UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

PARKERVISION, INC.
Patent Owner

Inter Partes Review No. IPR2024-00936[1]

U.S. Patent No. 9,118,528

PATENT OWNER'S OPPOSITION TO PETITIONERS' 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. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64, Patent Owner ParkerVision, Inc. ("ParkerVision" or "PO") submits this Opposition to the Motion to Exclude ("Mot.") (Paper 45) filed by Petitioners Petitioner Texas Instrument Inc. and NXP USA, Inc. (collectively, "Petitioners"). Petitioners' motion appears to be a veiled attempt to argue the sufficiency of PO's corroboration of Inventor Sorrells's testimony regarding conception and reduction to practice. This is not a proper use of a motion to exclude. Petitioners' motion is meritless and should be denied.

II. ARGUMNET

A. Exhibits 2010-2014, 2019-2022, 2027, 2029 Are All Authenticated

1. Petitioners Conflates Admissibility with Sufficiency of Corroboration for Conception and Reduction to Practice

According to Petitioners, inventor testimony cannot be used to authenticate evidence under FRE 803(6)(E) and 902(11). Mot., 4-5, 11. This argument is an end-run-around to improperly argue ***sufficiency of corroboration*** in a motion to exclude under the guise of an admissibility challenge. The *Apator* case cited by Petitioners has nothing to do with admissibility and cannot be pressed into the service of supporting Petitioners' argument. *Apator Miters ApS v. Kamstrup A/S*, 887 F.3d 1293, 1295-97 (Fed. Cir. 2018).

In *Apator*, patent owner attempted to corroborate inventor testimony regarding conception and reduction to practice with: (i) email communications written by the inventor himself; and (ii) inventor's declaration testimony regarding his own file naming convention, offered to establish a date that is earlier than the "modified" date of a drawing. *Apator*, 887 F.3d at 1296. The Federal Circuit held that these documents (as ***admitted*** evidence) were insufficient for corroboration purposes. The documents were insufficient because under the "rule of reason" analysis for the sufficiency of corroboration (not an admissibility of evidence analysis), "evidence of corroboration must not depend solely on the inventor," and Apator's "emails and drawings can only provide that corroboration with help from Mr. Drachmann's testimony." *Id.* at 1295-96.

Apator is inapplicable to Petitioners' motion to exclude and is distinguishable from this case. *First*, the admissibility of evidence was not at issue in *Apator*. Rather, *Apator* deals with ***sufficiency of corroboration*** for conception and reduction to practice under a "rule of reason" analysis. *Id.* at 1295. Nothing in *Apator* or other cases cited by Petitioners stands for the proposition that Inventor testimony cannot be used for authentication as a matter of law. *Second*, the evidence in *Apator* only corroborates "with help from [inventor's] testimony." *Id.* at 1296. Here, once admitted, the circuit layouts and schematics (Exs. 2011-2014),

testing reports (Exs. 2010, 2022), agreements (Exs. 2021, 2027), and press releases (Ex. 2019) have corroborative value that stand on their own, independent of Mr. Sorrells testimony. Petitioners' reliance on *Apator* is misplaced.

2. The Exhibits Are Authenticated Under FRE 902 (11) And/Or FRE 902 (7)

All of the documents are "authentic" documents – and not some after-the-fact forgery created for this litigation. Mr. Sorrell's, as the CTO and individual in charge of the research, development and design of the technology at issue was fully qualified to testify that the documents are what they appear to be. Ex. 2016, ¶¶ 2, 4. In fact, he was more qualified than anybody else on the planet and testified about each of the documents from his personal knowledge. Mr. Sorrell's relationship to the documents is explained in more detail in Section II.B.2.a and II.C.1 (and in his declaration at paragraphs 12, 22, 27). Given Mr. Sorrell's declaration, each of the challenged documents is self-authenticating under FRE 902 (11) as certified domestic record of a regularly conducted activity.

Moreover, Exhibits 2010, 2019, and 2020 are self-authenticated under FRE 902(7) by their "Trade Inscriptions" because they have "[a]n inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control." FRE 902(7). See Ex. 2010, 2 ([redacted]'s logo); Exs. 2019-2020 (ParkerVision's logo).

