UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEXAS INSTRUMENTS INC.,
and NXP USA, INC.,
Petitioners

v.

PARKERVISION, INC.,
Patent Owner

Case IPR2024-00936[1]
Patent 9,118,528

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

[1] NXP USA, Inc., who filed a petition in IPR2024-01068, is joined as petitioner in this proceeding.

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I. Exhibits 2010-2014, 2019-2022, 2027, 2029 Are Not Authenticated

Exhibits 2010-2014, 2019-2022, 2027, 2029 are documents purportedly corroborating Sorrells' testimony to antedate prior art. PO's Opposition dodged the central question of admissibility of these unauthenticated exhibits. Oppo. 1-3. Under FRE 901, authentication is a precondition to admissibility. To authenticate a document, the proponent can offer witness testimony. Here, the only witness testimony offered to authenticate these exhibits is from the inventor himself. However, "**inventor testimony alone**, without more, is **not considered credible** for the purposes of corroborating documentary evidence purporting to show earlier conception/reduction-to-practice to antedate a prior art reference." *Chen v. Bouchard*, 347 F.3d at 1309 (emphasis added); *see also*, *Apator*, 887 F.3d at 1295-96. Exhibits 2010-2014, 2019-2022, 2027, 2029 can only corroborate inventor testimony with the help *from* inventor testimony, presenting the same "catch-22" issue as rejected by *Apator*. Pet. Mot. 5-11; *Apator*, 887 F.3d at 1296. Thus, PO has not offered credible witness testimony to authenticate Exhibits 2010-2014, 2019-2022, 2027, 2029, and therefore, these exhibits should be excluded as inadmissible under FRE 901.

II. Exhibits 2010-2012, 2022, & 2029 Are Inadmissible Hearsay

PO's Opposition fails to remedy the hearsay issues raised by TI's opening brief. Despite cataloging Mr. Sorrells's other qualifications, PO has not established

that Mr. Sorrells is a qualified witness under FRE 803(6)(A)-(C). When asked about his knowledge of "how the files got from ParkerVision into Relativity," Mr. Sorrells conceded: "The answer is I do not know specifically." *Id.*, 24:19-27:2 (it was "2011 or 2012 when the attorneys came and…pulled everything"). Mr. Sorrells acknowledged that ParkerVision did not use Relativity in the 1997-1998 timeframe, the period of time the files were allegedly created. TI-1068, 24:15-18 (below), 21:5-21, 22:8-13, 23:19-24:14.

> Q. Okay. Do you know if Relativity was used by ParkerVision in 1997-98?
>
> A. I'm pretty comfortable with the answer of no.

Mr. Sorrells is thus neither a custodian nor someone with knowledge of the Relativity database; nor does he offer testimony as a qualified witness at the time the documents in question were created. Therefore, he is **<u>not</u>** "fully qualified to testify that the documents are what they appear to be," as alleged by PO. Oppo. at 3.

"[T]he proponent of the evidence must authenticate the information from the [Relativity database] itself, not merely the printout." *Standard Innovation Corp.*, IPR2014-00148, Paper 41 at 10 (internal citations omitted). To authenticate, PO "must produce some statement or affidavit from someone with knowledge of the [Relativity database]." *Id*. According to Mr. Sorrells (EX2016, ¶29), these exhibits (including Exhibits 2010, 2019, and 2022) were all maintained in the Relativity

database. However, PO never provided any statement from someone with "knowledge" of the Relativity database. *Id.* Therefore, these exhibits lack authentication. Pet. Mot. at 5-11 (further noting Sorrells is not a qualified witness of the Boeing reports, namely, EX2010 and EX2022).

