discrepancies or deviations in the preparedness of fire/life safety systems,” and that “[s]uch a system and method will bring about more strict code compliance, through improved testing and maintenance practices, so that reliability of fire/life safety systems will be greatly increased.”	discrepancies or deviations in the preparedness of fire/life safety systems,” and that “[s]uch a system and method will bring about more strict code compliance, through improved testing and maintenance practices, so that reliability of fire/life safety systems will be greatly increased.” EX1021, 1:9-2:24, 7:24-42, 7:1-6; EX1003 ¶138.
¶139: I further note that the Background of the ’966 Patent admits that various assets—including those disclosed in Key and the other prior art I discussed above such as “boilers,” “elevators,” “amusement park rides,” and other objects requiring inspection such as “fire hydrants” — were interchangeable for purposes of its registry. Ex. 1001 at 1:19-39. This would have further confirmed to a POSITA that there was nothing new or novel about the particular asset to be monitored/tracked. In fact, as I discussed above, and consistent with the prior art, the ’966 Patent states that a fire hydrant is a “non limiting example” and that “it should be readily appreciated that any owned asset may be substituted for the fire hydrant.”	p. 28: ’966 patent’s admissions in its Background of jurisdictionally required inspections including “boilers,” “elevators,” “amusement parks/rides,” and other objects requiring inspection such as “fire hydrant[s],” and that various known “owned assets” are interchangeable with each other...A POSA would have understood that there was nothing new or inventive about the particular asset to be tracked, nor does the ’966 patent purport there is, instead noting—just like in Key and the other prior art discussed above—that a fire hydrant is a “non[-]limiting example” and “it should be readily appreciated <i>any owned asset may be substituted for the fire hydrant.</i>”
¶237: Key discloses that after the initial process is completed and assuming that asset is not decommissioned, that “the [inspection] process is repeated,” which process includes scheduling an inspection, and “the review process is repeated,” which process includes “updat[ing] the inspection date” which	pp. 67-68: Key discloses that, after the initial process is completed and assuming that asset is not decommissioned, “the [inspection] process is repeated,” which process includes scheduling an inspection, and “the review process is repeated,” which process includes “updat[ing] the

“is used by the JOM to calculate the next required inspection” (that is, when the next inspection deadline is calculated after the previous one is completed).	inspection date” which “is used by the JOM to calculate the next required inspection” (namely, when the next inspection deadline is calculated after the previous one is completed).
¶240: Key alone or with Sweeney and/or McKinney discloses or renders obvious the selection of a qualified inspector, including the particularly selected inspector, and Sweeney discloses a bid selection process whereby multiple contractors submit bids that are presented to the asset owner which then selects a winning bid. For example, as to the bid-selection process, as I explained in limitation [8f], Sweeney discloses an “online bid submission form ... provided to a plurality of contractors for use in submitting bids” and that “[t]he asset owner can be provided with online access to the submitted bids ... in order to select[] a winning bid from the submitted bids,” that is, the owner selects the contractor from a compiled list (in Key’s JOM, it is the qualified inspector to perform the compliance inspection that is selected).	pp. 68-69: Key alone or with Sweeney and/or McKinney discloses or renders obvious the selection of a qualified inspector, including the particularly selected inspector, and Sweeney discloses a bid selection process whereby multiple contractors submit bids that are presented to the asset owner which then selects a winning bid. <i>See also</i> EX1003 ¶240; step [8f]. For example, as to the bid-selection process, as explained in step [8f], Sweeney discloses an “online bid submission form ... provided to a plurality of contractors for use in submitting bids” and that “[t]he asset owner can be provided with online access to the submitted bids ... in order to select[] a winning bid from the submitted bids,” that is, the owner selects the contractor from a compiled list (in Key’s JOM, the qualified inspector to perform the compliance inspection).
¶242: Key discloses “determining an inspection due date” and “scheduling an object inspection.” Ex. 1005 at claim 24, [0020], [0045], [0055]. Key further discloses that the “work assignment unit automatically schedules inspection for objects with	pp. 69-70: Key discloses “determining an inspection due date” and “scheduling an object inspection.” EX1005, cl. 24, [0020], [0045], [0055]; EX1003 ¶242. Key further discloses that the “work assignment unit automatically

upcoming inspection due dates.” Ex. 1005 at [0076], [0080], [0083]-[0084]. Key also discloses scheduling of “new work assignments,” which a POSA would have understood to be based on relevant availability (<i>e.g.</i>, inspector and asset). Ex. 1005 at [0134]-[0135]. In other words, it makes no sense to schedule an inspection if one or both the inspector and the asset are not available to be inspected.	schedules inspections for objects with upcoming inspection due dates.” EX1005, [0076], [0080], [0083]-[0084]; EX1003 ¶242. Key also discloses scheduling of “new work assignments,” which a POSA would understand to be based on relevant availability (<i>e.g.</i>, inspector and asset). EX1005, [0134]-[0135]; EX1003 ¶242.
¶242: Sweeney further discloses that contractor-submitted bids (inspectors, as applied to Key) include various information including contractor availability, etc. Ex. 1006 at [0014], [0051]; Ex. 1020, [0082]-[0084]	p.70: Sweeney further discloses that contractor-submitted bids (inspectors, as applied to Key) include various information including contractor availability, etc. EX1006, [0014], [0051]; EX1020, [0082]-[0084]; EX1003 ¶243.
¶244: Key and Sweeney disclose, or it would have been obvious to a POSITA include as part of Key, the limitations of claim 12.	p. 71: The combination of Key and Sweeney discloses, or it would have been obvious to include as part of Key, the steps of claim 12.
¶245: Sweeney discloses that the “inspection report” from the inspector may include various including, including “photographs of the construction asset” along with other relevant information that are stored as part of the inspection report for the asset in the database (for example, as shown in Figure 2, below).	p. 71: Sweeney discloses that the “inspection report” from the inspector may include various including, including “photographs of the construction asset” along with other relevant information that are stored as part of the inspection report for the asset in the database (for example, as shown in Figure 2, below).
¶246: Key discloses storing relevant information in association with the object inspection in its database as part of object 740 including, <i>e.g.</i>, inspection date, comments, recommendations, etc.	p. 72: Key discloses storing relevant information in associate with the object inspection in its database as part of object 740 including, <i>e.g.</i>, inspection date, comments, recommendations, etc. in inspection 1

