

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
U.S. Patent No. 8,271,892

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

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I.	Introduction.....	1
II.	EX1030: The Board should not exclude Dr. Hall-Ellis’s testimony.....	1
	A. Dr. Hall-Ellis is a qualified expert witness who provided reliable opinions based on underlying facts.	2
	B. Dr. Hall-Ellis has personal knowledge about the facts.	5
	C. Dr. Hall-Ellis’s testimony is relevant and not prejudicial.....	6
III.	EX1068: The Board should not exclude Ms. Lofton’s testimony.....	7
	A. Ms. Lofton’s testimony is not hearsay.	8
	B. Ms. Lofton’s testimony is self-authenticating.....	8
	C. Ms. Lofton has the requisite personal knowledge.....	8
	D. Ms. Lofton’s testimony is relevant and not prejudicial.	9
IV.	The Board should not exclude Exhibits 1014-1027 and 1061.	10
	A. Exhibits 1014-1027 and 1061 were authenticated.	10
	B. Exhibits 1014-1027 and 1061 are not hearsay.	11
	C. Exhibits 1014-1027 and 1061 are relevant and not prejudicial.	12
V.	The Board should not exclude Mr. Schmandt’s testimony.	13
	A. Mr. Schmandt is a qualified expert witness who provided reliable opinions based on underlying facts.	13
	B. Mr. Schmandt’s testimony is relevant and not prejudicial.....	15
VI.	Conclusion	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Belden Inc. v. Berk-Tek LLC</i> , 805 F.3d 1064 (Fed. Cir. 2015)	15
<i>Conoco Inc. v. Dep’t of Energy</i> , 99 F.3d 387 (Fed. Cir. 1996)	8, 9
<i>Cooler Masters Co. v. Aavid Thermalloy LLC</i> , IPR2019-00146, Paper 55 (June 4, 2020).....	2
<i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579 (1993).....	5, 12
<i>Eastman Kodak Co. v. CTP Innovations, LLC</i> , IPR2014-00789, Paper 34 (Nov. 25, 2015)	passim
<i>Genzyme Therapeutic Prods. Ltd. v. Biomarin Pharm. Inc.</i> , 825 F.3d 1360 (Fed. Cir. 2016)	15
<i>Johns Manville Corp. v. Knauf Insulation, Inc.</i> , IPR2015-01453, Paper 49 (Jan. 11, 2017).....	11, 12
<i>Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n</i> , 22 F.4th 1369 (Fed. Cir. 2022)	3
<i>OddzOn Prods., Inc. v. Just Toys, Inc.</i> , 122 F.3d 1396 (Fed. Cir. 1997)	6
<i>Qualcomm Inc. v. Network System Techs., LLC</i> , IPR2024-00338, Paper 69 (June 13, 2025).....	2, 5
<i>Samsung Elecs. Co. v. Power2B, Inc.</i> , IPR2021-01190, Paper 39 (Jan. 4, 2023).....	7
<i>Shimano Inc. v. GlobeRide, Inc.</i> , IPR2015-00273, Paper 40 (June 16, 2016).....	9
<i>Spiritline Cruises LLC v. Tour Mgmt. Serv’s, Inc.</i> , Oppo. No. 91224000 (TTAB Feb. 7. 2020)	11

<i>Symbol Techs., Inc. v. Opticon, Inc.</i> , 935 F.2d 1569 (Fed. Cir. 1991)	1, 4, 6, 15
<i>Syngenta Crop Protection AG v. UPL Ltd.</i> , PGR2023-00017, Paper 58 (July 26, 2024).....	2
<i>Toyota Motor Corp. v. American Vehicular Sciences LLC</i> , IPR2013-00417, Paper 78 (Jan. 7, 2015).....	3, 8
<i>Valve Corp. v. Ironburg Inventions Ltd.</i> , 8 F.4th 1364 (Fed. Cir. 2021)	10, 12
<i>VidStream LLC v. Twitter, Inc.</i> , 981 F.3d 1060 (Fed. Cir. 2020)	5

