

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and MOTOROLA MOBILITY LLC,
Petitioner

v.

MULTIFOLD INTERNATIONAL INCORPORATED PTE. LTD.,
Patent Owner

Case No. IPR2025-00058
Patent No. 9,158,494

**PETITIONERS' REPLY IN SUPPORT OF THEIR
MOTION TO EXCLUDE**

Pursuant to the Board's Scheduling Order (Paper 12), Petitioners file this Reply in support of their motion to exclude (Paper 37 ("Motion")).

I. Patent Owner Failed to Show a Non-Hearsay Purpose for the Challenged Exhibits and Did Not Assert That Any Hearsay Exception Applies

Petitioners moved to exclude the exhibits identified in the Motion as inadmissible hearsay because Patent Owner and its declarants rely on statements in the exhibits for their truth. (*See generally* Motion.) Patent Owner made a single argument in response: the exhibits and declaration testimony are not hearsay because the exhibits are purportedly being relied on exclusively to corroborate (or confirm) the witnesses' recollections and testimony. (*See* Paper 39 ("Opposition") at 3-8.) But this argument reflects a fundamental misunderstanding by Patent Owner about what it means to rely on a statement for its truth. The alleged consistency between the out-of-court statements in the exhibits and the declarants' testimony only matters if the statements in the exhibits are true.

As many courts have held, corroboration is a substantive use for the truth of the matter asserted and should be excluded as inadmissible hearsay. *See, e.g., Sprinturf, Inc. v. Sw. Recreational Indus., Inc.*, No. CIV.A. 01-7158, 2003 WL 22837937, at *1 (E.D. Pa. Nov. 24, 2003) (excluding as hearsay a declaration offered to "corroborate [alleged inventor's] testimony" on conception because it was "not apparent what probative value the [declaration] statements would have unless they

are offered for their truth”); *United States v. Lizon-Barias*, 252 F. App’x 976, 979-80 (11th Cir. 2007) (affirming exclusion of “statements . . . being offered for their truth, specifically, to corroborate [defendant’s] testimony” as inadmissible hearsay); *United States v. Garcia*, 189 F.3d 475 (9th Cir. 1999) (unpublished table decision) (affirming exclusion of receipts offered to corroborate Defendant’s testimony and explaining that “[i]f the receipts were not offered to show the truth of [dates and addresses listed on the receipts] then the items would have absolutely no relevance in corroborating [Defendant’s] testimony”); *United States v. Chen Kuo*, No. 10-CR-671 S-1 KAM, 2011 WL 145471, at *3 (E.D.N.Y. Jan. 18, 2011) (excluding as hearsay statements of 911 callers offered “to ‘corroborate the victim’s description of the attack,’” and therefore “offered for the truth of the matter asserted, i.e. the truth of the description of the attack on John Doe # 1”).

Patent Owner’s argument that it is relying on the exhibits to show “that the words were said . . . rather than for the truth of the statement” is not accurate. (Opposition at 4.) For example, for Exhibit 2034, Mr. Reeves’ claimed understanding that “ParentChild may have been added to the framework” (EX2034) cannot confirm or support Mr. Cassar’s testimony that certain features had been added to the EV-1 prototypes as of that date (EX2002 ¶30) without treating Mr. Reeves’ stated understanding (and the date on his email) as a true statement of fact.

(See Motion at 2-3; Opposition at 3-4.)¹ As the above-cited cases found, relying on an out-of-court statement to corroborate testimony is relying on such a statement for its truth. Otherwise, the emails would have no probative value and could not function to corroborate anything. The portions of the fact witness declarations that Petitioners moved to exclude similarly cite those hearsay emails as confirming or supporting the declarants' testimony, thus relying on the emails for their truth as explained in the Motion. (See EX2001 ¶¶ 38, 82; EX2002 ¶¶30-35, 40-49, 64-65, 69; Motion at 3-10.) Consequently, that testimony is inadmissible hearsay too.

Patent Owner makes the same argument for all challenged exhibits and it fails for the same reasons. Accordingly, the challenged exhibits are inadmissible hearsay.

