

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.
Petitioners,

v.

STERLING COMPUTERS CORPORATION,
Patent Owner.

Case No. IPR2025-00430
U.S. Patent No. 7,716,217

**PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(B)(1)**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Meta Platforms, Inc. (“Meta,” or “Petitioner”) submits the following objections to Sterling Computer Corp. (“Patent Owner”) paragraphs 2, 4, and 6–52 of the Supplemental Declaration of Justin Marston (EX2015), paragraphs 23–30, 33–44, 152, and 201–03 of the Declaration of Dr. Latifur Khan (EX2029), paragraphs 1–3 and 4–63 of the Second Supplemental Declaration of Justin Marston (EX2030), paragraphs 14–19, 24–31, and 33–40 of the Declaration of Paul Marston (EX2031), and Exhibits 2019–2028, 2032–2039, and 2041–2083.

Petitioner’s objections are made further pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and § 42.6(a)(3). As required by 37 C.F.R. § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“FRE” or “FREs”).

II. EXHIBIT 2015 (SUPPLEMENTAL DECLARATION OF JUSTIN MARSTON)

Meta objects to Paragraphs 8–9 of the Supplemental Declaration of Mr. Justin Marston (or “J. Marston”) (EX2015) because each paragraph is *ipse dixit*; these paragraphs lack foundation and are not based in sufficient facts or data pursuant FRE 702. As a result, Patent Owner has not established these paragraphs are relevant pursuant FRE 401, and the Board should exclude them as inadmissible under FREs 402, 403.

Meta further objects to Paragraphs 2, 4, 6–7, and 10–52 of Exhibit 2015 because they incorporate or refer to Mr. Justin Marston’s initial declaration (EX2003) and Exhibits 2004-2013. Meta already provided objections to Exhibits 2003-2013 and objects to the paragraphs identified above for the same reasons. *See* Paper 16 (Petitioner’s Objections to Evidence).

III. EXHIBIT 2029 (DECLARATION OF DR. LATIFUR KHAN)

Meta objects to Paragraphs 23–30, 33–44, 152, and 201–03 of the Declaration of Dr. Latifur Khan (EX2029) because each paragraph is *ipse dixit*; these paragraphs lack foundation and are not based in sufficient facts or data pursuant FRE 702. As a result, Patent Owner has not established these paragraphs are relevant pursuant FRE 401, and the Board should exclude them as inadmissible under FREs 402, 403.

Dr. Khan provides conclusory opinions and statements regarding the structure underlining the claimed modules and what a person of ordinary skill in the art (“POSITA”) would have understood regarding it without any supporting testimony, explanation, or evidence. Meta thus objects to the paragraphs for lack of foundation and for including testimony that is not based on sufficient facts or data pursuant FRE 702. *Cephalon, Inc. v. Watson Pharms., Inc.*, 707 F.3d 1330, 1338 (Fed. Cir. 2013) (citation omitted) (“Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination.”); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)

("[N]othing in either *Daubert* or the Federal Rules of Evidence requires . . . admit[ting] opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.").

Meta further objects to Exhibit 2029 pursuant FRE 802, to the extent it relies on other inadmissible exhibits and testimony (as discussed below) for the truth of the matters asserted.

IV. EXHIBIT 2030 (SECOND SUPPLEMENTAL DECLARATION OF JUSTIN MARSTON)

A. Paragraphs 1–3, 5–6, 13, 27, 37–38, 46, 57, and 60: Incorporated Objections to EX2003

Meta objects to Paragraphs 1, 3, 5-6, 13, 27, 37–38, 46, 57, and 60 of Exhibit 2030 because they incorporate or refer to Mr. Justin Marston's initial declaration (EX2003). Petitioner already provided objections to Exhibit 2003 and objects to the paragraphs identified above for the same reasons. *See* Paper 16 (Petitioner's Objections to Evidence). Meta further objects to Paragraph 2 of Exhibit 2030 because it incorporates or refers to Mr. Justin Marston's supplemental declaration (EX2015). Petitioner already provided objections to Exhibit 2015 and objects to the paragraphs identified above for the same reasons (*see* §II).

