

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 MOTION TO EXCLUDE
PURSUANT TO 37 C.F.R. § 42.64(c)**

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.62 and 42.64 and the Scheduling Order (Paper 8), Patent Owner, iCharts LLC (“Patent Owner” or “iCharts”) respectfully moves to exclude Petitioner Tableau Software, LLC’s (“Petitioner” or “Tableau”) Exhibits 1003, 1014–1027, 1030, 1061, 1068, and 1072 based on iCharts’s Objections to Evidence (Papers 10 and 20).

II. LEGAL STANDARD

When presented with improper evidence, the Board may exclude it or decline to consider it. *See CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 79 at 3 (PTAB Aug. 9, 2013). The Federal Rules of Evidence (“FRE”) govern (37 C.F.R. § 42.62(a)), including FRE 401-403, 602, 702-703, 801-803, and 901.

“A reply may only respond to arguments raised in the corresponding . . . patent owner response” (37 C.F.R. § 42.23(b)), and “a party may move to exclude evidence . . . as improper under the response-only regulation, under the Trial Practice Guide’s advice.” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1081 (Fed. Cir. 2015).

III. ARGUMENT

A. The Board Should Exclude Evidence Petitioner Relies on to Support Publication Date and Authenticity of QlikView Manuals

Tableau relies on two declarations (Exhibits 1030 and 1068) and screenshots (Exhibits 1014–1023, 1061) from the Wayback Machine and the internet to support the publication date and authenticity of the QlikView Manuals—the primary references relied upon in Grounds 7–10. The evidence provided, however, fails to meet Tableau’s burden of establishing July 8, 2008, as the publication date for Exhibits 1008 and 1009. *Valve Corporation v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1373 (Fed. Cir. 2021) (petitioner bears burden of establishing by preponderance of evidence that document is printed publication.) (citations omitted); *see also Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 775 (Fed. Cir. 2018). “In an [IPR], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016); 35 U.S.C. § 312(a)(3). Tableau cannot meet its burden that the QlikView Manuals are prior art.

1. The Board Should Exclude Exhibit 1030 Because it is Inadmissible as Improper Expert Testimony, Lacking Personal Knowledge, Irrelevant, and Unfairly Prejudicial

iCharts objects to Exhibit 1030, the “Hall-Ellis Declaration” dated September 26, 2024, and any reference to or reliance thereon. Tableau offers Ms. Hall-Ellis as, apparently, an authentication expert to opine on the authenticity of and public access to two publications that Tableau relies on in its Petition at Grounds 7–10: Exhibits 1008 (“QlikView Manual”) and 1009 (“QlikView Server

Manual”) (collectively the “QlikView Manuals”). Ms. Hall-Ellis is the wrong “expert” here; as a librarian, she does not fit the POSITA requirements. Accordingly, her opinions about publication and access should be excluded under FRE 702, 703, and 401–403, or at least given no weight. Ms. Hall-Ellis also relies on *copyright* law for the definition of “publication” instead of *patent* law as the requirements for each field differ. This is fatal to her opinion. Finally, because Ms. Hall-Ellis is an unqualified expert without personal knowledge of the Qlikview Manuals, her testimony should be excluded under FRE 602.

Patent law defines a “printed publication” as a reference that has been disseminated or otherwise made accessible to persons interested and ordinarily skilled in the subject matter to which the publication relates. *Orion IP, LLC v. Hyundai Motor America*, 605 F.3d 967, 974 (Fed. Cir. 2010); *see also In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986) (public accessibility is the “touchstone” in determining whether a reference constitutes a “printed publication”). “A reference is considered publicly accessible if “[POSITAs], exercising reasonable diligence, can locate it.” *Acceleration Bay*, 908 F.3d at 772 (citations omitted).

Ms. Hall-Ellis is a professor with a degree in library science. Exhibit 1030 ¶6. Librarian testimony, and other nontechnical expert testimony, is limited in scope in patent cases. Librarian testimony is primarily focused on opinions concerning information retrieval or patent research procedures. *See, e.g., Toyota*

Motor Corporation v. American Vehicular Sciences LLC, IPR2013-00417, Paper 78 at 17–18 (PTAB Jan. 7, 2015) (librarian’s testimony based on knowledge of library practices persuasive evidence to establish prior art date of publication). Here, however, the QlikView Manuals were available for download on *websites*, which is unrelated to her expertise. *See, e.g.*, Exhibit 1030 ¶¶27 n.6, 35.

