

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 REPLY IN SUPPORT OF
MOTION TO EXCLUDE EVIDENCE**

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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
2017	<i>excerpt from:</i> 32nd European Union Contest for Young

Patent Owner's Exhibit No.	Exhibit Description
	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
2052	"2004-09-10 notes on search document.doc," September 10,

Patent Owner's Exhibit No.	Exhibit Description
	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
2069	"BSMR021005_jfpm6.doc," October 14, 2005

Patent Owner's Exhibit No.	Exhibit Description
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
2083	"You Can Finally Switch Your Instagram Feed to a Chronological Timeline. Here's How," Business Insider, Mar. 24, 2022

Patent Owner's Exhibit No.	Exhibit Description
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)

I. Cross-Examination Misstating the Law in *KSR* Should Be Excluded.

Petitioner does not dispute that its question on *KSR* misstated the law. EX1058,18:14-19:14. That questioning should be excluded. Fed. R. Evid. 401, 403.

II. Dr. Khan's Cross-Examination about "Quality" Should Be Excluded.

Petitioner has repeatedly represented that Dr. Khan's testimony about "quality" "relied on an unrecited limitation." Opp. at 11; Mt. to Exclude, at 2; Reply, at 2. **That is false.** Dr. Khan testified that the claims **do not** have a "quality" requirement. EX1058, 173:10-24; *id.* 175:10-24; *id.* 177:23-178:9. He spoke of "quality" only in the context of the claims **producing** a "quality" **result**. EX1058, 44:18-23, 57:5-6, 58:15-16, 59:17-24, 62:-63:10, 93:4-10, 172:17-172:1. This was a proper consideration. *See* Opp. to Mt. to Exclude, at 1. Moreover, Dr. Khan testified about "quality" only because counsel for Petitioner kept asking about it,¹ even though it was nowhere in his direct. It should be excluded. Fed. R. Evid. 611 & 403.

III. Dr. Khan's Cross-Examination Did Not Address the Conception Evidence on the "*identify*..." Limitation; Using the Cross-Examination to Argue Otherwise Is Incorrect and Unduly Prejudicial.

Petitioner has argued that, because Dr. Khan testified that certain passages in the '217 Patent did not disclose **the entirety of** the "*identify*..." limitation, that shows that allegedly "similar passages" in the Conception Documents do not disclose any part of the "*identify*..." limitation. Reply, at 22; *see also* Sur-Reply, at 22 (objecting

¹ Petitioner contends that Dr. Khan referenced "quality" 64 times. Opp. at 10. Not so. "Quality" appears 64 times, but **41 times** it was **part of Petitioner's questions**.

to how Petitioner used the testimony in its Reply). Petitioner's use of this testimony is unduly prejudicial and irrelevant, for numerous reasons. **First**, although Petitioner has not bothered to identify which passages it contends are "similar," only **two** of the **seven** passages from the Conception Documents are arguably "similar" to any passage Dr. Khan was asked about. *Compare* EX2004, at 4, 13, 15, 15-16 & EX2006, at 22 & 58 *with* EX1001, 8:23-25,43:30-37,12:50-59,14:45-67. **Second**, Petitioner only asked Dr. Khan whether each of the passages from the '217 Patent specification disclosed **the entirety of** the "*identify...*" limitation. Thus, his testimony does not show that those two passages fail to disclose **any part** of the limitation. Because Dr. Khan did not address whether the actual passages from the Conception Documents disclose the "*identify...*" limitation, it is unfairly prejudicial to argue that his testimony shows that the passages from the Conception Documents fail to disclose the limitation. It should be excluded. Fed. R. Evid. 403 & 401.

IV. Cross-Examination About "Empirical Studies" Should Be Excluded.

Petitioner contends that Dr. Khan's testimony about an "empirical study" (EX1058,200:19:25; 252:15-19) is admissible because Dr. Khan "opened the door." Opp. at 8-9. But the testimony Petitioner contends "opened the door" was the excludable discussion regarding "quality results." *Supra* at 1; EX1058, 94:5-96:2.

Contrary to Petitioner's argument (Opp. at 9), the "empirical study" testimony also did **not** relate to his direct about a "*cognate*" user. EX1058, 94:5-96:2. The only

sentence Petitioner cites containing the word “*cognate*” addressed “how large a cognate group is,” which was also outside the scope of direct. *Id.* 200:19-23. The entire discussion is excludable as outside of the scope of direct. Fed. R. Evid. 611.