III. Exhibits 2011-2014 Are Not Admissible

PO alleged that metadata relating to Exhibits 2011 and 2012 are not hearsay because they were "machine generated" by the Relativity database, and were used "to corroborate." Oppo. at 4-5. However, the metadata was offered for the truth of the matter being asserted, namely, "the last modified date and timestamps." *Id.*, 4. None of the exhibits has been properly authenticated by, e.g., someone with "knowledge" of the Relativity database. *Supra* §I; Pet. Mot., 5-11. The Federal Circuit has repeatedly explained that, when, as here, PO attempts to antedate the prior art, PO initially bears "the burden of production" including authenticated documents. *Dynamic Drinkware*, 800 F.3d 1379. PO has not met its burden to produce the requisite authentication.

PO then alleged that Exhibits 2011-2014 are admissible under FRE 803(6) "based on Mr. Sorrells' testimony." Oppo. 6-7. As explained, the chain of custody of these exhibits would require "some statement or affidavit from someone with knowledge of" the Relativity database. *Supra* §I; Pet. Mot., 5-11.

PO further alleged Exhibits 2012 and 2014 are admissible under FRE 803(16)

as "ancient documents." Oppo., 7-8. Regarding ancient document before 1998, FRE 803(16) also requires that its "authenticity has been established." PO has not properly authenticated these exhibits in the first place. *Supra* §I; Pet. Mot., 5-11.

PO also alleged that Exhibits 2011-2014 are admissible under FRE 807. Oppo., 8-9. Mr. Sorrells already conceded his lack of personal knowledge of the Relativity database. *See e.g.*, TI-1068, 24:15-21. As explained *supra* §II, PO has not met its burden of production (including the requisite authentication) to antedate prior art.

PO additionally alleged Exhibits 2013-2014 are relevant because Mr. Sorrells relied on them. PO's Oppo., 9-10. However, Exhibits 2013-2014 are absent from Dr. Ricketts's claim chart (EX2015) purporting to map various features from PO's exhibits onto the claims, indicating that Dr. Ricketts did not need Exhibits 2013-2014 to reach his conclusions. Pet. Mot., 11-12.

IV. Exhibits 2011 and 2022 Are Not Admissible

PO asserted admissibility under FRE 803(6) "based on the testimony of Mr. Sorrells." Oppo., 10-12. However, Mr. Sorrells is not qualified. Pet. Mot., 9-10. PO then asserted admissibility under FRE 807. Oppo., 12-13. However, the chain of custody of these exhibits has not been established. Pet. Mot., 5-11. PO additionally asserted non-hearsay purposes. Oppo., 13. However, both were offered for the truth of the matter, namely, that [redacted] tested a working circuit in April 1998. EX2016,

¶¶22-23.

V. Exhibit 2029 Is Not Admissible

PO asserted machine-generated nature, non-hearsay use, and Sorrells declaration as authentication. Oppo., 14-15. However, the file listing of EX2029 was offered for the truth of the matter. EX2016, ¶30 (e.g., date range). While asserting "[t]he files were created under my supervision and/or direction" at ParkerVision, (EX2016, ¶31), Mr. Sorrells has no knowledge "how the files got from ParkerVision into Relativity" (TI-1068, 24:19-27:2) where Exhibit 2029 was generated (EX2016, ¶30). Thus, he is not qualified to authenticate EX2029. Pet. Mot., 5-11.

VI. Mr. Sorrells' Declaration (Exhibit 2016) Contains Irrelevant Material

PO admitted "diminutive difference between these two file names," (Oppo.,15), [redacted] and [redacted] are thus two different files. In other words, the screenshot of paragraph 9 of EX2016 is irrelevant to the circuit schematics that allegedly reduced claims 1, 3, 5, 8-9, 11-18 of the '528 patent to practice. Pet. Mot., 12-13.

VII. Conclusion

For the above reasons, Petitioner respectfully requests exclusion of Exhibits 2010-2014, 2019-2022, 2027, and 2029, and portions of Exhibit 2016 from the evidentiary record in this proceeding.

Respectfully submitted,

Dated August 19,2025

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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 August 19, 2025, a complete and entire copy of this Petitioner's Reply to Patent Owner's Opposition to Petitioner's Motion to Exclude was provided by email to the Patent Owner by serving the email correspondence address of record as follows:

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