

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

U.S. Patent No. 9,575,895

PATENT OWNER'S REPLY IN SUPPORT OF PATENT OWNER'S
MOTION TO EXCLUDE

TABLE OF CONTENTS

I.	ARGUMENT.....	1
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TABLE OF AUTHORITIES

CASES

<i>Williams v. Long</i> , 585 F. Supp. 2d 679 (DMD 2008)	3
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OTHER AUTHORITIES

Christopher B. Mueller and Laird Kilpatrick, 5 Federal Evidence § 9.9 (4th ed.)	2
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McCormick on Evidence § 227 at 74 (6th ed. 2006)	1
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RULES

FRE 901	1
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I. ARGUMENT

MB USA argues that “EX1019 is a printout of the webpage record from the United States Copyright Office online catalog for 2011 NORCHIP, published by the IEEE.” Opp. at 1. However, nothing that MB USA has provided in connection with Ex. 1019 corroborates this assertion. For example, Ex. 1019 bears no indicators that provide a URL of the alleged webpage or the date the webpage was accessed or printed. Nor was any declaration provided accompanying Ex. 1019 that attests to its origin or the circumstances of its production. Instead, MB USA simply asks the Board to take it on faith that the document is what MB USA alleges it to be. The rules of evidence are not so lenient. FRE 901 (“[The proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.]”).

MB USA further argues that because it is a printout of from the Copyright Office’s online catalog, Ex. 1019 qualifies under the public records exception to the hearsay rules. Opp. at 1. But this puts the cart before the horse. Nothing MB USA has proffered has satisfied the requirement that Ex. 1019 be shown to actually be such a printout. Said differently, whether Ex. 1019 is impermissible hearsay or not, it must be separately authenticated. McCormick on Evidence § 227 at 74 (6th ed. 2006)

(“Printouts of webpages must first be authenticated as accurately reflecting the content of the page and the image of the page on the computer at which the printout was made.”)

For example, MB USA could have offered proof that: (1) the printout accurately reflects the computer image of the webpage as of a specified date; (2) the website where the posting appears is owned or controlled by a particular person or entity; and (3) the authorship of the web posting is reasonably attributable to that person or entity. *See, e.g.*, Christopher B. Mueller and Laird Kilpatrick, 5 Federal Evidence § 9.9 (4th ed.). MB USA offered none of this.

Interestingly, what MB USA does offer is a citation to Ex. 1014. Opp at 2. Ex. 1014 purports to be the “IEEE Xplore Page” relating to the Xu reference. According to Ex. 1014, the Xu reference was “Published in: 2011 NORCHIP.” Ex. 1014 at 1. MB USA relies on this to show that Ex. 1019 is an adequate copyright record for Xu. Opp. at 2. But Ex. 1014 also indicates that Xu (perhaps as part of the 2011 NORCHIP conference proceedings) was “Added to IEEE Xplore” on 12 January 2012. Ex. 1014 at 1. That is, MB USA’s own evidence shows that Xu was added to IEEE Xplore, and presumable became publicly available, *after* the earliest priority date of the ’895 patent. If anything, by relying on Ex. 1014 in an attempt to bootstrap

Ex. 1019 into evidence, MB USA has demonstrated that Xu itself is not prior art to the '895 patent.

Finally, MB USA confuses printouts of government websites with information on the websites themselves. Opp. at 3. While the information on a government website may be self-authenticating under FRE 902, MB USA did not offer the website into evidence. Instead, MB USA offers an alleged printout of a webpage. Courts have afforded self-authenticating status to such printouts, but this has been true when the printouts include identifying information such as the URL of the webpage to show that the information came from a public authority's website. *See Williams v. Long*, 585 F. Supp. 2d 679, 686-689 (DMD 2008). Ex. 1019 has no such indicia that would make it self-authenticating.

Accordingly, Ex. 1019 should be excluded as inadmissible under the Federal Rules of Evidence

Dated: November 22, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing:

PATENT OWNER'S REPLY IN SUPPORT OF PATENT OWNER'S
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was served on November 22, 2024, by filing this document through the PTAB P-TACTS System as well as by delivering a copy via email directed to the attorneys of record for the Petitioner at the following addresses:

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The parties have agreed to electronic service in this proceeding.

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