V. Dr. Khan Lacks Personal Knowledge of Why Twitter Grew.

Dr. Khan's cross-examination regarding why Twitter grew should be excluded as outside the scope of direct and outside the scope of his personal knowledge. Dr. Khan does not use Twitter and has never been employed by Twitter. EX1058, 136:24; EX2002. Nevertheless, Petitioner contends that Dr. Khan has personal knowledge of why Twitter grew because he wrote about Twitter, and he has personal knowledge of his papers.² Opp. at 7. While Dr. Khan certainly has the personal knowledge to discuss his technical work in his papers, the discussions about why Twitter/X grew is simply not something he has any personal knowledge of.

The testimony also should be excluded as outside the scope of direct. Although Petitioner argues that Dr. Khan discussed his papers (Opp. at 7), that discussion was limited to the subject matters he published on. EX2029, ¶15. Petitioner also contends that, because Dr. Khan's direct discussed “the content management system described in the '217 Patent,” his papers on those subjects are within the scope of direct. Opp, at 7. Again, however, it is not Dr. Khan's papers

² Petitioner contends that P.O. did not object to the papers themselves, but Petitioner is not relying upon the papers to argue why Twitter grew; Petitioner is relying upon Dr. Khan's testimony. Reply, at 29 (citing EX1058).

that Petitioner is relying upon; Petitioner is relying upon statements by Dr. Khan about why Twitter/X grew, which is not admissible. Fed. R. Evid. 611 & 602.

VI. Justin Marston Lacked Personal Knowledge of Paul Marston's Time.

Justin Marston testified he did not know how much time Paul Marston spent on the invention (and Paul Marston was unable to estimate how much time he spent). *See* EX1050 287:21-288:4; *id.* 297:14-298:12; *id.* 300:10-15; EX1064,116:10-22. Petitioner cites Paul Marston's testimony that he would not dispute "if Justin feels he can make those hours [estimates]" (Opp. at 5), but Justin Marston **did not** feel he could make those estimates. *Id.* Petitioner also argues that Justin Marston must know exactly how much time Paul Marston spent because Justin Marston knew "what others on his team ... were working on." Opp. at 5. But there is a big difference between understanding **what** Paul Marston was working on and the precise **amount of time** he spent on those issues. The Board should exclude attempts to argue that Justin Marston was estimating time spent by **both** inventors.³

VII. Justin Marston Lacks Personal Knowledge of the BlueSpace Price.

Petitioner argues that Justin Marston's speculation about the purchase price of BlueSpace shows that the patents were not valuable (Opp. at 6), but Justin

³ Petitioner misleadingly argues that Justin Martson "estimated that he and Paul worked a mere 108 combined hours on the alleged invention during the entire 198-day critical period." Opp. at 5. The estimate reflected **only** time spent preparing **specific documents** (not on the invention as a whole). EX2030, ¶¶17, 34, 47.

Marston repeatedly testified he **does not know** the purchase price. EX1050, 45:21; 47:5; 53:5-15; 54:18-21. His speculation should be excluded. Fed. R. Evid. 602.

VIII. Paul Marston's Testimony About a PHOSITA Should Be Excluded.

Paul Marston is not a PHOSITA⁴ (EX2031 & EX2075), and there is no evidence he is familiar with the fictitious legal concept of a PHOSITA. Nevertheless, Petitioner asked him about "an ordinary skilled person" (EX1064,95:1-13), without defining that legal concept, and then used his testimony to argue that "more than 'ordinary skill [was] necessary to reduce the invention to practice.'" Reply, at 23. The testimony should be excluded. Fed. R. Evid. 611 & 602. Petitioner contends that Paul Marston's testimony about "an ordinary skilled person" shows that he has personal knowledge of a PHOSITA, but he clearly was discussing an average human, not a PHOSITA, and his reaction indicated he was not familiar with the PHOSITA concept. *See* EX1064, 95:1-13. Petitioner also contends that Paul Marston "adopted" Justin Marston's testimony **regarding a PHOSITA** (Opp. at 1-2 & n. 1), but that also is not true. *See* EX2031, ¶11. Finally, Petitioner contends that P.O. also has relied upon Paul Marston to show a PHOSITA's understanding (Opp. at 1), but that also is not true. *See* Paper 38, at 23 (citing testimony for the proposition that Paul Marston wrote the algorithms and that his later work was a "refinement").

⁴ Petitioner has taken the position that a person who is not a POSITA cannot testify about a skilled artisan's understanding. Pet. Mt. to Exclude, at 7-8.

Respectfully submitted,

Dated: March 4, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 4th day of March, 2026, a true and correct copy of the foregoing **Patent Owner's Reply in Support of Motion to Exclude Evidence** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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