

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.

Petitioner,

v.

STERLING COMPUTERS CORPORATION

Patent Owner.

Case IPR2025-00430

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

PATENT OWNER'S MOTION TO EXCLUDE

TABLE OF AUTHORITIES

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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, 2004
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)
2086	"Our Approach to Facebook Feed Ranking," Meta, June 11, 2025
2087	"Facebook Feed AI System," Meta, June 4, 2025
2088	"Meta Reports Fourth Quarter and Full Year 2024 Results," Meta, Jan. 29, 2025

Patent Owner respectfully requests the Court exclude the cross-examination of its expert regarding passages from the '217 Patent that Petitioner contends are "similar" to passages from the Conception Documents, but that Petitioner's expert never saw or addressed in his direct. *See* Pet. Reply, at 18-19 (citing EX1044, 123-131:21). Patent Owner's counsel objected repeatedly to the cited testimony on the record, citing Federal Rules of Evidence 401, 403, and 611. EX1044, 124:1-2, 126:8-9, 126:19, 128:1. Patent Owner seeks to exclude the testimony on the basis that (1) the testimony was outside the scope of direct (Fed. R. Evid. 611) and because, when used in the manner in which Petitioner is using the testimony, (2) the testimony is not relevant to any issue before the Board (Fed. R. Evid. 401) and (3) any arguable relevancy is outweighed by unfair prejudice and wasting of the Board's time (Fed. R. Evid. 403).

In IPR2025-00299,¹ during Dr. Khan's cross-examination, counsel for X Corp. 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* EX1044, 114:10-115:15 & 123:3-131:21. When

¹ As the Board knows, there is a second IPR challenging the '217 Patent (IPR2025-00299), which was brought by X Corp. The objected-to testimony at issue here is testimony from that proceeding, **not** this proceeding. Patent Owner moved to exclude the testimony in the IPR2025-00299 on the same grounds raised here. *See* IPR2025-00299, Paper 43.

Dr. Khan testified that some passage in the '217 Patent did not disclose **the entirety** **of** the “*identify...*” limitation, Petitioner in this proceeding then unfairly used this testimony to argue that allegedly “similar” passages in the Conception Documents fail to show conception of the “*identify...*” limitation. Reply, at 18-19 (“But PO’s own expert testified ...that similar specification passages do not disclose that [*identify...*] limitation....”). But the questioner never asked Dr. Khan about the actual passages from the Conception Documents that show conception of the “*identify...*” limitation. Moreover, Petitioner has never identified which passages it contends are “similar.” For example, Petitioner never identifies some sentence from the '911 Patent that it contends is “similar” to some sentence from the Conception Documents that Patent Owner has cited as showing conception of the “*identify...*” limitation. This cross-examination testimony should be excluded, for numerous reasons.

First, the testimony should be excluded as outside the scope of direct. Petitioner contends that Dr. Khan’s testimony relates to what **the Conception Documents** disclose (Reply, at 18-19), but any questioning about the Conception Documents is outside the scope of his direct (in both proceedings). *See generally* EX2029 (no citation to EX2004, EX2006, or EX2014); IPR2025-00299, EX2029 (same). Indeed, Dr. Khan never reviewed the Marstons’ declarations or the exhibits

cited within, including the Conception Documents, and he never opined on priority.² *Id.*; EX1044, 5:5-7:1 & 11:12-15; EX1040, 19:5-22:1. For all of these reasons, the cross-examination was outside the scope of Dr. Khan's direct. *See* Fed. R. Evid. 611. Patent Owner objected on this basis (Rule 611) as well as others (Rules 401-403 & 613). *See* EX1044, 123:23-124:2, 126:8-9, 126:19, 128:1. The cross-examination should be excluded as outside the scope of direct. Fed. R. Evid. 611; *see also* 37 C.F.R. § 42.53(d)(5)(ii); *Eli Lilly and Company v. Teva Pharmaceuticals International GmbH*, No. IPR2018-01710, 2020 WL 1540364, at *67 (P.T.A.B. Mar. 31, 2020) (granting motion to exclude cross-examination testimony that was not in expert's direct/declaration).

Second, the cross-examination should be excluded pursuant to Rules 401 and 403 because the testimony is not relevant for the proposition Petitioner cites it (i.e., to show what the Conception Documents disclose) and because Petitioner is using the testimony in a misleading, ambiguous, and unfairly prejudicial manner, which wastes the Board's time. Fed. R. Evid. 401 & 403. In particular, Petitioner argues (Reply, at 18-19) that the '217 Patent passages they questioned Dr. Khan about are

² His direct also did not address three of the four passages in the '217 Patent that he was questioned about (*see generally* IPR2025-00299, EX2029 (no citation to EX1001,8:23-25, 43:30-37, or 12:50-59)) and, with respect to the fourth passage, Dr. Khan's direct provided 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).

