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.

IPR2024-01311

U.S. Patent No. 11,039,218

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

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Pursuant to 37 C.F.R. §42.64 and the Scheduling Order (Paper 11), Patent Owner SportsCastr Inc. (d/b/a PANDA Interactive) ("Patent Owner" or "PANDA") opposes the Motion to Exclude (Paper 35) by Genius Sports, Ltd. ("Petitioner" or "Genius Sports") because Petitioner has failed to establish any basis to exclude the challenged evidence.

I. INTRODUCTION

Petitioner's motion invites the Board to exclude routine secondary-considerations materials—trade press, awards/recognition, marketing pages, and contemporaneous third-party emails—and a short paragraph of Dr. Rubin's declaration that references two of those items. That is not how the Board handles such issues. In this forum, concerns about authentication or hearsay are typically handled through weight, not wholesale exclusion, particularly where provenance is apparent, authenticity can be shown by the documents' identifying characteristics (*e.g.*, mastheads, dates, URLs), and the statements are offered for permissible non-hearsay purposes or, if necessary, fall within settled exceptions. Petitioner also attempts to improperly fold a merits "nexus" dispute into an evidentiary motion. Nexus is a probative-weight question to be resolved on the merits, not a basis to strike evidence from the record. The motion should therefore be denied so the Board may weigh the challenged evidence.

II. LEGAL STANDARD

Although the Federal Rules of Evidence apply, the Board generally accords challenged materials appropriate weight rather than excluding them outright, especially where reliability can be assessed on the face of the documents. Federal Circuit precedent establishes that the Board "has broad discretion to regulate the presentation of evidence" and should pursue "the correct answer" by considering evidence rather than applying strict exclusion rules. *See VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1065 (Fed. Cir. 2020). Board practice also recognizes that motions to exclude are not a vehicle to litigate merits issues (including scope of reply or nexus), and objections that go to the probative force of evidence—rather than threshold admissibility—are resolved at the merits stage. *See* PTAB Trial Practice Guide § II(K).

Authentication requires only a prima facie showing that an item is what it purports to be. *See* Fed. R. Evid. 901. Distinctive characteristics and context suffice, and printed periodicals are self-authenticating. *See* Fed. R. Evid. 901(b)(4), 902(6); *see also Kelly v. U.S. Bank*, 2010 WL 4135028, at *6 (D. Or. July 29, 2010) (noting that the "authentication requirement" can be satisfied by "exhibits that are self-authenticating, including "public records, newspaper or magazine articles, and other documents with built-in indicia of reliability"). Courts routinely accept web and publication evidence authenticated by appearance, URLs, timestamps, and publisher

indicia. Federal Courts likewise treat periodicals, trade press, and marketing pages as admissible with appropriate indicia, assigning weight as appropriate.

Hearsay rules do not bar the use of industry praise, market perception, and similar materials when offered for non-hearsay purposes such as effect on the listener or to establish industry recognition and timing, and multiple exceptions commonly apply (commercial publications (Fed. R. Evid. 803(17)), business records (Fed. R. Evid. 803(6)), present-sense impressions (Fed. R. Evid. 803(1)), and the residual exception (Fed. R. Evid. 807)). Federal Courts have long recognized that "hearsay evidence is admissible in administrative hearings so long as the evidence upon which a decision is ultimately based is both substantial and has probative value." *See Jacobowitz v. U.S.*, 191 Ct. Cl. 444, 452 (1970). The Board has broad discretion to weigh record evidence rather than excluding it entirely. *See Icon Health and Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1041 (Fed. Cir. 2017) ("It is within the discretion of the [PTAB] to give each item of evidence such weight as it feels appropriate.").

Experts may rely on otherwise inadmissible materials if experts in the field reasonably rely on them. *See* Fed. R. Evid. 703; *see also Inline Connection Corp. v. AOL Time Warner Inc.*, 472 F.Supp.2d 604, 613 (D. Del. 2007) ("FRE 703 allows an expert to use data or information that otherwise would be inadmissible if it is 'reasonably relied upon by experts in the particular field'"). In secondary indicia

analyses, experts routinely rely on industry press, marketing pages, and contemporaneous communications. Rule 703 expressly allows Dr. Rubin to rely on that evidence in forming his opinions.

Finally, nexus is a merits issue. A patent owner may establish nexus by showing a specific product embodies the claimed features and is coextensive with them, or by showing that the evidence of secondary considerations is the "direct result of the unique characteristics of the claimed invention." *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373–74 (Fed. Cir. 2019). A motion to exclude, however, is not the correct forum to challenge whether secondary considerations, such praise, copying, or commercial success, are tied to the claims.

III. ARGUMENT

A. Petitioner's Arguments Go To Weight, Not Admissibility

The challenged exhibits—EX2006–2007 (press), EX2008–2009 (awards/recognition), EX2010 (press), EX2011–2014 (marketing pages), EX2015–2016 (third-party emails), and EX2001 ¶312 expert reliance)—are routine secondary-considerations materials that the Board regularly admits and weighs. For example, EX2006–2007 reflect industry recognition of PANDA's real-time overlays and studio-style commentary; EX2010 captures contemporaneous market reception through a player's description of fan interaction; EX2011–2014 show the product's commercial positioning and timing (low-latency interaction, SocketVision, Watch-and-Bet); and EX2015–2016 evidence competitor awareness and interest.