Other Authorities

37 C.F.R. § 42.23(b)	15
37 C.F.R. § 42.53(a).....	8
37 C.F.R. §§ 42.53(a), 42.65(a)	7
37 C.F.R. § 42.53(c).....	7, 9
37 C.F.R. § 42.63	7
37 C.F.R. § 42.120	7
37 C.F.R. §§ 52.51(b)(i)(ii), 42.53(b)(2)	8

I. Introduction

iCharts's motion (Paper 26, "MTE") is an attempt to exclude highly credible evidence that is damaging to its case. iCharts asks the Board to exclude testimony from three witnesses: (1) Dr. Hall-Ellis (EX1030); (2) Ms. Lofton (EX1068); and (3) Mr. Schmandt (EX1003, EX1072) under Rules 401-403, 602, 702-703, 802, and/or 901 of the Federal Rules of Evidence ("FRE"). Had iCharts wanted to challenge this testimony, it had opportunities to depose them. iCharts chose not to. iCharts should not be permitted to purposefully avoid depositions and then claim unfair prejudice or insufficient underlying facts. *See Eastman Kodak Co. v. CTP Innovations, LLC*, IPR2014-00789, Paper 34 at 19-20 (Nov. 25, 2015); *Symbol Techs., Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1575-1576 (Fed. Cir. 1991).

iCharts also asks the Board to exclude Exhibits 1014-1027 and 1061 under FRE 401-403 and 901, which relate to the public accessibility of the QlikView Manuals (EX1008; EX1009). All but one of these exhibits are public websites that were authenticated by the Internet Archive. EX1032; EX1033. Courts routinely admit Internet Archive exhibits into evidence. The other (EX1061) is a screen capture of a currently active, public website. Nothing suggests it is not authentic.

II. EX1030: The Board should not exclude Dr. Hall-Ellis's testimony.

iCharts objects to Dr. Hall-Ellis's testimony under FRE 401-403, 602, and 702-703. Dr. Hall-Ellis is an expert in library science with over 50 years of

experience. EX1030, ¶¶6-9; EX1031. Her opinions are reliable, based on her personal knowledge, highly relevant, and not prejudicial.

A. Dr. Hall-Ellis is a qualified expert witness who provided reliable opinions based on underlying facts.

As the Board has found in other cases, Dr. Hall-Ellis is qualified as an expert witness under FRE 702-703. *E.g.*, *Cooler Masters Co. v. Aavid Thermalloy LLC*, IPR2019-00146, Paper 55 at 38 (June 4, 2020) (crediting Dr. Hall-Ellis’s expert testimony); *Qualcomm Inc. v. Network System Techs., LLC*, IPR2024-00338, Paper 69 at 35-42 (June 13, 2025) (same); *Syngenta Crop Protection AG v. UPL Ltd.*, PGR2023-00017, Paper 58 at 9-14, 30-32 (July 26, 2024) (same). She has a Master of Library Science, a Ph.D in Library and Information Science, over 50 years of relevant experience in her field, and over 100 publications. EX1030, ¶¶6-9; EX1031. iCharts’s insistence on referring to Dr. Hall-Ellis as “Ms.” despite her doctorate degree is a transparent effort to diminish her qualifications. The misnomer appears deliberate, as her correct title is neither unclear nor disputed.

iCharts’s argument that Dr. Hall-Ellis cannot testify because “as a librarian, she does not fit the POSITA requirements” misstates the record and is meritless. *See* MTE at 3. First, Dr. Hall-Ellis is not merely a librarian, she is an adjunct professor who teaches graduate-level courses in library and information services. EX1031, 0001. Second, iCharts cites no authority requiring a librarian expert to be a POSITA. That requirement is reserved for experts opining on technical issues

from the vantage point of an ordinarily skilled artisan. *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1377 (Fed. Cir. 2022). Here, Dr. Hall-Ellis opines on issues of public accessibility—not issues of technical merits. Dr. Hall-Ellis’s credentials plainly establish that she is qualified to do so. EX1031.

