

EXHIBIT
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Grant E. Kinsel, Bar No. 172407
GKinsel@perkinscoie.com
PERKINS COIE LLP
1888 Century Park East
Suite 1700
Los Angeles, CA 90067
Telephone: 310.788.9900
Facsimile: 310.788.3399

Attorneys for JUMIO CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACETEC, INC.,

Plaintiff,

v.

JUMIO CORPORATION,

Defendant,

and

IPROOV LTD.,

Intervenor-Defendant

Case No. 5:24-cv-3623-RFL

Declaration of Grant Kinsel in
Opposition to Motion to Disqualify

Date: 2/11/2025
Time: 10 a.m.
Crt Rm: 15, Hon. R. Lin

1 I, Grant Kinsel, declare:

2 1. I make this declaration on the basis of personal knowledge, and if
3 called to testify as a witness, I would and could testify competently hereto.

4 2. I am lead counsel for Jumio Corporation in the above-entitled mat-
5 ter. As lead counsel, I am responsible for all aspects of the litigation and have been
6 so involved since Jumio retained us to represent them in this matter in July 2024.

7 3. Since July 2024, I have billed more than 200 hours supervising the
8 various FaceTec/Jumio matters. In general, this would include reviewing pleadings,
9 conducting both internal and external meetings, holding conferences with opposing
10 counsel, reviewing research including prior art, detailed and in-depth review of the
11 asserted patents and their file histories, and investigations into the accused technol-
12 ogy. As lead trial counsel with more than thirty years of experience in the patent-
13 litigation field—and given my extensive experience in matters involving both dis-
14 trict court litigation and *inter partes* Review (“IPRs”)—in my view it would be
15 extremely costly, inefficient, and prejudicial for Jumio to have to retain new, expe-
16 rienced lead trial counsel to replace me in these proceedings.

17 4. Furthermore, to adequately defend Jumio in this matter, I have as-
18 sembled a large team of highly-trained lawyers—including lawyers with experience
19 as software engineers—to assist me and to represent Jumio. Collectively, this team
20 has invested more than 900 hours preparing pleadings (including invalidity conten-
21 tions), conducting research, reviewing prior art, reviewing the asserted patents,
22 identifying, researching, and analyzing both written and system prior art, and work-
23 ing with subject-matter experts. The team has also reviewed and analyzed source
24 code to understand the functionality of the accused products.

25 5. Our IPR team consists of at least five highly specialized and trained
26 lawyers with, collectively, decades of experience practicing before the Patent Trial
27 and Appeals Board (the “PTAB”). The lawyers on our PTAB team have collectively
28 spent nearly 900 hours identifying, reviewing, and analyzing prior art and preparing

1 four separate IPR petitions—one for each asserted patent. Each IPR petition runs
2 nearly 100 pages and analyzes in exhaustive technical depth and detail each limita-
3 tion of the claims of the asserted patents and shows why each limitation is found in
4 the asserted prior art. These petitions require hundreds of hours of technical review
5 and investment and require our lawyers to work closely with the subject-matter
6 expert witness who provided declarations in support of the petitions. This is a sig-
7 nificant investment in legal work that Jumio has been forced to undertake by the
8 allegations of this case.

9 6. As lead trial counsel, I am also responsible for implementing and
10 supervising the ethical screen that Perkins Coie imposed when we were retained by
11 Jumio. A true and correct copy of the email establishing the screen is attached as
12 Ex “1” to this declaration.

13 7. The ethical screen was established upon the outset of our represen-
14 tation of Jumio. At that time, Jordan Becker was the only patent prosecutor who
15 had worked on any patent matter for FaceTec who was still at the firm. Brian Cole-
16 man and Agatha Liu left the firm before we were engaged by Jumio for this matter.
17 Since that time, Mr. Becker has left the firm. Prior to FaceTec’s filing its motion on
18 December 16, neither I nor any member of my team had spoken with any screened
19 lawyer about the FaceTec litigation, reviewed any materials held by the firm asso-
20 ciated with FaceTec, or sought information from or provided information to any
21 screened Perkins Coie lawyer. Lowell Ness is located in Perkins Coie’s Palo Alto
22 office, as were Jordan Becker and Brian Coleman (when they were with the firm).
23 Agatha Liu was in our New York, New York office until she left the firm. No mem-
24 ber of the district-court litigation team is located in Palo Alto. The lawyers are in
25 Seattle, WA (Kinsel, Delacenserie, Carl), Denver, CO (Kaiser, Knox), Madison, WI
26 (Pekarek Krone), New York, NY (Lembo), and Washington, D.C. (Gao). The mem-
27 bers of the IPR team are located in Seattle, WA (Kinsel, Carl, Delacenserie), Dever,
28 CO (Kaiser, Knox), and New York, NY (Marando, Lembo, Carter).

1 8. Prior to FaceTec filing its motion on December 16, 2024, neither I
2 nor any member of my team had seen any confidential FaceTec materials from any
3 source, including from either Perkins Coie or Jumio. We had, of course, conducted
4 research regarding FaceTec in *publicly available information*, including FaceTec's
5 website and other public-facing sources (including, for example, FaceTec's
6 Youtube channel (<https://www.youtube.com/c/FaceTecVideos>)). All information
7 that my team and I have regarding FaceTec and its technology comes exclusively
8 from publicly available sources available to any member of the public with an In-
9 ternet connection. We did not ask for, search for, or receive any confidential Fac-
10 eTec information from any source, including Perkins Coie and Jumio. We have,
11 however, reviewed FaceTec's materials that it publicly filed in connection with its
12 Motion to Disqualify.