II. Patent Owner's Cited Cases Are Inapplicable

Patent Owner did not provide any basis for departing from the settled understanding that corroboration is a hearsay use. See Opposition at 1-3. The cases it cites are inapplicable. In *GoPro, Inc. v. Contour IP Holding LLC*, the Board declined to exclude an email and related testimony as hearsay, explaining that "the disputed statements are not offered to prove the truth of whether Mr. Woodman in

¹ Patent Owner misstates that Mr. Kurdziel made the statement in Exhibit 2034. Mr. Kurdziel sent the Exhibit 2034 email, but the pertinent statement was made by Mr. Reeves. (Compare Opposition at 3-4, with EX2034 and EX2002 ¶30.)

fact sent catalogs by FedEx to Mr. Jones, but rather that ‘Mr. Jones was informed that catalogs were being sent to him.’” IPR2015-01078, Paper 54 at 13-14 (P.T.A.B. Oct. 26, 2016). Thus, the email was not used to corroborate or confirm any witness’s recollection, unlike the Exhibit 2034-2038 emails. *See id.*

REG Synthetic Fuels, LLC v. Neste Oil Oyj, 841 F.3d 954 (Fed. Cir. 2016) is similarly inapposite. That opinion applied the verbal act doctrine to admit as non-hearsay an exhibit showing an inventor disclosing his invention to third parties. *Id.* at 964-65.² Regardless of if the inventor’s statements about what he did were true, his email reflected that he disclosed (and thus possessed) the idea for the claimed invention, impacting his legal rights. *See id.* The verbal act doctrine recognizes that an out-of-court statement is not hearsay if it “actually affects the legal rights of the parties, or where legal consequences flow from the fact that the words were said.” *Echo Acceptance Corp. v. Household Retail Servs.*, 267 F.3d 1068, 1087-88 (10th Cir. 2001); *see also United States v. Montana*, 199 F.3d 947, 950 (7th Cir. 1999) (explaining difference between verbal acts such as “a promise, offer, or demand,” which “commit the speaker to a course of action,” and hearsay statements, which

² *REG* does not use the term “verbal act,” but it cites and uses the analysis in *Knorr v. Pearson*, 671 F.2d 1368, 1372-73 (C.C.P.A. 1982), which applies the verbal act doctrine. *See REG*, 841 F.3d at 964-65.

“narrate, describe, or otherwise convey information, and so are judged by their truth value”). Unlike the inventor’s own disclosure in *REG*, none of the emails at issue in the Motion are disclosures by named inventors Sirpal or Selim of their conception of an alleged invention claimed in the ’494 patent. Neither Sirpal nor Selim sent any of the emails. (*See* EX2034-EX2038.) And Patent Owner does not contend that anyone’s legal rights were affected or legal consequences flowed from the mere fact that the words in those emails were stated. (*See generally* Opposition.) The emails were all internal within the original patent owner, Flextronics, contain statements by non-inventors, and Patent Owner agrees that it is using those statements for the purpose of confirming or corroborating testimony by Patent Owner’s declarants.

Patent Owner relies on *TransWeb, LLC v. 3M Innovative Props. Co.*, 812 F.3d 1295 (Fed. Cir. 2016), to contend that the hearsay emails and testimony should be considered under the “rule of reason” approach to assessing conception and reduction to practice. *TransWeb* explains that “all pertinent evidence” should be examined under that rubric, but it does not say that *inadmissible* evidence is pertinent or should be considered. *Id.* at 1301-02. Patent Owner provides no authority that a rule of reason analysis can (or should) disregard the Federal Rules of Evidence, and Petitioners are aware of none. Thus, *TransWeb* does not support admitting hearsay.

III. Conclusion

Petitioners request the Board grant their Motion to Exclude.

Respectfully submitted,

Dated: February 13, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I caused a true and correct copy of the foregoing Petitioners' Reply in Support of Their Motion to Exclude to be served electronically on counsel for Patent Owner at the following addresses:

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