The *Toyota* case iCharts cites, MTE at 3-4, does not establish otherwise. In *Toyota*, a petitioner relied on testimony from a corporate fact witness to establish a publication date of a reference. *Toyota Motor Corp. v. American Vehicular Sciences LLC*, IPR2013-00417, Paper 78 at 8 (Jan. 7, 2015). That witness had the title “Library and Archive Assistant” and was not offered as an expert. *Id.*, 12. This is in stark contrast to Dr. Hall-Ellis, who is a recognized expert in her field.

Meeting part (a) of FRE 702, Dr. Hall-Ellis’s specialized knowledge will help the Board understand the evidence and to determine a fact in issue, e.g., the publication date of the QlikView Manuals. EX1030, ¶¶23-41. Her testimony also meets part (b) of FRE 702 because it is based on sufficient facts or data. For example, Dr. Hall-Ellis shows that QlikView was a well-known product—it had tens of thousands of users. *Id.*, ¶¶23-25. As an expert who has reviewed countless multi-volume references, she reviewed the QlikView Manuals and did not identify any missing pages or visible alterations. *Id.*, ¶¶27, 35. She also relied on the Internet Archive to show how a POSITA could have located the QlikView Manuals. *Id.*, ¶¶30-31, 38. Notably, iCharts has not disputed any of the facts on

which Dr. Hall-Ellis relied. If iCharts had an issue, it should have deposed her and/or included arguments in its Patent Owner Response.

Symbol is on point. *Symbol*, 935 F.2d at 1575-76. In *Symbol*, a party in the case, Opticon, failed to cross examine an expert on the issue it later asserted fatally flawed the sufficiency of his testimony. *Id.* at 1575. But “[t]he responsibility for challenging the factual underpinnings of the testimony fell squarely on Opticon during cross-examination.” *Id.* (emphasis added); see also FRE 705. Because “Opticon failed to seize the opportunity,” it could not later “recoup for its failed litigation strategy.” *Symbol*, 935 F.2d at 1576. The same is true here.

Dr. Hall-Ellis’s testimony also meets parts (c) and (d) because her testimony is the product of reliable principles and methods and reflects a reliable application of those principles and methods to the facts. For example, she explained why the Internet Archive is trustworthy and how it archives dates by which the webpages were accessible. EX1030, ¶¶19-22. She also showed in a copyright registration where Qlik certified that QlikView 8.50 was published on July 8, 2008, which was consistent with the dates she found on the Internet Archive. *Id.*, ¶¶29-30, 37-38.

iCharts critiques Dr. Hall-Ellis’s reliance on a copyright date, but it does so by mischaracterizing how Dr. Hall-Ellis relies on it. See MTE, 4-5. Dr. Hall-Ellis does not substitute the Copyright Act’s definition of “publication” for patent law’s “printed publication” standard, as iCharts claims. She uses the Copyright Office’s

records to corroborate the date when the QlikView Manuals were posted on Qlik's ftp website. EX1030, ¶¶30, 38. Indeed, the Federal Circuit and the Board have found copyright registrations reliable evidence to support public accessibility. *E.g.*, *VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1066 (Fed. Cir. 2020); *Qualcomm*, Paper 69 at 35-37 (crediting Dr. Hall-Ellis's testimony about copyright dates).

Finally, iCharts alleges that Dr. Hall-Ellis's testimony should be excluded because the QlikView Manuals were "available for download on *websites*, which is unrelated to her expertise." MTE, 4. This argument is absurd—modern day library science and information services rely on online and digital publications, possibly more often than traditional print media. Even a cursory review of Dr. Hall-Ellis's CV shows that she has numerous publications on digital and online information services. EX1031. The premise that an expert in library science cannot testify about websites belies the reality of the modern digital world.

B. Dr. Hall-Ellis has personal knowledge about the facts.

iCharts asks the Board to exclude Dr. Hall-Ellis's testimony because she allegedly lacks personal knowledge under FRE 602. MTE, 5. But FRE 602 does not apply to expert testimony where the witness, like here, was made aware of, or personally observed, facts that are "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993); FRE 703.

