UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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JUMIO CORP.,
Petitioner

v.

FACETEC, INC.,
Patent Owner

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Case IPR2025-00108
U.S. Patent No. 11,693,938

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**PATENT OWNER'S MOTION TO FILE SUPPLEMENTAL INFORMATION UNDER 37 C.F.R. § 42.123**

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# I. Introduction

As FaceTec established in its Patent Owner's Response, FaceTec's software embodies and is coextensive with the challenged claims; it is the claimed invention. POR, 6-7; EX2059, ¶¶10-24; EX2061, ¶¶455-58, App'x A-H. In Reply, Petitioner identified several random features it asserts ***FaceTec*** believes are "critical." Petitioner's assertions, however, are unsupported by the evidence it cites, and FaceTec could not have reasonably foreseen that Petitioner would identify these particular features as "critical." As such, it is in the interests-of-justice that FaceTec be permitted to introduce a narrowly tailored declaration from FaceTec's Chief Technology Officer, Josh Rose, as to the criticality—or lack thereof—of these features.

# II. FaceTec Should Be Permitted to Introduce Evidence as to Criticality

## A. FaceTec Could Not Have Reasonably Foreseen that Petitioner Would Identify Certain Arbitrary Features as Critical

As explained in FaceTec's Sur-Reply, Petitioner's assertions of criticality are unsupported attorney argument. Sur-Reply, 5-11. Petitioner has identified encryption, for example, as critical to FaceTec's software. Reply, 25-26. But nothing Petitioner cites demonstrates criticality. Jumio's expert, Dr. Daft, for example, does not independently opine that encryption is critical to FaceTec's software. Instead, he opines that encryption is critical "[a]ccording to FaceTec," recasting Mr. Rose's testimony that "it's important that the data that we process

and analyze . . . hasn't been tampered with" (EX1082, 35:21-25) as demonstrating criticality (EX1060, ¶281). Mr. Rose, however, did not characterize encryption as "critical"; he characterized it as a "default behavior." EX1082, 36:25-37:7. Petitioner makes similarly unsupported attorney argument as to deleting the 3D FaceScan, FaceTec's UI with ovals, camera control, and liveness checks. Reply, 20-27.

Had Mr. Rose been asked about the criticality of encryption to FaceTec's software, he would have testified that encryption is routinely used to protect biometric data and is not a differentiator relative to competitors. Ex. A, ¶¶16-17. Mr. Rose would have provided similar testimony with respect to the non-criticality of deleting the 3D FaceScan, FaceTec's UI with ovals, camera control, and liveness checks. *Id.*, ¶¶5-14, 20-36. But Petitioner never asked Mr. Rose about the criticality of any feature, preferring instead to recast his testimony with attorney argument.

FaceTec was not required to affirmatively establish the non-criticality of every feature of its software in its Patent Owner's Response. FaceTec had an initial burden of production to show the existence of objective indica and their nexus to the claimed invention. *See Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1053 (Fed. Cir. 2016). It is undisputed that FaceTec met its burden of production with regard to the existence of objective indica. As for nexus, it is undisputed that

FaceTec's software embodies the claims; Petitioner only contends that FaceTec's software is not coextensive with the claims due to "critical" unclaimed features.

FaceTec could not have reasonably foreseen that Petitioner would assert that features as commonplace as encryption are "critical." *Siemens Mobility, Inc. v. Metrom Rail, LLC*, IPR2023-00468, Paper 68 (PTAB Apr. 2, 2024) (permitting supplemental information where patent owner could not have appreciated that petitioner would challenge a specific facet of patent owner's objective evidence); *Samsung Electronics Co. v. Netlist Inc.*, IPR2023-00847, Paper 34, 3 (PTAB Aug. 19, 2024) (permitting supplemental information in response to testimony that "was not reasonably foreseeable"); *see also General Elec. Co. v. United Techs. Corp.*, IPR2018-01442, Paper 33, 6 (PTAB Oct. 10, 2019) ("It is reasonable that Patent Owner should not have to deduce Petitioner's challenges and all of its supporting arguments before they develop during the course of a proceeding, without a chance to respond in some fashion.").

As explained in FaceTec's Sur-Reply, the identified features are secondary to the core foundational feature of FaceTec's software—performing 3D liveness checks using perspective distortion from images captured at two different distances. *E.g.*, EX1082, 78:12-16. These features support performing 3D liveness checks and provide only "incremental improvement" on top of the core foundational feature. *E.g., id.*, 117:8-17. As such, FaceTec only had reason to

address the criticality of these features ***after*** Petitioner raised them for the first time in its Reply. *Smartmatic USA Corp. v. Election Sys. & Software, LLC*, IPR2019-00531, Paper 32, 4 (PTAB Mar. 13, 2020) (permitting supplemental information to rebut positions taken for the first time in reply). Thus, the supplemental information reasonably could not have been obtained earlier.

