UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUMIO CORPORATION,
Petitioner,

v.

FACETEC, INC.,
Patent Owner.

Patent No. 11,693,938

Inter Partes Review No. IPR2025-00108

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION

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I. INTRODUCTION

Petitioner submits this opposition to Patent Owner's Motion to File Supplemental Information ("Motion" or "Mot.") (Paper 64 (Sealed), Paper 65). The Motion seeks to enter the Second Declaration of Josh Rose as supplemental information. But the Motion should be denied because Patent Owner ("PO") has not satisfied its burden under 37 C.F.R. § 42.123(b).

First, PO cannot show "why the supplemental information reasonably could not have been obtained earlier." 37 C.F.R. § 42.123(b). Jumio's Reply made clear the product at issue is ZoOm. (Reply, 20.) Neither the Sur-Reply nor the Motion disputes this fact. And PO's own evidence in its possession confirms that ZoOm contains numerous features critical to the ultimate liveness determination. (*See*, *e.g.*, Ex. 2069.) PO now feigns surprise that Jumio raised those features on reply.

Second, PO cannot establish that admitting this declaration would serve the "interests-of-justice." 37 C.F.R. § 42.123(b). PO's supposed need for a supplemental declaration is the product of its own choices. PO addressed presumption of nexus in just two conclusory paragraphs of its POR, submitted a narrow Rose declaration regarding ZoOm, and declined to depose Dr. Daft on secondary considerations. Now—two weeks before the hearing—it seeks to cure those decisions with a 50+ paragraph declaration that reframes his prior testimony and presents new arguments. The resulting prejudice falls entirely on Jumio.

II. PO COULD HAVE FORESEEN THE IDENTIFIED FEATURES

PO asserts that "nothing Petitioner cites demonstrates criticality" in order to act surprised as to Jumio's identification of ZoOm features. (Mot., 1.) This assertion lacks credibility, because PO has repeatedly told the public—reflected in documents in its possession—that the features highlighted in the Reply are critical.

Regarding *camera control*, PO has said that its "technology works, first by ensuring camera feed integrity." (Ex. 1067, 2.) It has touted *UI/Ovals* for "3D Liveness detection capability" as purportedly being "core IP." (Ex. 1066, 1.) On *encryption*, a FaceTec executive said "if you don't [use cryptography], you're going down in a hurry." (Ex. 1073, 16:17-19, 19:19-20.) The same executive underscored the importance of *liveness checks* because "[i]f the only thing you measure is three-dimensionality, then those [high quality 3D] masks will work." (Ex. 1073, 12:24-13:1.) [redacted]

Aside from these statements, PO is conspicuously silent about seeking patent protection for the identified features, thereby making clear this purported "core IP" is critical to them. *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1375 (Fed. Cir. 2019). PO's actions belie its assertion of having reason to address the features only "*after* Petitioner raised them" in the Reply. (Mot., 4 (emphasis in original).)

Moreover, PO acknowledges that it bears the burden of production to show

nexus. Mot. 2; *Fox Factory*, 944 F.3d at 1373. Yet PO devoted just two conclusory paragraphs in its POR on nexus between ZoOm and the independent claims. (POR, 6-7.) Having failed to carry its burden, PO now attempts to shift it to Jumio, arguing that *Jumio* should have asked Mr. Rose about critical features. (Mot., 2.) But it was PO's obligation at the *outset* to show that ZoOm is "essentially" the claimed invention. *Fox Factory*, 944 F.3d at 1374.

III. THE SECOND ROSE DECLARATION IS PREJUDICIAL

As discussed, PO failed to properly address nexus in its POR. Although it submitted a Rose declaration at that stage, Rose mentioned ZoOm tersely, devoting much of his discussion to evidentiary issues. PO also chose not to cross-examine Dr. Daft on his understanding of the criticality of ZoOm's features. Given these choices, PO's plea for the "last word" now rings hollow. (Mot., 4.)

All of PO's cited cases are readily distinguishable. *First*, none involved a sur-reply declaration like the one proposed here. In *General Electric*, the Board entered four *patents* based on petitioner's evolving claim term argument. *General Elec. Co. v. United Techs. Corp.*, No. IPR2018-01442, Paper 33, 2 (P.T.A.B. Oct. 10, 2019). *Smartmatic* likewise addressed a different circumstance—the admission of Massachusetts voting statutes. *Smartmatic USA Corp. v. Election Sys. & Software, LLC*, No. IPR2019-00531, Paper 32, 1 (P.T.A.B. Mar. 13, 2020). *Second*, PO mischaracterizes *Samsung* because the Board merely *authorized a*

motion for supplemental information. *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, IPR2023-00847, Paper 34, 4 (P.T.A.B. Aug. 19, 2024). That motion was later dismissed. *Samsung Elecs.*, Paper 42, 72. *Third*, none of the cases raised the issue of taking a deposition days before the hearing. Indeed, the *Siemens* Board granted the motion precisely because doing so did not prejudice the opposing party and did not require "reopening discovery" to take depositions. *Siemens Mobility, Inc. v. Metrom Rail, LLC*, No. IPR2023-00468, Paper 66, 7 (P.T.A.B. Apr. 2, 2024).

Unlike *Siemens*, the prejudice falls squarely on Jumio. The second Rose declaration recasts PO's secondary considerations only two weeks before the hearing. For example, [redacted].[1] Such arguments should be stricken,

[1] [redacted]

because there is no time—or vehicle in an IPR proceeding—for Jumio to substantively and thoroughly respond to all of the new arguments in the Second Rose Declaration. And PO's offer for Jumio to depose Rose days before the hearing adds to—not cures—the prejudice to Jumio. *Sonos, Inc. v. Implicit, LLC*, No. IPR2018-00766, Paper 34, 5 (P.T.A.B. May 8, 2019) ("At this stage of the proceeding, reopening discovery would be prejudicial to Petitioner and is contrary to our objective to secure [a] just, speedy, and inexpensive resolution[.]").

PO's deposition offer is also disingenuous. As of January 7, 2026, PO indicated it wanted to submit sur-reply evidence. (*See* January 7, 2026 email to Trials; Ex. 3001, 2.) Yet, PO waited until February 12, 2026—three weeks after the Reply and five weeks after the Board email—to seek authorization to file this Motion. PO attempts to pin the delay on Jumio's extension requests. (Mot., 5.) Not true. *PO* requested the first extension of Due Date 1—from September 9 to September 23. PO insisted on deposing Ms. Kaiser, leading to further extensions due to Ms. Kaiser's personal issues arising on September 15. As for the January extension, PO only agreed if Dr. Daft would be immediately available for deposition—yet PO declined to depose him.

[redacted]

Dated: March 17, 2026

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION was served as of the below date via e-mail (by agreement) to the following counsel of record for Patent Owner:

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