

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

X CORPORATION,
Petitioner,

v.

STERLING COMPUTERS CORPORATION,
Patent Owner.

Case No. IPR2025-00299
U.S. Patent No. 7,716,217

PETITIONER'S MOTION TO EXCLUDE

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EXHIBIT LIST

No.	Short Name	Reference
1001	217 Patent	Certified Copy of U.S. Patent 7,716,217
1002	217 File History	Certified File History of 7,716,217
1003	828 Provisional	Certified United States Provisional Patent Application No. 60/758,828.
1004	Houh Decl.	Expert Declaration of Dr. Henry Houh
1005	Houh CV	Curriculum Vitae of Dr. Henry Houh
1006	<u>Dumais</u>	U.S. Patent Application Publication 2007/0016553A1
1007	<u>Kircher</u>	U.S. Patent Application Publication 2003/0195937A1
1008	<u>Krug</u>	Certified Translation of WIPO Patent 2003/023650A2
1009	Sch. Order	Order 32 (Scheduling Order) in <i>Sterling Computers Corporation v. X Corp.</i> , Case No. 1:24-cv-00552 (W.D. Tex. May 22, 2024)
1010	Sch. Hr. Tr.	Oct. 21, 2024, Transcript of Initial Pretrial (Scheduling) Conference in <i>Sterling Computers Corporation v. X Corp.</i> , Case No. 1:24-cv-00552 (W.D. Tex. May 22, 2024).
1011	Goldberg	David Goldberg, et al., <i>Using Collaborative Filtering To Weave An Information Tapestry</i> , COMMUNICATIONS OF THE ACM, 35:12 (Dec. 1992).
1012	Kennedy	U.S. Patent 6,134,582
1013	Mailk	U.S. Patent Application Publication 2004/0078447
1014	587 Application	International Application PCT/US07/60587
1015	587 File History	File History of PCT/US07/60587
1016	RESERVED	
1017	118 File History	File History of 11/426,118

1018	605 Provisional	Provisional Patent Application No. 60/693,605.
1019	Shaw	U.S. Patent 6,249,807
1020	Karamchedu	U.S. Patent Application Publication 2004/0054744
1021	Fitzpatrick	U.S. Patent Application Publication 2006/0168029
1022	Yao	U.S. Patent Application Publication 2003/0187937
1023	Segal	Richard Segal, et al., <i>SpamGuru: An Enterprise Anti-Spam Filtering System</i> , CEAS 2004, FIRST CONFERENCE ON EMAIL AND ANTI-SPAM, (July, 2004).
1024	Carlson	U.S. Patent Application Publication 2005/0267973
1025	Sood	U.S. Patent 7,941,491
1026	Kirsch	U.S. Patent Application Publication 2005/0091319
1027	Boykin	P. Oscar Boykin, et al., <i>Personal Email Networks: An Effective Anti-Spam Tool</i> , ARXIV.ORG, 4 (Feb. 2004)
1028	Horvitz	International PCT Application WO2001/069432
1029	Lui	Andrew K. Lui, et al., <i>An Advanced Organizer for Asynchronous Discussion Forums</i> , IEEE (2005).
1030	Claypool	Mark Claypool, et al., <i>Combining Content-Based and Collaborative Filters in an Online Newspaper</i> , ACM SIGIR WORKSHOP ON RECOMMENDER SYSTEMS (Aug. 1999).
1031	Brun	U.S. Patent Application Publication 2007/0168430
1032	Linden	Greg Linden, et al., <i>Amazon.com Recommendations Item-to-Item Collaborative Filtering</i> , IEEE INTERNET COMPUTING (2003).
1033	Frankowski	International PCT Application WO2001/53973
1034	Dabbish	Laura A. Dabbish, et al., <i>Understanding Email Use: Predicting Action on a Message</i> , CHI (2005).
1035	Basu	Chumki Basu, et al., <i>Recommendation as Classification: Using Social and Content-Based Information in Recommendation</i> , AAAI-98

