

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

SPECTRUM SOLUTIONS L.L.C.,  
Petitioner,

v.

DNA GENOTEK INC.,  
Patent Owner.

U.S. Patent No. 11,536,632

---

*Inter Partes* Review No. IPR2023-01424

---

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

**TABLE OF CONTENTS**

|                                                                         | <b>Page</b> |
|-------------------------------------------------------------------------|-------------|
| I. INTRODUCTION .....                                                   | 1           |
| II. SPECTRUM DID NOT AUTHENTICATE THE WORKBOOK AND<br>THE BROCHURE..... | 2           |
| III. CONCLUSION.....                                                    | 4           |

**TABLE OF AUTHORITIES****Page(s)****Cases**

|                                                                                                                        |         |
|------------------------------------------------------------------------------------------------------------------------|---------|
| <i>ACTV, Inc. v. Walt Disney Co.</i> ,<br>346 F.3d 1082 (Fed. Cir. 2003) .....                                         | 2       |
| <i>Arista Networks, Inc. v. Cisco Systems, Inc.</i> ,<br>IPR2016-00303, Paper 53 (P.T.A.B. May 25, 2017) .....         | 3       |
| <i>FLIR Systems, Inc. v. Leak Surveys, Inc.</i> ,<br>IPR2014-00411, Paper 9 (P.T.A.B. September 5, 2014) .....         | 3       |
| <i>Ford Motor Co. v. Cruise Control Technologies, LLC.</i> ,<br>IPR2014-00291, Paper 44 (P.T.A.B. June 29, 2015) ..... | 3, 4    |
| <i>Hilgraeve, Inc. v. Symantec Corp.</i> ,<br>271 F. Supp. 2d 964 (E.D. Mich. 2003) .....                              | 4       |
| <i>In re Homestore.com, Inc. Sec. Litig.</i> ,<br>347 F. Supp. 2d 769 (C.D. Cal. 2004) .....                           | 2       |
| <i>Spectrum Solutions, Inc. v. DNA Genotek</i> ,<br>IPR2022-01347, Paper 43 (P.T.A.B. February 7, 2024) .....          | 1, 3, 4 |

**Other Authorities**

|                              |   |
|------------------------------|---|
| 37 C.F.R. § 42.6(e)(4) ..... | 6 |
| Fed. R. Evid. 901(a) .....   | 4 |

## I. INTRODUCTION

Petitioner had the burden to authenticate the Workbook (Ex. 1013) and the Brochure (Ex. 1042) when it filed its Petition (Paper 1) and Opposition (Paper 26), respectively. Patent Owner timely objected and then moved to exclude (“MTE”; Paper 35). Petitioner’s responsive Opposition (“MTE Opposition”; Paper 36) provides nothing to foreclose exclusion of either exhibit. *First*, whether the Workbook was created by the CDC or is currently published is not the issue. The issue is whether Spectrum has authenticated the Workbook *as a document that was available to the POSITA before June 19, 2011*.<sup>1</sup> Petitioner argues that a “URL indicates that the CDC Workbook was published in 2008[.]” (MTE Opposition, 2.) But Petitioner provides no authority or evidence—intrinsic or extrinsic—to show that the Workbook was available to a POSITA in 2008. Thus, the Motion to Exclude should be granted for the Workbook, just like the Board did when it excluded the Workbook in an earlier IPR. (*Spectrum Solutions, Inc. v. DNA Genotek*, IPR2022-01347, Paper 43 at 26-28 (P.T.A.B. February 7, 2024).) *Second*, the same conclusion should be reached for the Brochure as well given that Petitioner relies on a sole copyright date.

---

<sup>1</sup> The earliest application to which priority is claimed is provisional application No. 61/498,584, filed on June 19, 2011.

## **II. SPECTRUM DID NOT AUTHENTICATE THE WORKBOOK AND THE BROCHURE**

As a preliminary matter, Petitioner does not dispute that Patent Owner timely objected to the Workbook or to the Brochure. It is also undisputed that nothing *intrinsic* to the Workbook provides a publication date or any other indication that it was publicly available prior to 2011. Petitioner's assertion that the Workbook is a self-authenticating document requiring no *extrinsic* evidence of authenticity overlooks that Rule 902(5) "does not confer admissibility upon all official publications": there must still be *intrinsic* evidence supporting that the Workbook is what Petitioner claims it to be, *i.e.*, a CDC document publicly available as of 2008. (MTE Opposition, 1; *see* Fed. R. Evid. 902(5) advisory committee note.) There is no publication date (intrinsic or extrinsic) for the Workbook.