“similar” to the cited passages from the Conception Documents. EX2004 & EX2006; EX2014, at 5. But Dr. Khan did not review the Conception Documents, and, therefore, his testimony is **not relevant** to what the Conception Documents disclose. Fed. R. Evid. 401. Moreover, using Dr. Khan's testimony in this manner – i.e., to suggest that he testified that any passage from **the Conception Documents** to not show conception of the “*identify...*” limitation (which they do) – is a waste of time and unfairly prejudicial, for several reasons.

One reason Petitioner's use of the testimony unfairly misleads and wastes the Board's time is because Dr. Khan was not questioned about **any** of the seven passages **in the Conception Documents** that show conception of the “*identify...*” limitation, and none of the cited Conception Document passages is exactly the same as any passage from the '217 Patent. Although Petitioner ambiguously argues that the '217 Patent passages that counsel asked Dr. Khan about (EX1044,114:10-115:15 &123:3-131:21) are “similar” to some (unspecified) passages in the Conception Documents, Petitioner's Reply never actually compares the passages in the '217 Patent to the passages in the Conception Documents. Therefore, Patent Owner does not know (and, therefore, is deprived of the opportunity to respond by showing that the passages are not actually “similar”), and the Board must waste time trying to figure out whether any of the '911 Patent passages that Dr. Khan was asked about are actually “similar” to any of the cited Conception Document passages. In addition

to wasting the Board's time, because Dr. Khan was not asked about any of the actual passages from the Conception Documents, it is unfairly prejudicial to assert that his testimony about '217 Patent passages somehow establishes what the Conception Documents disclose.

Another reason Petitioner's use of the testimony wastes time and unfairly misleads is because Patent Owner's evidence of conception of the "*identify...*" limitation includes **seven** passages from the Conception Documents, but X Corp.'s counsel cross-examination only questioned Dr. Khan about **four** passages in the '217 Patent. *Compare* EX2014, at 5 (citing (1) EX2004, at 15; (2) *id.*, at 4, (3) *id.*, at 13; (4) *id.*, at 15-16; (5) EX2006, at 28; (6) *id.*, at 22; and (7) *id.* at 22) *with* Reply, at 18-19 (citing (1) EX1001,8:23-25; (2) *id.*, 43:30-37; (3) *id.*, 12:50-59; and (4) *id.*, 14:45-67). Moreover, of the **four** '217 Patent passages he was questioned about, Patent Owner has only been able to identify **two** that are arguably "similar" to any of the cited Conception Document passages; there appears to be no "similar" passage for **at least five** of the cited Conception Documents passages. The Board should not be required to waste its time on this exercise of trying to figure out which passages Petitioner thinks are "similar." It was **Petitioner's** burden to put in that evidence, but Petitioner did not. In sum, Dr. Khan only addressed language that is "similar" to, at most, **two of the seven**

passages that evidence conception of the “*identify...*” limitation.³ For these reasons, it is unfairly prejudicial for Petitioner to use the testimony to suggest that to suggest that Dr. Khan testified that **none** of passages from **the Conception Documents** show conception of the “*identify...*” limitation. The testimony should be excluded because it has no relevancy, because Petitioner's ambiguous citation to it wastes the Board's time, and because any arguable probative value is substantially outweighed by a danger of unfair prejudice and confusing the issues. Fed. R. Evid. 401 & 403; *see also One World Techs., Inc. v. Chamberlain Grp., Inc.*, No. IPR2017-00126, 2018 WL 5310166, at *7 (P.T.A.B. Oct. 24, 2018) (granting motion to exclude evidence as irrelevant where, among other issues, expert had not offered any opinion on that factual issue).

For the reasons set forth herein, and pursuant to Rules 401, 403, and 611 of the Federal Rules of Evidence, Patent Owner respectfully requests the Board exclude the testimony cited on pages 18-19 of Petitioner's Reply (EX1044, 123-131:21). Alternatively, Patent Owner requests that the Board give this cross-examination testimony no weight. *See Rpx Corp. v. Collision Avoidance Techs. Inc.*, No. IPR2017-01336, 2018 WL 5960792, at *5 (P.T.A.B. Nov. 13, 2018) (denying

³ For example, disclosures in the Conception Documents discuss the “*a recipient*” limitation. E.g., EX2014, at 5 (users that “read a piece of content sent globally” (quoting EX2004, at 15-16)). But Dr. Khan was never questioned about those passages (because he did not review the Conception Documents) or any “similar” passage in the ‘217 Patent.

motion to exclude but giving the cross-examination “testimony, and all reliance on it in this proceeding, no probative weight”); *Fanduel, Inc. v. Cg Tech. Dev., LLC*, No. IPR2017-00902, 2018 WL 5269266, at *30 (P.T.A.B. Oct. 4, 2018) (“[T]he Board ... is well positioned to determine and assign appropriate weight to evidence presented, including giving it no weight.”).

Respectfully submitted,

Dated: April 22, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 22nd day of April, 2026, a true and correct copy of the foregoing **Patent Owner's Motion to Exclude** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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