

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

American Axle & Manufacturing, Inc.,
Petitioner,

v.

Neapco Components, LLC,
Patent Owner.

Case IPR2025-00091
U.S. Patent No. 11,598,376

Patent Owner's Preliminary Response

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Exhibit	Description
2001	Stellantis Independent Operator Portal webpage
2002	Stellantis Terms and Conditions webpage
2003	Declaration of David J. Thomas in Opposition to Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,598,376

I. Introduction

The Board should deny institution because Petitioner failed to establish, and cannot establish, that the Renegade Manual—upon which every ground in the Petition is based—qualifies as prior art.

This is not a mere technical deficiency—there are critical unexplained and unaccounted for gaps in Petitioner’s attempt to carry its burden of proof that make any reliance on the Renegade Manual improper.

First, the manual is not “publicly accessible” because—as expressly stated therein—its use and distribution is heavily restricted. The cover page contains an explicit prohibition against any reproduction “without the prior written permission of Chrysler LLC.” Ex. 1013 at PET_AAM_1013-0002. The “terms of use” agreement makes clear that the manual may only be “access[ed]” and “use[d]” by those “servicing vehicles manufactured by or for Chrysler LLC...or its affiliates that You own or that You service as part of your business.” Ex. 1013 at PET_AAM_1013-0004. A “restrictions” clause expressly limits distribution of and access to the manual:

Restrictions. ... If You are a company, *You cannot provide this information to any person who is not an employee.* If You are an individual, *You cannot provide this information to any other person.* Except as expressly permitted by the license granted under Section 1, *no part of any of the information may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without first obtaining the written consent of Chrysler.*

Ex. 1013 at PET_AAM_1013-0004. Further, the manual provides for “injunctive relief” for any violation of the agreement, stating that any such violation would cause “irreparable injury.” Ex. 1013 at PET_AAM_1013-0006.

Thus, by its very terms, the Renegade Manual is not “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018). Anyone outside Chrysler and its service network cannot have it or use it (without written consent of Chrysler); engineers at competitive auto companies (including the named inventors), for example, could not obtain or use the Renegade Manual according to its express terms. Petitioner does not even address these express restrictions on use and dissemination of the manual, but this is dispositive on the issue, and Petitioner cannot establish the manual is publicly available and thus prior art as a matter of law.

On top of that, AAM has no record evidence tying the CD that AAM relies on to a time before the critical date. AAM says nothing about how it obtained the CD introduced as Exhibit 1013 in this proceeding and containing what purports to be the Renegade Manual. There is no testimonial or documentary evidence establishing that the CD of record was available from any source prior to the relevant priority date. AAM has a forensic “expert” testifying that it was burned on January 7, 2016,

and not modified since. But even if true, the fact that the CD *existed* does not prove that either the CD itself or its contents was *publicly available*. The CD could very well have been locked away in a file cabinet at Chrysler and kept as Chrysler's proprietary, non-public information. In view of the Manual's express terms, this is not just a mere possibility, but a likelihood.

Petitioner's other peripheral evidence offered in support of the issue of prior art fail badly as well. Petitioner offers an affidavit of a website purportedly offering the CD for sale, but the affidavit and website are dated *after* the May 3, 2017 critical date of the '376 patent, and are thus irrelevant. Petitioner offers a declaration describing various blog statements, but the statements themselves are inadmissible hearsay and the declaration describing them is inadmissible lay testimony disguised as so-called "expert" testimony. In any event, even if there was *some* CD offered for sale on *some* website, there is zero evidence tying the actual CD relied upon by Petitioner (Ex. 1013) to any such CD or its contents. Petitioner offers a comparison of a CD purchased from a website *in 2024* to Exhibit 1013, but that proves nothing about what, if anything, was available before the '376 priority date.

Because all grounds rely upon the Renegade Manual, and Petitioner has not, and cannot, establish that the Renegade Manual is prior art, the Board should deny institution. *See Vectair Systems Inc. v. Fresh Products, Inc.*, IPR 2024-00824, Paper 9, at 14 (P.T.A.B. Nov. 12, 2024) (denying institution where petitioner was unable

to prove the reference was a publicly accessible printed publication); *see also Next Step Group, Inc. v. Deckers Outdoor Corp.*, IPR 2024-00525, Paper 16, at 13 (P.T.A.B. Aug. 6, 2024) (same).

II. Legal Standards

“A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent...only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). “Whether a reference qualifies as a printed publication under § 102 is a legal conclusion based on underlying fact findings.” *Acceleration Bay*, 908 F.3d at 772.

“[P]ublic accessibility has been called the touch-stone in determining whether a reference constitutes a printed publication.” *Id.* (citations omitted). Public accessibility requires evidence that a reference was disseminated or made available such that interested POSAs, exercising reasonable diligence, can locate it. *Id.*

In an IPR, the petitioner bears the burden of establishing by a preponderance of the evidence that a particular document is a printed publication. *Id.*

III. The Petition Fails to Establish a Reasonable Likelihood That Petitioner Will Prevail Because the Renegade Manual is Not Prior Art

AAM relies upon the Renegade Manual (Exhibit 1013), an electronic document allegedly burned onto a CD, in support of every ground in the Petition. Because AAM cannot bear its burden of establishing the manual is prior art as a matter of law, the Board should deny Institution. *ENS Labs Ltd. v. Unstoppable*

Domains Inc., No. IPR2024-00872, Paper 8, at 25 (P.T.A.B. Nov. 22, 2024) (denying institution because reference relied upon did not qualify as a prior art printed publication).

A. The Renegade Manual’s Express Terms Restrict Dissemination and Use, Leaving Interested Persons Of Skill Unable to Access It

AAM bears the burden of establishing that the Renegade Manual is prior art, but—as set forth below—it cannot do so because the manual itself restricts dissemination and use such that interested persons of skill in the art exercising reasonable diligence could not obtain it. *Id.*; *Acceleration Bay*, 908 F.3d at 772; *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 936–937 (Fed. Cir. 1990) (affirming finding that documents were not printed publications where one of the documents stated “[r]eproduction or further dissemination is not authorized...not for public release”).

1. The Renegade Manual Contains Express Restrictions On Access, Distribution, and Use, Preventing It From Being Disseminated Outside of Chrysler’s Service Network

To start, the landing page of the Renegade Manual states:

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise ***without the prior written permission of Chrysler LLC.***

Ex. 1013 at PET_AAM_1013-0002 (reproduced below).



**TECH
AUTHORITY**

**Welcome to the:
2016 Jeep® Renegade
Service Information Manual**

[ENTER Service Information Manual](#)

[Additional information](#)

If you do not have Adobe® Reader installed, you must install it to view the parts catalog.

Click on the link below to do so.

[Install Adobe Reader](#)

If this is the first time you are using this CD/DVD, you must install the Adobe® SVG Viewer plugin if you are using Internet Explorer 9 or below.

