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 REPLY IN SUPPORT OF MOTION TO EXCLUDE

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2012 WL 2595275 (E.D. Tex. July 5, 2012) 4

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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	Dumais	U.S. Patent Application Publication 2007/0016553A1
1007	Kircher	U.S. Patent Application Publication 2003/0195937A1
1008	Krug	Certified Translation of WIPO Patent 2003/023650A2
1009	Sch. Order	Order 32 (Schedueling Order) in *Sterling Computers Corporation v. X Corp.*, 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 *Sterling Computers Corporation v. X Corp.*, Case No. 1:24-cv-00552 (W.D. Tex. May 22, 2024).
1011	Goldberg	David Goldberg, et al., *Using Collaborative Filtering To Weave An Information Tapestry*, 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., *SpamGuru: An Enterprise Anti-Spam Filtering System*, 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., *Personal Email Networks: An Effective Anti-Spam Tool*, ARXIV.ORG, 4 (Feb. 2004)
1028	Horvitz	International PCT Application WO2001/069432
1029	Lui	Andrew K. Lui, et al., *An Advanced Organizer for Asynchronous Discussion Forums*, IEEE (2005).
1030	Claypool	Mark Claypool, et al., *Combining Content-Based and Collaborative Filters in an Online Newspaper*, ACM SIGIR WORKSHOP ON RECOMMENDER SYSTEMS (Aug. 1999).
1031	Brun	U.S. Patent Application Publication 2007/0168430
1032	Linden	Greg Linden, et al., *Amazon.com Recommendations Item-to-Item Collaborative Filtering*, IEEE INTERNET COMPUTING (2003).
1033	Frankowski	International PCT Application WO2001/53973
1034	Dabbish	Laura A. Dabbish, et al., *Understanding Email Use: Predicting Action on a Message*, CHI (2005).
1035	Basu	Chumki Basu, et al., *Recommendation as Classification: Using Social and Content-Based Information in Recommendation*, AAAI-98

		PROCEEDINGS (1998).
1036	Melville	Prem Melville, et al., *Content-Boosted Collaborative Filtering for Improved Recommendations*, PROCEEDINGS OF THE EIGHTEENTH NATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE (Jul. 2002).
1037	Alspector	Joshua Alspectot, et al., *Comparing Feature-Based and Clique-Based User Models for Movie Selection*, PROCEESINGS OF THE THIRD ACM CONFERENCE ON DIGITAL LIBRARIES (1998).
1038	Balabanovic	Marko Balabanovic, et al., *Content-Based Collaborative Recommendation*, 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 – Lavenshtein Distance – Wikipedia
1043	Marston	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.	*Pro Hac Vice* 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	Khan Depo.	Final Transcript of Khan Deposition, November 13, 2025
1059	Thuraisingham	Bhavani Thuraisingham, et al., *Emergency-Driven Assured Information Sharing in Secure Online Social Networks: A Position Paper*. 2016 IEEE INTERNATIONAL PARALLEL AND DISTRIBUTED PROCESSING SYMPOSIUM WORKSHOPS (May 2016).
1060	Chandra	Swarup Chandra, et al., *Estimating Twitter User Locations Using Social Interactions – A Content Based Approach.* 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., *Tweets mining using WIKIPEDIA and impurity cluster measurement.* 2010 IEEE INTERNATIONAL CONFERENCE ON INTELLIGENCE AND

		SECURITY INFORMATICS (May 2010).
1062	Abrol Article	Satyen Abrol, et al., *Twinner: understanding news queries with geo-content using twitter*. 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	N. Tafradzhiyski Employment	Nayden Tafradzhiyski, Journalist, Employment History
1073	Porlezza	Colin Porlezza, *Accuracy in journalism*. OXFORD RESEARCH ENCYCLOPEDIA OF COMMUNICATION (2019).

Sterling's opposition lacks merit. Petitioner's motion to exclude Sterling's unreliable and hearsay evidence should be granted.