		PROCEEDINGS (1998).
1036	Melville	Prem Melville, et al., <i>Content-Boosted Collaborative Filtering for Improved Recommendations</i> , PROCEEDINGS OF THE EIGHTEENTH NATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE (Jul. 2002).
1037	Alspector	Joshua Alspector, et al., <i>Comparing Feature-Based and Clique-Based User Models for Movie Selection</i> , PROCEEDINGS OF THE THIRD ACM CONFERENCE ON DIGITAL LIBRARIES (1998).
1038	Balabanovic	Marko Balabanovic, et al., <i>Content-Based Collaborative Recommendation</i> , COMMUNICATIONS OF THE ACM (Mar. 1997).
1039	Kussmaul	U.S. Patent 7,860,933
1040	Rose	U.S. Patent 6,202,058
1041	MSFT Comp.	Microsoft Computer Dictionary, 3ed (1997).
1042	Levenshtein	Jan 2005 – Levenshtein Distance – Wikipedia
1043	<u>Marston</u>	U.S. Patent Application Publication 2004/0260710
1044	EX2010 Markup	EX2010 with comments and redlines enabled
1045	EX2010 metadata	System metadata for EX2010
1046	EXPUNGED	
1047	PHV Plail Dec.	<i>Pro Hac Vice</i> Declaration of Ethan L. Plail
1048	Board's Authorization Discovery	Patent Trial and Appeal Board's Correspondence Authorizing Request for Additional and Routine Discovery, November 6, 2025
1049	J. Marston Rough Depo. Tr.	Rough Deposition Transcript of Justin Marston, November 11, 2025
1050	J. Marston Final Depo. Tr.	Final Transcript of Justin Marston Deposition, November 11, 2025

1051	J. Marston C.V.	Justin Marston Curriculum Vitae
1052	BlueSpace Investment Presentation	BlueSpace Investment Presentation, December 2005
1053	Letter to Jon and Justin	Letter to Jon and Justin
1054	Letter to Justin and Jon Oct. 2005	Letter to Justin and Jon, October 14, 2005
1055	Updated EX2041 BlueSpace Doc. Log	Updated EX2041 BlueSpace Document Log, June 2005 to January 2006
1056	Updated EX2042 Priv. Comms. Log	Updated EX2042 Privileged Communications Log BlueSpace Counsel, June 2005 to January 2006
1057	Letter to Bobby Inman	Letter to Bobby Inman, August 2, 2005
1058	Dr. Khan Depo.	Final Transcript of Dr. Khan Deposition, November 13, 2025
1059	Thuraisingham	Bhavani Thuraisingham, et al., <i>Emergency-Driven Assured Information Sharing in Secure Online Social Networks: A Position Paper</i> . 2016 IEEE INTERNATIONAL PARALLEL AND DISTRIBUTED PROCESSING SYMPOSIUM WORKSHOPS (May 2016).
1060	Chandra	Swarup Chandra, et al., <i>Estimating Twitter User Locations Using Social Interactions – A Content Based Approach</i> . 2011 IEEE THIRD INTERNATIONAL CONFERENCE ON PRIVACY, SECURITY, RISK AND TRUST AND 2011 IEEE THIRD INTERNATIONAL CONFERENCE ON SOCIAL COMPUTING (Oct. 2011).
1061	Chen	Qing Chen, et al., <i>Tweets mining using WIKIPEDIA and impurity cluster measurement</i> . 2010 IEEE INTERNATIONAL CONFERENCE ON INTELLIGENCE AND