Click on the link below to do so. This is only necessary once.

[Install SVG Viewer](#)

[Adobe® SVG Documentation](#)

[Adobe® SVG EULA](#)

NO PART OF THIS PUBLICATION MAY BE REPRODUCED, STORED IN A RETRIEVAL SYSTEM, OR TRANSMITTED, IN ANY FORM OR BY ANY MEANS, ELECTRONIC, MECHANICAL, PHOTOCOPYING, RECORDING, OR OTHERWISE WITHOUT THE PRIOR WRITTEN PERMISSION OF CHRYSLER LLC.

[Full CD and DVD Terms and Conditions for use](#)

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81-370-16028-CD

The landing page then includes a link to the “Full CD and DVD Terms and Conditions for use,” which reiterates the limited access to the Renegade Manual. *Id.* The Terms of Use Agreement defines “You” as “the individual or company that is the original purchaser of this CD or DVD,” and states that “Your access to the information on this CD or DVD and the use of this information is subject to the following terms and conditions.” *Id.* at PET_AAM_1013-0004.

In accordance with Section 1 (“License”) of the Terms of Use Agreement, “You may access and use this information for Your personal use in servicing vehicles manufactured by or for Chrysler LLC...that You own or that You service as part of Your business.” *Id.* Section 1 demonstrates how the license granted to the original purchaser of the Renegade Manual is restricted to those individuals or companies within Chrysler’s service network. *See C.R. Bard, Inc. v. AngioDynamics, Inc.*, 748 F. App’x 1009, 1014 (Fed. Cir. 2018) (vacating and remanding Board’s finding of anticipation by an alleged prior art printed publication and distinguishing between the reference being “for distribution...rather than for internal or restricted use within” a company).

Section 2 (“Restrictions”) of the Terms of Use Agreement further establishes that access to, and use of, the Renegade Manual was restricted to Chrysler’s service network: “You ***cannot use*** this information for ***any purpose other than as permitted in the license*** granted under Section 1 above.” Ex. 1013 at PET_AAM_1013-0004

(emphasis added). It further provides: “If You are a company, ***You cannot provide this information to any person who is not an employee.*** If You are an individual, ***You cannot provide this information to any other person.***” *Id.* Further, it states: “no part of any of the information may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without first obtaining the written consent of Chrysler.” *Id.*

Such restrictions show the manual was not publicly accessible. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1349 (Fed. Cir. 2016) (affirming reference was not a prior art printed publication because the reference was not “disseminated to the interested public before the critical date”). This is precisely the opposite from the reference that the Federal Circuit found qualified as a printed publication in *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, in which that reference “explicitly stated that users were permitted to ‘use, print out, save on a retrieval system, and otherwise copy and distribute’ the reference for noncommercial use.” 847 F. App’x 869, 876-878 (Fed. Cir. 2021) (quoting *Cisco Systems, Inc. v. Centripetal Networks, Inc.*, IPR2018-01436, 2020 WL 402817 (P.T.A.B. Jan. 23, 2020)).

Other sections of the Terms of Use reinforce the restrictions on access, use, and dissemination of the manual. Section 4 (“U.S. Government Restricted Rights”) states: “Any software and related documentation that is used from this CD or DVD are provided with RESTRICTED RIGHTS.” Ex. 1013 at PET_AAM_1013-0004.

Section 4 further states “[u]se, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in” various computer software and data use statutes. *Id.* Similarly, Section 5 (“Export Restrictions”) prohibits “ship[ping] or otherwise export[ing] outside the United States any of this information without first obtaining the written consent of Chrysler.” *Id.*

Section 7 (“Cautions”) states: “**ALL SERVICE AND REBUILDING INSTRUCTIONS CONTAINED IN THE SERVICE MATERIALS ARE APPLICABLE TO, AND FOR THE CONVENIENCE OF, THE AUTOMOTIVE TRADE ONLY.**” Ex. 1013 at PET_AAM_1013-0005 (emphasis in original). Further, “[t]he service procedures recommended and described in this information...were developed for *professional service personnel* and are effective methods for performing vehicle repair.” *Id.* (emphasis added). Section 7 further demonstrates how the Renegade Manual was limited to only Chrysler’s service network, i.e., “professional service personnel” in “the automotive trade only.” *Id.*

The prohibition on distribution and use is critical enough that the Manual includes an “injunctive relief” provision that states that any violation of those terms will result in “irreparable injury” and would give Chrysler the ability to seek injunctive relief:

Injunctive Relief. You acknowledge that any actual or threatened violation of this agreement by You will cause *irreparable injury* to Chrysler. Chrysler will be entitled to specific performance of, and *extraordinary relief in court to enforce any provision of this*

agreement, including without limitation, temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bond or security, or proving damages.

Id. at PET_AAM_1013-0006 (emphasis added).

AAM's petition never even discusses these express restrictions, let alone identifies a reason that they do not disqualify the manual as prior art. Notably, these restrictions comport with common sense and industry practice: auto companies like Chrysler would restrict access to and use of its service manuals for obvious safety reasons and to prevent an unauthorized "do-it-yourself" or rogue repair job that could endanger drivers of its vehicles.

2. The Renegade Manual's Express Restrictions On Access, Use, And Distribution Disqualify It As Prior Art

The terms and conditions described above establish that the Renegade Manual could only be distributed to, and used by, those in the Chrysler service network, including those limited companies and individuals in the business of servicing Chrysler vehicles. A publication that could only be distributed narrowly as such does not as a matter of law qualify as prior art printed publications. *Cordis Corp. v. Boston Scientific Corp.*, 561 F.3d 1319, 1334–35 (Fed. Cir. 2009) (finding monographs that were distributed to university and hospital colleagues and two commercial entities for development were not prior art printed publications); *Allied Tube and Conduit Corp. v. John Maneely Co.*, 125 F. Supp. 2d 987, 990 (D. Ariz. 2000) (finding a letter that "was sent to distributors, rather than end users to whom

the distributors sold, and was marked confidential, the letter was not accessible to the interested public and does not constitute a publication”); *see also Wycoff v. Motorola, Inc.*, 502 F. Supp. 77, 88 (N.D. Ill. 1980) (“distribution of printed documents by an independent contractor to the customer or contracting party in connection with the contract work does not, in and of itself, constitute a ‘publication’ of the documents”) (citing *Dow Chemical Co. v. Williams Bros. Well Treating Corp.*, 81 F.2d 495, 499 (10th Cir. 1936), *cert. denied*, 298 U.S. 690 (1936)).