I. Sterling Miscasts and Mischaracterizes Khan's Testimony

Khan's testimony is unreliable and should be excluded.

First: Sterling contends that Khan did not use an unrecited "quality" limitation to distinguish prior art because the claims include a "*relevance score*." Opp. 1. But the "*relevance score*" is a number used to compare documents—not a comparison of "relative quality between the algorithms for the '217 patent and … the prior art." EX1058, 169:24–170:3. Despite many questions asking which limitation required "quality," Khan—unlike Sterling—did not identify the recited "*relevance score*." EX1058, 79:5–6, 174:23–175:15, 45:5–10, 57:5–6, 58:14–16.

In a tacit admission, Sterling cites *Natera, Inc. v. NeoGenomics Labs., Inc.*, 106 F.4th 1369, 1378 (Fed. Cir. 2024) to defend Khan's reliance on unrecited limitations. But *Natera* involved the scope of evidence that can be considered in analysis of a ***motivation to combine*** two references—not whether such evidence can be used to distinguish references based on ***features not recited by the claims***. *See id.* ("Unclaimed factors … can impact the motivation to combine analysis …."). Khan used the unrecited characteristic of "quality" to distinguish prior art like Dumais on its disclosures, ***not*** a motivation to combine. EX1058, 169:24–170:3, 162:1–12.

Second: Khan's testimony contradicts Dumais' express teachings—*i.e.*, that

its disclosed system processes email. *Compare* EX1006, ¶0031 *with* EX1058, 159:7–162:15 ("Yeah, I disagree"); EX2029, ¶125. Sterling attempts to defend Khan by rewriting his testimony. Opp. 1–4. Its rewrite should be rejected.

Third: Khan offered unequivocal testimony that a POSITA could ***not*** have combined teachings from multiple references. EX1058, 18:11–13, 19:8–14. Sterling attempts to excuse Khan's testimony by changing it—suggesting the question he answered was whether a POSITA could "***always***" combine references. This was not the question. Sterling cannot hide Khan's use of the wrong legal standard.

II. Sterling Admits EX2014 Is Attorney Argument

Sterling's admits that EX2014 was "prepared by counsel" (Opp. 4), not by J. Marston or Khan (Opp. 5–6). Sterling shifts its position to contend that EX2014 is a "summary" under FRE 1006. But EX2014 cannot qualify as a FRE 1006 summary.

First, the material in EX2014 must be independently admissible. FRE 1006(a). It is not. EX2014 is based on a POSITA's understanding. EX2014, 2 ("skilled artisan would understand" algorithms in Conception Documents). No witness interpreted the Conception Documents and no such evidence was not provided. FRE 1006(b).

Sterling admits that Khan did not review the Conception Documents. Opp. 6. Thus, Sterling now suggests that Justin Marston is a POSITA. *Id.* But Justin does not have a B.S. in electrical or computer engineering. Paper 13 at 8. And his knowledge of software is limited. EX1050, 56:1-59:10. He is not a POSITA. Nor

did Sterling establish that J. Marston prepared the relevant portions of EX2014—as is its burden when asserting an earlier invention date. EX1050, 200:18–201:6.

Second, EX2014 cannot be admitted under FRE 1006 because it is argumentative and does not accurately reflect the record. *United States v. Taylor*, 210 F.3d 311, 316 (5th Cir. 2000) (error to admit argumentative chart under FRE 1006). EX2014 relies on purported knowledge of a POSITA and attorney argument that appears nowhere else in the record to map claims to the Conception Documents. FRE 1006 does not permit introduction of these new, unsupported arguments.

Third, FRE 1006 summaries are only admissible when underlying documents are so voluminous they "cannot conveniently be examined in court." *Quinn-Hunt v. Bennett Enters.*, Inc., 211 F. App'x 452, 458 (6th Cir. 2006). Sterling admits this is not the case here. Opp. 7 (arguing EX2004/EX2006 are sufficient on their own).

