

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC

Petitioner,

v.

iCHARTS LLC

Patent Owner.

Case No. IPR2024-01387

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

**PATENT OWNER'S OPPOSITION TO PETITIONER'S
MOTION TO STRIKE**

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I. INTRODUCTION

Paper 32 (“Motion”) mischaracterizes iCharts’s valid *evidentiary* counterarguments in Paper 31 (“Reply”) as substantive. The POR states if iCharts successfully excludes QlikView Manuals publication date evidence, Tableau fails to meet its burden to establish them as prior art. POR 50 n.2; Sur-Reply 19. Paper 27 (“Opposition”) included arguments on relevance and prejudice, to which the Reply *directly responded*. iCharts stated the correct “public accessibility” standard. Tableau’s Internet Archive arguments reinforce iCharts’s evidentiary objections.

II. ARGUMENT

The Board should not strike Sections II.A.1 and II.A.2 of the Reply.

A. iCharts’s Reply Arguments are Proper

Section II.A.1 directly responds to and rebuts Tableau’s argument that Dr. Hall-Ellis’s testimony is “relevant and not prejudicial.” Opp. 6. Challenging the relevance of expert testimony necessarily goes to admissibility—not credibility or sufficiency—and FRE 402 explicitly states “irrelevant evidence is not admissible.” Relevance is a threshold requirement for admissibility under FRE 702: expert testimony must “help the trier of fact to understand the evidence or to determine a fact in issue,” FRE 702, and “must adequately ‘fit’ the factual issue[s].” *Parallel Networks Licensing, LLC v. Microsoft Corp.*, 777 Fed. App’x 489, 492 (Fed. Cir. 2019) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993)).

Relevancy is distinct from credibility. While cross-examination may help determine expert *credibility*, examination does not ensure the relevance of expert testimony because relevance challenges fundamentally differ. *See, e.g., EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1339–40 (Fed. Cir. 2025) (“Determinations of admissibility . . . are separate from determinations of weight and credibility”).

Likewise, Section II.A.2 directly responds to and rebuts Tableau’s arguments claiming that Ms. Lofton’s testimony is “relevant and not prejudicial.” Opp. 7. As stated above, “irrelevant evidence is not admissible.” FRE 402.

B. iCharts Appropriately Argued in Favor of Excluding Exhibit 1030

iCharts’s POR and Sur-Reply argue that the QlikView Manuals are not prior art because of reliance on inadmissible, excludable evidence. POR 50 n.2. If excluded, Petitioner would fail to meet its burden to establish the QlikView Manuals as prior art. *Id.* Therefore, Paper 26 argued the evidentiary shortcomings of the QlikView Manuals-related exhibits, including EX1030. Paper 26 1–3. Tableau argued that Dr. Hall-Ellis’s testimony is “relevant and not prejudicial.” Opp. 6. The Reply then responded to each relevance-based argument.

Tableau argued that EX1030 testimony: shows the authenticity and publication date (July 8, 2008) of the QlikView Manuals, ¶¶23-41; opines on issues of public accessibility, ¶¶23-25; “helps prove that tens of thousands of users

and thousands of organizations knew about QlikView,” and that “the QlikView Manuals were publicly accessible,” ¶¶26-41. Opp. 3, 6. iCharts responded that Dr. Hall-Ellis does not opine on QlikView 8.5 being POSITA-accessible, and refers to a February 2008 article and QlikView 8 instead, ¶¶23-25, opining on the *wrong product*. Reply 2. Also, opinions about *technical* accessibility fail to account for *POSITAs*—and, regardless, public accessibility “requires more than technical accessibility.” Reply 2 (citing *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, 908 F.3d 765, 772–73 (Fed. Cir. 2018)). iCharts argued further that the accessibility discussed at ¶¶28, 36, relates to people who bought QlikView 8.5 software—“customers,” generally—not the *relevant* target group for accessibility.