B. Paragraphs 6–12, 14–19, 21–45, 47–55, 58, 59 and 61–62: Lack of Authentication Requiring a Remainder under FREs 901, 106

Meta objects to Paragraphs 6–12, 14–19, 21–45, 47–55, 58, 59 and 61 for lack of authentication under FRE 901. Mr. Justin Marston (or "J. Marston") relies on

these paragraphs to allege that he and Mr. Paul Marston (or “P. Marston”) “worked reasonably continuously, within the confines of [their] occupations, to diligently finalize the inventions,” but fails to provide any citations sufficient to support Mr. J. Marston’s claims. EX2030, ¶6. Patent Owner has not proffered independent evidence sufficient to show what these documents are, who authored them, and how they were created. *Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1295 (Fed. Cir. 2018); *Kolcraft Enters., Inc. v. Graco Children’s Prods., Inc.*, 927 F.3d 1320, 1324 (Fed. Cir. 2019). The documents fail to show on their face the information Mr. J. Marston claims to be true in his declaration because, e.g., the metadata slips provided for Exhibits 2004–2008, 2010–2012,¹ 2032–2036, 2038–2039, 2043–2045, 2049–2050, 2073–2074—referenced in Paragraphs 5, 14–15, 20, 22–23, 26–32, 34, 37–43, 45, and 61–62—are incomplete. For example, Patent Owner references exhibits including metadata slipsheets listing authors, but the exhibit references in Paragraph 23 lists an author as “.” (e.g., EX2032, 90) and Paragraphs 41, 45 leave the author portion blank altogether (e.g., EX2038-EX2039). Worse still, Exhibits

¹ Meta incorporates its objections to the passages of J. Marston’s declaration relying on documents to show conception and reduction to practice (EX2004-EX2013) that lack metadata slipsheets showing author information, considering only Exhibits EX2009 and EX2013 listed who authored the document. Paper 16.

2041–45—cited in Paragraphs 10, 19, 25, 29–32, 36, 49, 50, and 53–55 as evidence of conception and reduction to practice—lack metadata slips altogether. For example, the log of BlueSpace documents from June 28, 2005, to January 12, 2006 (EX2041), cited in Paragraphs 10, 19, 25, 36, 49, and 53, lacks metadata and fail to tie that log’s documents to specific exhibits. Patent Owner’s incomplete and deficient metadata requires supplying a remainder under FRE 106.

C. Paragraphs 10, 19, 25, 36, 49, and 53–55: Improper Reliance per 37 C.F.R. § 42.51

Petitioner also objects to Paragraphs 10, 19, 25, 36, 49, 50, and 53–55 because they cite to privilege logs and rely on the underlying documents referenced in Exhibits 2041–2042, but Patent Owner did not submit the underlying documents. Such reliance is improper under 37 C.F.R. § 42.51. Patent Owner cannot use privilege as a sword and a shield—arguing documents are privileged to prevent their disclosure but also relying on said documents in an attempt to prove an earlier date of invention. *Ironburg Inventions Ltd. v. Valve Corporation*, 64 F.4th 1274, 1294 (Fed. Cir. 2023); *GEA Process Eng’g, Inc. v. Steuben Foods, Inc.*, IPR2014-00055, Paper 43 (July 21, 2014).

D. Paragraphs 6–9, 11–12, 16–18, 24, 33, 35, 48, 51–52, 57–59, and 62: Lack of Foundation under FREs 403, 602, and 901

Petitioner objects to Paragraphs 6-9, 11–12, 16-18, 24, 33, 35, 48, 51–52, and 57 for lack of foundation under FREs 602 and 403 because Mr. J. Marston fails to

provide any citations to evidence or the record tending to show his statements are true or have probative value. Again, these paragraphs are used to allege that Mr. J. Marston and Mr. P. Marston worked “reasonably continuously” to finalize the invention. EX2030, ¶6. For instance, Mr. J. Marston claimed that he worked on tasks for the claimed invention for approximately 55 hours from August 17 to October 6 without providing independent evidence or testimony. *Id.*, ¶35.

Petitioner also objects to Paragraphs 58, 59, and 62 under FRE 901 because Mr. J. Martson claimed that Messrs. Tony Morton-Jones, Rick Turner, and Tim Couper only provided comments to technical documents and no inventive contributions without offering independent evidence or testimony. However, the metadata in Exhibits 2047, 2048, and 2050 lists Messrs. Morton-Jones, Turner, and Couper as the authors and individuals who last saved the document in the exhibits’ metadata (EX2047, EX2048, and EX2050, respectively). *Id.*, ¶¶58, 59, and 62. Therefore, Mr. J. Marston’s Declaration lacks foundation because it directly contradicts the physical evidence.

