

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DISH Network L.L.C. et al.,  
Petitioner,

v.

Entropic Communications, LLC,  
Patent Owner.

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Case IPR2024-00393  
U.S. Patent 7,295,518

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**PETITIONER'S MOTION TO EXCLUDE**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. ARGUMENTS .....2

    A. Ex. 2008 should be excluded due to improper filing without Board  
        authorization .....2

    B. Ex. 2008 is not relevant under 37 CFR § 42.123(b) and FRE 402 .....3

    C. Admission of Ex. 2008 would unduly prejudice Petitioner .....4

III. CONCLUSION.....4

## **I. INTRODUCTION**

Pursuant to 37 CFR § 42.64 and the Federal Rules of Evidence (FRE), Petitioner moves to exclude Ex. 2008 from the evidentiary record at least because Ex. 2008 1) was improperly submitted; and 2) lacks relevance as it does not make a fact in this IPR proceeding more or less probable than it would be without the evidence. *See* Paper 27.

Ex. 2008 should be excluded due to Patent Owner's violation of discovery rules. In particular, Patent Owner submitted Ex. 2008 without Board authorization after the close of discovery, despite the rules requiring prior approval for such submissions. When Petitioner promptly notified Patent Owner of this impropriety on March 7, 2025—nearly a week before Patent Owner's sur-reply was due—Patent Owner did not withdraw the exhibit. Instead, Patent Owner cited and relied upon Ex. 2008 in its March 13, 2025 sur-reply, compounding Patent Owner's violation of discovery rules.

Ex. 2008 should also be excluded as irrelevant. Ex. 2008 is a district court order addressing DirecTV's motion to dismiss under 35 U.S.C. § 101 in parallel litigation. This exhibit is substantively irrelevant to the issues before the Board in this proceeding.

Petitioner timely objected to this exhibit on sufficiently particularized grounds in the Objections to Evidence filed on March 10, 2025. *See* Paper 27. For

the reasons further detailed below, Ex. 2008 should be excluded from the evidentiary record.

## **II. ARGUMENTS**

### **A. Ex. 2008 should be excluded due to improper filing without Board authorization**

On March 4, 2025, after discovery had closed, Patent Owner filed Ex. 2008 without obtaining authorization from the Board. Under 37 CFR § 42.123, Patent Owner needed to obtain prior authorization before submitting supplemental information.

As noted in Patent Owner's email to the Board on March 17, 2025, Petitioner promptly notified Patent Owner of this procedural violation via email on March 7, 2025, and formally objected to the exhibit on March 10, 2025.

Meanwhile, Patent Owner informed Petitioner that it intended to move for a motion to submit supplemental information to enter Ex. 2008. But Patent Owner neither moved for authorization to submit, nor withdrew, its improper submission of Ex. 2008. Instead, on March 13, 2025, with full knowledge that Ex. 2008 was not properly entered, Patent Owner nevertheless cited to Ex. 2008 in its sur-reply without having cured its improper submission.

Patent Owner's violations have created confusion in the record. For instance, supplemental information is used to enter evidence that is not in the record. However, Patent Owner has already improperly entered Ex. 2008 into the

record, and a submission of supplemental information does not cure an improper submission. Patent Owner's actions have rendered the record unclear as to whether Ex. 2008 is even part of the record. Indeed, Patent Owner's use of Ex. 2008 in its sur-reply presupposes Ex. 2008's acceptance into evidence despite no motion for submission having been granted by the Board. As explained below, allowing such unauthorized reliance prejudices Petitioner and undermines procedural fairness, thereby warranting exclusion.

**B. Ex. 2008 is not relevant under 37 CFR § 42.123(b) and FRE 402**

Ex. 2008 relates to a § 101 subject matter eligibility motion, which is irrelevant to the issues considered in IPR proceedings. Thus, even if Patent Owner had properly requested authorization, Ex. 2008 would fail the relevancy requirements under FRE 402. Other than alleging that Ex. 2008 is "relevant to the analogous art inquiry at issue in this proceeding," Patent Owner has failed to explain how a district court's § 101 analysis relates to any claims or grounds under review in this proceeding. *See* Paper 24. This underscores the irrelevance of the exhibit. And it comes as no surprise that Patent Owner has failed to explain the relevance of Ex. 2008 because it plainly is not germane to the issues in this case. Ex. 2008 does not concern prior art, validity under §§ 102, 103, claim interpretation, or analogous art. Given this utter lack of relevance for the issues before the Board, Ex. 2008 should be excluded under FRE 402.

**C. Admission of Ex. 2008 would unduly prejudice Petitioner**

Allowing Ex. 2008 into the record at this late stage denies Petitioner any meaningful opportunity to respond to or address its contents or relevancy. Petitioner prepared its arguments and responses based on the evidentiary record as properly established within the schedule. Patent Owner's unauthorized addition of Ex. 2008 at this stage—after the close of discovery and shortly before the final oral hearing—prevents Petitioner from effectively addressing this procedurally improper submission. *See Chervon N. Am., Inc. v. Milwaukee Elec. Tool Corp.*, IPR2015-00595, Paper 64 at 8 (PTAB Apr. 7, 2016) (denying Patent Owner's request to file a motion to submit supplemental information after the close of discovery and shortly before the final oral hearing, finding it unfairly prejudicial to Petitioner); *PNC Bank, NA v. United Services Automobile Association*, IPR2021-01077, Paper 73 at 83 (PTAB May 22, 2020) (denying Patent Owner's motion to submit supplemental information from co-pending litigation because there was no opportunity to address the information in the merits briefing).

**III. CONCLUSION**

For the above reasons, Petitioner respectfully requests the exclusion of Ex. 2008 from the evidentiary record in this proceeding.

Case IPR2024-00393  
Attorney Docket No. 45035-0025IP1  
Respectfully submitted,

Date: April 3, 2025

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### **CERTIFICATE OF SERVICE**

Pursuant to 37 CFR §§ 42.6(e)(1) and 42.6(e)(4)(iii), the undersigned certifies that on April 3, 2025, a complete and entire copy of this Petitioner's Motion to Exclude was provided by email to the Patent Owner by serving the email correspondence addresses of record as follows:

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