UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,
Petitioner
v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner

U.S. Patent 11,677,798
Issue Date: June 13, 2023
Title: APPARATUS, SYSTEM, AND METHOD FOR MULTI-BITRATE CONTENT STREAMING

Inter Partes Review No. IPR2024-00043

PETITIONER'S OBJECTIONS UNDER 37 C.F.R. § 42.64 TO EVIDENCE IN PATENT OWNER'S SUR-REPLY

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Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via PTAB P-TACTS

Petitioner Aylo Freesites Ltd objects to the following evidence cited in Patent Owner DISH Technologies LLC's sur-reply (Paper 41) in the above captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), these objections are being timely filed within five business days of service of the evidence submitted with Patent Owner's sur-reply—which was filed and served on November 26, 2024.

I. Exhibit 2091

Though Exhibit 2091 is the cross-examination deposition transcript of Petitioner's expert, Dr. Houh, Petitioner objects to all portions of Exhibit 2091 that describe, relate to, or rely upon documents identified and marked by Patent Owner for the first time during Dr. Houh's deposition but never previously filed as exhibits in this proceeding as non-compliant with 37 C.F.R. § 42.23(b). Petitioner further objects under F.R.E. 401/402 (lack of relevance), 403 (confusing, waste of time), 106 (incomplete), 602 (lack of foundation), 802 (hearsay), and 901 (authenticity). Petitioner's counsel timely objected to these documents during Dr. Houh's deposition. Examples of objectionable portions of Exhibit 2091 include, but are not limited to:

A. 21:16-24:8 (cited in Paper 41 at 8)

Petitioner objects to Patent Owner's reliance on this portion of Exhibit 2091 as not being compliant with 37 C.F.R. § 42.23(b). Patent Owner's sur-reply quotes from this portion of Exhibit 2091 to argue that, as a factual matter, the "'M.Show'

product . . . provided 'Internet-delivered ***Microsoft PowerPoint slides***.'" Paper 41 at 8 (quoting EX2091 at 21:16-24:8 (emphasis in original)). But Patent Owner is just quoting its own counsel reading passages of an unadmitted document into the record.

Dr. Houh had never seen this document before, and the document was never filed as an exhibit in this proceeding. Patent Owner knows that submitting this document with its sur-reply would have violated 37 C.F.R. § 42.23(b), which states that a sur-reply "may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." This is an improper attempt to skirt 37 C.F.R. § 42.23(b), and Petitioner objects on this basis. Petitioner further objects to this evidence under F.R.E. 401/402 (lack of relevance), 403 (confusing, waste of time), 106 (incomplete), 602 (lack of foundation), 802 (hearsay), and 901 (authenticity).

As it relates to Petitioner's objection under F.R.E. 106, Patent Owner fails to cite other portions of Exhibit 2091 that in fairness ought to be considered to the extent Patent Owner's improper evidence is allowed. These other portions include, but are not limited to, 110:10-111:25 ("M.Show.com enables instructor-led online training by integrating streaming video and audio with rich media content to create a synchronous, highly interactive delivery method."), 112:6-112:25 ("M.Show.com provides integration and synchronization of IP video and audio streaming, telephony

and graphics, plus extensive content services to ensure high quality presentations."), 113:2-114:14 ("M.Show.com recognizes Akamai's large-scale edge content delivery network as key to ensuring high-quality delivery of rich media on the Internet, especially streaming audio and video."), 114:15-115:12 ("M.Show integrates IP video and audio streaming, telephony and rich media with a patented pre-caching technology, Togetherware, that synchronizes audio and video regardless of each individual end user's bandwidth.").

To the extent Patent Owner argues that it is citing to 21:16-24:8 of Exhibit 2091 only to impeach Dr. Houh, Petitioner further objects to the evidence as improper impeachment evidence. As explained above, Patent Owner's sur-reply cites to Patent Owner's counsel reading passages of an unadmitted document into the record for its substance. Dr. Houh did not author this document, it is not Dr. Houh's prior testimony, and Dr. Houh had never seen the document before or adopted any portion of it. Thus, this cannot serve as proper impeachment of Dr. Houh.

B. 104:23-106:14, 91:9-94:21 (cited in Paper 41 at 22-24)

Petitioner objects to Patent Owner's reliance on this portion of Exhibit 2091 as not being compliant with 37 C.F.R. § 42.23(b). Patent Owner's sur-reply purports to cite to this portion of Exhibit 2091 to argue that, as a factual matter, ABC.com received an Emmy Award in 2006 (Paper 41 at 22-23 (citing EX2091 at 105:16-

106:14, 94:8-21) and that "ABC's use of MOVE's technology resulted in an Emmy Award in 2006, shortly after the priority date of the challenged patent" (Paper 41 at 24 (citing EX2091 at 104:23-106:10)). But Patent Owner is just citing to its own counsel paraphrasing portions of an unadmitted deposition transcript, which Dr. Houh had never seen before, into the record and asking Dr. Houh repeatedly, "[d]o you see that?".

Dr. Houh had never seen this document before, and the document was never filed as an exhibit in this proceeding. Patent Owner knows that submitting this document with its sur-reply would have violated 37 C.F.R. § 42.23(b), which states that a sur-reply "may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." This is an improper attempt to skirt 37 C.F.R. § 42.23(b), and Petitioner objects on this basis. Petitioner further objects to this evidence under F.R.E. 401/402 (lack of relevance), 403 (confusing, waste of time), 106 (incomplete), 602 (lack of foundation), 802 (hearsay), and 901 (authenticity).

To the extent Patent Owner argues that it is citing to these portions of Exhibit 2091 only to impeach Dr. Houh, Petitioner further objects to the evidence as improper impeachment evidence. As explained above, Patent Owner's sur-reply cites to Patent Owner's counsel paraphrasing an unadmitted deposition transcript of another person into the record to make unsupported factual assertions. Dr. Houh did

not author this document, it is not Dr. Houh's prior testimony, and Dr. Houh had never seen the document before or adopted any part of it. Thus, this cannot serve as proper impeachment of Dr. Houh.

II. The website "https://www.emmys.com/shows/abccom-full-episode streaming- player" (cited in Paper 41 at 24)

Petitioner objects to Patent Owner's citation of the website https://www.emmys.com/shows/abccom-full-episodestreaming-player as not being compliant with 37 C.F.R. § 42.23(b). Patent Owner relies on this website for the unsupported factual assertion that "ABC's use of MOVE's technology resulted in an Emmy Award in 2006, shortly after the priority date of the challenged patent." Paper 41 at 24. This website was never filed as an exhibit in this proceeding. Patent Owner knows that submitting this website as an exhibit with its sur-reply would have violated 37 C.F.R. § 42.23(b), which states that a sur-reply "may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." This is an improper attempt to skirt 37 C.F.R. § 42.23(b), and Petitioner objects on this basis. Petitioner further objects to this evidence under F.R.E. 401/402 (lack of relevance), 403 (confusing, waste of time), 106 (incomplete), 602 (lack of foundation), 802 (hearsay), and 901 (authenticity).

To the extent Patent Owner argues that it is citing to this website only to impeach Dr. Houh, Petitioner further objects to the evidence as improper impeachment evidence. As explained above, Patent Owner's sur-reply cites to this

unadmitted evidence to make unsupported factual assertions. Dr. Houh did not author this website, it is not Dr. Houh's prior testimony, and Dr. Houh had never seen the website before or adopted any portion of it. Thus, this cannot serve as proper impeachment of Dr. Houh.

DATED: December 4, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2024 I caused a true and correct copy of the foregoing objections to be served via email to counsel of record:

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