

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DROPBOX, INC.
Petitioner

v.

MOTION OFFENSE, LLC
Patent Owner

IPR2024-00287
U.S. Patent No. 11,611,520

PETITIONER'S MOTION TO EXCLUDE

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Pursuant to 37 C.F.R. § 42.64(c), Dropbox, Inc. ("Petitioner") moves to exclude evidence included and statements made by Motion Offense, LLC ("PO") in its Sur-Reply. EX1137 is a copy of the Sur-Reply highlighting the portions that should be excluded. Petitioner timely objected on grounds discussed herein (Paper No. 38) and now files this motion to preserve the objections. *See* 37 C.F.R. § 42.64.

I. BACKGROUND

On April 2, 2025, the Board issued an order reciting the relevant background and denying PO's request to file a corrected version of EX2026 (in co-pending IPR2024-00286) and to file a motion to submit supplemental evidence. Paper No. 39 ("Order") at 2-3, 7. The Order acknowledges that Petitioner contends that PO's Sur-Reply includes improper new arguments and evidence, but noted that the Board would not address those issues because "Petitioner indicated that it intends to file motions to exclude the allegedly improper evidence and arguments." *Id.* at 4 n.3. This is that motion for this IPR proceeding.

II. LEGAL STANDARD

A party may move to exclude evidence "under the Trial Practice Guide's advice, or on other grounds." *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1081 (Fed. Cir. 2015) (citing 37 C.F.R. § 42.64(c)). Other grounds include the Federal Rules of Evidence (FRE), which generally apply to IPR proceedings. 37 C.F.R. § 42.62. Under FRE 402, irrelevant evidence is inadmissible. *See also* FRE 401

(defining relevance). And even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of ... unfair prejudice.” FRE 403.

III. ARGUMENT

The Board should exclude the unfounded allegations of a 37 C.F.R. § 42.51(b)(1)(iii) violation in PO's Sur-Reply because (1) they are untimely and prejudicial, as the Board already found, and (2) because they lack probative value and pose an undue risk of prejudice under FRE 401, 402, and 403.

1. Despite the Board's March 20 denial of PO's belated request to raise its unfounded allegations, PO's Sur-Reply attempts to smear Petitioner with false allegations of a 37 C.F.R. § 42.51(b)(1)(iii) violation. The Board should not take the bait; it should exclude all of PO's baseless allegations from the Sur-Reply for the same reasons the Board (twice) denied PO's request to file a motion to submit supplemental information regarding Petitioner's compliance with 37 C.F.R. § 42.51(b)(1)(iii): The evidence and arguments are “untimely”; “Petitioner would be prejudiced as the hearings in these proceedings are less than a month away”; and it is not credible that PO was unable to obtain the evidence earlier because PO “admits that most of the evidence was publicly available.” Order at 6-7. *See* highlights in EX1137.

2. The Board should further exclude PO's false assertions under FRE 401, 402, and 403 because they lack any probative value and risk undue prejudice. These

statements all lack probative value because there is nothing “inconsistent” between Petitioner’s positions in this IPR and its positions in any prior proceedings or any of Dr. Mowry’s or any other Dropbox expert’s prior testimony. To the extent they have any probative value (they do not), that is clearly outweighed by the risk of prejudice because Petitioner does not have a full and fair opportunity to respond to these late-made assertions.

First, PO alleges that Petitioner contradicts itself in co-pending IPR2024-00286 with respect to an alleged admission made about Garcia. *See* highlight in EX1137 at 23. But there is no contradiction at all. Garcia’s disclosure that users may access shared folders without having to create an account (EX1104 at 10:40-43), just like its disclosures that “the contents of the folder are shared with the contact” (*id.* at 11:29-31) and “Anyone with the link can view files” (*id.* at Fig. 12), does not state or suggest that contents are downloaded when the user clicks on the link in the email. *See, e.g.*, Pet. Reply at 26-27 (citing EX1104 at 11:29-31, Fig. 2).

Second, PO asserts that Petitioner’s statements during prosecution of continuation applications claiming priority to Garcia are inconsistent with positions taken by Petitioner in the current proceeding. *See* highlight in EX1137 at 23. That too is facially false, and Petitioner’s statements in those continuation applications thus lack any probative value in this IPR. Petitioner’s reliance on Garcia’s specification disclosure of “[w]hen the contact clicks on the link to folder 1115, the

contents of the folder are shared with the contact” during prosecution of the continuation applications to support pending claims, which relate to providing content to a client device, is no way inconsistent with Petitioner’s position in the instant IPR. Providing content after the contact clicks on the link in the email does not imply that the content is downloaded or delivered immediately. *See, e.g.*, Pet. Reply at 26.