		SECURITY INFORMATICS (May 2010).
1062	Abrol Article	Satyen Abrol, et al., <i>Twiner: understanding news queries with geo-content using twitter</i> . PROCEEDINGS OF THE 6TH WORKSHOP ON GEOGRAPHIC INFORMATION RETRIEVAL (Feb. 2010).
1063	Abrol Patent	U.S. Patent 8,965,974
1064	Paul Marston Depo.	Final Transcript Dr. Victor “Paul” Marston, November 17, 2025
1065	University Schedule 2004-2005	University of Central Lancashire Schedule 2004-2005
1066	University Schedule 2005-2006	University of Central Lancashire Schedule 2005-2006
1067	Paul Marston Doc. List	Dr. Paul Marston Document List
1068	Sterling Metadata Table	Table of Metadata for Sterling’s Inventive Documents
1069	Native Metadata EX2004	Sterling’s Extracted Metadata from Native of EX2004 Conception document
1070	Native Metadata EX2006	Sterling’s Extracted Metadata from Native of EX2006 Conception document
1071	Unredacted EX2046	Unredacted version of EX2046.
1072 (NEW)	N. Tafradzhiyski Employment	Nayden Tafradzhiyski, Journalist, Employment History
1073 (NEW)	Porlezza	Colin Porlezza, <i>Accuracy in journalism</i> . OXFORD RESEARCH ENCYCLOPEDIA OF COMMUNICATION (2019).

Pursuant to 37 C.F.R. §§ 42.62 and 42.64, X Corp. hereby moves to exclude certain evidence propounded by Sterling. Petitioner has timely objected to Sterling's evidence (Papers 15, 18, 28, and 36), and said evidence does not comport with the Federal Rules of Evidence ("FRE") or the rules of the Board. The Board should grant this Motion and exclude the evidence identified below from consideration.

I. Board Should Exclude Dr. Khan's Testimony Because His Opinions Are Unreliable and Not Based Upon Sufficient Facts or Data

Under Rule 702 of the Federal Rules of Evidence, the court plays a crucial "gatekeeping role" to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1339 (Fed. Cir. 2025) (en banc) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589, 597 (1993)). Rule 702 requires that expert testimony: (1) be based on sufficient facts or data; (2) be the product of reliable principles and methods; and (3) apply those principles and methods reliably. *Id.* It is "incorrect" to treat "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology" as questions of weight rather than admissibility. *Id.* The court's gatekeeping role is separate from "weight and credibility." *Id.* Determining reliability under Rule 702 is "an essential prerequisite" to admissibility. *Id.* at 1340.

The Board should exclude Dr. Khan's testimony because it fails to meet these "reliability-based requirements for admissibility." *Id.* at 1339.

A. Dr. Khan Distinguishes Prior Art Based on Unrecited Limitations in the Claims

The claims do not recite or require any specific “quality” or result. Nor could Dr. Khan identify what separated higher or lower “quality” results. Yet Dr. Khan used an undefined and unclaimed “quality” requirement when forming his opinions and distinguishing the prior art. EX1058, 169:24-170:3, 162:1-12 (dismissing Dumais’s use of email because “result may not be that high quality”); 176:2-6 (Krug not high quality since it does not take “into consideration the various factors” and “focuses on collaborative -- equivalent calibrated configuring”).

Sterling attempts to characterize Dr. Khan’s testimony as only “explain[ing] that the claimed algorithms would produce a high-quality result.” Paper 38 at 3. Not so. Dr. Khan testified he was “evaluating the relative quality” of prior art in his obviousness analysis, not just the output of the prior art algorithms:

Q. ([BY PETITIONER]) You were evaluating the relative quality between the algorithms for the ’217 patent and the algorithms for the prior art when you were forming the analysis of the claims?

A. Correct.

EX1058, 169:24-170:3; *see also* EX1058, 44:3-9, 45:5-10, 57:5-6, 58:14-16 (“The important part is the ranking or the **quality**”), 79:5-6 (“But patent ’217, the focus is different. As a more improved ranking or the **quality of the result.**”), 169:24-170:3, 62:12-23, 96:3-14, 200:19-201:2.

