

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC
Petitioner

v.

ICHARTS LLC
Patent Owner

Case IPR2024-01387
Patent No. 8,271,892

**PATENT OWNER'S OBJECTIONS TO EVIDENCE ACCOMPANYING
PETITIONER'S REPLY PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner, iCHARTS, LLC (“Patent Owner”) objects under the Federal Rules of Evidence (“F.R.E.”) and the Patent Trial and Appeal Board Consolidated Trial Practice Guide (“the Guide”) to the admissibility of Exhibits 1069 and 1072-1076, which Petitioner filed with its Reply.

Patent Owner timely objects under 37 C.F.R. § 42.64(b)(1) within the allowed five business days of the service of evidentiary material.

I. EX1072 – DECLARATION OF MR. CHRISTOPHER SCHMANDT IN SUPPORT OF PETITIONER’S REPLY

Patent Owner objects to Exhibit 1072, including at least ¶¶4 and 6–56 for improper expert testimony under F.R.E. 702 and 703 because there has not been an adequate showing that Mr. Schmandt’s testimony is based on sufficient facts or data, is the product of reliable principles or methods, or will help the Board understand the evidence or determine a fact in issue.

Patent Owner also objects to Exhibit 1072 under F.R.E. 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Patent Owner further objects to Exhibit 1072 or its reliance on new and/or “gap filling” evidence that was available at the time of the filing of the Petition but was not included with or in it. Patent Owner specifically objects to ¶44 and related discussion

for its reliance on Exhibit 1069; ¶¶19-21 for their reliance on Exhibit 1074; and ¶¶8, 26 for their reliance on Exhibit 1075. “It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’ 35 U.S.C. § 312(a)(3).” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016). “All arguments for the relief requested in a motion must be made in the motion. A reply may only respond to arguments raised in the corresponding opposition or patent owner response.” 37 C.F.R. § 42.23(b). “Once the Board identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper.” *Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369. “Unlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute. While the Board’s requirements are strict ones, they are requirements of which petitioners are aware when they seek to institute an IPR.” *Id.* Patent Owner objects to Exhibit 1072 in its entirety, but especially objects to those sections that rely on new evidence necessary to make out a *prima facie* case for unpatentability and “gap-filling” prior art references objected to above and below. Added now, this evidence should be rejected.

II. EXHIBITS ACCOMPANYING THE REPLY

Patent Owner further objects to Exhibits 1069, 1073, 1074, 1075, and 1076 for the following reasons:

EXHIBIT 1069 – MERRIAM-WEBSTER CHART DEFINITION:

Under F.R.E. sections: 901 as inadmissible as lacking authenticity; 802 as inadmissible as improper hearsay; and 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. The screenshot provided as Exhibit 1069 shows a date of October 23, 2025, which is seventeen years after the filing of the disputed patent’s application. Petitioner fails to provide any support for the notion that it can use a definition from seventeen years in the future to support arguments about the state of the art from almost two decades prior.

Furthermore, the definition of “chart” as defined by Merriam-Webster was available to Petitioner at the time of its Petition, and according to the Guide (p.73), “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a *prima facie* case of unpatentability.” As this dispute centers on charting technology, providing new evidence to define “chart” goes beyond mere rebuttal as definitions such as this definition should have been part of the *prima facie* case for unpatentability in the Petition; added now, it should be rejected. *See Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369-70 (“Once the Board

identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper.”).

EXHIBIT 1073 – DISTRICT COURT CERTIFICATE OF CONFLICTS:

Under F.R.E. sections: 802 as inadmissible as improper hearsay; and 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. This evidence plays no role in determining patentability.

Furthermore, this document and information was available to Petitioner at the time of its Petition, and according to the Guide (p.73), “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.” Adding this evidence goes beyond mere rebuttal or response as arguments regarding interested parties were not presented in the Petition and have no role in determining patentability.

EXHIBIT 1074 - ELFARSSI:

Under F.R.E. sections: 901 as inadmissible as lacking authenticity; 802 as inadmissible as improper hearsay; and 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the

issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Furthermore, this article, dated February 2007, was available to Petitioner at the time of its Petition, and according to the Guide (p.73), “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a *prima facie* case of unpatentability.” As this dispute centers on charting technology, and includes descriptions of “Flash” technology in the specification and claims, addition of this evidence goes beyond mere rebuttal as these arguments and evidence should have been part of the *prima facie* case for unpatentability in the Petition and only serves to inappropriately fill gaps. Added now, it should be rejected. *See Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369-70 (“Once the Board identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper.”).

EXHIBIT 1075 – MICROSOFT COMPUTER DICTIONARY:

Under F.R.E. sections: 901 as inadmissible as lacking authenticity; 802 as inadmissible as improper hearsay; and 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Furthermore, the definition of “render” and “electronic document” as defined by Microsoft’s Computer Dictionary, Fifth Edition

(dated 2002), was available to Petitioner at the time of its Petition, and according to the Guide (p.73), “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a *prima facie* case of unpatentability.” The terms “render” and “electronic document” are found in the patent claims at issue here and have been since the patent’s publication. Providing new evidence to define “render” and “electronic document” goes beyond mere rebuttal as these terms should have been part of the *prima facie* case for unpatentability in the Petition; added now, they should be rejected. *See Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369-70 (“Once the Board identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper.”).

EXHIBIT 1076 – DISTRICT COURT MILLER DECLARATION:

Under F.R.E. sections: 802 as inadmissible as improper hearsay; and 401, 402, and 403 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

Furthermore, this declaration from the underlying district court case was available to Petitioner at the time of its Petition, and according to the Guide (p.73), “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a *prima facie* case of unpatentability.” Adding this

evidence goes beyond mere rebuttal and should have been part of the *prima facie* case for unpatentability in the Petition; added now, it should be rejected. *See Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369-70 (“Once the Board identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper.”)

Date: November 5, 2025

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/Lester J. Vincent/

Lester J. Vincent

Reg. No. 31, 460

Counsel for Patent Owner ICHARTS LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 5, 2025, the foregoing
**PATENT OWNER'S OBJECTIONS TO EVIDENCE ACCOMPANYING
PETITIONER'S REPLY PURSUANT TO 37 C.F.R. § 42.64(b)(1)** was served
electronically via e-mail on November 5, 2025, in its entirety on the following
counsel of record for Petitioner:

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