Third, PO alleges that Petitioner’s patent applications “directed to file request functionality” and filed “years later”¹ demonstrate that Petitioner’s “Petition and arguments are based on pure hindsight.” *See* highlight in EX1137 at 1. That assertion lacks any probative value as well because PO fails to not only specify which patent applications it is referring to, but also to analyze the substance of these unspecified applications or compare them to the challenged claims.

Finally, PO’s statements in footnote 1 on page 1 of its Sur-Reply are nothing more than naked (and false) assertions lacking any probative value. *See* highlight in

¹ It is unclear, without knowing which patent applications PO is referring to, whether PO meant years later than the filing date of the ’520 patent or PO’s earlier contended priority date of the ’520 patent.

EX1137 at 1 n.1. It should therefore be excluded under FRE 401 and 403, in addition to the reasons for exclusion that the Board already found in its April 2 Order.

IV. CONCLUSION

For the reasons above, Petitioner respectfully requests that the Board exclude PO's statements highlighted in EX1137, and the new evidence therein.

Respectfully submitted,

/Trishan Eram/

Trishan Eram

Registration No. 74,075

UPDATED TABLE OF EXHIBITS

Exhibit	Description
1101	U.S. Patent No. 11,611,520
1102	Declaration of Dr. Todd Mowry
1103	U.S. Patent No. 8,825,597 (“Houston”)
1104	U.S. Patent No. 9,633,125 (“Garcia”)
1105	U.S. Patent Application Publication No. 2010/0005138 (“Manzano”)
1106	U.S. Patent Application Publication No. 2007/0011246 (“Wu”)
1107	U.S. Patent Application Publication No. 2013/0046833 (“Riepling”)
1108	U.S. Patent Application Publication No. 2012/0278404 (“Meisels”)
1109	U.S. Patent Application Publication No. 2013/0067303 (“Kantor”)
1110	[Reserved]
1111	[Reserved]
1112	[Reserved]
1113	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Jury Verdict Form, May 19, 2023, Dkt. 382
1114	’520 Patent File History
1115	U.S. Patent No. 6,351,776 (“O’Brien”)
1116	U.S. Patent Application Publication No. 2008/0320397 (“Do”)

Petitioner's Motion to Exclude
IPR2024-00287 (U.S. Patent No. 11,611,520)

Exhibit	Description
1117	[Reserved]
1118	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:23-cv-00303, First Amended Complaint for Patent Infringement, July 26, 2023, Dkt. 22
1119	U.S. Patent Application Publication No. 2004/0267705 (“Lemus”)
1120	U.S. Patent No. 6,304,948 (“Motoyama”)
1121	U.S. Patent No. 7,559,088 (“Cohen”)
1122	U.S. Patent Application Publication No. 2003/0182332 (“McBrearty”)
1123	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:23-cv-00303, Plaintiff's Disclosure of Preliminary Infringement Contentions, September 20, 2023
1124	Declaration of Gregory H. Lantier
1125	Declaration of Liv L. Herriot
1126	Declaration of Todd C. Zubler
1127	Second Declaration of Dr. Todd Mowry
1128	Deposition Transcript of Michael Smith
1129	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Judgment, August 29, 2024, Dkt. 439
1130	<i>Motion Offense, LLC v. Dropbox, Inc.</i> , WDTX-6:20-cv-00251, Trial Transcript, September 9, 2023, Dkt. 402
1131	U.S. Patent No. 10,021,052

Petitioner's Motion to Exclude
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Exhibit	Description
1132	Patent Owner's Infringement Contentions
1133	[Reserved]
1134	[Reserved]
1135	[Reserved]
1136	[Reserved]
1137	Highlighted Version of Patent Owner's Sur-Reply

CERTIFICATE OF SERVICE

I hereby certify that, on April 4, 2025, I caused a true and correct copy of the foregoing materials:

- Petitioner's Motion to Exclude
- Exhibit 1137
- Updated Table of Exhibits

to be served via electronic mail by consent on counsel of record at:

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Respectfully Submitted

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