UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENIUS SPORTS LTD.,
Petitioner

v.

SPORTSCASTR INC.
(d/b/a PANDA Interactive),
Patent Owner.

IPR2024-01308
U.S. Patent No. 10,425,697

PETITIONER'S MOTION TO EXCLUDE

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence ("FRE"), Petitioner Genius Sports Ltd. ("Genius") hereby moves to exclude paragraph 315 of Exhibit 2001 and Exhibits 2007-2017 in their entirety. Each item of evidence that Genius seeks to exclude relates to Patent Owner's unreliable and impermissible evidence of secondary indicia of non-obviousness. Genius timely filed objections to these exhibits on March 20, 2025. Paper 12.

The FRE apply to this proceeding. *See* 37 C.F.R. § 42.62. Exercising its discretion, the Board may "exclude the … evidence in their entirety, or alternatively, decline to consider the … related evidence." *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 79, (PTAB Aug. 9, 2013).

II. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioner respectfully requests the Board exclude:

- Expert testimony (Exhibit 2001, ¶ 315) directed to alleged secondary indicia of non-obviousness which relies on inadmissible hearsay evidence (Exhibits 2016 and 2017);
- Exhibits 2007 and 2008 (articles quoting former NBA Commissioner David Stern) as unauthenticated documents under FRE 901 and inadmissible hearsay to the extent that Patent Owner relies on those exhibits for the truth of the matter asserted (*e.g.,* David Stern opined in an article that "SportsCastr.Live

will allow a budding sportscaster to overlay streams carrying enhancements that update in real time" *e.g.,* live betting lines and "lend a professional look to the presentation.") (Exhibit 2007 at 2);

- Exhibits 2009 and 2010 (alleged accolades and awards) as unauthenticated documents under FRE 901;
- Exhibit 2011 (an article quoting a retired NFL player) as an unauthenticated document under FRE 901 and inadmissible hearsay to the extent that Patent Owner relies on Exhibit 2011 for the truth of the matter asserted (*e.g.,* New York Giants Safety Landon Collins stated that the technology embodied in SportsCastr allowed him to interact with fans: "I can tell you what happened, why this play was successful or why this person got beat, from the perspective of a defensive player.") (Exhibit 2011);
- Exhibits 2012-2015 (web advertisements) as unauthenticated documents under FRE 901; and
- Exhibits 2016 and 2017 (emails to Patent Owner's CEO) as unauthenticated documents under FRE 901 and inadmissible hearsay to the extent that Patent Owner relies on those exhibits for the truth of the matter asserted (*e.g.,* "[SportsCastr is] based in NY and doing amazing work around sports broadcast with social commentators, graphics, and real time chat." (Exhibit 2017 at 2).

III. THE BOARD SHOULD EXCLUDE EXHIBIT 2001 (¶ 315) AND EXHIBITS 2007-2017

In support of its patent owner response ("POR"), Patent Owner PANDA ("PO") relies on certain secondary considerations—namely, long-felt need, industry praise, praise and copying by competitors, and commercial success—in an attempt to rebut the *prima facie* case of obviousness presented in the Petition. POR, 63-73. To be relevant, however, secondary considerations evidence must bear a nexus to the claimed invention. *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011). The Board previously rejected PO's evidence of secondary considerations at institution for lacking such a nexus. Institution Decision, Paper 9 at 38, Patent Owner does not attempt to show that a particular product embodies and is coextensive with the claimed features, so Patent Owner is not entitled to a presumption of nexus. In its POR, PANDA essentially copied and pasted the same secondary considerations of non-obviousness from its preliminary response. *Compare* Paper 8 at 61–71 *with* POR at 63–73. In Reply, Petitioner reiterated that PO's evidence of secondary indicia of non-obviousness lacks a nexus to the claimed subject matter. Paper 23, 22-25.

In addition to being facially deficient, the Board should exclude these exhibits for the following reasons.

A. Evidence of Industry Praise and Long Felt Need Should be Excluded

1. Exhibits 2007 and 2008

The Board should exclude Exhibits 2007 and 2008 as unauthenticated documents and inadmissible hearsay under the FRE. Under FRE 901, a proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. Here, Patent Owner has not provided any evidence to authenticate these articles, such as affidavits from the authors, publication records, or any other indicia of reliability or origin. Without such authentication, there is no basis for the Board to conclude that these documents are genuine or accurately reflect the statements attributed to their purported sources.

Moreover, to the extent Patent Owner relies on these articles for the truth of the statements contained therein—such as the assertion that "SportsCastr.Live will allow a budding sportscaster to overlay streams carrying enhancements that update in real time e.g., live betting lines and lend a professional look to the presentation"—the articles are classic hearsay under FRE 801 and 802. They are out-of-court statements offered for the truth of the matter asserted and do not fall within any recognized exception to the hearsay rule. The Board should therefore exclude Exhibits 2007 and 2008 on both authentication and hearsay grounds.

