

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

X CORP.

Petitioner,

v.

STERLING COMPUTERS CORPORATION

Patent Owner.

Case IPR2025-00299

U.S. Patent No. 7,716,217

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

I.	The Board Should Exclude Cross-Examination Testimony of Dr. Khan (1) That Is Outside the Scope of His Direct Testimony; (2) That Is Irrelevant; (3) for Which Any Relevancy Is Outweighed by Unfair Prejudice; and (4) That Is Outside the Scope of His Personal Knowledge.....	1
A.	Cross-Examination Testimony about <i>KSR</i> Should Be Excluded as Irrelevant Because the Questioning Did Not Accurately State the Law.	1
B.	Cross-Examination Testimony about “Quality” Should Be Excluded as Outside the Scope of Direct Examination.	2
C.	Cross-Examination About Passages from the ‘217 Patent Petitioner Contends Are “Similar” to Passages in the Conception Documents Should Be Excluded (1) as Outside the Scope of Direct and (2) Because, When Cited for the Proposition Petitioner Cites It, It Is Irrelevant and Unduly Prejudicial.....	3
D.	Cross-Examination Testimony About “Empirical Studies” Should Be Excluded as Outside the Scope.	5
E.	Cross-Examination About The Reasons for Twitter’s Growth Should Be Excluded as Outside the Scope of Direct and Because Dr. Khan Lacks Personal Knowledge to Testify About Why Twitter Grew.....	6
II.	The Board Should Exclude Cross-Examination Testimony of Justin Marston Regarding (1) Time Paul Marston Spent on the Invention as Outside the Scope of Direct and (2) the Amount Spent to Purchase BlueSpace as Outside Justin Marston’s Personal Knowledge.	7
III.	The Board Should Exclude Cross-Examination Testimony of Paul Marston Regarding a POSA as Outside the Scope of His Direct and Outside the Scope of His Personal Knowledge.....	9

TABLE OF AUTHORITIES

<u>Rules</u>	<u>Page(s)</u>
Fed. R. Evid. 401.....	1, 2, 4, 10
Fed. R. Evid. 403.....	1-5, 10
Fed. R. Evid. 601.....	1, 7-11
Fed. R. Evid. 602.....	1, 7-11
Fed. R. Evid. 611.....	1-4, 6, 8-11
Fed. R. Evid. 613.....	1, 2, 4, 6

EXHIBIT LIST

Patent Owner's Exhibit No.	Exhibit Description
2001	Declaration of Latifur Khan (March 12, 2025)
2002	Curriculum vitae of Latifur Khan
2003	Declaration of Justin Marston (March 12, 2025)
2004	"BlueSpace Mail Search" Document, Sept. 2, 2004
2005	"The Development of the Mathematical Algorithms," May 12, 2005
2006	"BlueSpace Mail Relevance," June 7, 2005
2007	"BlueSpace Mail Relevance," Aug. 16, 2005
2008	"BlueSpace Mail Relevance," Aug. 17, 2005
2009	"Importance," Sept. 18, 2005
2010	"BlueSpace Mail Relevance," Oct. 6, 2005
2011	"BlueSpace Mail Relevance," Oct. 7, 2005
2012	"BlueSpace Mail Relevance," Oct. 7, 2005
2013	"There are many cognate relevance values that must be calculated," Nov. 9, 2004
2014	Claim Chart for BlueSpace Mail Documents
2015	Supplemental Declaration of Justin Marston (July 8, 2025)
2016	<i>listing of NATURE article:</i> Marston, Justin, "Chaos in the Classroom," Jan. 25, 1996, NATURE, <i>available at</i> https://www.nature.com/articles/379306b0

Patent Owner's Exhibit No.	Exhibit Description
2017	<i>excerpt from:</i> 32nd European Union Contest for Young Scientists (2020-2021) ("Winners 1989-2019")
2018	LinkedIn profile: Justin Marston
2019	Metadata extracted from native of EX2004
2020	Metadata extracted from native of EX2005
2021	Metadata extracted from native of EX2006
2022	Metadata extracted from native of EX2007
2023	Metadata extracted from native of EX2008
2024	Metadata extracted from native of EX2009
2025	Metadata extracted from native of EX2010
2026	Metadata extracted from native of EX2011
2027	Metadata extracted from native of EX2012
2028	Metadata extracted from native of EX2013
2029	Declaration of Latifur Khan (September 10, 2025)
2030	Declaration of Justin Marston (September 9, 2025)
2031	Declaration of Paul Marston (September 9, 2025)
2032	"BlueSpace Mail Relevance," September 21, 2005
2033	"BlueSpace Mail Relevance," October 2, 2005
2034	"BlueSpace Mail Relevance," November 8, 2005
2035	"BlueSpace Mail Relevance," November 12, 2005
2036	"BlueSpace Mail Relevance," November 13, 2005

