

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Mercedes-Benz USA, LLC,
Petitioner,

v.

Daedalus Prime LLC,
Patent Owner.

Case No. IPR2023-01344
Patent 9,575,895

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

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Rules

FRE 803(8)	1, 2
FRE 902	3

LIST OF EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 9,575,895 (<i>Challenged Patent</i>)
1002	File History for the '895 Patent
1003	IBM POWER7 multicore server processor to Sinharoy et al. ("Sinharoy")
1004	DMA Cache: Using On-Chip Storage to Architecturally Separate I/O Data from CPU Data for Improving I/O Performance to Tang et al. ("Tang")
1005	Explorations of Optimal Core and Cache Placements for Chip Multiprocessor to Thomas Canhao Xu et al. ("Xu")
1006	U.S. Patent Application Publication No. 2009/0164739 to Harikumar ("Harikumar")
1007	Declaration of Dr. Robert Horst
1008	Curriculum Vitae of Dr. Robert Horst
1009	Declaration of Gordon MacPherson, IEEE, Re Sinharoy
1010	Sinharoy IEEE Xplore Page
1011	Declaration of Gordon MacPherson, IEEE, Re Tang
1012	Tang IEEE Xplore Page
1013	Declaration of Gordon MacPherson, IEEE, Re Xu
1014	Xu IEEE Xplore Page
1015	File History for the '895 Patent Parent Application U.S. Application No. 13/324,053
1016	Architectural Implications of Cache Coherence Protocols with Network Applications on Chip Microprocessors to Kyueun Yi et al. ("Yi")

1017	Supplementary Declaration of Dr. Robert Horst
1018	Deposition Transcript of Dr. Michael C. Brogioli
1019	Copyright Record of 2011 NORCHIP with the U.S. Copyright Office
1020	Declaration of Jiaxing (Kyle) Xu in Support of <i>Pro Hac Vice</i> Admission Under 37 C.F.R. § 42.10(c)

I. INTRODUCTION

Petitioner respectfully submits that the Board should deny Patent Owner's Motion to Exclude (Paper 24, "MTE") EX1019 and decide the patentability of the claims at issue on the full record presented. As explained below, EX1019 was submitted to the Board in compliance with PTAB rules and the Rules of Evidence.

II. ARGUMENT

A. EX1019 Is Admissible Under at Least FRE 803(8)

Patent Owner argues that because EX1019 is "being offered to prove the truth of the alleged public availability of Xu by way of a publication date," it is hearsay and no applicable exception applies. MTE, 3. This argument is incorrect.

EX1019 is a printout of the webpage record from the United States Copyright Office online catalog for 2011 NORCHIP, published by the IEEE. EX1019. Based on the well-settled case law, EX1019 is admissible under at least the "public records" exception to the hearsay rules. FRE 803(8).

Both district courts and the Board have found that printouts from the Copyright Office's online catalog qualify under the public records exception to the hearsay rules. In *Eagle Rock Entm't, Inc. v. Coming Home Prods., Inc.*, the court found that a webpage "print-out from the Copyright Office's [online] database[,] which show[ed] the results from a search of the Registered Works Database ... fit[] within the public records exception to the hearsay rule." No. CV 03-571 FMC, 2004

WL 5642002, at *11 n.13 (C.D. Cal. Sept. 1, 2004). Similarly, in *Smart Microwave Sensors GMBH v. Wavetronix LLC*, the Board found that printed copies of “Copyright Office Catalog information” are “public records and, therefore, not hearsay.” IPR2016-00488, Paper 57 (Final Written Decision), at 29 (PTAB July 17, 2017). In reaching this conclusion, the Board reasoned that “these Exhibits [printouts of webpage records from the Copyright Office online catalog] fall within the ‘public records’ exception to the hearsay rules under FRE 803(8) ‘because they are public records that set out the office’s activities under FRE 803(8)(A)(i) and because PO has not shown that the source of information or other circumstances indicate a lack of trustworthiness under FRE 803(8)(B).’” *Id.* at 57 (quotation omitted).

The same should apply here, as Patent Owner has not shown the “source of information or other circumstances indicate a lack of trustworthiness” of EX1019. *See* MTE, 2-3. Although unclear from the MTE itself, Patent Owner appears to allege the copyright record of 2011 NORCHIP is not the record for the Xu reference (EX1005), and thus should be excluded. *Id.* This argument is unfounded. The Xu reference was published in 2011 NORCHIP by the IEEE. Petition, 33; EX1014 (Declaration of Gordon MacPherson), ¶ 11 (“Thomas Canhao Xu, et al.; ‘Explorations of optimal core and cache placements for Chip Multiprocessor’, published in 2011 NORCHIP . . .”). Because EX1019 is a printout of the webpage record for 2011 NORCHIP from the Copyright Office’s online catalog, it also serves

as the record for the Xu reference, which is an article published as part of 2011 NORCHIP.

B. EX1019 Is Admissible as Self-Authenticating Under FRE 902

Patent Owner further argues EX1019 should be excluded because it allegedly “has not been properly authenticated.” MTE, 4. But, courts have consistently held records/information on government websites, e.g., that of the Copyright Office, as self-authenticating under FRE 902. *See, e.g., Jackson v. Netflix, Inc.*, 506 F. Supp. 3d 1007, 1013 (C.D. Cal. 2020) (taking judicial notice of Copyright Catalog entries from the Copyright Office’s website, because they are “indisputably authentic, relevant to Plaintiffs’ claims, and on government websites”); *Maxberry v. Univ. of Ky. Med. Ctr.*, 39 F. Supp. 3d 872, 874 n.5 (E.D. Ky. 2014) (taking judicial notice of records and information located on the USPTO’s online database because they are “located on government websites” and are “self-authenticating under Federal Rule of Evidence 902”); *Williams v. Long*, 585 F. Supp. 2d 679, 689 (D. Md. 2008). The same is true here. Because EX1019 is a printout of record of Copyright Catalog from the Copyright Office’s official website, it is self-authenticating under FRE 902.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that EX1019 is admissible at least under the “public records” exception to the hearsay rule, and is further a self-authenticating record from a government website. Patent Owner’s Motion to Exclude should be denied.

Dated: November 20, 2024

Respectfully submitted,

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CERTIFICATION OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, the foregoing was served on September 30, 2024 in their entirety upon the following parties via electronic mail:

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