III. No Evidence Either Marston Authored EX2004 or EX2006

Other than biased testimony, there is no indication either J. or P. Marston authored EX2004/EX2006. Sterling contends EX2004/EX2006 must have been authored by them because other documents (*i.e.*, EX2043, EX2044, EX1056) reflect their *potential* involvement, and because Sterling listed Justin as a "custodian."

But "custodian" is a field created by Sterling's counsel—not evidence of contemporaneous creation. EX1068–1070. Sterling does not establish that Justin qualified as a custodian under FRE 803(6), nor did it describe his role at BlueSpace

in 2004/2005. *Versata Software, Inc. v. Internet Brands, Inc.*, 2012 WL 2595275, at *6 (E.D. Tex. July 5, 2012) (retrieving documents in litigation do not show admissibility under 803(6)). The "author" field in the EX2004/EX2006 documents is blank, and the last saved field indicates "Bal" (EX2004) and "n/a" (EX2006). EX1068–1070; *Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1296 (Fed. Cir. 2018) (evidence does not corroborate when it only corroborates "with help from [inventor] testimony"). This contrasts with other documents that list "Marston" and "Justin Marston" in the "author" field. EX1068, 1-2. Sterling attempts to explain this deficiency by relying on ***postdated*** activities to support its positions. EX2030 ¶29 (EX2043-EX2044: Oct. 2005); EX1056 (Jan. 2006). But Sterling does not show how Oct. 2005 comments in a document establish earlier conception in June 2005.

IV. Marstons' Statements Are Hearsay, Not "Non-Assertive Question[s]"

EX2031, ¶¶24–26: Paul Marston asserts Mr. Fernyhough "did not contribute to any of the inventions." EX2031, ¶24. Paul formed this "understanding" from his hearsay conversation with Justin. EX1064, 43:20–44:23. This should be excluded.

EX2031, ¶19 & EX2030, ¶58: Sterling's own cases confirm "I asked [Morton-Jones] to review for me the formulas" is assertive. It contains a substantive assertion and is not a question "designed to elicit information and a response." *United States v. Pulliam*, 973 F.3d 775, 783-784 (7th Cir. 2020) ("what gun?" was assertive).

EX2030, ¶¶59–60, 62: Sterling contends ¶62 does not refer to EX2050. But

¶62 describes EX2050 in detail, and Justin Marston's assertion that "Tim Couper did not contribute in any way to" EX2050 is contradicted by the document metadata. The metadata in EX2048 also contradicts Justin's statements in ¶59. EX2048, 5.

V. Exhibit Nos. 2080–2083 Are Hearsay News Articles

Sterling improperly relies on EX2080–2083 for the truth of their assertions.

EX2080–2081: Sterling relies on revenue figures in EX2080. Paper 17 at 54. Sterling relies on EX2081 for its statement that X implemented a new relevancy-based algorithm in 2016. EX2080/EX2081 reference other sources that are not in the record. *See* EX2080, 14-19 (purported "company data"); EX2081, 3 (blog post from Jahr). These tenuous links are not enough to make them admissible statements by X.

EX2082–2083: Sterling contends that Meta and Instagram introduced new "algorithmically curated" feeds in 2011 and 2016, but offers no indication that EX2082/EX2083 are generally relied-upon market directories under FRE 803(17).

VI. Justin Marston's Reliance on EX2042 Is Unduly Prejudicial

Sterling admits that the files underlying EX2042 "informed the testimony in [Justin Marston's] declaration." EX1050, 259:7–261:2. His reliance on these withheld files in ¶¶19, 36, 49, 50, and 53–55 of EX2031 should be excluded.

VII. The Board Did Not Authorize Sterling to Violate 37 C.F.R. § 42.6(a)(3)

Sterling claims the Board authorized it to improperly incorporate thousands of pages of material. Not so. EX2032–2039 and EX2041–2078 should be excluded.

Dated: March 4, 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 4th day of March, 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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