In addition to “quality,” Dr. Khan also distinguished prior art based on local

and global “relevancy,” another unrecited limitation. In particular, Dr. Khan distinguished Kircher as missing “local relevancy or global relevancy.” EX1058, 64:6-10. But Dr. Khan could not identify where the claims recited this “relevancy.”

Further, Dr. Khan sought to distinguish Dumais by asserting its teaching were “primarily used for query modification” while the “’217 patent focuses on assigning a relevance score to inter-person communications.” EX2029, ¶125. But the claims do not recite “inter-person communications” or exclude “query modification.” Dr. Khan also distinguished Dumais because it “employ[ed] a two-step process, which differs from ... the ’217 patent.” *Id.*, ¶130. But the claims do not recite limitations on the number of steps performed by an algorithm.

Dr. Khan also attempts to distinguish Kircher and Krug based on similar unclaimed limitations. *Id.*, §XII.C.1, §XII.C.2. For example, Dr. Khan opined that Kircher has a different “objective” and “underl[ying] approach” from the ’217 Patent because Kircher used fuzzy logic to predict user actions for ranking emails. *Id.*, ¶¶154-55. Dr. Khan claims this differs from the “multi-dimensional relevance system” based on “three lists of attributes which could feasibly influence the system relevance” in the ’217 Patent. *Id.* But a “multi-dimensional relevance system” based on “three lists” is not claimed. Nor do the claims recite limitations excluding Kircher’s user actions or fuzzy logic. *Id.*, ¶159 (similar for Krug).

The Board must “disregard the testimony of an expert that is plainly

inconsistent with the record, or based on an incorrect understanding of the claim[s].” *Homeland Housewares, LLC v. Whirlpool Corp.*, 865 F.3d 1372, 1378 (Fed. Cir. 2017). Indeed, the Board has been reversed when relying on an unreliable expert who “add[ed] an additional claim requirement.” *Id.* Dr. Khan’s testimony should be excluded for adding unrecited claim requirements to distinguish prior art.

B. Dr. Khan Impermissibly Contradicts Teachings of Prior Art

“To contradict a reference, an unsupported opinion is not substantial evidence.” *Ericsson Inc. v. Intell. Ventures I LLC*, 890 F.3d 1336, 1346 (Fed. Cir. 2018) (contradicting express teachings of reference is “not a matter of credibility but of technological evidence”) Dr. Khan’s testimony is not “based on sufficient facts or data” under FRE 702 because he contradicts teachings in references with unsupported opinions.

For example, Dumais discloses a system that processes multiple types of “data items,” including “email.” EX1006, [0031] (“data items such as documents, files, email messages, ...”); [0045]; [0051]; [0056]; [0058]; [0064]; cl. 2 (discussing email). Yet Dr. Khan “disagreed” that Dumais processes emails because its “result may not be that high quality.” EX1058, 159:7-162:15; EX2029, ¶125 (“Although Dumais mentions email in passing (as a type of document that can be queried), communications are not the focus of Dumais.”). Dr. Khan’s *ipse dixit* contradiction of express disclosures in Dumais is testimony that must be excluded under FRE 702.

C. Dr. Khan Applied an Incorrect Legal Standard for the Person of Ordinary Skill in the Art

A person of ordinary skill in the art (POSITA) has “ordinary creativity, [and is] not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). But by his own admission, Dr. Khan failed to consider a POSITA’s creativity in his obviousness analysis, defending his conclusions by asserting that a POSITA “may not necessarily be creative” and cannot “fit multiple teachings of a reference together.” EX1058, 18:11-13, 19:8-14.

Dr. Khan’s fundamental misapplication of the controlling legal standard infects his entire analysis. His conclusions of nonobviousness are therefore unreliable and should be excluded. *See Homeland*, 865 F.3d at 1378.