### B. Permitting FaceTec to Introduce Evidence as to the Criticality of These Features Is in the Interests-of-Justice

While Petitioner bears the ultimate burden of persuasion to show that the challenged claims are unpatentable, the patent owner has an initial burden of production to show the existence of objective indica of nonobviousness and their nexus to the claimed invention. *See Apple*, 839 F.3d at 1053. These burdens dictate that, as a matter of logic and fairness, the patent owner should be given the "last word" on objective evidence of nonobviousness, regardless of whether it meets the test for supplemental information. 37 C.F.R. § 42.5; *see MSN Labs. Private Ltd. v. Bausch Health Ireland Ltd.*, No. IPR2022-00722, Paper 99, 2 (PTAB Nov. 12, 2025) ("Because these questions relate to objective indicia issues for which Patent Owner has the burden of production, the parties agree that Patent Owner should submit the opening brief, followed by a response from Petitioner, and a reply from Patent Owner.").

This is consistent with many district courts, which require the patent owner

to submit any expert opinions on objective evidence in the opening round of expert reports and also permit reply expert reports on those issues. Indeed, the historically low rates of success on objective evidence of nonobviousness before the Board are likely attributable in part to the patent owner's usual inability to fully respond to the petitioner's reply evidence with evidence of its own.

To the extent Petitioner argues that it will not have time to depose Mr. Rose or move to exclude his testimony, any alleged prejudice was caused by Petitioner's earlier delay and is not compelling. Petitioner did not make Jessica Kaiser available for her deposition until October 9, 2025, pushing the due date for Patent Owner's Response from September 9, 2025, to October 16, 2025. Additionally, in response to Petitioner's request, FaceTec agreed to further extend the due date for Petitioner's Reply from January 14, 2026, to January 21, 2026, without a corresponding extension for FaceTec's Sur-Reply. Regardless, Mr. Rose is available for deposition March 10-13, 2026, and Petitioner has been provided an opposition to this motion to raise whatever issues it has with his testimony.

Finally, if the Board has any question as to the features of FaceTec's software that are critical "[a]ccording to FaceTec" (EX1060, ¶281), FaceTec should be permitted to speak for itself, rather than have statements attributed to it by Petitioner. As such, permitting FaceTec to introduce evidence as to the criticality of these features is in the interests-of-justice.

Date: March 3, 2026

Respectfully submitted,

/Kassandra M. Officer/

Kassandra M. Officer, Back-up Counsel
Reg. No. 74,083

## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing **PATENT OWNER'S MOTION TO FILE SUPPLEMENTAL INFORMATION UNDER 37 C.F.R. § 42.123** was served on March 3, 2026, via email directed to counsel of record for Petitioner at the following:

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Dated: March 3, 2026

By: /Lisa C. Hines/
Lisa C. Hines
Case Manager
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP

# EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUMIO CORPORATION,
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**SECOND DECLARATION OF JOSH ROSE**

[redacted]

I, Josh Rose, under penalty of perjury, declare as follows:

## I. Introduction

1. I am of legal age and otherwise competent to make this declaration.

2. I am the same Josh Rose who executed a declaration in this matter on October 15, 2025 (submitted on October 16, 2025). My education and work experience remain unchanged from my first declaration. I am the Chief Technology Officer at FaceTec, Inc., which I co-founded with Kevin Tussy, FaceTec's Chief Executive Officer.

3. I understand that Jumio has made certain assertions in this proceeding, and I would like to submit a declaration responding to those assertions.

4. I explained many of the concepts in my first declaration and during my deposition, but I have repeated those explanations below to add context and clarity.

## II. FaceTec's Software

### A. 3D Liveness Algorithms

5. I understand that Jumio has parsed FaceTec's software and attempted to distinguish between three-dimensional depth checks and liveness checks. 106Reply at 28-29; 107Reply at 27-28; 108Reply at 26; 109Reply at 27-28. For the reasons explained below, I disagree with how Jumio has characterized FaceTec's software.

6.

7. For context, I would like to explain the relationship between two-dimensional spoof artifacts, three-dimensional spoof artifacts, and three-dimensional live humans. A two-dimensional spoof artifact, such as a printed photograph or an image on a screen, does not provide a three-dimensional signal.

[redacted]

8. FaceTec's software is designed to make a high-confidence decision as to whether a real, live three-dimensional human face is present in front of the camera. The core foundational aspect of this decision-making process is the two-distance capture[1] and analysis of the resulting image data for expected differences such as perspective distortion. I describe the two-distance capture and analysis of the resulting image data for expected differences in my first declaration. *See* Ex. 2059 ¶¶ 11-12.