Moreover, she cannot opine from the perspective of a person of ordinary skill in the art as to the public accessibility *to* such persons because she is *not* a POSA. *See Acceleration Bay*, 908 F.3d at 772 (“publicly accessible” as to *POSAs*). This is an important distinction because it limits Ms. Hall-Ellis’s ability to opine on the accessibility of the QlikView Manuals to POSAs—the “touchstone” of defining “publication” in the patent field.

Even if Ms. Hall-Ellis can qualify as an expert, her opinions are fundamentally flawed as she relies on copyright law to establish the QlikView Manuals’ “publication date.” Exhibit 1030 ¶¶29, 30, 37, 38. Under copyright law, a “publication” is the “distribution” of copies or phonorecords of a work, to the public, by sale or other means. *See, e.g., Moberg v. 33T LLC*, 666 F.Supp.2d 415, 421 (D.Del. 2009). The component of availability and access to persons of ordinary skill in the art, as required under patent law, is noticeably missing from the copyright definition of “publication.” Courts have held that copyright dates do not always reflect actual public accessibility, and thus “publication,” as defined by

patent law. *See, e.g., Philips Electronics North America Corp. v. Contec Corp.*, 312 F.Supp.2d 632, 637–38 (D.Del. 2004). Tableau has done nothing to remedy this oversight. As a result, Exhibit 1030 should be excluded or given no weight as it is purported expert testimony, but it is not “based on sufficient facts or data” or is not “the product of reliable principles and methods,” or application of the particular facts of the matter at hand. FRE 702(b)-(d).

Finally, because Ms. Hall-Ellis fails to meet the requirements of an expert—as pointed out above—she must meet the personal knowledge requirement of FRE 602 to provide layperson testimony. She simply recites copy-and-paste citations to other exhibits or publicly available information with little if any inclusion of her own personal knowledge. *See, e.g.,* Exhibit 1030 ¶¶20, 22, 24, 26–40. Thus, Ms. Hall-Ellis’s testimony is not helpful to determining the publication date of the QlikView Manuals. Her testimony fails under FRE 401–403. For these reasons, and those listed above, Exhibit 1030 should be excluded and given no weight.

2. Exhibit 1068 is Inadmissible as Hearsay, is Not Authenticated, Lacks Personal Knowledge, and Should be Excluded as Irrelevant and Unfairly Prejudicial

iCharts objects to Exhibit 1068, the “Lofton Declaration” dated September 24, 2024, and any reference to or reliance thereon. Tableau relies on Ms. Lofton’s testimony to provide underlying facts that purport to establish public availability of the QlikView Manuals as of July 8, 2008. Ms. Hall-Ellis also relies on Exhibit

1068; if excluded, it provides an independent basis for finding that Tableau has failed to meet its burden of establishing the QlikView Manuals are prior art.

Exhibit 1068 is a declaration from Deborah Lofton, the current Chief Legal Officer and Corporate Secretary of QlikTech Inc. Her testimony fails to indicate any statements made on personal knowledge and belief and provides no facts suggesting that Ms. Lofton was employed with QlikTech at the time of the creation of QlikView Version 8.5 and the publication of the QlikView Manuals.

Tableau fails to remedy the deficiencies outlined above, and so exclusion of Exhibit 1068 is warranted. Furthermore, Exhibit 1068 does not fall into any category outlined in FRE 901 (especially under FRE 901(b)(1)), since Ms. Lofton fails to show personal knowledge of the QlikView manuals as required by FRE 602. The exhibit does not fit into any hearsay exception to FRE 802 and is irrelevant and unfairly prejudicial under FRE 401–403.

