

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILEYE GLOBAL, INC., and
ZF ACTIVE SAFETY AND ELECTRONICS US LLC,

Petitioner,

v.

FACET TECHNOLOGY CORP.,

Patent Owner.

Case IPR2024-01110¹

Patent No. 9,335,255 B2

**PETITIONER'S MOTION TO EXCLUDE
EXHIBITS 2009-2012 AND 2014**

¹ ZF Active Safety and Electronics US LLC, which filed a petition in IPR2025-00748, has been joined as a petitioner in this proceeding.

Pursuant to 37 C.F.R. § 42.64(c), Petitioner Mobileye Global, Inc., files this motion to exclude Exhibits 2009-2012 and 2014 (the “Disputed Exhibits”). Petitioner timely complied with its obligations under 37 C.F.R. § 42.64(b)(1) by filing objections to Patent Owner’s exhibits following institution. *See* Paper 18. As explained in its objections, and further below, the Disputed Exhibits are inadmissible under Federal Rules of Evidence 401 and 402 since they are neither relevant nor do they have any tendency to make a fact of consequence in this proceeding more or less probable. *See* Fed. R. Evid. 401, 402. Even if the Board finds the Disputed Exhibits bear some modicum of probative value, they should still be excluded under Federal Rule of Evidence 403 due to the risk of unfair prejudice and confusion of the issues. *See* Fed. R. Evid. 403.

Specifically, Exhibits 2009-2012 and 2014 are web publications obtained from various online sources and one ebook, which Patent Owner attempts to rely on as extrinsic evidence to support its claim construction for the disputed term, “characterization profile.” *See* Paper 7 at 7-8, 12; Paper 25 at 15-17. But these exhibits cannot provide relevant evidence of what a skilled artisan would understand the “characterization profile” term to mean because they were purportedly published long after the alleged priority date of the ’255 patent. *See* Paper 16 at 9 n.2; *see also* Ex. 2023, ¶¶56, 59 (assuming priority date of “no later than August 10, 2001”). The Federal Circuit has made clear that use of extrinsic evidence for definitions are

relevant only to the extent that they reflect a skilled artisan's understanding of the term at the time of the alleged invention. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (“[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.”). Since Patent Owner relies on a chain of priority back to 2001, the Disputed Exhibits lack relevance with respect to a POSITA's understanding of the terms at that time.

Reviewing the Disputed Exhibits confirms Petitioner's position. For example, the Disputed Exhibits bear the following dates of publication:

- Exhibit 2009 was created on May 16, 2019;
- Exhibit 2010 has a copyright date of 2020;
- Exhibit 2011 has a copyright date of 2022;
- Exhibit 2012 was published on February 21, 2019; and
- Exhibit 2014 has no discernable publication date on its face, but shows an access date of December 9, 2024.

Taken together, the Disputed Exhibits do not provide evidence as to the meaning of any terms earlier than 2019. They cannot be credible evidence of how a skilled artisan would have understood the “characterization profile” term as of 2001, the alleged priority date for the '255 patent. *See Netflix, Inc. v. GoTV Streaming*,

LLC, IPR2023-00759, Paper 33 at 77 (P.T.A.B. Oct. 29, 2024) (granting motion to exclude certain exhibits as “not credible evidence of how one of ordinary skill would have [understood] the terms recited in the issued claims” because Patent Owner “did not establish these definitions were available at the time the invention was made”).²

Even if the Board finds the Disputed Exhibits have probative value as to how a POSITA would understand the “characterization profile” term in the context of the ’255 patent, the Board should exclude the Disputed Exhibits under Federal Rule of Evidence 403 because their minimal probative value is “substantially outweighed” by the risk of unfair prejudice and potential confusion of the issues that may occur should the Disputed Exhibits remain in evidence. *See* Fed. R. Evid. 403.

For the reasons explained above, the Disputed Exhibits should be excluded. Should the Board admit the Disputed Exhibits, they should be afforded substantially less weight as they are non-contemporary sources of extrinsic evidence.

² In its determination to exclude exhibits, the Board refers to “Petitioner” as “not establish[ing] these definitions were available” and granting “Patent Owner’s Motion to Exclude.” *See Netflix*, Paper 33 at 77. This appears to be an error, as Petitioner filed the Motion to Exclude. *See id.* at 76, 78 (acknowledging this was Petitioner’s Motion to Exclude).

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Petitioner's Motion to Exclude

Date: November 12, 2025

Respectfully Submitted,

/Cory C. Bell/
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Petitioner's Motion to Exclude Exhibits 2009-2012 and 2014** was served electronically via email on November 12, 2025, in its entirety on the following:

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Patent Owner has consented to service by email.

Date: November 12, 2025

By: /Daniel E. Doku/
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