Patent Owner's Exhibit No.	Exhibit Description
2037	"Frequency analysis stats," August 21, 2005
2038	"Relevance typology 2.bmp," November 13, 2005
2039	"Relevance process flow 2.bmp," November 13, 2005
2040	<i>intentionally omitted (duplicate)</i>
2041	Log of BlueSpace documents showing BlueSpace work from June 28, 2005, until January 13, 2006
2042	Log of J. Marston privileged communications with BlueSpace counsel regarding BlueSpace work from June 28, 2005, until January 13, 2006
2043	Version of EX2010/EX1044 showing tracked changes and comments by Justin Marston
2044	Version of EX2010/EX1044 showing tracked changes and comments by Paul Marston
2045	Version of EX2010/EX1044 showing tracked changes and comments by Jon Fernyhough
2046	Redacted (for privilege) correspondence from J. Marston to B. Hoffman, January 12, 2006
2047	"Transmail Relevance Formulae," September 9, 2004
2048	"Notes on Search Document," September 13, 2004
2049	"Pauls Formula Section Sept 17.doc," September 20, 2004
2050	"General Comments," May 17, 2005
2051	"Some Thoughts on the TransMail Relevance/Importance Algorithm," May 17, 2005

Patent Owner's Exhibit No.	Exhibit Description
2052	"2004-09-10 notes on search document.doc," September 10, 2004
2053	"Changes to document_.doc," September 15, 2004
2054	"BlueSpaceMailSearchfor JamesB.doc," September 15, 2004
2055	"Importance 1.1.1.doc," September 18, 2004
2056	"formula.doc," August 17, 2005
2057	"SoftwareImplementation.doc," August 18, 2005
2058	"SoftwareImplementationComment.doc," August 19, 2005
2059	"BlueSpaceRelevancePM250805.doc," August 25, 2005
2060	"BlueSpaceMailRelevancePM250905.doc," September 25, 2005
2061	"BlueSpaceMailRelevancePM270905c.doc," September 28, 2005
2062	"BlueSpaceMailRelevancePM280905.doc," September 28, 2005
2063	"Comments to Jon and Justin 07.doc," October 8, 2005
2064	"Alterations to document.doc," October 8, 2005
2065	"BSMR021005_jfpm2.doc," October 13, 2005
2066	"BSMR021005_jfpm3.doc," October 13, 2005
2067	"BSMR021005_jfpm4.doc," October 13, 2005
2068	"BSMR021005_jfpm5.doc," October 13, 2005

Patent Owner's Exhibit No.	Exhibit Description
2069	"BSMR021005_jfpm6.doc," October 14, 2005
2070	"Jon & Justin 14.10.05.doc," October 14, 2005
2071	"Comments to Justin and Jon Oct 15th.doc," October 15, 2005
2072	"BlueSpaceMailRelevanceJM06,11,05.doc," November 10, 2005
2073	"BlueSpace Mail Relevance," August 21, 2005
2074	"BlueSpace Mail Relevance," November 12, 2005
2075	Paul Marston LinkedIn Profile
2076	Paul Marston employment history (1968-2024) (from teachers' pensions employment history)
2077	Article: "Farewell after almost 50 years: Paul Marston, Senior Lecturer in Mathematics."
2078	Letter appointing P. Marston as lecturer at Nazarene Theological College, July 25, 2005
2079	"Twitter's Recommendation Algorithm," X Blog, March 31, 2023
2080	"Twitter Revenue and Usage Statistics (2025)," Business of Apps, Sept. 2, 2025
2081	"Twitter Is Changing Your Timeline: What You Need to Know," ABC News, Feb. 10, 2016
2082	"News Feeds, Old Content: A Brief History of Algorithmically Curated Feeds on Facebook and Twitter," Medium, April 29, 2019