3. The Board Should Exclude Exhibits 1014–1023 and 1061 because they are Inadmissible Hearsay, Not Properly Authenticated, and Irrelevant and Unfairly Prejudicial

The Hall-Ellis (Exhibit 1030) and Lofton (Exhibit 1068) Declarations rely on, among others, Exhibits 1014–1023, and 1061 to support their opinions. These exhibits are a series of Wayback Machine and website screenshots that Tableau attempts to authenticate by way of Exhibits 1032 and 1033. While Wayback Machine archival dates may indicate the date on which the archive was collected,

Exhibits 1032 at 0001; 1033 at 0001, they do not indicate the date by which those archived webpages were originally published and cannot indicate the authenticity of any links or affiliations on the pages themselves.

Furthermore, Exhibit 1061, “Qlik Community Page, Qlikview 8.5 Manual,” appears to be a printout of a webpage from the “Qlik Community”—what looks to be a help page thread dedicated to QlikView troubleshooting. The URLs that appear on Exhibit 1061’s pages are not fully visible for authentication purposes. The entries in the thread appear to range from September 2020 to May 2021 (long after the filing of the ’892 Patent’s application). Tableau failed to produce evidence sufficient to support a finding that Exhibit 1061 is what the proponent claims it is.

iCharts therefore objects to Exhibits 1014–1023 and 1061 and any reference to or reliance thereon, as improperly authenticated, impermissible hearsay, and irrelevant and unfairly prejudicial. These exhibits should be excluded or given little weight under FRE 901, 802, and 401–403.

B. The Board Should Exclude the “Web Selector Tool” Exhibits 1024–1027 Because They are Not Properly Authenticated, are Inadmissible Hearsay, and are Irrelevant and Unfairly Prejudicial

iCharts objects to Exhibits 1024 (“QlikView Wine Guide Intro (Jan 7, 2007)”), 1025 (“QlikView Wine Guide How To (Jan 8, 2007)”), 1026 (“QlikView Wine Guide Wine Selector (Jan 7, 2007)”), and 1027 (“QlikView Wine Guide

Analysis (Jan 8, 2007)”) and any reference to or reliance thereon. iCharts previously objected to these four exhibits under FRE901, 802, and 401–403. *See* Paper 10. Tableau has not relied upon any of these exhibits as part of any grounds, but purports to rely on them to establish the state of the art.

None of these exhibits have been properly authenticated under FRE 901. A Wayback Machine URL provides what appears to be an indication of a date for each exhibit (Exhibit 1024, 1026 are January 7, 2007; Exhibit 1025, 1027 are January 8, 2007). But none of the exhibits provide a date *on* the webpage itself, and neither Tableau, nor the Wayback Machine, can provide a date by which these exhibits were first available to the public. Without knowledge of *when* these tools were first available to the public, the parties and the Board cannot speculate as to how Exhibits 1024–1027 provide any support for state of the art/POSITA arguments. *See, e.g.,* Exhibit 1003 ¶¶355–358. Even if Tableau attempts to authenticate the date of the screenshots by providing Exhibit 1033, *see* Pet. p.7, a date of a screenshot only refers to the “preserved instance of a file for a given URL,” Exhibit 1033 at 0001, and *not* the publication date. Tableau simply fails to produce any evidence sufficient to support a finding that Exhibits 1024–1027 are what the proponent claims they are.

In addition to being improperly authenticated, Exhibits 1024–1027 constitute impermissible hearsay under FRE 802. Frankly, iCharts cannot tell what

exception these screenshots *might* fall under: Tableau does not specify whether this is a blogpost hosted by QlikView, if it is connected to some QlikView-related reference manual, if it is provided by some third-party website in cooperation with QlikView, etc. The screenshots from the Wayback Machine simply reference “QlikTech International” and “www.qliktech.com,” but that, alone, does not fit the exhibits into any exception.

Furthermore, Exhibits 1024–1027 are inadmissible under 401, 402, and 403. This is because Tableau has provided zero indication as to the relationship between these screenshots and the QlikView Manuals (EX1008, EX1009), especially because Exhibits 1024–1027 appear to be dated over a year and half *before* the relevant version of QlikView, Version 8.5, was offered. QlikView Reference Manual and the QlikView Server Reference Manual are both for *Version 8.5* of QlikView for Microsoft Windows. EX1008 p.0001; EX1009 p.0001. Tableau alleges that the QlikView Manuals were available to the public by at least *July 2008*. *See, e.g.,* Pet. p.7. Exhibits 1024–1027, however, are dated *January 7–8, 2007*, (EX1003 ¶8; EX1024-1027), and neither Petitioner nor the Board has provided evidence of any connection between the Wine Selector exhibits and the disclosure of the QlikView Version 8.5. EX2201 ¶57.