The remainder of Petitioner's hearsay and relevance objections, like its authenticity arguments, present no justification for exclusion.

B. Exhibits 2011-2014 are Admissible

Exhibit 2011-2014 are circuit schematics for the Eddie device. Petitioners argue that these Exhibits are inadmissible because: Exhibits 2011-2012 are hearsay and Mr. Sorells testimony is purportedly insufficient to show that they fall under the hearsay exception in FRE 803(6) ("Records of a Regularly Conducted Activity"); and (2) Exhibits 2011-2014 are not sufficiently authenticated by Mr. Sorrells' testimony. Mot., 5, 11. Petitioners' arguments are unavailing.

1. Metadata Relating to Exhibits 2011-2012 Are Not Hearsay

Petitioners argue that "metadata from a Relativity database," including the last modified date of Exhibits 2011 and 2012, are inadmissible hearsay. Not so.

Mr. Sorrells testified that these metadata were generated by the Relativity database based on copies/images of ParkerVision's computer hard drives and servers. Ex. 2016, ¶¶ 29, 31; Ex. 1068, 20:17-21:4, 25:16-27:4. His testimony establishes that the metadata from the Relativity database, including the last modified date and timestamps, were machine generated. Petitioners do not contest, and provide no reasons to doubt, this fact. Accordingly, these machine-generated metadata are not a "statement" by a person/declarant within the meaning of FRE 801. *Google LLC v. Valtrus Innovations Ltd.*, IPR2022-01545, Paper 76 at 35

(P.T.A.B. April 10, 2024) ("[R]aw data generated by the machines are not hearsay statements …. Only a person may be a declarant and make a statement. Accordingly, nothing said by a machine is hear-say." (internal quotations omitted)) (citing *United States v. Washington*, 498 F.3d 225, 231 (4th Cir. 2007)).

Moreover, metadata relating to Exhibits 2011 and 2012 is useful for non-hearsay purposes—to corroborate the dates shown in Exhibits 2011 and 2012 and Mr. Sorrells' testimony regarding creation of the same. With respect to Exhibit 2011, the January 20, 1998 date shown on its face corresponds with the February 26, 1998 last modified date from the Relativity database. Ex. 2016, ¶¶ 14-15. With respect to Exhibit 2012, the "Modified" date shown in its properties matches the last modified date from the Relativity database. *Id.*, ¶ 9. And as Mr. Sorrells noted, the last modified dates generated by the Relativity database are "consistent with the time that the ParkerVision team and [Mr. Sorrells] were working on … the Eddie chip. *Id.*, ¶¶ 9, 15; Ex. 1068, 23:19-24:6 (testifying that the dates in the relativity database lines up with the dates in the Exhibits).

Thus, "metadata from a Relativity database," including the last modified date of Exhibits 2011 and 2012, are not hearsay at all and are admissible.

2. Exhibits 2011-2014 Are Not Hearsay

a) Exhibits 2011-2014 are admissible under FRE 803(6)

Exhibits 2011-2014 are themselves admissible under FRE 803(6) based on Mr. Sorrells' testimony. Mr. Sorrells is a qualified witness who is knowledgeable of ParkerVision's regular business practice of creating, maintaining, and retrieving technical documentations, including Exhibits 2011-2014.

Mr. Sorrells "was ParkerVision's CTO from September 1996 to the beginning of 2020," and "led the research, design, development, evaluation, and testing of ParkerVision's down-conversion technology" in 1997 and 1998. Ex. 2016, ¶¶ 2, 4. In this capacity, Mr. Sorrells' responsibilities included the "supervision and/or direction" of the creation of technical documentations, including "layouts and schematics" produced in this IPR as Exhibits 2011-2014. *Id.*, ¶ 27; Ex. 1068, 19:9-20:6. Mr. Sorrells testified, based on personal knowledge, that "[t]he making of these layouts and schematics [i.e., Exhibits 2011-2014] was a regular practice of ParkerVision at the time." *Id.* Indeed, Exhibits 2011-2014 "were created under [Mr. Sorrells'] supervision and/or direction and … were created at or around the time that the designs they reflect were implemented by individuals with knowledge of those designs and as directed by [Mr. Sorrells.]" *Id.*; *see also id.*, ¶ 12; Ex. 1068, 23:19-24:6. Mr. Sorrells further testified that technical documentations, including Exhibits 2011-2014, were stored on computer hard

drives when they were created in 1997 and 1998. Ex. 1068, 26:7-27:4. And, beginning in the 2011 or 2012 timeframe, these hard drives are submitted to ParkerVision's IT department "on a routine and regular basis," and full copies/images of these hard drives were made and uploaded to a Relativity database. *Id.*; *see also id.*, 30:20-31:3.