Even if Dr. Hall-Ellis were not an expert, her testimony is still admissible because she *does* have personal knowledge of the facts of her inquiry. EX1030, ¶¶26, 29-32, 35, 37-39. If iCharts wanted to challenge that personal knowledge, it should have done so in deposition. *Symbol*, 935 F.2d at 1575-76.

C. Dr. Hall-Ellis’s testimony is relevant and not prejudicial.

iCharts also moves also moves to exclude Dr. Hall-Ellis’s testimony under FRE 401-403 for being irrelevant and unfairly prejudicial. MTE, 2. But iCharts does not explain how this plainly relevant testimony is prejudicial. It is not.

Dr. Hall-Ellis’s testimony is relevant because it shows that the QlikView Manuals are authentic and were published at least by July 8, 2008. EX1030, ¶¶23-41. “Evidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” FRE 401. This is a “low threshold,” *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1406-07 (Fed. Cir. 1997), which is met here.

Under FRE 403, the Board may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. But here, Dr. Hall-Ellis’s testimony is highly probative. It helps prove that tens of thousands of users and thousands of organizations knew about QlikView. EX1030, ¶¶23-25. It also helps prove that the QlikView Manuals were publicly accessible. *Id.*, ¶¶26-41.

There is also no unfair prejudice. When a patent owner has an opportunity to

cross-examine an opposing expert and respond, there is no unfair prejudice.

Eastman Kodak, IPR2014-00789, Paper 34 at 19-20 (motion denied when PO “had a fair opportunity to respond” and “ample opportunity to depose” witnesses but chose not to); *Samsung Elecs. Co. v. Power2B, Inc.*, IPR2021-01190, Paper 39 at 60-61 (Jan. 4, 2023) (“Rule 403 has limited applicability” in PTAB proceedings).

iCharts had many opportunities to respond to Dr. Hall-Ellis’s testimony. iCharts had at least seven hours to depose Dr. Hall-Ellis. 37 C.F.R. § 42.53(c). iCharts could have responded to her testimony in its POR. 37 C.F.R. § 42.120. iCharts could have submitted expert testimony or fact witness testimony in response. 37 C.F.R. §§ 42.53(a), 42.65(a). iCharts also could have filed exhibits. 37 C.F.R. § 42.63. Yet iCharts did not depose Dr. Hall-Ellis or submit *any arguments or evidence* in response to her testimony. iCharts should not be permitted to forfeit its opportunities to respond and then claim unfair prejudice.

III. EX1068: The Board should not exclude Ms. Lofton’s testimony.

iCharts objects to Ms. Lofton’s testimony under FRE 401-403, 602, 802, and 901. Ms. Lofton is QlikTech Inc.’s Chief Legal Officer and Corporate Secretary. EX1068, ¶1. Her testimony is in-court testimony (not hearsay) and does not need authentication. She has personal knowledge in her capacity as a corporate representative. And her testimony is plainly relevant and not prejudicial.

A. Ms. Lofton’s testimony is not hearsay.

Under PTAB procedure, Ms. Lofton’s testimony is *in-court* direct testimony. *See* 37 C.F.R. § 42.53(a); *Toyota*, Paper 78 at 12-13. In contrast, hearsay is an *out-of-court* statement. *See* FRE 801(c). Ms. Lofton’s direct testimony was then subject to routine cross examination. 37 C.F.R. §§ 52.51(b)(i)(ii), 42.53(b)(2).

B. Ms. Lofton’s testimony is self-authenticating.

iCharts also objected to Ms. Lofton’s testimony under FRE 901. MTE, 5-6. But direct testimony does not need separate authentication because FRE 901 relates to “an item of evidence,” not direct testimony. *See* FRE 901.