Patent Owner's Exhibit No.	Exhibit Description
2083	"You Can Finally Switch Your Instagram Feed to a Chronological Timeline. Here's How," Business Insider, Mar. 24, 2022
2084	Complaint, <i>Sterling v. X Corp.</i> , Case No. 1:24-cv-00552 (W.D. Texas)
2085	Complaint, <i>Sterling v. Meta</i> , Case No. 1:24-cv-00551 (W.D. Texas)

For the reasons set forth below, and pursuant to Federal Rules of Evidence 401, 403, 601, 602, 611, and 613, Patent Owner respectfully requests the Board exclude certain cross-examination testimony of Dr. Khan, Justin Marston, and Paul Marston set forth in detail below.

I. The Board Should Exclude Cross-Examination Testimony of Dr. Khan (1) That Is Outside the Scope of His Direct Testimony; (2) That Is Irrelevant; (3) for Which Any Relevancy Is Outweighed by Unfair Prejudice; and (4) That Is Outside the Scope of His Personal Knowledge.

The Board should exclude the specific cross-examination testimony of Dr. Khan described below on the basis that the cross-examination was outside the scope of his direct testimony (Fed. R. Evid. 611), the cross-examination was irrelevant (Fed. R. Evid. 401), any relevancy of the cross-examination is outweighed by the danger of unfair prejudice (Fed. R. Evid. 403); and/or the cross-examination was outside the scope of his personal knowledge (Fed. R. Evid. 602).

A. Cross-Examination Testimony about *KSR* Should Be Excluded as Irrelevant Because the Questioning Did Not Accurately State the Law.

During Dr. Khan's cross-examination, counsel for Petitioner asked whether "a [POSA] can fit the multiple teachings of references together like pieces of a puzzle." EX1058,18:14-19:14. Petitioner argues that the question accurately reflected the standards set forth in *KSR* (Reply at 1), but, to the contrary, the question misstated that law. What *KSR* actually states is that "often," or "in many cases a [POSA] will be able to fit the teachings of multiple patents together like pieces of a

puzzle.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 402 & 420 (2007) (emphasis added). KSR does not state that a POSA can **always** “fit the multiple teachings of references together like pieces of a puzzle.” Because the question was confusing and misstated the law, counsel for Patent Owner objected pursuant to Rules 401 and 403. EX1058, 19:8-14. In particular, because the question misstated the law, Dr. Khan’s answer to the question is not relevant. Fed. R. Evid. 401, 403. Moreover, Petitioner now prejudicially cites Dr. Khan’s response (“A: [i]n this context, no”) to argue that Dr. Khan “fail[ed] to apply *KSR*” (Reply, at 1), when in fact it is **the question** that misstated *KSR*. The testimony should be excluded as not relevant (Fed. R. Evid. 401) and/or unduly prejudicial (Fed. R. Evid. 403).

B. Cross-Examination Testimony about “Quality” Should Be Excluded as Outside the Scope of Direct Examination.

During Dr. Khan’s cross-examination, counsel for Petitioner asked dozens of questions about what a “quality” result means in the context of the ‘217 Patent. *E.g.*, EX1058, 45:6-10, 57:5-6, 62:12-23, 96:3-14, 169:24-170:3, 200:19-201:2.1. Dr. Khan’s declaration (i.e., direct), however, did not use the word “quality” when discussing the ‘217 Patent and did not impose a “quality” requirement in the claims. *See generally* EX2029. The cross-examination, therefore, was outside the scope of direct. Fed. R. Evid. 611. Counsel for Patent Owner repeatedly objected to the line of questioning on this ground (Fed. R. Evid. 611), as well as others (Rules 401, 403, and 613). *See* EX1058, 44:16-17; 57:4; 62:17-18; 96:9-10; 170:4; 200:22-23.