This obligation to maintain the Renegade Manual in confidence is much stronger than prior cases where courts have found that a reference does not qualify as a prior art printed publication where, even in the absence of explicit confidentiality agreements, it was the norm in the particular industry to maintain the reference in confidence. For example, in *Cordis Corp. v. Boston Scientific Corp.*, the disputed references were “distribut[ed] to a limited number of entities without a legal obligation of confidentiality.” 561 F.3d at 1333–34. However, the Federal Circuit “noted that ‘[w]here professional and behavioral norms entitle a party to a reasonable expectation’ that information will not be copied or further distributed, ‘we are more reluctant to find something a printed publication.’” *Id.* (quoting *In re Klopfenstein*, 380 F.3d 1345, 1350–51 (Fed. Cir. 2004)). Based on this, the Federal Circuit “affirm[ed] the district court’s holding that [the references] were not prior art printed publications under § 102(b).” *Id.* at 1335.

Similarly, the court in *PeroxyChem LLC v. Innovative Environmental Technologies, Inc.* found that a reference did not qualify as a prior art printed publication where there was “record evidence that there is an understanding of confidentiality in conference review committees, and that disclosing the contents of an abstract would not have been consistent with professional practice when reviewing abstracts for the purposes of selecting conference presenters.” No. 14-6446, 2015 WL 4093923, at *10 (E.D. Pa. Jul. 7, 2015).

The Renegade Manual’s strict prohibition against distribution demonstrates, at the very least, to a member of Chrysler’s service network that the material should be maintained in confidence. The holdings in *Cordis Corp.* and *PeroxyChem* show that even in the absence of explicit confidentiality designations, a document may still be deemed confidential based on industry norms. Here, the facts are much stronger than those two cases, and clearly deem the Renegade Manual confidential as it includes explicit distribution prohibitions and restrictions to access.

AAM failed to address the contents of the Terms of Use Agreement of the Renegade Manual. Indeed, AAM’s failure to produce any evidence from Chrysler in this proceeding suggests Chrysler may not agree with AAM’s characterization that the Renegade Manual was publicly accessible. Because the Terms of Use Agreement of the Renegade Manual demonstrates the lack of public accessibility of the document and AAM has not provided any counterarguments or explanation of

this evidence, AAM has failed to satisfy its “burden of persuasion...on all issues relating to the status of the [Renegade Manual] as prior art.” *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1579 (Fed. Cir. 1996) (finding “no reasonable jury could have found that [patent challenger] proved the [reference] was prior art.”); *see also Vectair Systems Inc.*, IPR2024-00824, Paper 9, at 14 (denying institution where petitioner was unable to show the reference was a printed publication).

Thus, the Renegade Manual’s own express terms establish that it was not publicly accessible.

3. Access to, and Distribution of, the Renegade Manual is Still Restricted Today

AAM submits testimony of Dr. Davis, who AAM claims separately accessed the service manual for the 2016 Jeep® Renegade online in Mopar Tech Authority’s ‘Service Library,’ now available at the URL, ‘<https://stellantisiop.com/iop/app/secure/dashboard>.’” Pet. at 10 (citing Ex. 1032 ¶ 234). But, as discussed below, whether AAM and its declarants could access a document today is irrelevant to establishing whether the document was publicly accessible as of the priority date. *See Next Step Group, Inc.*, IPR2024-00525, Paper 16, at 18 (denying institution and rejecting petitioner’s argument that webpages constituted prior art because webpages are dynamic and can be changed, such that a print out of a webpage from 2024 does “not provide sufficient evidence of what was publicly available on the website years earlier prior to the critical date”).

Nonetheless, retracing Dr. Davis's footsteps shows that the Manual *may not be publicly accessible even today*.

Following the URL Dr. Davis provides redirects to a landing page having the URL, "https://stellantisiop.com/iop/app/landing." Ex. 2001 at Neapco-Exhibit 2001-000001; *see also* Ex. 2003 at Neapco-Exhibit 2003-000002 ¶¶ 1–3. Selecting the "Terms and Conditions" link at the bottom of that landing page leads to a Stellantis Independent Operator Portal Terms and Conditions webpage having the URL, "https://stellantisiop.com/iop/app/legal/terms_and_conditions." Ex. 2002 at Neapco-Exhibit 2002-000001; *see also* Ex. 2003 at Neapco-Exhibit 2003-000002 ¶¶ 1–3.

These Stellantis Terms & Conditions state that "[a]ccess to Stellantis NV's Independent Operator Portal system is controlled." *Id.* This is consistent with the Renegade Manual's Terms of Use Agreement restricting access to only Chrysler and its service network. *See* Ex. 1013 at PET_AAM_1013-0004–07. The Stellantis Terms & Conditions further state that "[t]he site contains information proprietary to Stellantis NV...which shall not be provided to unauthorized third parties," and reiterates that "UNAUTHORIZED ACCESS OR USE OF THE SYSTEM OR INFORMATION IT CONTAINS IS PROHIBITED." Ex. 2002 at Neapco-Exhibit 2002-000001.

The Stellantis Terms & Conditions further state that “[b]y proceeding beyond this screen, you...acknowledge and agree that you will not provide proprietary or other business information to unauthorized users and acknowledge and agree that unauthorized access or use may result in irreparable harm to the Company.” *Id.* Finally, the Stellantis Terms & Conditions state that “you may not... reproduce or publicly display, perform, or distribute or otherwise use them for any public or commercial purpose” and “you must not transfer the Materials to any other person.” *Id.* at Neapco-Exhibit 2002-000003.

These restrictions put in place today by Stellantis show that the Renegade Manual is not even publicly accessible today (let alone at the legally relevant point in time, prior to the priority date). *See RasterOps v. Radius, Inc.*, 861 F. Supp. 1479, 1490 n.11 (N.D. Cal. 1994) (noting references “did not constitute a ‘printed publication’ due to their generally confidential, in-house nature.”).

4. The Forum Posts Confirm the Renegade Manual Was Not Publicly Accessible

AAM relies on various forum blog posts purportedly discussing the Renegade Manual. *See generally* Ex. 1023. But as discussed in more detail below, Neapco contends that the forum posts are inadmissible hearsay and should be either excluded or, at the very least, given no weight in this proceeding. However, even if the forum posts are considered, they demonstrate that the users of the forum recognized that the Renegade Manual was restricted to Chrysler’s service network and the

individuals in the forum should not have access to the information. *See Carpenter Tech. Corp. v. Allegheny Techs. Inc.*, No. 08-2907, 2011 WL 3296202, at *10 (E.D. Pa. Aug. 2, 2011) (finding “internal technical reports” to not be prior art printed publications).