C. Ms. Lofton has the requisite personal knowledge.

Ms. Lofton, as QlikTech’s Chief Legal Officer and Corporate Secretary, has personal knowledge of Qlik’s documents, document-retention policies, and business activities. *See* EX1068, ¶¶1-7. iCharts’s only gripe appears to be that Ms. Lofton “provides no facts suggesting that [she] was employed with QlikTech at the time of the creation of QlikView Version 8.5 and the publication of the QlikView Manuals.” MTE, 6. Even if true, this is not a basis for excluding her testimony.

Business records do not need to be authenticated by a witness who prepared or maintained the records at the time of creation. *Conoco Inc. v. Dep’t of Energy*, 99 F.3d 387, 391 (Fed. Cir. 1996). Instead, *any* witness can authenticate business records if “the court could reasonably conclude that [she] was familiar with the type of documents [the company] routinely maintain[s] and the procedures used to

prepare those documents.” *Id.* at 392. As QlikTech’s Chief Legal Officer and Corporate Secretary, Ms. Lofton has this knowledge. EX1068, ¶¶1-7. If iCharts wanted to challenge her knowledge, it was free to do so. 37 C.F.R. § 42.53(c).

D. Ms. Lofton’s testimony is relevant and not prejudicial.

iCharts’s objections under FRE 401-403 fail for similar reasons to why they fail for Dr. Hall-Ellis’s testimony. *Supra* Section II.

Ms. Lofton’s testimony is plainly relevant because it shows that the QlikView Manuals are authentic and were available to customers by July 2008—before the ’892 patent’s priority date. EX1068, ¶¶4-7. Ms. Lofton states: “No later than July 9, 2008, Qlik was selling and shipping to customers copies of QlikView Version 8.50.” *Id.*, ¶7. At the time of sale, she verified that the QlikView Manuals were accessible on Qlik’s ftp website and on compact discs. *Id.*

In contrast to the high probative value, there is no unfair prejudice because iCharts had opportunities to respond. *Eastman Kodak*, Paper 34 at 19-20. Yet iCharts did not depose Ms. Lofton or submit *any arguments or evidence* in response. As was the case for Dr. Hall-Ellis’s testimony, iCharts should not be permitted to forfeit its opportunities to respond and then claim unfair prejudice. Rather, since iCharts did not depose or respond to Ms. Lofton’s testimony, it is undisputed and establishes that the QlikView Manuals were accessible as of the dates specified. *Cf. Shimano Inc. v. GlobeRide, Inc.*, IPR2015-00273, Paper 40 at

20 (June 16, 2016) (forfeiting a deposition made witness testimony undisputed).

IV. The Board should not exclude Exhibits 1014-1027 and 1061.

iCharts objects to Exhibits 1014-1027 and 1061 under FRE 401-403, 802, and 901. These exhibits are webpages that were properly authenticated, are either not hearsay or subject to a hearsay exception, are relevant, and are not prejudicial.

A. Exhibits 1014-1027 and 1061 were authenticated.

The authenticity of these exhibits cannot reasonably be questioned. Tableau submitted two sworn affidavits from the Internet Archive to authenticate Exhibits 1014-1027. EX1032, ¶6, 0004-13 (Exhibits 1015-1019); EX1033, ¶6, 0005-25 (Exhibits 1014, 1020-1027). Even without these affidavits, “courts have taken judicial notice of the contents of webpages available through the Wayback Machine ‘as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021) (citation omitted).

iCharts argues that the Internet Archive dates do not show the *earliest* date these exhibits were accessible, MTE at 8, but that is immaterial. The dates nonetheless establish a date when the webpages were accessible. EX1032, ¶5; EX1033, ¶6; EX1030, ¶22. They might have been accessible sooner, but that would only support an even earlier publication date for the QlikView Manuals.

The only other exhibit, EX1061, is an authentic copy of a webpage. iCharts

can feign ignorance of the URL, MTE at 7, but clicking the URL link at the bottom of the exhibit takes you directly to the webpage.

Tableau has produced evidence sufficient to support a finding that Exhibits 1014-1027 and 1061 are what Tableau claims they are.