The above testimony by Mr. Sorrells established that: (1) as CTO, he was responsible for, and has personal knowledge of, the creation, maintenance, and retrieval of Exhibits 2011-2014; (2) Exhibits 2011-2014 was created at or around the time by individuals with knowledge of the designs set forth therein, as directed by Mr. Sorrells; (3) creation and maintenance of technical documents, including Exhibits 2011-2014, was a regular business practice of ParkerVision. Thus, Mr. Sorrells is a qualified witness and his testimony shows that Exhibits 2011-2014 falls under the "Records of a Regularly Conducted Activity" exception to hearsay under FRE 803 (6). And Petitioners' motion did not (and could not) allege any circumstance that indicates a lack of trustworthiness.

b) Exhibits 2012, 2014 are admissible under FRE 803(16)

Exhibits 2012 and 2014 are admissible under FRE 803(16) because they are ancient documents "prepared before January 1, 1998." FRE 803(16).

Regarding Exhibit 2012, the properties of the file shows that it was last modified on March 6, 1997. Ex. 2016, ¶ 9. This date matches, and is corroborated by, the last modified date shown in the metadata from the Relativity database. *Id.* Regarding Exhibit 2014, it shows an August 21, 1997 date on its face. *Id.*, ¶ 11-12; Ex. 2014. These dates are consistent with Mr. Sorrells testimony regarding the timeframe during which the ParkerVision team worked on the layout of the Eddie device shown in Exhibit 2012. *Id.*, ¶¶ 4-6, 9, 28, 30.

Thus, Exhibits 2012 and 2014 are ancient documents prepared before January 1, 1998, and thus are not hearsay under FRE 803(16).

c) Exhibits 2011-2014 are admissible under FRE 807

Exhibits 2011-2014 are also admissible under FRE 807 because they are supported by sufficient guarantees of trustworthiness and is more probative on conception and reduction to practice than any other evidence that can be offered.

Exhibits 2011-2014 were all created more than 20 years ago, decades before this IPR and the parallel district court proceedings were filed. Exs. 2011-2014; Ex. 2016, ¶¶ 9-16. They are the sort of technical documents (e.g., circuit layouts and schematics) that are routinely and regularly created and maintained by technology companies like ParkerVision. Press releases, testing reports, and manufacturing agreement all show that ParkerVision was working on the subject matters of

Exhibits 2011-2014 at the time they were created. Exs. 2010, 2019-2020, 2027; Ex. 2016, ¶¶ 17-27. All of the above are corroborated and confirmed by Mr. Sorrells' testimony. Ex. 2016, ¶¶ 9-27; Ex. 1068. Mr. Sorrells, the person who directed and/or supervised the creation of Exhibits 2011-2014, was available for cross-examination and was, in fact, cross-examined. Ex. 1068. Petitioners had ample time and opportunity to probe the trustworthiness of Exhibits 2011-2014 during Mr. Sorrells' deposition, but chose not to after merely ***thirty-two minutes*** of cross-examination. *Id.* Petitioners have not provided any reason to doubt the trustworthiness of these Exhibits, which show the layout and schematic design of the down-conversion technology that ParkerVision was working on during the relevant time period, and are more probative on conception and reduction to practice than any other evidence that can be offered.