According to a post on December 1, 2015, on www.renegadeforum.com from user “Jack Kuykendall”: “Does anyone know how I can get a service manual for the 2015 Jeep Renegade? I have been told that it is currently web-based and **accessible by dealer and other authorized service people**. Is this true?” Ex. 1023 at PET_AAM_1023-0047 (emphasis added). On December 20, 2015, user “Jbell” responded to this post, stating: “My husband said that is true so far.” *Id.* On June 19, 2016, user “Todd Harris” also responded, stating “[s]eams [sic] like FCA is **restricting information**.” *Id.* (emphasis added). In another post on February 6, 2016, on a different forum, www.jeeprenegadeforum.com, a user similarly doubted the accessibility of the service manuals, stating “[s]ervice manuals for the Renegade are **not yet available to the general public** or to the dealers service center for that matter.” *Id.* at PET_AAM_1023-0072 (emphasis added). Similarly, a post on May 18, 2016 on www.renegadeforum.com from Todd Harris states a dealer told him that “they access this information through web via Jeep headquarters.” Ex. 1023 at PET_AAM_1023-0034. Notably, Todd Harris does not state that this dealer told him he could access the Renegade Manual on his own.

In a post on July 29, 2015, on www.jeeprenegadeforum.com by user “MRM331,” the user stated they “really wish[ed] a tech manual was available somewhere other than a Jeep dealer.” *Id.* at PET_AAM_1023-0084. User “syzygy” responded on the same day, stating: “***That might leave the forum open to copyright infringement.***” *Id.* (emphasis added). User “raz-0” also responded on July 30, 2015 stating the last tech manual he obtained was “***pirated***” and that the particular OEM “didn’t want customers seeing it.” *Id.* (emphasis added).

Finally, in a post on July 21, 2015, on www.jeeprenegadeforum.com, user “Rufus” doubted that any service manual would be available, stating “[t]his would be great if they actually sold service manuals.” Ex. 1023 at PET_AAM_1023-0058. “In fact even going back several years, the only thing offered is owners manuals, NOT service manuals.” *Id.*

These forum posts demonstrate that there were significant doubts that the Renegade Manual was available to users of the forum at all, but if it was available, the users clearly believed they should not have access to it. AAM and its declarants failed to address any of these other forum posts and instead cherry-picked evidence in a light most favorable to AAM. On a whole, these (inadmissible) posts, even if considered, are consistent with the manual’s express terms of use restrictions on access, use, and dissemination of the manual, and thus support a finding that the

manual was not publicly accessible. *Acceleration Bay*, 908 F.3d at 773 (noting “‘public accessibility’ requires more than technical accessibility”).

B. AAM Failed to Establish the Renegade Manual Was Publicly Accessible Before the Critical Date

1. No Evidence Links the Renegade Manual Relied Upon in the Petition to Anything Allegedly Available for Purchase Online Before The Priority Date

AAM claims that the “Renegade Manual was published in 2016 on compact disc (CD) by Mopar Tech Authority.” Pet. at 4. But AAM is silent regarding the circumstances by which it came into possession of the CD allegedly containing the Renegade Manual. With no evidence of the CD’s origin, presumably AAM obtained it well after the critical date of May 3, 2017.

Yet there is no evidence tying the CD of record to anything allegedly publicly available before the critical date. Federal Rule of Evidence 901(b)(3) states that evidence may be authenticated by “[a] comparison with an *authenticated specimen* by an expert witness or the trier of fact.” (emphasis added). However, AAM has not produced any “authenticated specimen” of a pre-critical-date CD containing the Renegade Manual, so it is unable to conduct such a comparison. *See In re Grand Jury Subpoena Duces Tecum Dated Oct. 29, 1992*, 1 F.3d 87, 93 (2d Cir. 1993) (noting an original copy of a document is required to enable “the trier of fact to compare the copy and the original”).

The crux of AAM's failure to link the Renegade Manual of Exhibit 1013 with the CD that it alleges was publicly accessible prior to May 3, 2017, is that the Board is unable to confirm that the disclosures AAM relies on in the Renegade Manual of Exhibit 1013 were actually published and/or available before the critical date. This is particularly problematic where, as here, the electronic document relied upon could have and likely was revised over and over again, and AAM needs to prove that the particular contents on which it relies were actually included in a version of the CD publicly available before the critical date. In fact, the Renegade Manual itself states that "Chrysler reserves the right to ***change any of the information***, including without limitation, testing procedures, specifications, diagnosis, repair methods, or vehicle wiring ***at any time*** without incurring obligation." Ex. 1013 at PET_AAM_1013-0005 (emphasis added).

To that end, in *B/E Aerospace, Inc. v. C & D Zodiac, Inc.*, after a witness "conceded during his deposition that he lacked personal knowledge regarding whether the version of the [reference] in the record was identical to the version that was allegedly published and distributed," the Federal Circuit concluded that "substantial evidence supports the Board's determination that [Petitioner] did not satisfy its burden of establishing that the version of the [reference] in the record was publically accessible." 709 F. App'x 687, 697–98 (Fed. Cir. 2017).

Here, to be clear, there is no information about the origin and acquisition of the CD at Exhibit 1013, and there is no information about *any* CD allegedly obtained prior to the critical date. Thus, even if AAM was able to establish that *some* CD and *some* version of the manual were somehow available for purchase before the critical date (it has not), it would still have no way of establishing that the contents of the CD at Exhibit 1013 are the same as what was allegedly offered for sale. This is a critical evidentiary gap.

In an attempt to link the Renegade Manual of Exhibit 1013 with the CD that it alleges was publicly accessible prior to May 3, 2017, AAM purports to rely on “indicia associated with Renegade Manual (and its CD),” but these “indicia” fail to satisfy its burden of establishing that the version of the Renegade Manual in the record was publicly accessible. Pet. at 8; *Elmos Semiconductor SE v. Texas Instruments Inc.*, IPR 2024-00802, Paper 9, at 28 (P.T.A.B. Nov. 5, 2024) (denying institution where petitioner was unable to identify any indicia that shows the reference was published in an October 2016 edition, to prove it was publicly accessible).

First, AAM asserts that it was “customary in the automotive industry for [OEMs]...to distribute information on how to service their vehicles,” so the Renegade Manual “would have been accessible to the public...‘around the 2016 time frame.’” Pet. at 7–8 (citing Exs. 1021, 1032). However, this unsupported

assumption from Mr. Pace—who has no affiliation with Mopar or any understanding of the inner workings of Mopar Tech Authority—lacks the specificity and regularity required to be reliable. *See U.S. v. Anderson*, 755 F.3d 782, 794 (5th Cir. 2014) (to qualify as a habit or routine practice under Rule 406, the action alleged must be “a regular response to a repeated specific situation that has become semi-automatic.”) (citation and internal quotations omitted).

Mr. Pace has not offered any evidence to support this assumption, such as the timing for the release of service manuals for other model year Jeep Renegades or even the timing for the release of service manuals for other Chrysler vehicles. *See id.* (“To offer evidence of a habit, a party must at least demonstrate a regular practice of meeting a particular kind of situation with a specific type of conduct.”) (citation and internal quotations omitted). Additionally, the Federal Circuit has found that even in view of testimony regarding “general practice,” “the lack of substantial evidence of actual availability of [a reference] adequately supports the...conclusion that dissemination of the [reference] was not established.” *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330 (Fed. Cir. 2004). Quite simply, an assumption that the Manual *would have* been distributed publicly based on general industry practice is not legally sufficient.