II. Board Should Exclude EX2014 as Lacking Foundation and Constituting Attorney Argument

An alleged earlier conception date must be corroborated by independent evidence, not mere attorney argument. *See Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1327 (Fed. Cir. 2004) (inventor “must prove their contribution to the conception with more than their own testimony ...”). Sterling relies on EX2014 to support its contention that the ’217 patent is entitled to an earlier priority date. EX2014, 2-6, 9-10, 13-17, 20, 31, 32. EX2014 has no author. It is an unsigned document with a claim chart mapping the claim language onto EX2004 and EX2006 in view of what “a skilled artisan would understand from the documentation” that

appears to have been prepared by Sterling's counsel for this IPR. Paper 38 at 21.

Named inventor Justin Marston claimed he "prepared [EX2014] with assistance ... from counsel." EX1050, 200:18-201:6. Sterling later contradicted his testimony and claimed that Justin Marston only "helped prepare" EX2014. Paper 38 at 21. Sterling now claims that portions of EX2014 "come from Patent Owner's expert's opinions." *Id.* (citing EX2029, ¶¶26-49).

Sterling's shifting positions are inconsistent with its expert's testimony. Sterling's expert Dr. Khan did not provide opinions on the '217 patent's priority date. *See* EX1058, 11:12-15 (admitting he did not "provide a substantive opinion for which of th[e] two priority dates to use"). Nor does Dr. Khan analyze the documents (EX2004 and EX2006) cited in EX2014. *Compare* EX2029 (no citations to EX2004/EX2006) *with* EX2014, 2-6¹ (quoting EX2004/EX2006), 9-10, 13-17, 20, 31, 32 (similar).

Sterling's position cannot be reconciled with Justin Marston's testimony, either. Justin Marston testified that he never spoke with Dr. Khan and never reviewed

¹ **EX2014, 6:** A skilled artisan would understand from the documentation between September 4, 2004, and June 7, 2005. (citing EX2004, at 4; EX2006, at 5)

EX2014, 2: The documentation between September 4, 2004, and June 7, 2005, describes algorithms. E.g., EX2004, at 28-32 ("8. Algorithms."); EX2006, at 52-56 ("9. Algorithms."). A skilled artisan would understand that these algorithms....

Dr. Khan's declaration. EX1050, 9:14-22. Nor do any of Justin Marston's three declarations state that he reviewed Dr. Khan's report or EX2029 ¶¶26-49 (cited by Sterling). If Justin Marston never spoke to or reviewed Dr. Khan's declaration, he could not have incorporated any portions of Dr. Khan's testimony into EX2014.

In a futile attempt to cabin these inconsistencies, Sterling contends that the "only parts [of EX2014] that discuss a POSA[] are the parts discussing the '*module*' limitations, and those discussions come from Patent Owner's expert's opinions." Paper 38 at 21 (citing EX2029, ¶¶26-49). This is false. EX2014 relies on the knowledge of a POSITA for more than just the "*module*" limitations. On pages 2, 3, 4, 5, 6, 9, 10, 13, 14, 15, 16, 20, 31, and 32, EX2014 refers to the algorithms in EX2004 and EX2006 and what a POSITA would understand from those documents. *See, e.g.*, EX2014, 2. The algorithms are not the "*module*" limitations and are nowhere in Dr. Khan's declarations. EX2014 also refers to "understand[ing]" a POSITA would have gained "from the documentation between September 4, 2004, and June 7, 2005." *See, e.g.*, EX2014, 2. But Dr. Khan never cites to or discusses "the documentation." EX2029, ¶¶26-49 (no citations to EX2004/EX2006).

In short, Sterling has not met its burden to establish the admissibility of EX2014. It is not admissible as independent corroborating evidence of earlier conception if it was authored by a self-interested named inventor. *See Linear Tech.*, 379 F.3d at 1327. Nor is it admissible as expert testimony, as Dr. Khan did not opine

on the subject matter of or documents cited in EX2014 in his direct (EX2029) or cross (EX1058) testimony, and Justin Marston does not meet the level of skill in the art under any of the parties' proposed definitions. *Compare* Paper 13, 8-9 (requiring "at least a bachelor's degree in computer science/engineering, or a related field"), *with* EX1050, 58:10-59:7 ("I have a degree and a Master's degree in chemistry"); *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1376-77 (Fed. Cir. 2022) ("To offer expert testimony from the perspective of a skilled artisan...a witness must at least have ordinary skill in the art.").