in inspection 1 760 (in Figure 7 below). Ex. 1005 at [0104]-[0105]. One logical example of relevant information to include in the inspection report are visual depictions (photos, video, etc. as in Sweeney) to aid in subsequent jurisdictional review and understanding of the inspection (<i>e.g.</i>, to illustrate deficiencies, compliance, allow a reviewer to remotely confirm that a repair was properly made, etc.).	760 (as in Figure 7 below). EX1005, [0104]-[0105], FIG. 7; EX1003 ¶246. One logical example of relevant information to include in the inspection report are visual depictions (photos, video, etc. as in Sweeney) to aid in subsequent jurisdictional review and understanding of the inspection (<i>e.g.</i>, to illustrate deficiencies, compliance, allow a reviewer to remotely confirm that a repair was properly made, etc.).
¶248: Key discloses that its inspection reports include noting violations and recommendations and that violations may block a certificate from issuance. Key also discloses that “[v]iolations must be rectified before the jurisdiction will allow the object to be placed into service” and that repairs are arranged to be done by an “authorized repairer” to make the object compliant, which a POSITA would have understood needed to be done within the compliance deadline (or logically, within a specified period to perform an action such as a repair as was common in the field, which could depend on the particular problem identified or action to be taken).	pp. 73-74: Key discloses that its inspection reports include noting violations and recommendations and that violations may result in block a certificate from issuance. Key further discloses that “[v]iolations must be rectified before the jurisdiction will allow the object to be placed into service” and that repairs are arranged to be done by an “authorized repairer” to make the object compliant, which a POSA would have understood needed to be done within the compliance deadline (or logically, within a specified period to perform an action such as a repair as was common in the field, which could depend on the particular problem identified or action to be taken).
¶250: Sweeney discloses a bid selection process whereby multiple qualified contractors submit bids that are	pp.75-76: Sweeney discloses a bid selection process whereby multiple qualified contractors submit bids that are presented to the asset owner which then selects a winning bid...For example, as to the bid-selection

presented to the asset owner which then selects a winning bid. For example, as to the bid-selection process, as I explained, Sweeney discloses an “online bid submission form ... provided to a plurality of contractors for use in submitting bids” and that “[t]he asset owner can be provided with online access to the submitted bids ... in order to select[] a winning bid from the submitted bids,” that is, the owner selects the contractor (in Key’s JOM, the contractor performs the repair to remedy the deficiency).	process, as explained in step [8f] and claim 10, Sweeney discloses an “online bid submission form ... provided to a plurality of contractors for use in submitting bids” and that “[t]he asset owner can be provided with online access to the submitted bids ... in order to select[] a winning bid from the submitted bids,” that is, the owner selects the contractor (in Key’s JOM, the contractor performs the repair to remedy the deficiency).
¶249: Key and Sweeney disclose, or it would have been obvious to a POSITA include as part of Key, the limitations of claim 14. And, the combination of Key, Chauhan, Sweeney, and McKinney renders obvious claim 14 for the same reason as claim 8. Claim 14 is like claim 10, except claim 14 is applied contractors to remedy a deficiency instead of inspectors to perform an inspection.	p. 75: The combination of Key and Sweeney discloses, or it would have been obvious to include as part of Key, the steps of claim 14 for effectively the same reasons as claim 10 (claim 14 is like claim 10 except applied to contractors to remedy a deficiency instead of inspectors to perform an inspection).
¶255: Key discloses, or it would have been obvious to include as part of Key, the step of claim 16 for the same reasons as claim 8, step [8i]. To the extent it requires a compilation compliance report from multiple inspections, it is likewise disclosed by Key. Ex. 1005 at [0152], [0176]. In effect, this claim would amount to nothing more than ... a routine compliance report that allows a user,	p. 77: Key discloses, or it would have been obvious to include as part of Key, the step of claim 16 for the same reasons as claim 8, step [8i]. To the extent it requires a compilation compliance report from multiple inspections, it is likewise disclosed by Key, or obvious in view of the prior art (in other words, this claim would amount to nothing more than a routine summary report that allows a

such as the jurisdiction, to easily view and understand the status of compliance and inspections including violations for regulated assets).	user, such as the jurisdiction, to easily view and understand the status of compliance and inspections including violations for regulated assets).
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Patent Owner Mandatory Notice Information Under 37 CFR § 42.8 was served on the above referenced date via email on the following attorneys for the Petitioners:

mberkowitz@reichmanjorgensen.com
pcolsher@reichmanjorgensen.com
khoang@reichmanjorgensen.com
rjbrycertegris@reichmanjorgensen.com

/Chris Perque/
Chris Perque
Reg. No. 37,696
Fisher Boyles LLP