Second, AAM relies on what it calls common indicia and markings on the faces of the two CDs, including the year “2016,” the month and year “01/2016,” a

Mopar Tech Authority logo that was allegedly used in October 2016, and product ID “81-370-16028-CD.” Pet. at 8–15. But although a date printed on a reference can have some relevance, *C.R. Bard, Inc.*, 748 F. App’x at 1014–15, merely pointing to common inscription dates and other indicia on the faces of the two CDs is insufficient based on the inherent nature of CDs. Specifically, a user is unable to discern the contents of a CD until the CD is launched as a CD is an “optical disc [that] **stores encoded information or data** that can be accessed by CD players which contain optical reading devices.” *Discovision Associates v. Disc Mfg., Inc.*, 25 F. Supp. 2d 301, 308 (D. Del. 1998). Two CDs could have the exact same text, markings, and appearance on their face, but the contents of each CD could be completely different from one another. *See Optical Disc Corp. v. Del Mar Avionics*, 208 F.3d 1324, 1325 (Fed. Cir. 2000) (“In order to retrieve the data on a CD, the surface of the CD is optically scanned.”).

Third, AAM relies on the “copyright notice dated 2015 (‘Copyright® 2015 Chrysler LLC’) on the landing page.” Pet. at 8–9 (citing Ex. 1013 at PET_AAM_1013-0002). But the law is clear that evidence of a copyright date, on its own, does not support the public accessibility of a document. *Acceleration Bay*, 908 F.3d at 772 (“a reference is considered publicly accessible if it was ‘disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence can

locate it’”) (citations omitted); *see In re Lister*, 583 F.3d 1307, 1311, 1317 (Fed. Cir. 2009) (holding a copyright date alone is insufficient to establish public accessibility); *see also Navico Inc. v. Garmin International, Inc.*, No. 2:16-CV-00190, 2017 WL 3750252, at *3 (E.D. Tex. 2017), *report and recommendation adopted*, 2017 WL 3764213 (E.D. Tex. 2017) (finding a reference does not qualify as a prior art printed publication where defendant attempted to rely on the reference’s copyright date). Because publication is not a prerequisite to copyright protection, *Norma Ribbon Trimming, Inc. v. Little*, 51 F.3d 45, 48 (5th Cir. 1995), the 2015 copyright date has no legal significance and does not support AAM’s argument.

Fourth, AAM relies on the testimony of Tim Kiefer who asserts “that the CD was burned...on January 7, 2016” and “no items on the CD had a ‘date created’ or ‘date modified’ after December 22, 2015.” Pet. at 10 (quoting Ex. 1022 ¶¶ 6–15). Again, the date in which the CD currently in AAM’s possession was created does nothing to address the public accessibility of the CD nor link it to any other CD that AAM alleges was available before May 3, 2017. Again, there is no evidence of where the CD of record came from, let alone that it was publicly available before the priority date. It could have been retrieved from a locked cabinet in Chrysler’s corporate offices (obviously not publicly available). Thus, the fact that the CD of record was burned and not modified is insufficient on its own to establish public accessibility. *Navico Inc.*, 2017 WL 3750252, at *4 (finding digital files with

creation dates before the critical date were not prior art printed publications because the accused infringer had failed to establish the public accessibility of the digital files before the critical date). If AAM is contending that the CD of record is identical to some other CD that was allegedly publicly accessible before the critical date, it needs evidence to prove it. There is none.

Along those lines, the fact that the Renegade Manual likely went through many revisions undermines AAM's assumption that the CD it has now was identical to something otherwise available before the critical date. Chrysler may have made, and almost certainly did make, changes to the Renegade Manual to address safety recalls, regulation updates, or any other new information that would warrant a revision to the Renegade Manual. Indeed, burning the Renegade Manual to a CD, as opposed to a print manual, would have allowed Mopar to make many different versions of CDs and/or many different modifications to the CD in a very cost-effective manner by simply burning new CDs rather than re-printing several thousands of pages whenever a modification was needed. Thus, there is no way for AAM to confirm that the Renegade Manual currently in its possession and relied upon in the Petition is the same as what it alleges was available prior to May 3, 2017.

Fifth, AAM asserts that "Dr. Davis separately accessed the service manual for the 2016 Jeep® Renegade online in Mopar Tech Authority's 'Service Library,' now available at the URL, '<https://stellantisiop.com/iop/app/secure/dashboard>.'" Pet. at

10 (citing Ex. 1032 ¶ 234). AAM contends that “Dr. Davis confirmed that the Renegade Manual of Exhibit 1013 contains the same information as that currently made available online by Stellantis and Mopar Tech Authority.” *Id.* But this proves nothing as well. As a matter of logic and common sense, comparing the CD of record to a manual obtained in 2024 has no bearing on whether either of those documents was publicly available prior to the critical date. *See* Fed. R. Evid. 901(b)(3) (requiring an “authenticated specimen” for comparison); *In re Grand Jury Subpoena Duces Tecum Dated Oct. 29, 1992*, 1 F.3d at 93 (an original copy of a document is required for comparison).

Additionally, the Renegade Manual of Exhibit 1013 includes 29 chapters, with the table of contents alone spanning 137 pages. *See* Ex. 1013 at PET_AAM_1013-00008–144. AAM has only submitted chapters 3 and 21 and these two chapters alone comprise 655 pages. *Id.* at PET_AAM_1013-0145–0800. Dr. Davis’s claims that he “confirmed that the “Renegade Manual of Exhibit 1013 contains the same information as that currently made available online by Stellantis and Mopar Tech Authority” is conclusory and not supported by any evidence. Pet. at 10 (citing Ex. 1032 ¶ 234). Dr. Davis does not, for example, assert that he used any software programs to run a redline comparison between the two versions. If Dr. Davis conducted only a visual comparison between the two versions, he would have needed to visually compare 655 pages for just chapters 3 and 21. However, this

would be insufficient to determine whether the versions are exactly the same, so he would have needed to visually compare all 29 chapters, with thousands, if not tens of thousands, of pages to ensure the two versions are identical. The deficiencies with Dr. Davis's supposed comparison are highlighted by the proper comparison in *Valve Corporation v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1371–72 (Fed. Cir. 2021), where the court was able to conduct “a simple comparison” between an exhibit and an article that was “not burdensome” because there were only twelve paragraphs and 23 images spanning 10 pages in the exhibit and 9 pages in the article. The comparison in *Valve Corp.* was permissible under Fed. R. Evid. 901(b)(3), but Dr. Davis's comparison here is insufficient or, at the very least, unsupported by any evidence.