If authored by Sterling's attorneys, it is inadmissible as unsupported attorney argument. *See Impax Labs. Inc. v. Lannett Holds. Inc.*, 893 F.3d 1372, 1380 (Fed. Cir. 2018) (no weight to attorney argument on technical facts). It is also inadmissible as improper incorporation by reference. *See* 37 C.F.R. § 42.6(a)(3); FRE 901.

III. Board Should Exclude EX2004 and EX2006 as Lacking Foundation, Authenticity, and Constituting Hearsay

The Federal Circuit has made clear that inventor testimony alone is not sufficient to prove an earlier conception date. *See Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1356 (Fed. Cir. 2010) ("Because it is a mental act, an inventor's oral testimony regarding conception must be corroborated by 'evidence which shows that the inventor disclosed to others his completed thought expressed in such clear terms as to enable those skilled in the art to make the invention.'"). Yet Sterling offers no independent corroborating evidence on the authenticity of EX2004

and EX2006, which it relies on to support a claim of an earlier conception date for the '217 patent.

Named inventors Justin and Paul Marston claim that they authored EX2004 and EX2006. But their claim is not corroborated by the documents themselves—the metadata for “author” in the documents is blank and indicates they were last saved by “Bal” (EX2004) and “n/a” (EX2006). EX1068-1070.

The Marstons’ claim is also inconsistent with the time period they were part of BlueSpace—the company where the documents were created on Aug. 4, 2004 (EX2004) and Apr. 18, 2005 (EX2006). In particular, Justin Marston testified he was “CEO of BlueSpace during the Summer 2005” (EX2030, ¶19). But his CV states he “gave up the CEO role around 2003, but took it up again in the Summer of 2006.” EX1051, 2; EX1050, 244:3-245:1 (“there was a period where I handed over the CEO-ship to a series of guys in the UK”). Based on his CV, he was not CEO of BlueSpace when EX2004 and EX2006 were created.

The Marstons are self-interested and biased. Sterling is paying them \$500/hour for their testimony. EX1050, 76:11-77:6; EX1064, 136:5-22. Their testimony alone is insufficient to corroborate EX2004 and EX2006.

EX2004 and EX2006 also contain inadmissible hearsay. Sterling claims these documents disclose the claims of the '217 patent. As such, they are (1) out-of-court statements and (2) being offered for “the truth of the matter asserted.” See FRE 801.

No exception to the hearsay rules renders them admissible.

While Justin Marston claims these documents were kept in the ordinary course, the FRE 803(6) exception must be established by “the testimony of the custodian or another qualified witness.” If Justin Marston was not CEO at BlueSpace when the documents were created, he is not a qualified witness to establish whether the documents were kept in the ordinary course of business. Accordingly, EX2004 and EX2006 should be excluded as inadmissible hearsay.

IV. Board Should Exclude Portions of Justin and Paul Marston’s Declarations as Hearsay and Lacking Foundation

Paragraphs 19 and 24-26 of EX2031 contain hearsay and should be excluded.

In paragraph 24 (incorporated into ¶¶25-26), Dr. Paul Marston states:

The metadata for this document lists Jon Fernyhough as the Author....My understanding of why Jon is listed as the Author is because Justin asked Jon to cut and paste the draft section into a Word document for my review.

Dr. Paul Marston relies on this “understanding” as the basis for his testimony that Mr. Fernyhough “did not contribute to any of the inventions.” EX2031, ¶24. Dr. Paul Marston “never met” Mr. Fernyhough and “never had a verbal conversation with him.” EX1064, 41:19-24. His “understanding” was formed through communications with Justin Marston—not through conversations with Mr. Fernyhough. EX1064, 43:20-44:23.