9. As part of the analysis of the image data for expected differences, FaceTec's software contains algorithms that utilize the image data resulting from the two-distance capture (i.e., 3D data). These algorithms are designed to identify, process, analyze, and extract signals that result from differences in the image data due to the user capturing face images at two different distances. This data not only enables FaceTec's software to make a high-confidence decision as to whether the subject is three-dimensional, [redacted].

10. The core foundational signal that FaceTec's software identifies, processes, analyzes, and extracts is the 3D signal that results from perspective

[1] Two-distance capture refers to the user's capturing of images at two different distances. *See* Ex. 2059 ¶¶ 10-24.

distortion. As I explained in my first declaration, perspective distortion effects cause, for example, the user's nose to appear larger in proportion to the rest of the face in the second image as compared to the first image. *See* Ex. 2059 ¶ 25.

11. FaceTec's software also identifies, processes, analyzes, and extracts other signals that result from differences in the image data due to the user's capturing of images at two different distances. These signals include things like expected differences in .

12.

13.

14.

**B. Encryption**

15. I understand that Jumio has asserted that "encryption is so very important, according to FaceTec." 106Reply at 27-28; 107Reply at 26-27; 108Reply at 25-26; 109Reply at 26-27 (internal citations and quotations omitted). For the reasons explained below, I disagree with Jumio's characterization.

16. Data encryption is not new or uncommon. Data encryption is routinely used to protect sensitive or confidential data, both at rest and in transit, and to ensure that the data has not been tampered with.

17. Consistent with best practices and industry norms, FaceTec uses encryption to protect users' biometric data. It is not a differentiator relative to competitors.

18. FaceTec also uses encryption to ensure that the image data FaceTec's software analyzes has not been tampered with.

19. Encryption is not critical to the functionality of FaceTec's software, which would function in exactly the same way without encryption. As I explained above, the core foundational aspect of FaceTec's software is the analysis of the image data resulting from the two-distance capture for expected differences such as perspective distortion. Using encryption to ensure that the image data FaceTec's software is analyzing has not been tampered with provides only an incremental improvement to the overall product.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**D. Deletion of the 3D Liveness Data**

27. I understand that Jumio has excerpted a quote from a podcast with Jay Meier (Ex. 1073) and relied on it to assert that "FaceTec describes the removal of liveness data as a 'critical selling feature in our view.'" 106Reply at 29-30;

[redacted]

107Reply at 28-29; 108Reply at 27; 109Reply at 28-29 (quoting Ex. 1073 at 10:3-4). For the reasons explained below, I disagree with Jumio's characterization.

28. Deletion of the 3D FaceScan simply derisks the storage of the user's biometric data.

29. After the user completes the two-distance capture, a 3D FaceScan is generated. A 3D FaceScan is an encrypted object that contains data FaceTec's software has collected from the user's interactions with FaceTec's software during the two-distance capture. This data includes image data in types and resolutions that FaceTec utilizes for 3D liveness checks.

30. Deletion of the 3D FaceScan is not critical to the functionality of FaceTec's software, which would be fully operational even if the 3D FaceScan were not deleted.

31. Deletion of the 3D FaceScan has no impact on the 3D liveness determination. It occurs after FaceTec's software makes the 3D liveness determination and is recommended only to mitigate the potential damage from a breach of the stored data, should that ever happen.

**E. User Interface with Ovals**

32. I understand that Jumio has excerpted words from Dr. Turk's deposition transcript and from my declaration and deposition transcript and relied on those words to assert that "[Dr.] Turk called [FaceTec's UI with ovals]

[redacted]

'important,' while [I] viewed it as a 'security feature,' providing requisite 'guidance.'" 106Reply at 25-27; 107Reply at 24-26; 108Reply at 23-25; 109Reply at 25-26. For the reasons explained below, I disagree with Jumio's characterization.

33. FaceTec's software provides a user interface, and during the two-distance image capture, prompts in the form of ovals guide the user. Specifically, the user aligns or places their face in the different sized ovals for each of the two image captures.

34. During the first image capture at the first distance, the oval is small. It then becomes larger for the second image capture at the second distance.

35. Other alignment prompt shapes could be used. For example, the user interface could display the outer outline of the ears or holes for the eyes.

36. FaceTec's use of ovals is not critical to the functionality of FaceTec's software, which would be fully operational even if ovals were not used. As I explained above, the core foundational aspect of FaceTec's software is the analysis of the image data resulting from the two-distance capture for expected differences such as perspective distortion. Using ovals to guide the user during the two-distance capture provides only an incremental improvement to the overall product.