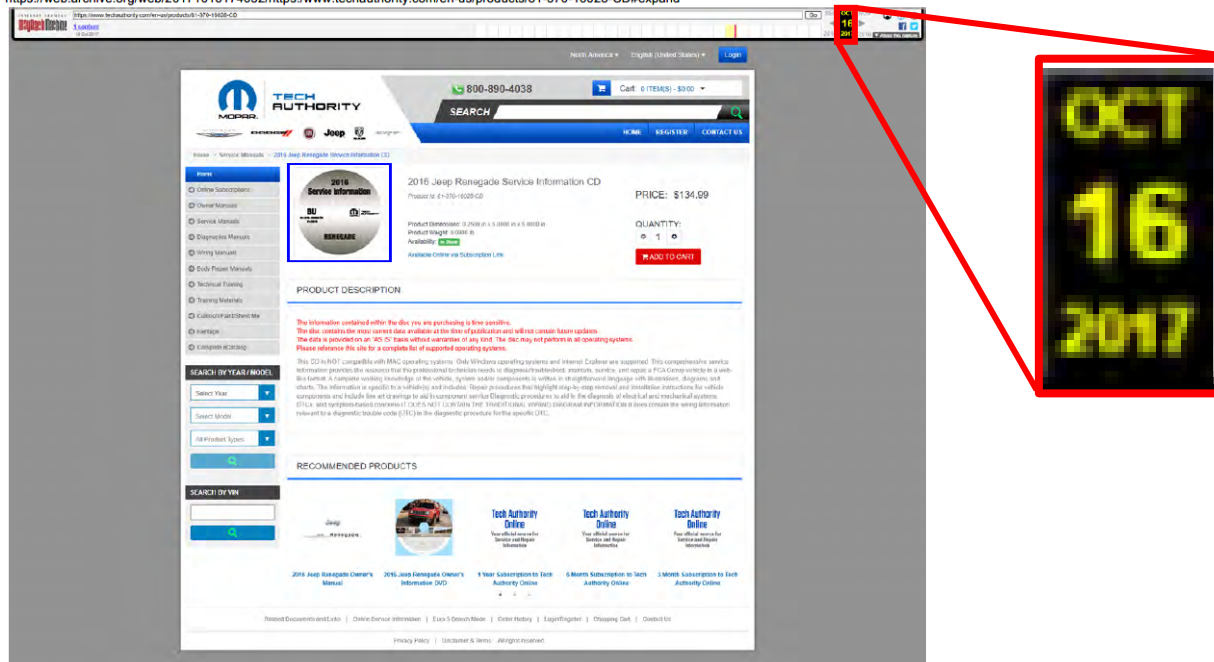
AAM's failure to establish that the Renegade Manual of Exhibit 1013 itself was publicly available before the critical date, or is materially identical to anything allegedly publicly available prior to May 3, 2017, is fatal. “In short, nothing in the record demonstrates that ‘persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence’ could have located the relevant version of the [Renegade Manual] before the priority date.” *B/E Aerospace*, 709 F. App'x at 698 (quoting *In re Lister*, 583 F.3d at 1311).

2. The Webpage Allegedly Showing the Renegade Manual CD Available for Purchase is Dated After the Critical Date

AAM offers additional irrelevant evidence that does not establish the Renegade Manual is prior art.

AAM's primary piece of evidence to allege that the Renegade Manual was available before **May 3, 2017**—an archived URL from the Internet Archive—only shows that a CD allegedly containing the Renegade Manual was available on **October 16, 2017, five months after the critical date**. See Pet. at 13–14 (“The URL...was archived on October 16, 2017”). Ms. Gregory includes, as Exhibit 31 to her declaration, “a true and accurate copy of a screenshot of the Internet Archive’s record of the archived file for the URL, ‘<https://web.archive.org/web/20171016174032/https://www.techauthority.com/en-us/products/81-370-16028-CD#expand>,’ on the date specified in the URL, **October 16, 2017**.” Ex. 1023 ¶ 48 (emphasis added). An annotated version of Exhibit 31 to Ms. Gregory’s declaration is shown below:

<https://web.archive.org/web/20171016174032/https://www.techauthority.com/en-us/products/81-370-16028-CD#expand>



Ex. 1023 at PET_AAM_1023-0102 (annotated).

AAM also submits an Affidavit of Nathaniel E. Frank-White, who is “a Records Request Processor at the Internet Archive.” Ex. 1025 ¶ 1. Mr. Frank-White declares that “The Internet Archive assigns a URL on its site to the archived files in the format `http://web.archive.org/web/[Year in yyyy][Month in mm][Day in dd][Time code in hh:mm:ss]/[Archived URL]` aka an ‘extended URL’.” *Id.* ¶ 5. Accordingly, the URL in Exhibit 31 to Ms. Gregory’s declaration confirms that the URL was archived on “20171016,” i.e., October 16, 2017, **after the critical date**. See Ex. 1023 ¶ 48.

Thus, this evidence only shows that something was available for purchase **after** the critical date of May 3, 2017, and is thus irrelevant. See *Koninklijke Philips, N.V. v. Zoll Medical Corp.*, 656 F. App’x 504, 529 (Fed. Cir. 2016) (finding a

reference did not qualify as a prior art printed publication where a third-party “did not receive the [reference] until after the...priority date”); *TypeRight Keyboard Corp. v. Microsoft Corp.*, 374 F.3d 1151, 1158–59 (Fed. Cir. 2004) (reversing summary judgment of invalidity in view of an alleged prior art printed publication that was discovered after the critical date); *Next Step Group, Inc.*, IPR2024-00525, Paper 16, at 13 (rejecting petitioner’s argument that a reference was publicly available, where petitioner was only able to show the reference was available *after* the critical date, and not before).

Additionally, AAM fails to authenticate the archived webpage relied upon. AAM cites to the affidavit of Mr. Frank-White in an attempt to authenticate the October 16, 2017 Mopar Tech Authority archived webpage. *See* Pet. at 13–14 (citing Ex. 1025). The affidavit of Mr. Frank-White attaches “as Exhibit A...true and accurate copies of screenshots of the Internet Archive’s records of the archived files for the URLs and the dates specified in the attached coversheet of each printout.” Ex. 1025 ¶ 6. However, the URL on the coversheet of Mr. Frank-White’s exhibit is to an irrelevant and unrelated website:

<https://web.archive.org/web/20070709161226/http://investor.pharmion.com/phoenix.zhtml?c=142045&p=irol-newsArticle&ID=1010376&highlight=>

Ex. 1025 at PET_AAM_1025-0004. This URL supposedly directs to a webpage that Mr. Frank-White attached as an exhibit to his declaration, but this webpage has no

relevance to this proceeding. Instead, the archived webpage (excerpt shown below) is for a news release of “Clinical Data Presented on Pilot Pharmacokinetic Study of Oral Azacitidine.” *Id.* at PET_AAM_1025-0005.



Ex. 1025 at PET_AAM_1025-0005 (excerpted).