The Opposition also relied on testimony incorporating Internet Archive screenshots to support its relevancy. *See* Opp. 6. But mere Internet Archive evidence of webpage access does not establish relevant testimony. Reply 3 (citing *First Solar, Inc. v. Rovshan Sade*, IPR202300827, Paper 13 at 15–19 (PTAB Nov. 16, 2023) (despite Internet Archive verification, “there was no evidence that the ordinarily skilled artisan would know of [the reference] or its web address”).

C. iCharts Appropriately Argued in Favor of Excluding Exhibit 1068

The Reply also appropriately responded to Tableau’s EX1068 arguments. Tableau cited EX1068 ¶¶4-7 to argue that Ms. Lofton’s testimony proves

QlikView Manuals’ authenticity and their availability to customers by July 2008 because copies of QlikView 8.5 were being sold and shipped and the QlikView Manuals were accessible on Qlik’s website and as CDs. Opp. 9. Like EX1030, iCharts responded that “customers” do not automatically translate to POSITAs for public accessibility’s sake. Reply 3. This is an appropriate relevance argument.

D. Tableau’s “Interested Public” Argument Contradicts Precedent

Tableau belatedly, and incorrectly, contends that iCharts applied the wrong public-accessibility standard—an untimely argument that should have appeared in its Opposition, not the Motion. iCharts applied the proper standard. *See* Paper 26, 31 (citing *Acceleration Bay*, 908 F.3d at 772 (quoting *Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1356–56 (Fed. Cir. 2018) (citing *In re Wyer*, 655 F.2d 221, 226 (CCPA 1981))). Tableau cherry-picks quotes from decisions that exclude “skilled in the art.” However, *all* of Tableau’s cited decisions cite to *Wyer*, directly or indirectly, which states the decades-old standard. *Wyer*, 655 F.2d at 226 (“persons interested and ordinarily skilled in the subject matter or art”).¹ Hence, *Weber* does not deviate from the long-standing *POSITA* standard.

¹ *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1569 (Fed. Cir. 1988) (citing *Wyer*, 655 F.2d at 226–27); *In re Enhanced Sec. Rsch., LLC*, 739 F.3d 1347, 1354 (Fed. Cir. 2014) (citing *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986) (citing *Wyer*, 655 F.2d at 226–27)); *In re Hall*, alone, citing *Wyer*; *In re Klopfenstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004) (citing *Wyer*, 655 F.2d at 226,

E. Internet Archive Arguments Reinforce Evidentiary Objections

With respect to Tableau’s Internet Archive evidence and *First Solar*, Tableau ignores *First Solar*’s emphasis on *POSITA* accessibility, and, more significantly, cites evidence for its Internet Archive arguments that supports iCharts’s relevance objections. *See* Mot. 5. Published in February 2008 (pre-QlikView 8.5), EX1028 cites 2007 statistics. EX1030 ¶¶23-40 refers to QlikView 8 when mentioning thousands of users in 2007/early 2008, omitting users of QlikView 8.5. ¶24. EX1003 ¶84 cites to non-QlikView companies, then relies on 2007 statistics and the wrong QlikView version. EX1068 cites generic “customers.” EX1023 omits QlikView 8.5 and is dated pre-QlikView Manuals publication date. All are irrelevant — only printed publications (or patents) are relevant in IPR proceedings. 35 U.S.C. § 311(b).

III. CONCLUSION

For the foregoing reasons, the Motion should be denied.

at 1349–50); and *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059, 1067–68 (Fed. Cir. 2024) (citing to *Jazz Pharms.*, 895 F.3d at 1355 (citing *Wyer*, 655 F.2d at 226)) (even *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021), cites *Wyer*, 655 F.2d at 226–27, by way of *Constant*, 848 F.2d at 1568).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 24, 2026, a true and correct copy of the foregoing was served on Counsel for Petitioner via filing through the P-TACTS System, as well as by delivering a copy via electronic mail to the following:

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