B. Exhibits 1014-1027 and 1061 are not hearsay.

Exhibits 1014-1027 fall under the business records exception. FRE 803(6). Mr. Frank-White from the Internet Archive established the exhibits attached to his affidavits come from the Internet Archive's regularly conducted business activities. EX1032, ¶¶2-8; EX1033, ¶¶2-7. He explained that the Internet Archive's Wayback Machine stores copies of webpages automatically by creating unaltered copies as they appear on a given day. EX1032, ¶¶4-5; EX1033, ¶¶4-5. When the Wayback Machine captures a webpage, a screenshot will display the webpage's URL with the date the screenshot was captured and archived. EX1032, ¶5; EX1033, ¶5. A qualified witness has therefore shown that the records were made on the date specified, kept in the ordinary course of a regularly conducted business activity, and made as a regular practice of that activity. iCharts has not shown these references to be untrustworthy, so the business records exception applies. *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2015-01453, Paper 49 at 15 (Jan. 11, 2017); *Spiritline Cruises LLC v. Tour Mgmt. Serv's, Inc.*, Oppo. No. 91224000, Opinion at 10-11 (TTAB Feb. 7. 2020).

Exhibits 1014-1027 also fall under the commercial publications exception.

See FRE 803(17). Under This exception, “compilations that are generally relied on by the public or persons in particular occupations” are exceptions to hearsay. Here, the Internet Archive is a compilation of webpages that are generally relied on by the public and the Federal Judiciary. *Valve*, 8 F.4th at 1374 (Fed. Cir. 2021). As the Board has found previously, 803(17) applies. *Johns Manville*, Paper 49 at 15.

Exhibit 1061 is also not hearsay because it is not being offered for the truth of the matter asserted. It is being offered to show a link where the QlikView Manuals are available for download. EX1030, ¶¶32, 35, 39.

Accordingly, Exhibits 1014-1027 and 1061 are not hearsay or fall within an exception. Even if they were, the Board should admit them under the residual exception (FRE 807) because the authenticated exhibits have sufficient guarantees of trustworthiness and are highly probative. Additionally, expert opinions based on otherwise inadmissible hearsay should be admitted if the facts, like here, are “of the type reasonably relied upon by experts in the particular field in forming opinions and inferences upon the subject.” *Daubert*, 509 U.S. at 595; FRE 703.

C. Exhibits 1014-1027 and 1061 are relevant and not prejudicial.

As was the case with Dr. Hall-Ellis and Ms. Lofton’s testimony, iCharts’s objections under FRE 401-03 lack merit. *Supra* Sections II, III.

Exhibits 1014-1027 and 1061 are plainly relevant. They show Qlik’s ftp

website and where/how a POSITA could have found the QlikView Manuals.

EX1014-EX1019, EX1061. They show Qlik and other third-party websites that explain QlikView's prominence in the industry. EX1020-EX1023. And they show an example web application powered by QlikView. EX1024-EX1027.

In contrast to the high probative value, there is no unfair prejudice. *Eastman Kodak*, Paper 34 at 19-20. iCharts had many opportunities to respond to it.

V. The Board should not exclude Mr. Schmandt's testimony.

iCharts moves to exclude (i) paragraphs 71-117, 163-456 of Exhibit 1003 under FRE 702-703 and 401-403 and (ii) paragraphs 4 and 6-56 of Exhibit 1072 under FRE 702-703. MTE, 10-14. These objections should also fail.

A. Mr. Schmandt is a qualified expert witness who provided reliable opinions based on underlying facts.

iCharts does not challenge Mr. Schmandt's qualifications as an expert but objects to large swaths of his testimony, alleging that "his opinions are conclusory, unreliable, and fail to disclose underlying facts and data." MTE, 10. iCharts's objections are directed to the weight of the evidence, not admissibility, and are no more than an attempt to re-argue the merits. MTE, 10-14. "A motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents." CTPG, 79.