3. Exhibits 2013-2014 Are Relevant[2]

Petitioners argue that Exhibits 2013-2014 are irrelevant because they were not relied upon by PO's expert Dr. Ricketts to show conception and reduction to

[2] Petitioners assert, in addition to Exs. 2013-2014, that Exs. 2019-2020 and 2022 are irrelevant with no explanation. Mot. 11-12. Exs. 2019-2020 and 2022 are relevant at least as corroborating evidence for conception and reduction to practice.

practice. Mot. 11-12. Exhibits 2013-2014 illustrates the layout and schematic of the circuit board for the Eddie device. Mr. Sorrells testified that the circuit board layouts shown in Exhibits 2013-2014 were designed for the Eddie device. Ex. 2016, ¶¶ 11-16. Mr. Sorrells explained what was fabricated by [redacted] in connection with Exhibits 2013-2014. *Id.*, ¶¶ 16-18. Mr. Sorrells further testified that "the combined Eddie chip and circuit board" was tested and evaluated by [redacted] by the first quarter of 1998. *Id.*, ¶¶ 20-27. Mr. Sorrells corresponded Figures in the testing report with the layouts shown in Exhibits 2013-2014. *Id.*, ¶¶ 25-26. Thus, Mr. Sorrells relied upon Exhibits 2013-2014 to show design iterations of the circuit board for the Eddie device, what was fabricated by [redacted], and what was tested by [redacted]. This roadmap is highly relevant to conception, diligence, and reduction to practice.

C. Exhibits 2010 and 2022 Are Admissible

Exhibits 2010 and 2022 are [redacted]. Petitioners wrongly argue that they are inadmissible hearsay. Mot., 9-11. Not so.

1. Exhibits 2010, 2022 are admissible under FRE 803(6)

Exhibits 2010 and 2022 are admissible under FRE 803(6) based on the testimony of Mr. Sorrells. Mr. Sorrells is a qualified witness who is knowledgeable of ParkerVision's regular business practice of ordering and maintaining tests from

independent testing company to evaluate the performance of ParkerVision's technology. Ex. 2016, ¶¶ 22, 27.

As CTO, Mr. Sorrells was responsible for, and is knowledgeable of, the "evaluation[] and testing of ParkerVision's down-conversion technology." *Id.*, ¶¶ 2, 4. Mr. Sorrells testified that "[t]esting/evaluation … was a regular practice of ParkerVision at the time." *Id.*, ¶27. As shown in Exhibit 2021, ParkerVision and [redacted] entered into an agreement for [redacted]. *Id.*, ¶22; Ex. 2021. Mr. Sorrells "was present and observed some of the testing." Ex. 2016, ¶ 22.

Mr. Sorrells further testified that technical documentations, including Exhibits 2010 and 2022, were stored on computer hard drives in 1997 and 1998. Ex. 1068, 26:7-27:4. And, beginning in the 2011 or 2012 timeframe, these hard drives are submitted to ParkerVision's IT department "on a routine and regular basis," and full copies/images of these hard drives were made and uploaded to a Relativity database. *Id.*; *see also id.*, 30:20-31:3.

The above testimony by Mr. Sorrells established that: (1) as CTO, he was responsible for, and has personal knowledge of, the creation, maintenance, and retrieval of Exhibits 2010 and 2022; (2) Exhibits 2010 and 2022 was created at or around the time by individuals with knowledge of the results set forth therein; (3)

the ordering and maintenance of independent testing reports, including Exhibits 2010 and 2022, was a regular business practice of ParkerVision. Thus, Mr. Sorrells is a qualified witness and his testimony shows that Exhibits 2010 and 2022 falls under the "Records of a Regularly Conducted Activity" exception to hearsay under FRE 803 (6). And Petitioners' motion did not (and could not) allege any circumstance that indicates a lack of trustworthiness.

2. Exhibits 2010 and 2022 are admissible under FRE 807

Exhibits 2010 and 2022 are admissible under FRE 807 because they are supported by sufficient guarantees of trustworthiness and is more probative on conception and reduction to practice than any other evidence that can be offered.