Patent Owner respectfully requests the Board exclude this testimony (EX1058,45:6-10, 57:5-6, 62:12-23, 96:3-14,169:24-170:3, 200:19-201:2.1) as beyond the scope of direct pursuant to Rule 611. The Board should also exclude the testimony pursuant to Rule 403 because Petitioner is misleadingly citing to the testimony to argue that Dr. Khan is imposing a “quality” requirement in the claims (*see* Reply, at 2), even though Dr. Khan repeatedly said he did not. EX1058, 173:10-15 (“Q. [T]he claim requires a high-quality algorithm in order to identify a cognate user, correct? [Objection] A. **No.**” (emphasis added)); *id.* 173:18-21 (“Q. The claim requires a high-quality algorithm in order to identify the cognate user? [Objection] A. **No.**” (emphasis added)).

C. Cross-Examination About Passages from the ‘217 Patent Petitioner Contends Are “Similar” to Passages in the Conception Documents Should Be Excluded (1) as Outside the Scope of Direct and (2) Because, When Cited for the Proposition Petitioner Cites It, It Is Irrelevant and Unduly Prejudicial.

During Dr. Khan’s cross-examination, counsel for Petitioner asked Dr. Khan whether specific passages of the ‘217 Patent disclose **the entirety of** the following limitation: “...*identify at least one other of the plurality of users that is a recipient of the piece of electronic content and that is cognate to the user....*” EX1001, Claims; *see also* EX1058,114:10-115:15 &123:3-131:21. When Dr. Khan testified that some passage in the ‘217 Patent did not disclose **the entirety of** the “*identify...*” limitation, Petitioner then unfairly used this testimony to argue that allegedly “similar passages” in the Conception Documents cannot actually show conception

of the “*identify...*” limitation. Reply,22 (“Sterling’s own expert testified that similar passages in the specification do not disclose ‘identifying...’”). This cross-examination testimony should be excluded for numerous reasons.

First, the testimony should be excluded as outside the scope of direct. Dr. Khan’s declaration (i.e., direct) contained (1) **no testimony about the Conception Documents** (*see generally* EX2029 (no citation to EX2004, EX2006, EX2014)); (2) **no testimony about** three of the four passages in the ‘217 Patent that he was questioned about (*see generally* EX2029 (no citation to EX1001,8:23-25, 43:30-37, or 12:50-59)); and, (3) with respect to the fourth passage that he was questioned about, no testimony about the portion that Petitioner cites it for (i.e., EX1001,14:48-58). *See id.* ¶80 (discussing EX1001,14:59-15:11, but not EX1001,14:45-58). For all of these reasons, the cross-examination was outside the scope of Dr. Khan’s direct examination. *See* Fed. R. Evid. 611. Patent Owner objected on this basis (Fed. R. Evid. 611) as well as others (Fed. R. Evid. 401-403 & 613). EX1058, 123:23-124:2, 126:8-9, 126:19, 128:1. The cross-examination should be excluded on this basis.

Second, the cross-examination should be excluded pursuant to Rule 403 because Petitioner is using the testimony in a misleading, unduly prejudicial manner. Fed. R. Evid. 403. In particular, Petitioner argues (Reply,22) that the ‘217 Patent passages they questioned Dr. Khan about are “similar” to the passages in the Conception Documents (EX2004 & EX2006) that Patent Owner cites (*see* EX2014)

to show conception of the “*identify...*” limitation. To the contrary, however, the conception evidence includes seven citations to portions of the Conception Documents, whereas Petitioner questioned Dr. Khan about only four passages in the ‘217 Patent. *Compare* EX2014, at 5 (citing EX2004, at 13, 15, 15-16 & EX2006, at 22 (2 passages) & 58) *with* Reply, 22 (citing EX1001, 8:23-25; 43:30-37; 12:50-59; 14:45-67). Moreover, even if some of the passages were “similar,” as Petitioner contends, the passages discussed on cross-examination are **not identical** to the passages from the Conception Documents that Patent Owner cites in EX2014. *Id.* Finally, the cross-examination should be excluded as unduly prejudicial because Petitioner seems to be using the testimony to argue that the conception documents do not disclose the “*identify...*” limitation **at all**, when the questions were whether each specific passage **alone** disclosed **the entire** “*identify...*” limitation. Fed. R. Evid. 403.

