

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILEYE GLOBAL, INC., and
ZF ACTIVE SAFETY AND ELECTRONICS US LLC¹

Petitioners

v.

FACET TECHNOLOGY CORP.,
Patent Owner

Inter Partes Review No. IPR2024-01110
U.S. Patent No. 9,335,255

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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

Petitioner seeks to exclude Exhibits 2009–12 and 2014 (“Disputed Exhibits”) as not being relevant under Federal Rules of Evidence 401 and 402. Paper 36 (“Motion”) at 1. Petitioner also argues that the Disputed Exhibits should be excluded as prejudicial and confusing under Federal Rule of Evidence 403. *Id.* Specifically, Petitioner argues that, because the Disputed Exhibits bear dates on the face of the exhibits after the priority date of the ’255 Patent, the exhibits are not relevant. Motion at 1-2.

Petitioner’s argument should be rejected for multiple reasons. First, there is no categorical rule excluding extrinsic evidence for purposes of claim construction that post-dates the priority of the patent. *See In re Hogan*, 559 F. 2d 595, 605 (CCPA 1977) (“This court has approved use of later publications as evidence of the state of art *existing on the filing date* of an application”); *Amphastar Pharms., Inc. v. Aegis Therapeutics, LLC*, IPR2021-01324, Paper 43, 72-73 (PTAB Feb. 9, 2023) (“We agree with Patent Owner that ‘[n]o bright line rule prohibits the consideration of postpriority date evidence.’”). Additionally, the Federal Circuit has explicitly considered “dictionary definitions at *or around* the time of the invention,” confirming that there is no bright line exclusion of post-filing extrinsic evidence. *TEK Glob., S.R.L. v. Sealant Sys. Int’l, Inc.*, 920 F.3d 777, 786 (Fed. Cir. 2019) (emphasis added).

Indeed, the Federal Circuit and the district courts have repeatedly considered extrinsic evidence from similar types of online sources as those in the Disputed Exhibits. For example, the Federal Circuit discussed another Wikipedia entry in determining the “ordinary, common-sense, natural English meaning” of terms. *K-fee Sys. GmbH v. Nespresso USA, Inc.*, 89 F.4th 915, 921 (Fed. Cir. 2023). Similarly, in reviewing a decision by the Board regarding a series of IPRs on patents claiming priority to a provisional application filed in 2000, the Federal Circuit acknowledged that the Board’s claim construction relied, in part, on extrinsic evidence representing a Wikipedia entry. *Google LLC v. Network-1 Techs., Inc.*, 726 F. App'x 779, 783-786 (Fed. Cir. 2018). Further, the Federal Circuit considered entries from the Merriam-Webster online dictionary in reviewing a district court’s claim construction determination of a patent claiming priority to a 2004 provisional application. *Pazandeh v. Yamaha Corp. of Am.*, 718 F. App'x 975, 979 (Fed. Cir. 2018). Still further, a district court considered two online definitions (one from the defendant’s own website) dated within a year of the opinion in construing a claim term. *Visto v. Microsoft*, No. 2:05-cv-546, 2007 WL 5688730, at *17 (E.D. Tex. 2007). As such, Federal Courts and the Federal Circuit routinely review online sources that do not pre-date a patent’s priority date in construing claim terms.

Moreover, contrary to Petitioner's arguments, the Federal Circuit's *Philips* decision eschews any categorical rule restricting the type of evidence that may be properly considered in connection with claim construction. *Phillips v. AWH Corp.*, 415 F. 3d 1303, 1317 (Fed. Cir. 2005) (en banc) ("we have also authorized district courts to rely on extrinsic evidence, which 'consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.'"); *see also id.* at 1318 (holding that "dictionaries and treatises can be useful in claim construction" without imposing a date-based rule). Combined with the low standard for relevance under Fed. R. Evid. 401—any tendency to make a fact more or less probable than it would be without the evidence—it is clear that disputes regarding the pertinence of extrinsic evidence should go to the weight rather than the admissibility of such evidence. *See Phillips*, 415 F.3d at 1319 ("in weighing all the evidence bearing on claim construction, the court should keep in mind the flaws inherent in each type of evidence and assess that evidence accordingly.").

Indeed, rigidly applying the unsupported categorical rule proffered by Petitioner, and erroneously applied in *Netflix*, to exclude all claim construction "exhibits [that] have dates identifying information that suggests publication after the effective filing date" would lead to absurd results. *Netflix, Inc. v. GoTV Streaming LLC*, IPR2023-00759, Paper 33 at 77 (P.T.A.B. Oct. 29, 2024). For

example, a technical dictionary published one day after the effective filing date that includes an express definition of a claim term would be held inadmissible, but a passing reference to the term in a non-technical document from hundreds of years ago would be held admissible. Moreover, such rule conflicts with *Phillips*' express tolerance for expert testimony, which is plainly not something that existed prior to the patent. *Phillips*, 415 F.3d at 1317-1319. Rather than a categorical rule of exclusion, these types of disputes properly go to the weight, rather than the admissibility of such evidence. That is, the Board can properly assess and weigh all of the evidence, including the cited exhibits, expert testimony, and other evidence, in determining how well the disputed exhibits reflect the meaning of the claim terms as of the filing date. *See FUJIFILM Corporation et al v. Sony Corporation*, IPR2017-01356, Paper No. 48 at 59-60 (PTAB).

Notably, this is not a case where Petitioner has attempted to present any evidence or argument purporting to show that the ordinary meaning of the terms have changed over time. Rather, Patent Owner's expert opined that the Disputed Exhibits were consistent with the ordinary meaning of the claim term "at the time of the '255 Patent's earliest priority date." Ex. 2023 ¶ 78. That opinion is facially reasonable because, in addition to his significant and lengthy experience in the field, Patent Owner's expert identified an exhibit for the meaning of sensor characterization dating before the filing date, in addition to the exhibits which

Petitioner is challenging. *Id.* (citing, e.g. Ex. 2013, bearing a 1996 date in the publication identifier). In response to those opinions, Petitioner has presented no evidence either showing or attempting to show a change in the meaning of the claim terms. As such, the disputed exhibits provide documentary evidence of a reasoned basis for Patent Owner's expert's opinions, and thus should be properly considered, regardless of whether the Disputed Exhibits themselves would be considered independently admissible outside of the context of expert testimony. *See* Fed. R. Evid. 703. This provides a further, independent basis for denying Petitioner's Motion.

Finally, Petitioner presents a conclusory argument that, even if the Disputed Exhibits have probative value, they should be excluded under Federal Rule of Evidence 403 as being unfairly prejudicial or confusing the issues. Motion at 3. However, Petitioner presents no evidence or argument showing *how* or *why* the Disputed Exhibits would be either unfairly prejudicial or would confuse the issues. Indeed, this is not a jury case and the Board can readily ascertain the weight of such ordinary types of evidence without prejudice or confusion. As such, Petitioner presents no reasoning to support this conclusory, alternative theory for exclusion.

For the reasons explained above, the Board should deny Petitioner's Motion to Exclude the Disputed Exhibits (Exhibits 2009-2012 and 2014).

Dated: November 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 19, 2025, I will cause true and correct copies of the foregoing **PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE EVIDENCE** to be served electronically upon the following attorneys who have consented to service via email. Pet. at 75-76.

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