In short, Dr. Marston’s testimony is not based on personal knowledge but on what he “presumed” to be true. EX1064, 43:24-45:22. His testimony on Mr.

Fernyhough lacks foundation, is hearsay, and should be excluded.

Paragraph 19 of Exhibit 2031 refers to an out-of-court conversation between Dr. Paul Marston and Dr. Tony Morton-Jones. EX2031, ¶19 (“I asked him to review for me the formulas that I had prepared.”). Dr. Paul Marston relied on this conversation to claim that “Tony Morton-Jones did not prepare any of the formulas in the draft (or final) provisional patent application.” *Id.*, ¶19. This is an out-of-court statement that Dr. Paul Marston relies on for “the truth of the matter asserted.” *See* FRE 801. Paragraph 19 should also be excluded.

Paragraph 58 of EX2030 also contains hearsay and should be excluded. Justin Marston states: “I understand that this is because Paul Marston asked his friend, Tony Morton-Jones, to review the formulas that Paul Marston had prepared.” EX2030, ¶58. Justin Marston admitted he never “interact[ed] directly with Mr. Jones.” EX1050, 178:13-16. Mr. Marston relies on the truth of this double hearsay to claim that “Tony Morton-Jones did not prepare any of the formulas himself; he was only commenting on the formulas that Paul Marston created.” EX2030, ¶58; FRE 801.

Paragraphs 59 and 62 of EX2030 lack foundation. Justin Marston asserts without explanation that Mr. Rick Turner and Mr. Tim Couper “did not contribute ... to the inventions set forth in the provisional patent application filed on January 13, 2006.” EX2030, ¶¶59, 62. Justin Marston provides no basis for these conclusory

assertions, which contradict metadata in the documents.

Justin Marston also states that Mr. Couper “did not contribute in any way to this document [EX2050].” EX2030, ¶62. But metadata in EX2050 lists Mr. Couper as an author. Mr. Marston’s statements in paragraphs 59 and 62 should be excluded. EX2050, 2048, 2047, 2056, 2058, and 2057 should also be excluded because they are based on the inadmissible hearsay in Paragraphs 58, 59, and 62 of EX2030 and Paragraphs 19 and 24-26 of EX2031.

V. Board Should Exclude EX2080-2083 Because They Are Hearsay and Unduly Prejudicial

EX2080-2083 are news articles by Nayden Tafradzhiyski, ABC News, Anna Chung, and Isobel Hamilton, respectively. Sterling relies on these articles for the truth and accuracy of their assertions. Paper 17, 53-56. Based on EX2080 (Tafradzhiyski), Sterling claims that “Twitter has realized commercial success using [the claimed] model, with an estimated 388 million monthly active users in 2024, and generating over \$2 billion in revenue every year from 2016-2024.” Paper 17, 54. Ms. Tafradzhiyski is not an X Corp. or Twitter employee and provides no sources for her information. EX1072 (Ms. Tafradzhiyski is “Content Editor” for “Business of Apps”). Ms. Tafradzhiyski has no apparent personal knowledge or foundation for her unsworn statements.

EX2081-2083 are infected with the same flaw. Paper 17, 55-56 (EX2081: X Corp. implemented a new relevancy-based algorithm in 2016 that has been praised

and offers a better experience); 56 (EX2082: Meta introduced its “algorithmically curated News Feed” in 2011); 56 (EX2083: Instagram introduced its “engagement-based feed” in 2016). EX2080-2083 are not based on personal knowledge and are not reliable evidence of how X Corp.’s or Meta’s products operate (Paper 17, 55-56), the intent behind X Corp.’s or Meta’s decision-making (*Id.*), or evidence of copying (Paper 17, 56). EX1073 at 11 (journalism has a 41% to 61% factual error rate).