E. Paragraphs 1–2, 5–8, 10, 13–15, 19–23, 25–32, 34, 36–47, 49, 50, 53–56, 58–63: Hearsay under FREs 801(c) and 802

Petitioner also objects to Paragraphs 5–8, 10, 19, 25, 29, 31–32, 36, 49–50, 53–56, 58–59, 61–63 as including impermissible hearsay under FRE 801(c) and 802. For example, Mr. J. Marston states that EX2047 was “Last Saved by” Tony Morton-Jones “because Paul Marston asked his friend, Tony Morton-Jones, to review the

formulas that Paul Marston had prepared.” EX2030, ¶58. However, Mr. J. Marston is merely conveying second-hand information. He does not claim to have any personal knowledge of Mr. Morton-Jones’ involvement or contribution, apart from this second-hand knowledge. Petitioner further objects to Paragraphs 1, 2, 5–7, 10, 13–15, 19–23, 25–32, 34, 36–47, 49–50, 53–56, 58–63 as hearsay under FRE 801(c) and 802. Patent Owner appears to be attempting to rely on the documents referenced in these paragraphs for the truth of the matter asserted within them.

F. Paragraphs 32, 58–59, 62: Lack of Foundation under FRE 403

Petitioner objects to Paragraphs 32, 58–59, and 62 for lacking foundation and undue prejudice under FRE 403. In these paragraphs, Mr. J. Marston states cursorily that various individuals (including Rick Turner, Tony Morton-Jones, John Fernyhough, and Tim Couper) “did not contribute in any way to this document or to the inventions” but fails to identify the roles of those individuals.

G. EX2030 Conclusion

Due to these deficiencies and all those preceding, Patent Owner has failed to establish that the paragraphs of EX2030 are relevant under FRE 401, and therefore these paragraphs are inadmissible under FRE 402 and should be excluded.

V. EXHIBIT 2031 (DECLARATION OF PAUL MARSTON)

Meta objects to all paragraphs of EX2031 for the reasons below.

A. Paragraphs 14–19, and 24–26: Hearsay and Lack of Corroboration under FREs 801(C), 802, 401, and 402

Petitioner objects to Paragraphs 14–19, and 24–26 as inadmissible hearsay under FRE 801(c), 802 that are furthermore irrelevant, inadmissible evidence under FRE 401, 402.

For example, Mr. Paul Marston (or “P. Marston”) alleges that “from May 2005 until the provisional patent application was filed on January 13, 2006, Justin Marston and [Paul Marston] worked reasonably continuously” to finalize the inventions for the provisional patent application. EX2031, ¶14. Mr. P. Marston makes these comments without providing independent testimony or evidence to authenticate “regular correspondence regarding the draft patent application with Justin Marston” over the time in question as it applies to paragraphs 14–18 under FRE 901. *Id.*, ¶17. This further fails to corroborate the cited testimony and documents. *See NFC Tech., LLC v. Matal*, 871 F.3d 1367, 1371-72 (Fed. Cir. 2017) (discussing “rule of reason” for evaluating corroboration).

Paragraphs 14–18, 19, and 24–26 are therefore all objected to as hearsay, not relevant, inadmissible irrelevant, and inauthentic evidence under FREs 802, 401–403, and 901.

B. Paragraphs 14–19, 24–30, 33–37, 40: Lack of Authentication Requiring a Remainder per FREs 901, 106

Petitioner objects to Paragraphs 14–19, 21, 24–30, 33–37, and 40 for lack of

authentication under FRE 901. Mr. P. Marston relies on these paragraphs to allege that he and Mr. J. Marston “worked reasonably continuously” to finalize the invention. EX2031, ¶14. Mr. P. Marston comments that the documents cited in exhibits 2054, 2059–62, 2065–69, 2072 reflect his work with Mr. J. Marston, and that they reflect the refinement of the claimed relevance model. However, the documents fail to show on their face the information Mr. P. Marston claims to be true in his declaration. In Paragraphs 19 and 24–26, Mr. P. Martson claimed that Messrs. Tony Morton-Jones and Jon Fernyhough only provided comments and no inventive contributions without offering independent evidence or testimony. However, Messrs. Morton-Jones and Fernyhough (not Mr. P. Martson) are listed as the author and individual who last saved the document in the metadata of Exhibits 2047 and 2056–2058 referenced in Paragraphs 19 and 24–26. Additionally, Paragraphs 27–30 reference Exhibits 2065–2069 and the metadata slip lists the author as “.” instead of an individual’s name. Similar deficiencies were found in the Exhibits referenced in Paragraphs 33–37 and 40, referencing Exhibits 2065–2069, 2072. Patent Owner has not, therefore, provided independent evidence sufficient to authenticate these documents under FREs 901, 106 by showing what these documents are, who created them, and how they were created. *Apator*, 887 F.3d at 1295.