D. Cross-Examination Testimony About “Empirical Studies” Should Be Excluded as Outside the Scope.

During Dr. Khan's cross-examination, counsel for Petitioner asked numerous questions about conducting an “empirical study.” EX1058,200:19:25; 252:15-19. Petitioner cites this testimony as allegedly supporting the proposition that the math involved in the ‘217 Patent is complex and took effort to develop. Reply, 23 (citing EX1058,200:19:25; 252:15-19). Dr. Khan's direct (EX2029), however, did not discuss any “empirical study,” and, therefore, the line of questioning was outside the

scope of direct examination. Fed. R. Evid. 611. Counsel for Patent Owner objected pursuant to Rules 611 and 613. *Id.* 200:22-23, 252:13 & 252:17. The Board should exclude the testimony (EX1058,200:19:25; 252:15-19) as beyond the scope of direct pursuant to Rule 611.

E. Cross-Examination About The Reasons for Twitter's Growth Should Be Excluded as Outside the Scope of Direct and Because Dr. Khan Lacks Personal Knowledge to Testify About Why Twitter Grew.

During Dr. Khan's cross-examination, counsel for Petitioner asked numerous questions about his personal opinions about why Twitter (n/k/a "X") grew during certain periods of time. *See, e.g.*, EX1058,134:3-15; 136:4-16, 139:1-15, 148:25-150:8. The testimony should be excluded for at least two reasons.

First, the cross-examination should be excluded as outside the scope of direct pursuant to Rule 611. Dr. Khan's direct did not include any testimony about Twitter's success or growth. *See generally* EX2029. For this reason, the testimony is outside the scope of direct, and counsel for Patent Owner properly and repeatedly objected to the line of cross-examination pursuant to, among other Rules, Rules 611 and 613. *See, e.g.*, EX1058,136:8, 139:5, 149:7, 149:11-12, 149:20-21. The cross-examination should be excluded as outside the scope of direct pursuant to Rule 611.

Second, the cross-examination about why Twitter/X has grown should be excluded as outside the scope of Dr. Khan's personal knowledge. Fed. R. Evid. 602¹; *see also* Fed. R. Evid. 601. Dr. Khan does not personally use Twitter/X and has no personal knowledge of why others did decide to join Twitter/X. EX1058, 136:24. He also has never been employed by Twitter/X (*see* EX2002) and, therefore, is not privy to the reasons Twitter/X believes it has grown. Because he lacked personal knowledge, counsel for Patent Owner objected pursuant to Rules 601 and 602. *See, e.g.*, EX1058, 136:8, 139:5, 149:20-21. The cross-examination should be excluded as outside the scope of Dr. Khan's personal knowledge pursuant to Rule 602.

II. The Board Should Exclude Cross-Examination Testimony of Justin Marston Regarding (1) Time Paul Marston Spent on the Invention as Outside the Scope of Direct and (2) the Amount Spent to Purchase BlueSpace as Outside Justin Marston's Personal Knowledge.

During Justin Marston's cross-examination, counsel for Petitioner asked Justin Marston repeatedly how much time both he **and Paul Marston** spent on the provisional patent application during specific points in time. EX1050,297:6-300:16. Justin Marston's direct testimony, however, was limited to his personal knowledge (i.e., how much time he personally spent). *See* EX2030,¶4; EX1050:297:21-298:12 (clarifying that his estimates of hours spent set forth in declaration were estimates of how much time he personally ("me myself") spent). He does not know how much

¹ Although Rule 602 does not apply to expert testimony (Fed. R. Evid. 602), the issue of Twitter's growth was not a subject on which Dr. Khan has been offered as an expert in this proceeding. *See* EX2029.

time Paul Marston was spending working on the invention. *See id.*; *see also, e.g., id.*, 299:19-21 (“Q. [D]oes that include Paul Marston? A. Ask him.”); *id.* 300:10-15 (testifying “[y]ou should ask [Paul Marston]” whether Paul Marston spent time on the application between specific dates).² Because Justin Marston does not have personal knowledge about how much time Paul Marston spent, his direct testimony did not address that issue, and counsel for Patent Owner properly objected to testimony regarding how much time Paul Marston spent as outside the scope of direct. *See* EX1050, 298:6-7. Patent Owner respectfully requests the Board exclude this testimony as outside the scope of direct. Fed. R. Evid. 611.

