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 MOTION TO STRIKE

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Patent Trial and Appeal Board
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The Board should strike, or at least disregard, Sections II.A.1 and II.A.2 of Patent Owner's Reply in Support of the Motion to Exclude Evidence (Paper 31).

I. ARGUMENT

The Board's guidance is clear. "A motion to exclude … may *not* be used to challenge the sufficiency of the evidence to prove a particular fact." Consolidated Trial Practice Guide (CTPG), 79 (Nov. 2019) (emphasis added); *see also id.* ("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."). "While a motion to exclude may raise issues related to admissibility of evidence, it is not an opportunity to file a sur-reply … ." CBM2012-00002, Paper 66 at 62 (PTAB Jan. 23, 2014). But that is precisely what iCharts did. It used its Motion to Exclude briefing to raise new arguments about public accessibility of the QlikView Manuals. Paper 31 at 1-3.

The Board should grant this Motion to Strike, or at a minimum disregard iCharts's new, impermissible, and legally erroneous arguments. CTPG, 80.

A. iCharts's arguments for Exhibit 1030 are new and exceed the proper scope of a Reply to an Opposition to a Motion to Exclude.

iCharts's Reply arguments in Section II.A.1 are not evidentiary. They raise new arguments on the sufficiency of the evidence, which is improper. CTPG, 79.

iCharts's Reply arguments in Section II.A.1 do not refer to Tableau's Opposition to the Motion to Exclude at all. iCharts moved to exclude Exhibit 1030

under the Federal Rules of Evidence (FRE) 401-403, 602, and 702-703. Paper 26 at 2-5. Opposing the motion, Tableau showed that Dr. Hall-Ellis's testimony is relevant and not prejudicial. Paper 27 at 6-7. Tableau also showed that Dr. Hall-Ellis is an esteemed expert with over 50 years of experience in library science who based her opinions on reliable underlying facts. Paper 27 at 1-6.

Rather than responding to Tableau's arguments and case law, iCharts raises new theories regarding the sufficiency of the evidence, arguing that Dr. Hall-Ellis's declaration is insufficient because "[p]atent law requires that a 'publication' must be disseminated or otherwise made accessible to POSITAs." Paper 31 at 1. iCharts also argued that "Dr. Hall-Ellis's reliance on Wayback screenshots is misplaced [because] Internet Archive webpages are generally *not sufficient* evidence of public accessibility." *Id.* at 3 (emphasis added). The CTPG expressly forbids these "sufficiency of the evidence" arguments. CTPG, 79.

Making matters worse, iCharts never raised these arguments in its merits briefing, as iCharts's counsel admitted during the oral hearing. These arguments, therefore, warrant no consideration and should be stricken from the record. CTPG, 79-81; 37 C.F.R. § 42.23(b); *see also* IPR2019-01278, Paper 26 at 2-6 (PTAB Sept. 9, 2020) (striking "belatedly present[ed] new argument … regarding the public accessibility of [a reference]"); IPR2021-01342, Paper 61 at 97-99 (PTAB Feb. 7, 2023) (determining "late action by Patent Owner [in its Sur-reply]

unprompted by any argument made by Petitioner in its Reply is sufficient to strike the argument and for the Board not to consider it").

B. iCharts's arguments for Exhibit 1068 are new and exceed the proper scope of a Reply to an Opposition to a Motion to Exclude.

The Board should also strike Section II.A.2 of iCharts's Reply. There, iCharts likewise does not respond to the arguments or case law in Tableau's Opposition, instead pivoting to a sufficiency-of-the-evidence theory.

iCharts moved to exclude Exhibit 1068 under FRE 401-403, 602, 802, and 901. Opposing the motion, Tableau showed that Ms. Lofton's testimony is relevant, not prejudicial, based on her personal knowledge as QlikTech's Chief Legal Officer and Corporate Secretary, not hearsay (it is in-court testimony), and self authenticating. Paper 27 at 7-10. Instead of responding to these evidentiary arguments, iCharts again uses the Reply to argue sufficiency of the evidence, arguing that Ms. Lofton's declaration shows only that the QlikView Manuals were available to customers but not a POSA. Paper 31 at 3.

As was the case when addressing Dr. Hall-Ellis's declaration, iCharts's Reply arguments are new. iCharts's POR did not address Ms. Lofton's declaration at all, let alone present any argument regarding public accessibility of the QlikView Manuals. These arguments, again, warrant no consideration and should be stricken from the record. CTPG, 79-81; 37 C.F.R. § 42.23(b).

C. iCharts applies the wrong legal standard for public accessibility.

iCharts's new arguments also do not warrant consideration because iCharts relies on the wrong legal standard for public accessibility.

The operative question for public accessibility is not whether the reference was accessible to a POSA, but instead whether the reference was accessible to "interested members of the relevant public." *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1569 (Fed. Cir. 1988) ("Accessibility goes to the issue of whether interested members of the relevant public could obtain the information if they wanted to."); *In re Enhanced Sec. Rsch., LLC*, 739 F.3d 1347, 1354 (Fed. Cir. 2014) ("This court has interpreted § 102 broadly, explaining that even relatively obscure documents qualify as prior art so long as the public has a means of accessing them."); *In re Hall*, 781 F.2d 897, 900 (Fed. Cir. 1986) (accessibility requires "sufficient accessibility to those interested in the art exercising reasonable diligence"); *In re Klopfenstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004) ("The statutory phrase 'printed publication'" from § 102 has been defined to mean a reference that was "sufficiently accessible to the public interested in the art.").

In *Weber*, "Weber's operating manuals were created for dissemination to the interested public to provide instructions about how to assemble, use, clean, and maintain Weber's slicer, as well as guidance for addressing malfunctions that users might encounter." *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059, 1067 (Fed.

Cir. 2024). The Federal Circuit placed no requirement that the workers on a meat slicing line must be a POSA. Rather, "[w]here, as here, 'a publication's purpose is 'dialog with the intended audience,' that purpose indicates public accessibility.'" *Id.* at 1067-68 (quoting *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021)). The same is true of the QlikView Manuals. Their purpose is dialog with interested members of the public, indicating public accessibility.

D. Patent Owner's new argument about the sufficiency of the Internet Archive evidence is also incorrect.

Contrary to iCharts's claim, Paper 31 at 3, the Board has previously relied on Internet Archive evidence to show public accessibility. *E.g.*, *Valve*, 8 F.4th at 1374-75. iCharts's citation to *First Solar* is misleading and inapposite. There, the Board did credit the Internet Archive evidence for the existence of a webpage but separately found no evidence that the interested public "would know of [the reference] or its web address." IPR2023-00827, Paper 13 at 18 (Nov. 16, 2023). In contrast, Dr. Hall-Ellis, Dr. Schmandt, Ms. Lofton, and Gartner demonstrate that tens of thousands of members of the interested public were aware of QlikView and would have known where to purchase the product and/or find the manuals. EX1030, ¶¶23-40; EX1003, ¶84; EX1068, ¶¶6-7; EX1023; EX1028, 0017-18.

II. CONCLUSION

iCharts's Reply arguments directly violate the Board's guidance and lack merit. These arguments should be stricken, or at the very least disregarded.

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

I certify that the above-captioned **PETITIONER'S MOTION TO STRIKE** was served in its entirety on February 17, 2026, upon the following parties via electronic mail:

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