Tableau did nothing to remedy this inconsistency in its Reply: both the Reply brief and Tableau’s expert are silent as to the correlation between the Wine

Selection exhibits and QlikView Manuals. Neither are mentioned at all. *See, generally*, Reply and Exhibit 1072. Exhibits 1024–1027 should be excluded, or, at the very least, not entitled to any weight.

C. The Board Should Exclude Portions of Exhibits 1003 (Christopher Schmandt’s Declaration in Support of Petition) and 1072 (Christopher Schmandt’s Declaration in Support of Reply).

iCharts objects to Tableau’s expert’s declarations in support of the Petition (Exhibit 1003) and the Reply (Exhibit 1072) and now moves to exclude those portions. iCharts timely objected to Exhibit 1003 on May 29, 2026, and Exhibit 1072 on November 5, 2025. Papers 10 at 1; 20 at 2–3.

1. Exhibit 1003

Tableau relies on Exhibit 1003 throughout its Petition (Paper 1) and in support of its Reply (Paper 17 at, e.g., 6–8, 10-14, 19-21, 27, 29, 31).

a. Paragraphs 71–117 and 163–456 of Exhibit 1003 should be excluded under FRE 702, 703, and 401–403.

Portions of the testimony of Mr. Schmandt in Exhibit 1003 should be excluded because his opinions are conclusory, unreliable, and fail to disclose underlying facts and data. FRE 702; *Intellectual Ventures Mgmt., LLC v. Xilink, Inc.*, IPR2012-00020, Paper 34 at 10 (PTAB Feb. 11, 2014); *Tietex Int’l, Ltd. v. Precision Fabrics. Grp., Inc.*, IPR2014-01248, Paper 39 at 17 (PTAB Jan. 27, 2016). The Board should act as a reliability “gatekeeper” to exclude expert testimony that falls short of FRE 702. *Daubert v. Merrell Dow Pharms., Inc.*, 509

U.S. 579, 589-95 (1993). Tableau, the proponent of the expert testimony, bears the burden of establishing admissibility. *See Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1315 (Fed. Cir. 2011).

Tableau offers Mr. Schmandt as a technical expert witness; however, Mr. Schmandt fails to provide reliable methodology or rationale to support his conclusions, even, at times, relying on alleged prior art not included or explained in the Petition. *See, e.g.*, Ex. 1003 ¶¶96; 98; 108; 193; 203, 221, 230 (relying on “Kung *et al.*” even though it is never mentioned in the Petition); 229; 355-359 (relying on a “Web Selector Tool” that is dated earlier than QlikView Version 8.5 without providing any evidence of a connection between the tool and the disclosure of Version 8.5 of the later-dated QlikView Manuals).

Further, Mr. Schmandt parrots Tableau’s attorney arguments and makes bald conclusions regarding unpatentability. *See, e.g.*, Ex. 1003 ¶¶231; 275–276; 291 (“Therefore, a POSA would not have experienced any unreasonable technical hurdles in implementing this modification, and the combination would yield predictable results”); 293 (“Indeed, modifying Becerra’s system to include Couckuyt’s drag-and-drop techniques and Keys’ remotely-stored templates would not impede a POSA’s ability to also implement Jou’s interactive features on the Becerra-Couckuyt combined system.”); 388; 409; 444–445.

Mr. Schmandt's commentary on the Becerra prior art, both alone and in combination, is also devoid of factual grounding. *See, e.g.*, Ex. 1003 ¶¶165–258.

Mr. Schmandt's testimony is not the product of reliable principles and methods, and it does not assist the trier of fact. "Affidavits expressing an opinion of an expert must disclose the underlying facts or data upon which the opinion is based." Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,763 (Aug. 14, 2012); *see also* FRE 705; 37 C.F.R. § 42.65. The opinions in Exhibit 1003 are conclusory and fail to apply relevant and reliable analysis to the facts of the case. *See Daubert*, 509 U.S. at 589. Paragraphs ¶¶71–117 and 163–456 should be entitled to no weight and excluded from this proceeding under FRE 702 and 703. They fail under FRE 401–403 as well.