2. Exhibits 2009 and 2010

Exhibits 2009 and 2010, which purport to show accolades and awards received by the Patent Owner, should also be rejected as unauthenticated under FRE

901. Patent Owner has not provided any evidence to establish the authenticity of these documents—such as official award records, declarations from the awarding organizations, or any other reliable verification. In fact, Exhibit 2009 appears to be a compilation of several separate articles, some of which are incomplete, and Exhibit 2010 is a collection of media reports allegedly created by Patent Owner. Without proper authentication, there is no assurance that these documents are what they purport to be, nor that they accurately reflect any accolades or awards relevant to the claimed invention.

B. Evidence of Praise and Copying by Competitors Should be Excluded

1. Exhibits 2016 and 2017

Exhibits 2016 and 2017, which are emails allegedly sent to Patent Owner's CEO, should be excluded under the FRE for two independent reasons. First, under FRE 901, the proponent of evidence must produce sufficient evidence to support a finding that the item is what the proponent claims it is. Patent Owner has not provided any authentication for these emails—such as testimony from the sender or recipient, metadata, or other corroborating evidence—so there is no basis for the Board to conclude that these emails are genuine or that they were actually sent or received as claimed. Second, to the extent Patent Owner relies on these emails for the truth of the statements contained therein (for example, that "[SportsCastr is] based in NY and doing amazing work around sports broadcast with social

commentators, graphics and real time chat"), the emails are classic hearsay under Fed. R. Evid. 801 and 802. They are out-of-court statements offered for the truth of the matter asserted and do not fall within any recognized exception to the hearsay rule. As such, they are inadmissible.

2. Exhibit 2001 (¶ 315)

The Board should exclude Exhibit 2001, paragraph 315, because the expert testimony offered therein is impermissibly based on inadmissible hearsay evidence—specifically, Exhibits 2016 and 2017. Under FRE 703, an expert may base an opinion on facts or data in the case only if those facts or data are of a type reasonably relied upon by experts in the particular field. However, when the underlying evidence is itself inadmissible and not the type of evidence reasonably relied upon by experts, the expert's opinion is likewise inadmissible. *Wi-LAN Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1374 (Fed. Cir. 2021) (finding expert testimony inadmissible because it relied on inadmissible source code without a showing that experts in the field reasonably relied on such source code). Here, Dr. Rubin's testimony in paragraph 315 references and relies on the content of Exhibits 2016 and 2017—emails purportedly sent to Patent Owner's CEO—as evidence of secondary considerations such as industry praise or copying. Because these emails are not authenticated and constitute hearsay, Dr. Rubin's reliance on them does not

cure their evidentiary defects. Dr. Rubin's opinion is therefore inadmissible to the extent it is predicated on these hearsay documents.

C. Evidence of Commercial Success Should be Excluded

1. Exhibit 2011

The Board should exclude Exhibit 2011 under the FRE for two principal reasons. First, under FRE 901, the proponent of a document must provide sufficient evidence to support a finding that the item is what it purports to be. Patent Owner has not provided any authentication for Exhibit 2011—such as testimony from the article's author, a custodian of records, or any metadata or corroborating evidence establishing the article's source, authorship, or integrity. Without such authentication, there is no basis for the Board to conclude that Exhibit 2011 is a genuine and accurate copy of the article it purports to be.

Second, to the extent Patent Owner relies on Exhibit 2011 for the truth of statements contained within the article—such as the assertion that New York Giants Safety Landon Collins stated the technology allowed him to interact with fans ("I can tell you what happened, why this play was successful or why this person got beat, from the perspective of a defensive player")—the article constitutes classic hearsay under Fed. R. Evid. 801 and 802. The article is an out-of-court statement offered for the truth of the matter asserted, and Patent Owner has not identified any applicable exception to the hearsay rule. The statements attributed to Mr. Collins are

double hearsay: first, the reporter's account of what Mr. Collins allegedly said, and second, the underlying statement by Mr. Collins himself. Neither layer of hearsay is subject to a recognized exception. As such, Exhibit 2010 is inadmissible for the purpose of proving the truth of any statements it contains.

2. Exhibits 2012-2015

Exhibits 2012 through 2015, which are advertisements purportedly related to the claimed invention, should also be excluded under FRE 901. The proponent of documentary evidence must establish its authenticity by producing evidence sufficient to support a finding that the item is what the proponent claims. Here, Patent Owner has not provided any authentication for these advertisements—such as testimony from a custodian of records, evidence of publication, or any other corroborating information establishing that these advertisements are genuine, were actually published or disseminated as claimed, or are unaltered. Without such authentication, there is no foundation for the Board to consider these documents as evidence. The mere submission of advertisements, without any supporting evidence as to their origin, publication, or connection to the claimed invention, is insufficient under the FRE.

IV. CONCLUSION

For the foregoing reasons, the Board should exclude these exhibits.

Date: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on November 14, 2025, via electronic mail directed to counsel of record for the Patent Owner as follows:

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