Petitioner's arguments are largely directed to provenance and use; none justifies striking the record. The Board can and should accord the materials appropriate weight in its ultimate nexus and obviousness analysis, rather than excluding them wholesale.

B. Authentication Is Established Or Readily Shown For The Challenged Evidence

Petitioner's authenticity arguments must fail because Rule 901 requires only a prima facie showing that an item is what it purports to be. That is satisfied here by the documents' identifying characteristics (*e.g.*, mastheads, dates, author bylines, URLs, timestamps, publisher branding) within the surrounding context of the record. What's more, Petitioner's motion to exclude stops short of arguing that any challenged exhibit is ***not***, in fact, what it purports to be.

1. Periodicals and Trade Press (Exs. 2006, 2007, 2010)

First, the periodicals and trade-press articles at issue include (i) EX2006: an NBA.com piece by Steve Ashburner (Apr. 27, 2017) quoting former NBA Commissioner David Stern recognizing PANDA's real-time overlays and in-stream enhancements; (ii) EX2007: a SportTechie article by Robert Roble (Apr. 22, 2017) describing PANDA's studio-style commentary, live graphics, and interactive features; and (iii) EX2010: a CNBC article (Dec. 20, 2018) quoting New York Giants safety Landon Collins on using SportsCastr to interact with fans in real time. Each bears publisher mastheads, dates, author bylines, and pagination. They are

therefore self-authenticating as periodicals. *See* Fed. R. Evid. 902(6); *Kelly v. U.S. Bank*, 2010 WL 4135028, at *6. In addition, the articles include URLs and, where applicable, archive metadata corroborating appearance and provenance, which satisfies Rule 901 by distinctive characteristics and context. *See Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1371 (Fed. Cir. 2021) (establishing that web content can be authenticated through routine comparison).

2. Awards and Recognition Compilations (Exs. 2008, 2009)

Next, EX2008 and EX2009 are compilations of awards and recognitions. EX2008 includes third-party accolades such as Sports Tech Tokyo honors and finalist placements at the 2019 Yahoo! Sports Tech Awards and Sports Business Awards, while EX2009 compiles media coverage from outlets such as CNBC, The Washington Post, Yahoo, Forbes, and ESPN discussing the platform's real-time enhancements. These materials bear distinctive marks, logos, dates, and issuing-organization indicia. The compilation sources are apparent from the materials themselves and from publicly available descriptions by the issuing organizations. Taken together, the on-page identifiers (logos, issuer names, dates) and those public descriptions readily establish what these documents are, satisfying Rule 901(b)(4) and eliminating any authentication issues for the Board. *See* Fed. R. Evid. 901(b)(4).

3. Marketing Pages and Advertisements (Exs. 2011-2014)

Turning to the challenged marketing materials: EX2011 is PANDA's "About"

page (sportscastr.com/about) describing low-latency live interaction and studio-quality tools; EX2012 is PANDA's patents page (pandainteractive.com/patents) describing the patented SocketVision architecture, including specific U.S. patent numbers (10,425,697; 10,805,687; 11,039,218; 11,356,742; 11,770,591); EX2013 is PANDA's product page (sportscastr.com) highlighting real-time overlays and audience engagement; and EX2014 is the PANDA Studio page (studiopanda.live) showcasing Watch-and-Bet experiences and listing the same patent families. They are authenticated by their distinctive characteristics—company logos, consistent branding and formatting, product-specific copy, patent callouts, and stable URLs/timestamps—reflected on the pages themselves. *See, e.g., It's My Party v. Live Nation, Inc.*, 2012 WL 3655470, at *9 (D. Md. Aug. 23, 2012) (authenticating webpages by reference to their "appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances").

4. Third-Party Emails to CEO (Exs. 2015, 2016)

Finally, the third-party emails—EX2015 (February 24, 2018) and EX2016 (May 7, 2018)—were sent to Patent Owner's CEO by industry participants, including Genius personnel, expressing interest and praise (e.g., "doing amazing work around sports broadcast with social commentators, graphics, and real-time chat"). They are authenticated by circumstantial features and metadata: sender and recipient domains, signature blocks, internal routing, thread continuity, and header

information contained in the messages. Courts are free to rely on emails based on distinctive characteristics "including the date and time the messages were sent and received, as well as the addresses of the sender and recipient." *See Global Health Solutions LLC v. Selner*, 148 F.4th 1363, 1374 (Fed. Cir. 2025) (finding the Board did not err in its consideration of emails as evidence because the "trier of fact can conclude for itself what documents show").

Petitioner's generic complaint about "web-based" authentication does not defeat the multiple, overlapping indicia present here. Rule 901 is flexible and circumstance-driven. The exhibits comfortably clear that threshold.