Accordingly, Mr. Frank-White does not properly authenticate the October 16, 2017 Mopar Tech Authority webpage, and Ms. Gregory is the only person who claims that Exhibit 31 to her declaration is a “true and accurate copy of a screenshot of the Internet Archive’s record of the archived file” for the October 16, 2017 Mopar Tech Authority webpage. Ex. 1023 ¶ 48. However, Ms. Gregory has no connection to the Internet Archive or any personal knowledge regarding the Internet Archive or its practices. Thus, Ms. Gregory is unable to authenticate this webpage because “the individual who authenticates the documents must have personal knowledge of their authenticity.” *Frazier v. Layne Christensen Co.*, No. 04-C-315-C, 2006 WL 6041120, at *3 (W.D. Wis. Feb. 21, 2006). Finally, merely referencing an archive

of a website does nothing more than show the website existed at a certain point in time (here, after the critical date). Notably, this archive provides no information of whether one could purchase the CD, whether one would have to provide additional credentials, or whether any additional steps to purchase were required. The static page alone is insufficient.

3. The Forum Posts Are Inadmissible Hearsay

AAM also contends that “the specific URL” where the manual was supposedly made available to the public was “posted several times in 2016 on various forums.” Pet. at 13. AAM relies on the testimony of Ms. Gregory, who “determined that several forum posts directing members to purchase the 2016 Jeep® Renegade service manual online from Mopar Tech Authority were each dated in July or August.” *Id.* at 10-11 (citing Ex. 1023 ¶¶ 45, 49). Each of these forum posts are out-of-court statements offered by AAM to prove the truth of the matter asserted in the statements, and are, thus, inadmissible hearsay. Fed. R. Evid. 801(c).

AAM relies on six forum posts from Internet users having the usernames “Cruiser,” “cruiser66,” “fernandosousa,” and “raz-0.” Pet. at 11–13; *see also* Ex. 1023 ¶¶ 10–44. None of these individuals have submitted declarations in this proceeding, none of these individuals have revealed their identities, and there is no way for Neapco or the Board to contact these individuals (let alone cross-examine the statements).

The first post AAM relies on is from “Cruiser” on the website “www.renegadeforum.com” on July 6, 2016:

I recently found the service manual on disc at techauthority.com. It’s for the 2016 model which is essentially the same as the 2015. Here’s the link:

<https://www.techauthority.com/en-us/products/81-370-16028-CD>

Pet. at 11 (citing Ex. 1023 ¶¶ 13–15, Ex. 1; *id.* ¶¶ 10–12).

The second post AAM relies on is also from “Cruiser” on the website “www.renegadeforum.com” on July 6, 2016:

I found the service manual on disc at techauthority.com. It’s for the 2016 model which is essentially the same as the 2015. Here’s the link:

<https://www.techauthority.com/en-us/products/81-370-16028-CD>

Pet. at 11 (citing Ex. 1023 ¶¶ 19–21, Ex. 7; *id.* ¶¶ 16–18).

The third post AAM relies on is from “cruiser66” on the website “www.jeeprenegadeforum.com” on July 13, 2016:

Here’s the service manual for the 2016 Renegade on disc. None for the 2015, but it’s essentially the same as the 2016. Found on techauthority:

<https://www.techauthority.com/en-us/products/81-370-16028-CD> ...

Pet. at 11–12 (citing Ex. 1023 ¶¶ 31–33, Ex. 18; *id.* ¶¶ 28–30).

The fourth post AAM relies on is also from “cruiser66” on the website “www.jeeprenegadeforum.com” on July 15, 2016:

The service manual on disc is available for the 2016 Renegade as well as the 2014 GC. Here’s the link for the Renegade:

[https://www.techauthority.com/en-us/products/81-370-16028-CD ...](https://www.techauthority.com/en-us/products/81-370-16028-CD)

Pet. at 12 (citing Ex. 1023 ¶¶ 25–27, Ex. 12; *id.* ¶¶ 22–24).

The fifth post AAM relies on is from “fernandosousa” on the website “www.jeeprenegadeclub.com” on July 15, 2016:

I would really like to get my hands on the Renegade service manual, as it is the best way to solve any problems with the car. I searched the internet and found the American Renegade service manual for sale, but it costs \$135.00 and the engine is different. Does anyone know where I can find the Brazilian version?

Here is the link to what I found:

<https://www.techauthority.com/en-us/products/81-370-16028-CD>

Pet. at 12 (citing Ex. 1024; Ex. 1023 ¶¶ 40–44, Ex. 28).

The sixth and final post AAM relies on is from “raz-0” on the website “www.jeeprenegadeforum.com” on August 18, 2016:

Well a tech manual finally came out:

<https://www.techauthority.com/en-us/products/81-370-16028-CD>

Pet. at 12–13 (citing Ex. 1023 ¶¶ 37–39, Ex. 23; *id.* ¶¶ 34–36).

For each of these out-of-court statements on the various Internet forums, AAM is relying on the truth of the matter asserted in those statements: that a CD containing a Renegade Manual was available at the link posted by each of the users on the date of each post. Indeed, the sole purpose for AAM submitting these posts is to try to prove that the “Renegade Manual was ‘publicly accessible’ before May

3, 2017, at least...online at...‘<https://www.techauthority.com/en-us/products/81-370-16028-CD>.’” Pet. at 15. The Board should not rely upon these hearsay statements.

Reliance on these hearsay statements is also problematic because websites can be seamlessly updated without changing the underlying URL, so it is impossible to verify that the URL posted to these forums directs to the same website as the October 16, 2017 Mopar Tech Authority archived webpage. *See In re Mineral Resources International, Inc.*, 565 B.R. 684, 697–98 (Bankr. D. Utah 2017) (recognizing that “information at the URL” can be “revis[ed]”); *see also Clark v. Viacom Int’l Inc.*, 617 F. App’x 495, 505 (6th Cir. 2015) (“Because online fora and content delivery systems are frequently altered, many courts have struggled to parse whether specific technological changes in the format and delivery of” statements made online are affected by these changes).

These are classic hearsay statements and should be given no weight here. *See U.S. v. Jackson*, 208 F.3d 633, 637 (7th Cir. 2000) (affirming the exclusion of “web postings” as hearsay and rejecting argument that the web postings qualified as exceptions to hearsay under Fed. R. Evid. 803(6) as business records of the Internet service providers); *Castagna v. Newmar Corp.*, No. 3:15-CV-249, 2020 WL 13659743, at *4 (N.D. Ind. Mar. 4, 2020) (excluding “postings on an internet forum

by RV owners” as “classic hearsay”); *U.S. v. Hassan*, 742 F.3d 104, 134–35 (4th Cir. 2014) (affirming the exclusion of Internet posts as hearsay).

4. AAM Cannot Introduce These Inadmissible Statements Through A Lay Witness Disguised As “Expert Testimony”

AAM identifies no exception to the hearsay rule. Nevertheless, AAM tries to introduce the forum posts as evidence through the declaration of Ms. Gregory and claiming that she is an “expert.” Ex. 1023. This attempt to end-run the rules of evidence should be rejected.