Exhibits 2010 and 2022 were created more than 20 years ago, decades before this IPR and the parallel district court proceedings were filed. Exs. 2011-2014; Ex. 2016, ¶¶ 9-16. Exhibits 2010 and 2022 were created by an independent party—[redacted]—with no interest in this IPR and the parallel district court proceedings. Exs. 2010, 2021-2022. Ex. 2010 bears the logo of [redacted], and was signed by [redacted] personal, confirming that it is a "report on the evaluation of [redacted] that was conducted at the [redacted]" Ex. 2010, 2. Exhibit 2021 evince an agreement between ParkerVision and [redacted] for the

purpose of conduct the test, the result of which was reported in Exhibit 2010. Ex. 2021; Ex. 2016, ¶ 22. Exhibit 2022 includes photographs and notes of the test, consistent with the content of Exhibit 2010. *Id.* All of the above are corroborated and confirmed by the testimony of Mr. Sorrells, who "was present and observed some of the testing." *Id.*, ¶¶ 22-26. Mr. Sorrells was deposed on his testimony regarding Exhibits 2010 and 2022. Ex. 1068. Petitioners had ample time and opportunity to probe the trustworthiness of these Exhibits during Mr. Sorrells' deposition, but chose not to after merely ***thirty-two minutes*** of cross-examination. *Id.* Petitioners have not provided any reason to doubt the trustworthiness of these Exhibits, which show testing notes and results for the down-conversion technology that ParkerVision was working on during the relevant time period, and are more probative on reduction to practice than any other evidence that can be offered.

3. Exhibits 2010 and 2022 serves non-hearsay purposes

Exhibits 2010 and 2022 also serves non-hearsay purposes of: (1) showing that communication relating to testing of ParkerVision's down conversion technology took place at the relevant time; and (2) corroborating the design layouts and schematics shown in Exhibits 2011-2014, which corresponds with the content of Exhibits 2010 and 2022.

D. Exhibit 2029 is Admissible

Contrary to Petitioners argument, Exhibit 2029 is not hearsay and is admissible. Exhibit 2029 is an excel spreadsheet export of search results generated by the Relativity database. Ex. 2016, ¶¶ 29-31.

Mr. Sorrells testified that these search results were generated by the Relativity database based on a search he performed, and search parameters he devised, with ParkerVision's attorneys. *Id.*; Ex. 1068, 22:19-23:18. Mr. Sorrells testified that the metadata shown in Exhibit 2029, including "file extension, file name, and last modified date of these files," are generated and provided by the Relativity database based on copies/images of ParkerVision's computer hard drives and servers. Ex. 2016, ¶¶ 29, 31; Ex. 1068, 20:17-21:4, 25:16-27:4. These testimony establish that Exhibit 2029 and the metadata therein were machine generated. Petitioners do not contest, and provide no reasons to doubt, this fact. Accordingly, these machine-generated metadata are not "statement" by a person/declarant within the meaning of FRE 801. *Google*, IPR2022-01545, Paper 76 at 35. Moreover, Exhibit 2029 is useful for non-hearsay purposes—to corroborate the dates shown in Exhibits 2011-2014 and Mr. Sorrells' testimony regarding "ParkerVision's continuous work from at least January 1997 through

October 1998 related to designing and developing the Eddie chip and circuit." Ex. 2016, ¶ 30. Thus, Exhibit 2029 and the metadata therein are not hearsay.

Exhibit 2029 is authenticated by Mr. Sorrells testimony that he (along with ParkerVision's attorney) performed the search on the Relativity database, the result of which was exported to an excel spreadsheet and produced as Exhibit 2029. Ex. 2016, ¶¶ 29-31; Ex. 1068, 22:19-23:18. He created the document and there is no better person to authenticate than him.

E. Mr. Sorrells' Declaration (Exhibit 2016) is Relevant

Petitioners argue that paragraph 9 of Mr. Sorrells declaration (Ex. 2016) is irrelevant because the file named "[redacted]" does not exactly match the file named "[redacted]" which PO contends shows the Eddie device. Mot., 12-13. Notwithstanding the diminutive difference between these two file names (which is identical but for ***a single digit***), the properties and metadata of "[redacted]" including its last modified date, is at least probative to the last modified date of a file with an almost identical name [redacted] The Board should not exclude paragraph 9 of Mr. Sorrells declaration, and should instead weigh the probative value of the evidence and testimony therein in view of the substantial similarity between the file names.

III. CONCLUSION

For the foregoing reasons, Petitioners' Motion to Exclude should be denied.

Dated: August 12, 2025

Respectfully submitted,

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