C. The Challenged Materials Are Not Hearsay As Used

As a threshold matter, the challenged materials are not offered for the truth of the specific matters they assert. Rather, they are offered more generally to show industry perception and recognition. For example, EX2006 (NBA.com, Apr. 27, 2017) and EX2007 (SportTechie, Apr. 22, 2017) highlighting real-time overlays, live graphics, and studio-style commentary. Others show contemporaneous market reception, as in EX2010 (CNBC, Dec. 20, 2018) reflecting player-fan interactivity on PANDA. They also show competitor awareness and interest, as in EX2015 (Feb. 24, 2018) and EX2016 (May 7, 2018), which are inbound emails to PANDA's CEO from industry participants, including Genius personnel, expressing interest and praise. And they show commercial presence and timing, as in EX2011–2014

(company pages) describing low-latency interaction, the patented SocketVision architecture, and Watch-and-Bet capabilities. Taken together, these materials are used for classic non-hearsay purposes in the secondary-considerations framework because they demonstrate how the market responded to the claimed features and how the industry understood the technology at the time.

Even if the Board were to view discrete statements within these materials as hearsay, multiple well-recognized exceptions fit the record. Trade press and periodicals fall within the commercial publications exception. *See* Fed. R. Evid. 803(17). Company-maintained marketing pages and archives, as well as routinely received third-party communications kept in the ordinary course, qualify as business records when supported by their regular creation and maintenance. *See* Fed. R. Evid. 803(6). In appropriate instances, contemporaneous descriptions of experience by industry participants may be treated as present-sense impressions where timing and trustworthiness are apparent. *See* Fed. R. Evid. 803(1). And in the limited circumstances where no categorical exception neatly applies, the residual exception permits consideration of material, trustworthy evidence that is more probative on the point than reasonably available alternatives. *See* Fed. R. Evid. 807.

PTAB practice confirms that, in this forum, any residual hearsay concerns are handled through the weight assigned to the evidence rather than wholesale exclusion. *See* PTAB Trial Practice Guide § II(K). The Board has wide latitude to accord these

materials appropriate weight in view of their reliability and context. *See Icon Health and Fitness, Inc.*, 849 F.3d at 1041. Given this, there is no persuasive basis for striking them form the record.

Finally, Petitioner's "double hearsay" point aimed at EX2010 (a CNBC piece quoting Landon Collins on using PANDA to explain plays to fans) does not warrant exclusion. The article is offered to show market reception and perceived benefits, not to prove any technical proposition. If the Board nonetheless views the quoted statements as hearsay within hearsay, each layer is addressed by the exceptions discussed above, and any remaining concern is properly addressed by according the evidence diminished weight, not by excluding it.

For these reasons, the motion to exclude on hearsay grounds should be denied so the Board can consider the full record and assign the challenged materials the weight they deserve.

D. The Challenged Paragraph Within Dr. Rubin's Declaration Is Admissible Under Rule 703

Experts in market adoption and secondary considerations routinely rely on trade press, marketing pages, and contemporaneous industry communications when assessing industry recognition, copying, and commercial uptake. That is precisely what Dr. Rubin did in Paragraph 312 referencing EX2015–2016. Rule 703 permits such reliance even where the underlying materials are not independently

admissible,[1] so long as they are of a type reasonably relied upon. *See Inline Connection Corp.*, 472 F.Supp.2d at 613. Petitioner's reliance on authority involving untrustworthy third-party source code (Wi-LAN) is inapposite; those trustworthiness concerns are not present here, and the Board as factfinder is well positioned to give the testimony appropriate weight.

E. Petitioner's "Nexus" Challenge Is An Improper Merits Issue

Whether praise, competitor interest, and commercial performance are tied to claimed features is a question of probative value to be resolved on the merits. *See, e.g.*, *Fox Factory, Inc.*, 944 F.3d at 1372–78 (reinforcing that the nexus inquiry is a "question of fact" involving substantial factual determinations). Patent Owner's POR already ties the praised functionality—real-time overlays/updates, interactive broadcasting, in-stream enhancements, synchronized event information—to the claim limitations. While coextensiveness supports a presumption of nexus, alternatively, nexus can be shown if the record demonstrates a direct linkage between the objective evidence and the claimed features. *Id.* at 1373–74. Petitioner's arguments however, go to weight and should be addressed in the final written decision, not on a motion to exclude. *See* PTAB Trial Practice Guide § II(K)

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[1] Here, the underlying materials are independently admissible.

("A motion to exclude is not a vehicle for addressing the weight to be given evidence.").

IV. CONCLUSION

The motion should be denied because the challenged exhibits and expert paragraph are authenticated or readily authenticated; they are used for non-hearsay purposes or fall within well-recognized exceptions; and disputed issues go to weight, not admissibility. The Board should consider the full record—including Patent Owner's secondary-indicia evidence—and assign appropriate weight in the merits analysis of nexus and obviousness.

Dated: December 2, 2025

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CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing: **PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE** was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) on December 2, 2025, in its entirety on the following:

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