

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 REPLY IN SUPPORT OF ITS
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.

Each of Exhibits 2009-2012 and 2014 (the “Disputed Exhibits”) present definitions that are nearly *two decades* removed from the alleged priority date of the '255 patent. Patent Owner does not contest this fact in its opposition to Petitioner's motion to exclude Exhibits 2009-2012 and 2014. Rather, Patent Owner makes general arguments about how courts have previously allowed consideration of extrinsic evidence from online sources for claim construction purposes. *See* Paper 37 at 1-4. Patent Owner also argues that because its expert relied on the Disputed Exhibits and his opinion was “facially reasonable” that Patent Owner may rely on such exhibits as further basis for denying Petitioner's Motion. *Id.* at 5. Finally, Patent Owner contends that Federal Rule of Evidence 403 would not be applicable since “this is not a jury case and the Board can readily ascertain the weight of such ordinary types of evidence without prejudice or confusion.” *Id.* None of these arguments are persuasive.

Patent Owner's Opposition focuses on general caselaw and propositions about the scope and appropriateness of claim construction practices. *See* Paper 37 at 1-4. Yet, Patent Owner improperly frames Petitioner's argument as seeking to exclude most of the Disputed Exhibits because they are *online* sources. *Id.* at 2. Petitioner maintains that exclusion is warranted because there is no indication the cited portions of the sources reflect a skilled artisan's understanding of the corresponding terms at the time of the alleged invention. *See generally* Paper 36. That makes the sources

(whether online or physical publications) irrelevant. Patent Owner cites to *Phillips* for the proposition that tribunals may rely on extrinsic evidence for claim construction. *See* Paper 37 at 3. But, as Petitioner cited in its Motion, which Patent Owner did not respond to or dispute, *Phillips* also requires that claim terms be interpreted according to their meaning to a person of ordinary skill in the art *at the time of the invention*. Paper 36 at 2. Patent Owner has not shown how the Disputed Exhibits, published nearly two decades after the alleged priority date, are relevant with respect to a POSITA's understanding of the terms at that time. While Patent Owner cites caselaw that shows courts may rely on extrinsic evidence, such as dictionaries and online publications like Wikipedia entries, none of Patent Owner's cited caselaw addresses evidentiary challenges to the use of extrinsic evidence. *See* Paper 37 at 2.

Patent Owner's next argument regarding the use of its expert is equally unavailing. Patent Owner contends that Dr. Papanikolopoulos opined the Disputed Exhibits were consistent with "the ordinary meaning of the claim term 'at the time of the '255 Patent's [sic] earliest priority date.'" Paper 37 at 4 (citing Ex. 2023 ¶ 78). But Dr. Papanikolopoulos claimed his analysis was as of the date of the invention of the '255 patent. Ex. 2023 ¶¶ 55-56. The suggestion that he accounted for the time that elapsed between the priority date of the '255 patent and the dates of the Disputed Exhibits is incorrect. In fact, the paragraph Patent Owner contends as being Dr.

Papanikolopoulos's opinions appears to be a wholesale adoption by Dr. Papanikolopoulos of *Patent Owner's* arguments in its pre-institution briefing. Compare Ex. 2023 ¶ 78 with Paper 7 at 12. As Petitioner has previously argued, expert declarations that recite attorney argument warrant little consideration. See, e.g., *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000). In short, Dr. Papanikolopoulos's declaration functions as a vehicle to allow Patent Owner to rely on otherwise inadmissible evidence.

Finally, Patent Owner's assertion regarding Petitioner's citation to Federal Rule of Evidence 403 being inapplicable given the fact that this proceeding is "not a jury case and the Board can readily ascertain the weight of...evidence without prejudice or confusion" is incorrect. Paper 37 at 5. The Board has *never* adopted a per-se rule prohibiting the application of Rule 403. At most, the Board has acknowledged that the "risk of unfair prejudice is diminished" when the Board acts as fact-finder. E.g., *Trend Micro Inc. v. Cupp Computing AS*, IPR2019-00765, Paper 30 at 4-5 (P.T.A.B. Aug. 25, 2020). But Petitioner's argument regarding the Disputed Exhibits centers on their irrelevance, e.g., they have no probative value. Rule 403 requires the Board to balance whether the "probative value" of evidence is "substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. Even if the Board

ascertains *some* modicum of relevance from the Disputed Exhibits, their probative value *is* outweighed by unfair prejudice that would inure to Petitioner from relying on evidence that is so far removed from the alleged priority date.

For the reasons explained above as well as in Petitioner's Motion to Exclude (Paper 35), Exhibits 2009-2012 and 2014 are not relevant because they are non-contemporary publications used to bolster Patent Owner's incorrect claim construction position. Accordingly, the Board should exclude the Disputed Exhibits under Rules 401-403. Should the Board admit the Disputed Exhibits, Petitioner maintains that the Disputed Exhibits should be afforded substantially less weight as they are non-contemporary sources of extrinsic evidence.

Date: November 26, 2025

Respectfully Submitted,

/Cory C. Bell/

Cory C. Bell

Reg. No. 75,096

Lead Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Petitioner's Reply in Support of its Motion to Exclude Exhibits 2009-2012 and 2014** was served electronically via email on November 26, 2025, in its entirety on the following:

Michael D. Saunders
msaunders@princetonobel.com

Bryan D. Atkinson
batkinson@princetonobel.com

Patent Owner has consented to service by email.

Date: November 26, 2025

By: /Daniel E. Doku/
Daniel E. Doku
Senior Litigation Paralegal

Finnegan, Henderson, Farabow,
Garrett & Dunner, LLP