Petitioner's reliance on numerals buried in a currently available URL that is extrinsic to the Workbook does not authenticate the Workbook as a document that was available in 2008. (MTE Opposition, 2.) Petitioner does not overcome the authority showing that numbers in a URL do not establish a publication date and cites no cases to the contrary. *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1084-85, 1090-92 (Fed. Cir. 2003) (URL identifies the *location* of information on the internet); *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782-83 (C.D. Cal. 2004) (requiring evidence of publication date even when the source has

a “URL address and date stamp”). Indeed, Petitioner previously emphasized the Workbook’s URL in an IPR between the parties, but the Board nonetheless granted Patent Owner’s motion to exclude the Workbook. (*Spectrum Solutions*, Paper 31 at 2 (October 31, 2023); Paper 43 at 26-28.)

As another tack, Petitioner tries to analogize to copyright date cases for the Workbook. (MTE Opposition, 4.) The analogy, however, fails because each of the cited cases involved an actual date on the document at issue. *Arista Networks, Inc. v. Cisco Systems, Inc.*, IPR2016-00303, Paper 53 at 17 (P.T.A.B. May 25, 2017); *Ford Motor Co. v. Cruise Control Technologies, LLC.*, IPR2014-00291, Paper 44 at 10 (P.T.A.B. June 29, 2015); *FLIR Systems, Inc. v. Leak Surveys, Inc.*, IPR2014-00411, Paper 9 at 18-19 (P.T.A.B. September 5, 2014). And, in all three cases, there was additional testimony beyond the copyright date and, in at least one case, the decision was an initial institution decision. *Arista*, Paper 53 at 17; *Ford Motor*, Paper 44 at 9; *FLIR Systems*, Paper 9 at 19 (institution decision). The Workbook has no such date, nor has Petitioner provided any such testimony.

Petitioner further argues that Patent Owner has ignored the “full record” and has not provided a reason to doubt the public accessibility of the Workbook. (MTE Opposition, 2-4.) But Petitioner’s “full record” is based on questionable assumptions, *i.e.*, that the dates of listed references somehow reflect the date of the Workbook, or that a 2024 website printout (Exs. 1023 and 1024) somehow reflects

a 2008 date. In any event, Petitioner is incorrectly shifting the burden onto Patent Owner to provide evidence of the Workbook's *inaccessibility*. *See* Fed. R. Evid. 901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."); *Spectrum Solutions*, Paper 43 at 28 (same).

Finally, with respect to the Brochure, Petitioner points to a sole copyright date. (MTE Opposition, 5.) The Exhibit, however, does not include a copyright date, just like the Workbook. Petitioner submitted another version of the Brochure, Exhibit 1045, that includes a copyright date and argues that the date provides "an inference" of publication. (*Id.*) But the cases upon which Petitioner relies, including *Ford Motor*, all included additional testimony beyond the copyright date and one case was an initial institution decision as discussed above. *See also Hilgraeve, Inc. v. Symantec Corp.*, 271 F. Supp. 2d 964, 976 (E.D. Mich. 2003) ("The Court has already concluded that a mere citation to the date imprinted on a document, without more, is insufficient to establish that a product was known or used by others on that date.").

### **III. CONCLUSION**

For the reasons set forth above and in the MTE, Patent Owner respectfully requests the Board grant its Motion to Exclude Exhibits 1013 and 1042.

Dated: January 10, 2025

Respectfully submitted,

By: /Mehran Arjomand/  
Mehran Arjomand, Reg. No. 48,231  
MORRISON & FOERSTER LLP  
707 Wilshire Boulevard, Suite 6000  
Los Angeles, California 90017  
T: (213) 892-5630  
E: MArjomand@mofo.com

*Counsel for Patent Owner*

**Certificate of Service (37 C.F.R. § 42.6(e)(4))**

I hereby certify that the attached PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE was served as of the below date via e-mail (by agreement) to the following counsel of record for the Petitioner:

Ali S. Razai (Reg. No. 60,771)  
Joseph F. Jennings (Reg. No. 40,664)  
Paul N. Conover (Reg. No. 44,087)  
Benjamin J. Everton (Reg. No. 60,659)  
Benjamin B. Anger (Reg. No. 62,207)  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Ph: 949-760-0404  
Email: BoxSpectrum8@knobbe.com

Date: January 10, 2025

By: /Mehran Arjomand/  
Mehran Arjomand