Also, during the cross-examination of Justin Marston, counsel for Petitioner repeatedly asked Justin Marston the purchase price of BlueSpace. EX1050, 45:14-21; 46:20-47:5; 53:5-15; 54:8-21. Justin Marston repeatedly testified he does not know the purchase price and that any guess would be speculative. EX1050, 45:21; 47:5; 53:5-15; 54:18-21. Because he lacked personal knowledge of the purchase price, counsel for Patent Owner repeatedly objected pursuant to Rules 601 and 602. *Id.* 45:18-19; 47:1-2. 53:12-13, 54:15-16. Nevertheless, Petitioner cites this testimony in its Reply to suggest the ‘217 Patent invention was not valuable. Reply, 24&29 (citing 46:20-47:11). The testimony should be excluded as outside the

² Paul Marston testified it was impossible for him to estimate – 20 years later – how much time he spent on the provisional patent application during particular time periods in 2005. EX1064, 116:10-22.

scope of Justin Marston's personal knowledge. Fed. R. Evid. 602; *see also* Fed. R. Evid. 601.

III. The Board Should Exclude Cross-Examination Testimony of Paul Marston Regarding a POSA as Outside the Scope of His Direct and Outside the Scope of His Personal Knowledge.

During Dr. Khan's cross-examination, counsel for Petitioner asked Paul Marston whether "an ordinary skilled person would[] understand" how to tweak the formulas. EX1064,95:1-13. It is apparent that counsel for Petitioner was asking Paul Marston about what the fictitious legal POSA (i.e., a person having ordinary skill in the art) would have known at the time of the invention. *Id.* Paul Marston, however, provided **no direct testimony** regarding a POSA or what a POSA would have understood at the time of the invention. *See generally* EX2031. For this reason, counsel for Patent Owner objected to the line of questioning pursuant to Rule 611. EX1064, 95:4-5; Fed. R. Evid. 611. Paul Marston also does not have a background in computer science (his background is in statistics) and, therefore, he does not have personal knowledge of what a POSA would have understood at the time of the invention. For this reason, counsel for Patent Owner also objected to the line of questioning pursuant to Rules 601 and 602. EX1064, 95:4-5; Fed. R. Evid. 602 & 601. Patent Owner respectfully requests the Board exclude this testimony as both outside the scope of direct and outside the scope of Paul Marston's personal knowledge.

CONCLUSION

For the reasons set forth in the Response and above, Patent Owner respectfully requests the Board:

- exclude the following cross-examination testimony of Dr. Khan for the following reasons:
 - regarding whether “a [POSA] can fit the multiple teachings of references together like pieces of a puzzle” (EX1058,18:14-19:14) as irrelevant and unduly prejudicial pursuant to Rules 401 and 403;
 - regarding “quality” in the ‘217 Patent claims (EX1058,45:6-10, 57:5-6, 62:12-23, 96:3-14,169:24-170:3, 200:19-201:2.1) as outside the scope of direct pursuant to Rule 611 and unduly prejudicial pursuant to Rule 403;
 - regarding whether certain passages of the ‘217 Patent disclose the entirety of the “*identify...*” limitation (EX1058,114:10-115:15 &123:3-131:21) as outside the scope of direct pursuant to Rule 611 and unduly prejudicial pursuant to Rule 403;
 - regarding an “empirical study” (EX1058,200:19:25; 252:15-19) as outside the scope of direct pursuant to Rule 611;
 - regarding the reasons for the growth of Twitter/X (EX1058,134:3-15; 136:4-16, 139:1-15, 148:25-150:8) as outside of the scope of direct pursuant to Rule 611 and beyond the scope of Dr. Khan’s personal knowledge pursuant to Rule 602
- exclude the following cross-examination testimony of Justin Marston for the following reasons:
 - regarding how much time Paul Martson spent on the invention (EX1050,297:6-300:16) as outside the scope of direct pursuant to Rule 611; and
 - regarding the purchase price of BlueSpace (EX1050, 45:14-21; 46:20-47:5; 53:5-15; 54:8-21) as outside the scope of Justin Marston’s personal knowledge pursuant to Rules 601 and 602;

- exclude the cross-examination testimony of Paul Marston regarding the understanding of a skilled artisan (EX1064,95:1-13) as outside the scope of direct examination pursuant to Rule 611 and outside the scope of his personal knowledge pursuant to Rules 601 and 602.

Respectfully submitted,

Dated: February 18, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 18th day of February, 2026, a true and correct copy of the foregoing **Patent Owner's Motion to Exclude Evidence** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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