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 REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE

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I. INTRODUCTION

Patent Owner appropriately identified evidentiary bases for excluding Petitioner's evidence. Petitioner fails to satisfy its burden to establish admissibility. Exhibits 1003, 1014–1027, 1030, 1061, 1068, and 1072 should be excluded.

II. ARGUMENT

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

The two declarations and relied-on screenshots should be excluded. As to the declarations, Petitioner presents misguided lack-of-deposition arguments. *Petitioner's* burden is to present reliable, non-objectionable evidence to establish the QlikView Manuals' publication date. Petitioner failed; this burden never shifted to Patent Owner. Petitioner does not cite any authority (and Patent Owner knows none) that requires Patent Owner to depose witnesses with facially deficient declarations.

1. The Board Should Exclude Exhibit 1030

Patent law requires that a "publication" must be disseminated or otherwise made accessible to POSITAs. A reference is considered publicly accessible if "[POSITAs], exercising reasonable diligence, can locate it." *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018) (citations omitted). Dr. Hall-Ellis's opinions about *technical* accessibility should be excluded because they are irrelevant to patent law public accessibility—especially as to *POSITAs*.

Dr. Hall-Ellis does not provide testimony that the QlikView Manuals for Version 8.5 were accessible by POSITAs before the filing of the '892 Patent. Dr. Hall-Ellis first references an article dated February 2008 that mentions an entirely different product, QlikView 8—not Qlikview 8.5, which is the subject of this IPR—to leap to the conclusion that QlikView was "a well-known product." EX1030 ¶¶24–25. Dr. Hall-Ellis next states that the product release date for QlikView 8.5 was June 30, 2008, and that by July 9, 2008—after the filing of the '892 Patent's provisional application—"Qlik was selling and shipping to customers copies" of Exhibits 1008 and 1009. *Id*. ¶¶28, 36. In other words, even taken at face value, the declaration at most shows that the manual in question was accessible by people who bought the QlikView 8.5 software but makes no effort to show that such people would be POSITAs. To qualify as a POSITA, a customer would have to hold at least a bachelor's degree in Computer Science/Engineering, or equivalent computing experience, as well as 2–3 additional years of academic or industry experience in web application development/data visualization services. EX2201 ¶5. Dr. Hall-Ellis provides no indication that users of QlikView met these qualifications. "Public accessibility requires more than technical accessibility," and it is Petitioner's burden to support its prior art. *Acceleration Bay*, 908 F.3d at 772–73. Plainly stated, Petitioner has failed to meet its burden.

Also, Dr. Hall-Ellis's reliance on Wayback screenshots is misplaced. Internet Archive webpages are generally not sufficient evidence of public accessibility. *First Solar, Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13 at 15–19 (PTAB Nov. 16, 2023). For all of Petitioner's bluster, Exhibit 1030 simply lacks key information, and should be excluded.

2. The Board Should Exclude Exhibit 1068

Petitioner does not refute the fact that Exhibit 1068 fails to provide specific employment dates for Ms. Lofton. Petitioner also conclusorily states that Exhibits 1008 and 1009 are "authentic and were available to *customers* by July 2008." Opp. at 9 (emphasis added). As explained above, "customers" do not automatically translate to POSITAs, and Ms. Lofton's testimony suffers from some of the same fact deficiencies as Exhibit 1030. Exclusion of Exhibit 1068 is warranted.

3. The Board Should Exclude Exhibits 1014–1023 and 1061

These Wayback Machine and website screenshots offered to support the prior art status of the QlikView Manuals should be excluded under FRE 401–403. Again, although Wayback Machine archival dates may indicate the date on which the archive was collected, they do not indicate the date of original publication. EX1032 at 0001; EX1033 at 0001. Significantly, however, even if they were authenticated—which they are not—Archive webpages are not automatically evidence of public accessibility. *First Solar*, IPR2023-00827, Paper 13 at 15–19.

B. The Board Should Exclude Exhibits 1024–1027

Petitioner lumps Exhibits 1024–1027 in with Exhibits 1014–1023 and 1061. Exhibits 1024–1027 require separate consideration. Petitioner remains curiously vague as to the *relevance* of these exhibits to the version of QlikView included in the QlikView Manuals (EX1008, EX1009). The *only* specific mention of purported relevance is that "they show an example web application powered by QlikView. EX1024-EX1027." Opp. at 13. Which version? The Wayback Machine allegedly provides dates over a year and half *before* Version 8.5, and neither Petitioner nor the Board have provided evidence of *any* connection between the Wine Selector exhibits and QlikView Version 8.5. EX2201 ¶57. Exhibits 1024–1027 have not been properly authenticated, are hearsay, and are irrelevant and prejudicial.

C. The Board Should Exclude Portions of Exhibits 1003 and 1072

1. Exhibit 1003

Portions of Exhibit 1003 should be excluded. For instance, Petitioner provides only conclusory arguments that Mr. Schmandt's discussion of the "Web Selector Tool" at ¶¶355-359 (not ¶¶255-259 (Opp. at 14)) is supported by facts he uses to support his opinion that QlikView publishes interactive charts. *Id*. This *does not* explain Mr. Schmandt's reliance on versions of QlikView *outside* of Version 8.5.

2. Exhibit 1072

Portions of Mr. Schmandt's testimony should be excluded. For example, sections of declaration that refer to or rely on Exhibit 1074 do not reflect a reliable application of principles and methods to the facts of the case under FRE 702. There is absolutely no reason to combine Exhibit 1074 with Becerra as Petitioner tries to do by relying on Mr. Schmandt's testimony. EX1072 ¶¶19, 21. Patent Owner pointed out that Becerra never mentions embedding or publishing and Mr. Schmandt opines on combinations of references that are not part of this proceedings. His testimony should thus be excluded.

Additionally, Mr. Schmandt's conception opinions should be excluded as unreliable because he failed to address the vast majority of the corroborating evidence cited by Patent Owner. Specifically, while Patent Owner's declarants relied on twenty-eight exhibits to corroborate the date of conception, Petitioner's expert discusses only five (EX2002, 2005, 2007, 2014, 2015) of these exhibits in his opinions and makes no representations as to the other twenty-three. Because Mr. Schmandt takes no position as to the vast majority of Patent Owner's evidence of conception, his opinions are unreliable and prejudicial and should thus be excluded.

III. CONCLUSION

Exhibits 1003, 1014–1027, 1030, 1061, 1068, and 1072 should thus be excluded.

Dated: February 4, 2026

Respectfully submitted,

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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 Reply in Support of Motion to Exclude Evidence** was served on Petitioner via electronic mail at the following:

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