C. Paragraphs 19, 24–26, 31, 38–39: Lacking Foundation, Unduly Prejudicial, Hearsay per FREs 403, 801(c), 802

Meta objects to Paragraphs 19, 24–26, 31, and 38–39 as lacking foundation

and being unduly prejudicial under FRE 403. In each paragraph Mr. P. Marston states cursorily that various individuals (i.e., Tony Morton-Jones, Jon Fernyhough) did not contribute to the inventions, but fails to identify their roles.

Meta also objects to Paragraphs 19, 24–26, 31, and 38–39 for containing hearsay under FRE 801(c) and 802. For example, in Paragraph 25, Mr. P. Marston states that “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.” Mr. P. Marston merely repeats 20-year-old, secondhand information lacking support and relying on it for the truth of the matter asserted. This is classic hearsay.

D. EX2031 Conclusion

Due to these deficiencies and all those preceding, Patent Owner has failed to establish that the paragraphs of EX2031 are relevant under FRE 401, and therefore these paragraphs are inadmissible under FREs 402, 403 and should be excluded.

VI. EX2019–EX2028, EX2054, EX2059–2062, EX2065–2069

Meta objects to Exhibits 2019–2023, 2025–2027, 2054, 2059–2062, 2065–2069 for lack of authentication under FRE 901 requiring Patent Owner to supply other evidence of the remainder under FRE 601. There is no evidence or testimony presented that identified exhibits are what Patent Owner claims they are, or who wrote them, aside from Patent Owner’s assertions. POR, 45 (describing these exhibits as supplying “additional metadata”). Inspecting the metadata confirms only

ambiguity; the authorship field contains a “.” rather than the name of an individual, and the “Last saved by” field varies, often citing someone other than the alleged co-inventors Mr. J. Marston and Mr. P. Marston. *See, e.g.*, EX2019 (listing author as “.” and the last person to save the document as “Bal”).

VII. EX2032–EX2039, EX2041–EX2078²

Petitioner objects to Exhibits 2032–2039, 2041–2074 for lack of authentication under FRE 901. As stated above regarding Exhibits 2030 and 2031, there is no evidence or testimony presented that identified exhibits are what Patent Owner claims they are, or who wrote them, aside from the testimony of the biased inventors, Messrs. J. Marston and P. Marston. Additionally, many of Exhibits 2032–2039, 2041–2078 contradict the testimony of Messrs. J. Marston and P. Marston.

For example, in his second supplemental declaration (EX2030), Mr. J. Marston claims that Mr. P. Marston and himself “prepared another draft of the patent application” by September 21, 2005. EX2030, ¶23. Referencing EX2032, Mr. J. Marston claimed that the “initials ‘JM’ in this File Name refer to revisions” made by himself. *Id.* But the metadata slip for EX2032 shows that “.” is the “author” and no user was shown to last edit the file. There is no indication within EX2032, or its metadata slip, that the file was created or edited by Messrs. J. Marston or P. Marston.

² Exhibit 2040 was intentionally omitted by Patent Owner.

Furthermore, Exhibits 2041–2046 refer to document logs, documents with tracked changes, and correspondence that lack metadata slips altogether. All of Exhibits 2032–2039, 2041–2074 are objected to for these same or similar reasons.

Exhibits 2032–2039, 2041–2074 are objected to under FRE 401–403 for the same reasons, and at least because they lack any foundation or connection to the issues of the case.

Exhibits 2032–2039, 2041–2074 are also not the documents that Patent Owner claim them to be. *See* FRE 901. As an example, Exhibit 2059 includes comments and redlines from only users “JM” or “Marston” but also has comments from additional user “JPM” (EX2059, 23) and a note, “[o]ver to Jon” (*id.*, 82). Neither “JPM” nor “Jon” were discussed in Mr. P. Marston’s declaration. EX2031, ¶27. Likewise, the metadata slips attached to each of Exhibits 2032–2039, 2041–2074 omit important information from the true metadata records. *See e.g.*, EX2043–2045 (no metadata slip). For these same and similar reasons, Exhibits 2032–2039, 2041–2074 are also inadmissible under FRE 106 for lack of completeness.

Petitioner objects to Exhibits 2032–2039, 2041–2078 as hearsay under FRE 801(c) and 802. Patent Owner appears to be attempting to rely on the documents for the truth of the matter asserted within them.