13 9. I made my appearance in this case on August 7, 2015. That same
14 day, I reached out to speak with counsel for FaceTec. I was able to speak with coun-
15 sel for FaceTec on August 16. During that call, I told counsel for FaceTec that it
16 appeared to Jumio that FaceTec's complaint largely targeted technology provided
17 to iProov. I told FaceTec's counsel that Jumio was transitioning away from iProov's
18 technology and that Jumio's proprietary technology did not infringe. I told counsel
19 that in view of the fact that FaceTec's allegations appeared to be largely directed at
20 iProov, FaceTec should dismiss Jumio from the case. At no time during this call,
21 did FaceTec's counsel raise any issue with respect to Perkins Coie's former repre-
22 sentation of FaceTec, and at no time, did FaceTec's counsel suggest that Perkins
23 Coie had a conflict of interest such that disqualification would be appropriate.

24 10. On August 29, the parties held their Rule 26 conference. During that
25 conference at no time did FaceTec's counsel raise any concerns with respect to Per-
26 kins Coie's former representation of FaceTec. Nor did FaceTec's counsel raise any
27 concerns with discovery or any other concerns associated with Perkins Coie's
28

1 former representation of FaceTec. Counsel for FaceTec never raised any supposed
2 conflicts of interest that would require disqualification.

3 11. On September 20, I again spoke with counsel for FaceTec about the
4 litigation. During this call, I told counsel for FaceTec that I believed FaceTec and
5 its counsel had failed to engage in adequate diligence in advance of filing this case.
6 At no time during this September 20 conversation did counsel for FaceTec raise
7 any concerns with respect to Perkins Coie's former representation of FaceTec. And
8 at no time during this call did FaceTec's counsel suggest that Perkins Coie had a
9 conflict of interest such that disqualification would be appropriate.

10 12. On October 8, I spoke with counsel for FaceTec and Trevor Chap-
11 lick, FaceTec's General Counsel. During the call, I again told FaceTec that I did not
12 believe that FaceTec had conducted adequate diligence ahead of filing its case. Mr.
13 Chaplick told me that FaceTec had sufficient money to pursue a "world-wide" liti-
14 gation campaign against Jumio, and that unlike Jumio, FaceTec would not be con-
15 strained by its funding in litigating against Jumio. Neither FaceTec's outside coun-
16 sel nor Mr. Chaplick raised any concerns about Perkins Coie's former representa-
17 tion of FaceTec, and neither raised any questions regarding purported conflicts of
18 interest. Neither Mr. Chaplick nor FaceTec's outside counsel said anything about
19 Perkins Coie having conflicts of interest sufficient to warrant disqualification. The
20 first time that any representative from FaceTec raised any issue associated with
21 Perkins Coie's former representation of FaceTec was in a letter I received from Nate
22 Dilger on November 26.

23 13. Attached as Exhibits 2, 3, 4, and 5 are true and correct copies of the
24 petitions Perkins Coie filed in behalf of Jumio in the PTAB challenging all claims
25 of the asserted patents.

26 14. I have reviewed the billing records attached to the declaration of
27 Stephen Porter showing all time entered by any lawyer doing patent-prosecution
28 work for FaceTec. Each of the matter number references refer to either patents

applications or provisionals on which Perkins Coie worked. None of the docket references refer to either the '584 provisional or '505 application. There is a "general" patent matter number, but the limited time entered for that matter all occur in summer 2014, before Mr. Tussy claims to have conceived of the invention described in the 584 provisional or 505 application (in mid-2015). As the table below shows, the Perkins Coie Docket Nos. relate to applications other than the asserted patents or any of the applications in the priority chain of the asserted patents.

Perkins Coie Docket No.	Application
113050.8001.US00	US61/806281
113050.8001.US01	US61/812857
113050.8001.US02	US61/873305
113050.8001.US03	US14/229766
113050.8001.WO03	PCT/US14/53936
113050.8002.US00	US61/825976
113050.8002.US01	US14/284391
113050.8003.US00	US61/939417
113050.8003.US01	US14/621611
113050.8003.US02	29/497131
113050.8006.US00	62/024820
113050.8007.US00	62/033431
113050.8008.US00	62/025938

15. The Court entered its scheduling order on September 18, 2024. Among other deadlines, the court set invalidity contentions as due on December 27 (extended by stipulation to January 10), the deadline for exchange of proposed terms for construction on January 10, damages contentions on February 17, completion of claim construction discovery by March 27, and claim construction

1 briefing by May. While Jumio filed its motion to stay pending the IPRs on Novem-
2 ber 27, that motion—originally scheduled to be heard in January—has been con-
3 tinued to February 11 to coincide with FaceTec’s motion to disqualify. As a conse-
4 quence, even if the case is stayed as requested by Jumio, Jumio must continue to
5 prepare its invalidity contentions and its claim construction positions.

6 I declare under the penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct. Executed December 30, at Sun
8 Peaks, BC.



Grant Kinsel

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record for the parties.

/s/ Grant E. Kinsel
Grant E. Kinsel