## III. FaceTec's Spoof Bounty Program

37. I understand that Jumio has asserted that "tamper proofing with encryption is so 'very important,' according to FaceTec, that the Bounty program has a bounty for decrypting the [3D] FaceScan file, according to Rose." 106Reply at 28; 107Reply at 27; 108Reply at 25; 109Reply at 27. I understand that Jumio has also asserted that "FaceTec believes controlling the camera to be critical, so much so that it created a Level 5 threat in its Spoof Bounty Program based on camera feed integrity." 106Reply at 24-25; 107Reply at 23-24; 108Reply at 22-23; 109Reply at 24. As I explain below, Jumio misunderstands FaceTec's software and Spoof Bounty Program, and I disagree with Jumio's characterizations.

38. As I explained in my first declaration, FaceTec has a Spoof Bounty Program. The Spoof Bounty Program has five levels: Levels 1-5.

39. FaceTec's two-distance capture and analysis of the resulting image data for expected differences such as perspective distortion prevents successful Level 1, Level 2, Level 3, Level 4, and Level 5 attacks.

40. Level 1 rewards those who can successfully spoof FaceTec's software with "[h]i-res paper & digital photos, hi-def videos exhibiting challenge/response and human-worn paper masks." Ex. 2046 at 1.

[redacted]

41. Level 1 attacks are prevented by analysis of the image data resulting from the two-distance capture for expected differences in perspective distortion effects.

42. Level 2 rewards those who can successfully spoof FaceTec's software with "[c]ommerically available lifelike dolls, and resin, latex & silicone 3D masks up to USD $300 in creation costs." Ex. 2046 at 1.

43. Level 3 rewards those who can successfully spoof FaceTec's software with "[c]ustom-made ultra-realistic 3D masks, sculptures, wax heads, etc. up to USD $3,000 in creation costs." Ex. 2046 at 1.

44. Level 2 and 3 attacks are prevented by analysis of the image data resulting from the two-distance capture for expected differences in perspective distortion effects as well as expected differences in [redacted].

45. Level 4 rewards those who can "[s]uccessfully decrypt & edit the contents of a 3D FaceScan to contain synthetic data not collected from the session, have the FaceTec Server process it and respond with Liveness Success." Ex. 2046 at 1.

46. Level 4 attacks are prevented by analysis of the image data resulting from the two-distance capture for expected differences in perspective distortion

[redacted]

effects as well as expected differences in [redacted]. Specifically, even if a bad actor successfully decrypts the contents of a 3D FaceScan, that bad actor would still need to edit the contents of the 3D FaceScan to contain synthetic data and successfully spoof FaceTec's 3D liveness software. In other words, after the bad actor edits the 3D FaceScan to contain synthetic data, that edited 3D FaceScan would still be subjected to analysis for expected differences in perspective distortion effects as well as expected differences in [redacted]. As such, a bad actor could not spoof FaceTec's 3D liveness software if they edit the decrypted 3D FaceScan to contain only a single 2D image as well as most videos.

47. It is incorrect to characterize FaceTec's use of encryption as the ***only*** method that mitigates Level 4 attacks. Even if an attacker could successfully edit the contents of the 3D FaceScan, FaceTec's three-dimensional depth checks and three-dimensional liveness checks would still need to be spoofed in order for an attack to be successful

[redacted]

48. Level 5 rewards those who can "[s]uccessfully take over the camera feed [and] inject previously captured frames that result in the FaceTec Server responding with [3D] Liveness Success." Ex. 2046 at 1.

49. Level 5 attacks are prevented by analysis of the image data resulting from the two-distance capture for expected differences in perspective distortion effects as well as expected differences in [redacted]. Specifically, even if a bad actor successfully takes over the camera feed and injects previously captured frames, that bad actor would still need to successfully spoof FaceTec's software with the previously captured frames they injected. In other words, the previously captured frames would still be subjected to analysis for expected differences in perspective distortion effects as well as expected differences in [redacted]. As such, a bad actor could not spoof FaceTec's software if they inject a single 2D image or 2D video into the camera feed.

50. [redacted] Even if an attacker could successfully take over the camera feed and inject previously captured frames, FaceTec's three-

dimensional depth checks and three-dimensional liveness checks would still need to be spoofed in order for an attack to be successful.

## IV. Jumio's Use of FaceTec's Software

51. With regard to statements that FaceTec developed a "genius solution," Ex. 2057 at 11:10, I understand that Jumio has asserted that its statements "discussed ZoOm, something more than just the check for three-dimensionality" and that Jumio has asserted that Jumio's license also included the "matching feature, something separate from the 3D liveness checks but was discussed in tandem with the liveness check at the talk FaceTec cited." 106Reply at 31; 107Reply at 30; 108Reply at 28; 109Reply at 30.

52.

53.

54.

## V. Conclusion

55. In signing this declaration, I understand that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I acknowledge that I may be subject to cross-examination in this case and that cross-examination will take place within the United States. If cross-examination is required of me, I will appear for cross-examination within the United States during the time allotted for cross-examination.

56. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001.

Executed on: 3/3/2026 By: _____
Josh Rose