The statements in EX2080-2083 are not based on personal knowledge, yet are offered to establish the technical operation of X Corp.’s and Meta’s products and X Corp.’s financial performance. EX2080-2083 should be excluded because they are hearsay offered for the truth of the matter asserted and do not fall into any hearsay exception. *See* FRE 802; *Supercell Oy v. GREE, Inc.*, Paper 42 at 57, PGR2018-00008 (PTAB Jan. 2, 2019) (excluding “Exeter Chess Club” website as hearsay). Moreover, EX2080-2083 are unduly prejudicial, and there is an unjustifiably high risk of confusion if admitted under FRE 403.

VI. Reliance on Documents Referenced in Exhibit 2042 Is Unduly Prejudicial

As explained in Petitioner’s motion for additional and routine discovery (Paper 28), Justin Marston’s declaration cites to and relies on communications with counsel from 2004 to 2006 to purportedly “corroborate” his claim that he diligently conceived and reduced to practice the inventions. EX2042 (log). In its Order (Paper

31), the Board explained that it would not grant Petitioner's request as to EX2042 because "rather than relying on the specific substance of the emails in the privilege log, Mr. Marston merely relies on the existence of those emails to show the exchange of emails." Paper 31 at 6.

In view of the Board's Order, statements in Justin Marston's declaration (EX2030), Patent Owner's Response (Paper 17), and Sur-Reply (Paper 38) should be excluded as prejudicial. Sterling relied on the "specific substance of the emails" in EX2042 without producing the corresponding emails. *See, e.g.*, Paper 17 at 47; Paper 38 at 19, 20, 24, 25. This reliance is prejudicial to Petitioner and should be excluded. FRE 403 (highly prejudicial); FRE 106 (completeness).

Paragraphs 19, 36, 49, 50, and 53-55 of Justin Marston's declaration should also be excluded because they rely on withheld documents. EX1050, 259:7-261:2 ("Everything I read informed the testimony in my declaration."). Justin Marston's testimony is "premised upon the contents of privileged communications," and his reliance waives privilege over those communications. *Willis Elec. Co. v. Polygroup Macao Ltd.*, 2020 WL 1934425, at *2 (D. Minn. Apr. 22, 2020) (citing *Milwaukee Elec. Tool Corp. v. Chervon N. Am. Inc.*, 2017 WL 1934425, at *1 (E.D. Wis. Jul. 10, 2017)). Sterling's reliance on unproduced emails is highly prejudicial.

VII. Board Should Exclude EX2032-2039 and EX2041-2078 Based on Improper Incorporation by Reference²

EX2032-2039 and EX2041-2078 should be excluded because Sterling improperly incorporates these exhibits by reference. *See* 37 C.F.R. § 42.6(a)(3); FRE 401, 402. Sterling cites these exhibits three times, all as part of bulk cites to 45 exhibits spanning thousands of pages, with no explanation, pincites, or analysis. *See* Paper 17 at 6 (“additional documentation relating to diligence (EX2032 through EX2078)”), 46 (“EX2032 through EX2078 (corroborating documentation).”); Paper 38 at 19 (“EX2032-EX2078 are additional evidence that both corroborates Justin Marston’s testimony and shows reasonable diligence.”). These exhibits are not relied upon for any proper purpose and are irrelevant. The Board should exclude them.

VIII. Conclusion

For the foregoing reasons, the following evidence should be excluded: (1) Dr. Khan’s testimony; (2) EX2014 (claim chart); (3) EX2004 and EX2006 (conception document); (4) Paragraphs 58, 59, and 62 of EX2030 and Paragraphs 19 and 24-26 of EX2031; (5) EX2080-2083 (news articles); (6) EX2042 (Log) and documents and statements relying on EX2042 and (7) EX2032-2039 and EX2041-2078.

² Exhibit 2040 was “intentionally omitted (duplicate)” by Sterling. Paper 17 at viii.

Dated: February 18, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), I hereby certify that on this 18th day of February, 2026, I caused to be served a true and correct copy of the foregoing and any accompanying exhibits by email on the following counsel:

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