Ms. Gregory is not an “expert” of anything relevant in this proceeding. According to Ms. Gregory’s CV, she “specialize[s] in assisting organizations in managing, storing, searching and tracking assets in a centralized digital space to ensure that: Documents are easily accessible and secure[;] Content is centrally managed and available to all team members[;] Files are systematically organized and easy to locate[; and] Content is compliant with regulatory and security standards.” Ex. 1023 at PET_AAM_1023-0031. But of course, none of this bears on the question of whether the Manual qualifies as prior art. And Ms. Gregory does not claim to have any expertise in evaluating the accuracy or authenticity of Internet forum posts, and she does not claim to have any familiarity, let alone expertise, with service manuals offered by Mopar or Chrysler.

Federal Rule of Evidence 702(a) requires that “the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the

evidence or to determine a fact in issue.” Yet here, Ms. Gregory simply regurgitates hearsay forum posts, which does nothing to help the Board understand the evidence as the Board is just as capable of reading the forum posts itself. *Id.*; see *Mondis Technology Ltd. v. LG Electronics, Inc.*, No. 15-4431, 2021 WL 4077563, at *13 (D.N.J. Sep. 8, 2021) (excluding expert testimony because it “would not help the jury to understand the evidence”).

To be sure, “[a]n expert may base [her] opinions on facts that are otherwise inadmissible, such as hearsay that does not fall within a recognized exception, if ‘experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject.’” *United States v. Rodriguez*, 651 F. App’x 44, 46 (2d Cir. 2016) (quoting Fed. R. Evid. 703). However, an expert may only disclose the inadmissible facts or data “if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.” *Id.* Further, “Rule 703 does not make admissible otherwise inadmissible evidence.” *Wi-LAN Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1374 (Fed. Cir. 2021) (quoting 4 *Weinstein’s Federal Evidence* § 703.05 n.12).

Here, the probative value does not outweigh the prejudicial effect of allowing the inadmissible hearsay forum posts into the record. The rule against hearsay is designed to ensure compliance with “oath, personal presence at the trial, and cross-examination.” 2 *McCormick On Evid.* § 245 (9th ed. 2025) (citing *California v.*

Green, 399 U.S. 149, 155 (1970); Strahorn, *A Reconsideration of the Hearsay Rule and Admissions*, 85 U. Pa. L. Rev. 484 (1937)). Not only do the forum posters fail to comply with all three of these criteria, their identities are not even known. Accordingly, Neapco—and AAM for that matter—are not able to question these individuals to understand the circumstances of their forum posts. This is prejudicial to Neapco because the forum posters’ identities and other details are crucial to understanding whether the Renegade Manual was available before the critical date.

As one example, the posters on these forums may simply be mistaken that the CD allegedly containing the Renegade Manual was available for purchase. Instead, the CD may be restricted to dealers and authorized servicers only, or the posted URL may direct to a different webpage than the October 16, 2017, Mopar Tech Authority archived webpage. Similarly, the forum posters themselves may be dealers or authorized servicers who only had access to the CD through these avenues. As another example, these forum posters may be referencing an earlier or different version of the Renegade Manual that is different than what AAM is relying upon in Exhibit 1013 and that may not contain the content on which AAM relies in this proceeding. See Ex. 1013 at PET_AAM_1013-0005 (stating “Chrysler reserves the right to ***change any of the information***, including without limitation, testing procedures, specifications, diagnosis, repair methods, or vehicle wiring ***at any time*** without incurring obligation”).

As yet another example, these forum posters may be referencing a completely different manual, such as an owner's manual, or a service manual for another vehicle. Without the ability to question these individuals, it is impossible to determine the accuracy of their posts, which is precisely why the prohibition against hearsay exists to exclude this type of evidence. *See Google, Inc. v. Meiresonne*, No. IPR2014-01188, 2016 WL 280103, at *4 (P.T.A.B. Jan. 20, 2016) (excluding exhibits in an IPR that were offered “to prove the truth of the matter asserted in those exhibits”).

More fundamentally, “a party cannot call an expert simply as a conduit for introducing hearsay under the guise that the testifying expert used the hearsay as the basis of [her] testimony.” *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 136 (2d Cir. 2013) (quotations and citations omitted); *see also United States v. Mejia*, 545 F.3d 179, 197 (2d Cir. 2008) (stating that an expert must “apply[] [her] extensive experience and a reliable methodology” to the inadmissible materials or [s]he is simply “repeating hearsay evidence without applying any expertise whatsoever” (quoting *United States v. Dukagjini*, 326 F.3d 45, 58–59 (2d Cir. 2003))).

Again, Ms. Gregory does not appear to be an “expert” in anything or to have conducted any “expert” analysis that would pass muster under FRE 702. Ms. Gregory’s analysis amounted to reading the forum posts, reviewing the forum posters’ profiles, and checking the date/time the posts were made online. *See, e.g.,*

Ex. 1023 ¶¶ 13–14 (reviewing post from “Cruiser,” “hovering over the date,” and “review[ing] Cruiser’s member profile page”). This is not expert analysis; this is simply “repeating hearsay evidence without applying any expertise whatsoever.” *Mejia*, 545 F.3d at 197; *see also* Fed. R. Evid. 702(a) (expert testimony must help the Board “understand the evidence”). Because “Rule 703 is not, itself, an exception to or exclusion from the hearsay rule or any other evidence rule that makes the underlying information inadmissible,” the forum posts should be excluded or, at the very least, not given any weight. *Wi-LAN Inc.*, 992 F.3d at 1374.

IV. Conclusion

For the reasons above, the Renegade Manual does not qualify as a prior art printed publication. Because AAM relies upon the Renegade Manual in both grounds of unpatentability in its Petition, the Board should deny institution of this *Inter Partes* Review. *See ENS Labs Ltd.*, No. IPR2024-00872, Paper 8, at 25 (denying institution because PTAB found that reference relied upon did not qualify as a prior art printed publication).

Dated: March 11, 2025

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**CERTIFICATE OF COMPLIANCE
WITH 37 C.F.R. § 42.24**

I hereby certify under 37 C.F.R. § 42.24(d) that the foregoing document complies with the type-volume limitation of 37 C.F.R. §§ 42.24(a)(1)(i) and 42.24(b)(1). This Preliminary Response contains 8726 words, as calculated by Microsoft Word, excluding the parts of the paper exempted by 37 C.F.R. §§ 42.24(a)(1) and 42.24(b).

Dated: March 11, 2025

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CERTIFICATE OF SERVICE

Under 37 C.F.R. § 42.6, I hereby certify that I served a copy of the foregoing document on counsel of record for the Petitioner by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by delivering a copy via e-mail to the addresses below.

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