2. Exhibit 1072

Tableau relies on Exhibit 1072 throughout its Reply brief (Paper 17).

a. Paragraphs 4 and 6–56 of Exhibit 1072 should be excluded under FRE 702 and 703

On its face, Mr. Schmandt's Reply declaration shows that he did not consider all of the evidence provided with iCharts's Response in order to develop his opinions in support of Tableau's Reply. *See* Ex. 1072 ¶¶3 (providing a chart of the materials "reviewed and considered"); 4 (stating that he "also considered all other materials cited *herein*" (emphasis added) without any explanation as to

whether “herein” applies to more than his declaration in support of Tableau’s Reply). The list provided in Mr. Schmandt’s declaration only references six exhibits that accompanied iCharts’s Response. Over a hundred others remain unmentioned. It follows that Mr. Schmandt did not review scores of exhibits that were filed in this proceeding to accompany iCharts’s Response, and his failure to review a majority of the available materials undercuts his opinions, especially his opinions at, at least, ¶¶27–42, and 52, about conception and reduction to practice of the iCharts technology—the subject matter of a majority of the exhibits Mr. Schmandt failed to review.

Furthermore, and for the same reasons as Exhibit 1003, portions of the testimony of Mr. Schmandt in Exhibit 1072 should be excluded because his opinions are conclusory, unreliable, and fail to disclose underlying facts and data. *See, e.g.*, Ex. 1072 ¶¶6–26; 32; 36; 41–42; and 51–54.

Therefore, paragraphs 4 and 6–56 of Exhibit 1072 should be entitled to no weight and excluded from this proceeding under FRE 702 and 703.

b. At least Paragraphs 8, 19-21, 26, and 44 should be excluded under 37 C.F.R. § 42.23 and FRE 401–403.

Moreover, portions of Mr. Schmandt’s testimony in Exhibit 1072 should be excluded as untimely for exceeding the permissible scope of the reply. Tableau may not offer new arguments and evidence for the first time in its reply.

Acceleration Bay, 908 F.3d at 775; *Scotts Co. v. Encap, LLC*, IPR2013-00110, Paper 79 at 5-6 (PTAB June 24, 2014); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016). “A reply may only respond to arguments raised in the corresponding . . . patent owner response.” 37 C.F.R. § 42.23(b). Tableau improperly offers testimony of Mr. Schmandt to cobble together new motivation to combine and unpatentability arguments involving newly asserted references (i.e., Exhibits 1069, 1074, and 1075), which should have been submitted with the petition. *See* 37 C.F.R. § 42.23(b) (a reply “may only respond to arguments raised in the corresponding . . . patent owner response”); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,612, 48,620 (Aug. 14, 2012) (“replies may rely upon appropriate evidence to support the positions asserted. Reply evidence, however, must be responsive and not merely new evidence that could have been presented earlier to support the movant’s motion.”).

Therefore, paragraphs 8, 19-21, 26, and 44 of Exhibit 1072 improperly exceed the scope of a reply as they rely on newly submitted exhibits to form new and inadmissible gap-filling arguments. These paragraphs should therefore be excluded from this proceeding under 37 C.F.R. § 42.123. Further, the portions exceeding permissible scope are irrelevant and unfairly prejudicial and should be excluded under FRE 401, 402, and 403.

IV. CONCLUSION

For at least the foregoing reasons, the evidence proffered by Tableau in the form of Exhibits 1003, 1014–1027, 1030, 1061, 1068, and 1072 based on iCharts’s Objections to Evidence (Papers 10 and 20) fails to comply with 37 C.F.R. § 42.64(b), 37 C.F.R. § 42.23(b), the Federal Rules of Evidence, and the Rules of Practice before the PTAB, and should therefore be excluded.

Respectfully submitted,

Dated: January 21, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), I hereby certify that a true and correct copy of
Patent Owner's Motion to Exclude Pursuant to 37 C.F.R. § 42.64(c) was served on
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