Here, iCharts is silent on specifics as to most of the paragraphs to which it objects. The few where it does provide specifics demonstrate that Mr. Schmandt's

opinions *are* supported by underlying facts. For example, iCharts objects to paragraph 230 for “relying on ‘Kung *et al.*’ even though it is never mentioned in the Petition.” MTE, 11. But Mr. Schmandt cites Kung to support his opinion that drag-and-drop techniques were known—an opinion that is in the petition. EX1003, ¶230; Pet., 30. iCharts also objects to paragraphs 355-59 for relying on an example web application powered by QlikView. MTE, 11. Mr. Schmandt cites this evidence to support his opinion that QlikView publishes interactive charts. EX1003, ¶¶255-59.¹ iCharts cannot, in one breath, fault Mr. Schmandt for lacking factual support and in the next object to the very facts he relies upon.

Specific to Mr. Schmandt’s Reply Declaration (EX1072), iCharts alleges that Mr. Schmandt did not consider “all of the evidence provided with iCharts’s Response.” MTE, 12-13. But Mr. Schmandt *did* consider all the evidence iCharts relied upon for the claim elements on which he opined. *See, e.g.*, EX1072, ¶¶28, 35. Moreover, iCharts could have deposed Mr. Schmandt on additional exhibits.

iCharts also broadly objects to Mr. Schmandt’s conclusions on Beccera, motivations to combine, and his Reply opinions. MTE, 11-13. His opinions are factually supported with record evidence. When a party has an opportunity to

¹ QlikView is an iterative product that *adds* functionality version-to-version. EX1008, 9-45. Although the web application predates V8.5, iCharts cites nothing to show that QlikView’s ability to publish interactive charts was removed in V8.5.

depose an expert witness and chooses not to, these types of challenges ring hollow.

Eastman Kodak, Paper 34 at 20; *Symbol*, 935 F.2d at 1576.

B. Mr. Schmandt’s testimony is relevant and not prejudicial.

iCharts objects to paragraphs of Mr. Schmandt’s Reply Declaration under FRE 401-403. iCharts raises no argument for why the opinions in these paragraphs are irrelevant. *See* MTE, 13-14. Nor can it. The opinions are also not prejudicial because, again, iCharts had an opportunity to depose Mr. Schmandt.

iCharts also alleges “paragraphs 8, 19-21, 26, and 44 of Exhibit 1072 improperly exceed the scope of a reply....” MTE, 14. That issue is not appropriate for a MTE. CTPG, 79 (“Nor should a motion to exclude address arguments or evidence that a party believes exceeds the proper scope of a reply or sur-reply.”). Regardless, Mr. Schmandt’s testimony and supporting evidence directly reply to issues raised in the POR and DI. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1078 (Fed. Cir. 2015) (finding “no violation” of 37 C.F.R. § 42.23(b) when evidence “fairly responds only to arguments made in [the opposition’s] response”); *Genzyme Therapeutic Prods. Ltd. v. Biomarin Pharm. Inc.*, 825 F.3d 1360, 1367 (Fed. Cir. 2016) (“The development of evidence in the course of the trial is in keeping with the oppositional nature of an inter partes review proceeding.”).

VI. Conclusion

For the foregoing reasons, the challenged evidence should not be excluded.

Respectfully submitted,
STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/Ryan Richardson, Reg. No. 67,254/

Ryan C. Richardson
Registration No. 67,254
Counsel for Petitioner Tableau Software, LLC

Date: January 28, 2026

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE** was served in its
entirety on January 28, 2026, upon the following parties via electronic mail:

Lester J. Vincent (Lead Counsel) Lester.Vincent@wbd-us.com
Fabio E. Marino (Back-Up Counsel) Fabio.Marino@wbd-us.com
Steve M. Levitan (Back-Up Counsel) Steve.Levitan@wbd-us.com
Christian E. Mammen (Back-Up Counsel) Chris.Mammen@wbd-us.com
Carrie Richey (Back-Up Counsel) Carrie.Richey@wbd-us.com
iChartsWBDSERVICE@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP

Respectfully submitted,
STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/Ryan Richardson, Reg. No. 67,254/

Ryan C. Richardson
Registration No. 67,254
Counsel for Petitioner Tableau Software, LLC

Date: January 28, 2026

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600