Petitioner also objects to Patent Owner’s reliance of Exhibits 2032–2039, 2041–2078 as improper incorporation by reference based on 37 C.F.R. § 42.6(a)(3),

FRE 401 and 402. For these exhibits Patent Owner simply bulks cites them with no analysis or discussion. For example, Patent Owner characterizes these exhibits as “documentation relating to diligence (EX2032 through EX2078) [that] corroborate the inventors’ testimony[.]” Paper 18, 5–6. Accordingly, these exhibits are not relied upon for any proper purpose and are irrelevant.

VIII. EX2042 and EX2046

Exhibit 2042 purports to be a “Log of privileged communications with BlueSpace counsel regarding BlueSpace work from June 28, 2005, until January 13, 2006.” However, Patent Owner is relying on these documents to show diligence “relating to TransMail” and “regarding BlueSpace matters” spanning July to November 2005. EX2030, ¶¶19, 25, 36, 49. But Patent Owner cannot use privilege as a sword and a shield. *Ironburg*, 64 F.4th at 1294. Furthermore, Exhibit 2042 lacks any tie between its communications to the alleged invention of the ’217 patent as opposed to other, irrelevant issues. For example, the privilege log lists communications and subject lines regarding an unrelated Canadian patent application. EX2042, 16 at REV0000819 (“Canadian Application No. 2,517,345 (payment of fees)”). The privilege log also lists a tamper proofing action on September 29, 2005. *Id.*, 11 at REV0000850 (“RE: Tamper Proofing GOS 839”). Mr. J. Marston relies on these irrelevant and non-probative entries to testify that he, for example, “exchanged correspondence with counsel for BlueSpace regarding BlueSpace matters on September

28 and 29. EX 2042 (privilege log).” EX2030, ¶36.

Therefore, Patent Owner (1) improperly relies on the privileged communications to establish diligence, (2) fails to establish their relevance, and (3) has not included any information in the log in EX2042 that would substantiate its arguments or privilege claims rendering them inadmissible under FREs 401–403.³

Mr. J. Marston also relies on this log to claim he sent his Patent Attorney “a draft of the provisional patent application” on January 11, 2006. EX2030, ¶¶50, 53. While the log does include an entry on January 11, without being able to inspect the underlying documents and communications, neither Petitioner nor the Board is able to confirm that this communication did in fact relate to the alleged inventions. Because Patent Owner is relying on these documents to prove its claims, it has waived privilege. *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1349 (Fed. Cir. 2005) (“The waiver extends beyond the document initially produced out of concern for fairness, so that a party is prevented from disclosing communications that support its position while simultaneously concealing communications that do not.”)

³ Exhibit 2042 also appears to include communications between non-lawyers without any explanation for Patent Owner’s basis to assert privilege. *See, e.g.*, EX2042, 7 at REV0000870 (communication between Sara Ball and Andrew Hatch with copy to Justin Marston, all of Bluespace).

Exhibit 2046 purports to be an email between Brian Hoffman and Justin Marston. Mr. J. Marston relies on a heavily redacted version of this exhibit to claim that Mr. Jon Fernyhough is not an inventor. But Patent Owner's selective waiver on one sentence of this email is improper because Patent Owner cannot choose to waive only the one sentence that supports their positions and omit the rest. *Fort James Corp.*, 412 F.3d at 1349.

IX. EX2079–EX2083

Petitioner objects to Exhibits 2079–2083 as hearsay under FREs 801(c), 802. Exhibits 2079–83 are webpages allegedly describing products attributed to X (f/k/a Twitter) and Meta's Facebook. However, these exhibits are irrelevant under FRE 401–403 at least because they do not tend to support any claims or defenses and are unduly prejudicial. They also represent improper expert opinion under FRE 702. Meta further objects to these exhibits for lacking foundation and authenticity under FREs 601, 703.

Respectfully submitted,

/ Jessica C. Kaiser /

Dated: November 13, 2025

Jessica C. Kaiser
Reg. No. 58,937
Attorney for Petitioner

PERKINS COIE LLP
1900 Sixteenth Street, Suite 1400
Denver, CO 80202-5255

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2025, true and correct copies of the foregoing **PETITIONER'S OBJECTIONS TO EVIDENCE** were served via electronic mail upon the following counsel of record for Patent Owner:

Devan V. Padmanabhan - devan@paddalawgroup.com
Michelle E. Dawson - michelle@paddalawgroup.com
Britta S. Loftus - britta@paddalawgroup.com

Dated: November 13, 2025

Respectfully submitted,

/ Jessica C. Kaiser /

Jessica C. Kaiser
Reg. No. 58,937
Attorney for Petitioner

PERKINS COIE LLP
1900 Sixteenth Street, Suite 1400
Denver, CO 80202-5255