

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 OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

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

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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

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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)
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

I. There Is No Basis to Exclude Exhibit 2014.

Petitioner seeks to exclude Exhibit 2014, which is a summary chart prepared by counsel and verified by Justin Marston. EX2014; EX1043, 11:21-13:1. Exhibit 2014 summarizes EX2004 and EX2006, which consist of nearly 100 pages of technical writing. It is a proper summary of voluminous writings. Fed.R.Evid.1006.

Petitioner argues Exhibit 2014 should be excluded as “improper incorporation by reference” and/or attorney argument. Mt.,1-2. But the Board has considered similar charts in the past. *See, e.g., Unified Pats., LLC v. Flexiworld Techs., Inc.*, No. IPR2022-00775, 2023 WL 7198014, at *5 (P.T.A.B. Nov. 1, 2023) (considering “a claim chart purporting to show where each limitation ... may be found in [the corroborating document]”). And, there is no improper incorporation by reference because the Response describes Exhibit 2014. Resp.,45 (EX2014 shows that “[t]hese Conception Documents disclose each limitation of the Challenged Claims”). Moreover, Justin Marston explained what the exhibit is and that he reviewed it for accuracy. EX1043, 11:21-13:1;200:20-201:6; EX1041,311:3-312:9.

Petitioner also contends the statements about a PHOSITA's understanding are attorney argument. Mt.,2-3. But the portion about a PHOSITA's understanding of the “*module*” terms was compiled **from Patent Owner's expert**. EX2029,¶¶20-43. Moreover, Justin Marston reviewed and verified Exhibit 2014. Although Petitioner contends that Justin Marston is not a PHOSITA, Petitioner applies the wrong

definitions. *Infra*, _____. Moreover, as an inventor, Justin Marston is qualified as a fact witness to “connect technical evidence” (i.e., the language in his drafts of the provisional) “to claim language” – i.e., the language he included in his ‘217 Patent.

Importantly, even without EX2014, Patent Owner has evidence of conception prior to Dumais. It is **not** EX2014 that shows entitlement to an earlier priority date: it is the conception documents themselves (e.g., EX2004, EX2006, EX2049).

II. Petitioner Cites No Authority for Excluding Documents “for Lack of Authentication” Solely Because a Single Metadata Field Is Unavailable.

Petitioner attempts to exclude numerous exhibits on the basis of “lack of authentication.” Mt.,4-6. The sole basis for Petitioner’s authenticity challenge is that a single metadata field is not available. Mt.,3-5. Petitioner cites **no authority** for its proposition that an exhibit should be excluded as not authentic on that basis. *Id.*

“[A]uthentication is a low bar,” requiring only a rational basis that [a document] is what it is asserted to be.” *Advanced Micro Devices, Inc. v. Aquila Innovations, Inc.*, No. CASE IPR2019-01526, 2021 WL 921325, at *39 (P.T.A.B. Mar. 10, 2021); accord *Google LLC v. Zipit Wireless, Inc.*, No. IPR2019-01567, 2021 WL 886416, at *23 (P.T.A.B. Mar. 9, 2021) (authenticity is “not an especially high hurdle for a party to overcome”). Here, Patent Owner submitted evidence under Rule 901 establishing that each of these exhibits is what it is asserted to be (*infra*,3-7), and Petitioner has not met its burden of establishing that these exhibits are **not** admissible. *Advanced Micro*, 2021 WL 921325, at *39 (citing 37 C.F.R. § 42.20(c)).

A. EX2004-EX2008 and EX2010-EX2012 Have Been Authenticated.

Petitioner seeks to exclude these exhibits as lacking authentication solely because the “author” metadata field is not available. Petitioner cites **no authority** for its proposition that an exhibit is not authentic unless every metadata field is available. Here, each exhibit has been properly authenticated because the Marstons’ – who, as inventors, are witnesses “with knowledge – provided testimony that each exhibit “is what it is claimed to be.” *See* EX2015, ¶¶4,10-48; EX2003, ¶¶4,11; EX2031, ¶¶12,19,25; Fed.R.Evid.901(b)(1).¹ No further authentication is required.

Petitioner asserts that the Marstons’ testimony as to authenticity should be “disregarded” because they are “self-interested and biased.” Mt.,6. Petitioner cites **no authority** in support, and the argument has been rejected. *E.g., Sonos, Inc. v. Implicit, LLC*, No. IPR2018-00767, 2019 WL 4419356, at *21 (P.T.A.B. Sept. 16, 2019) (“We disagree that such testimony and evidence should be excluded on the basis of insufficient authentication because they stem from the inventor himself.”).

Petitioner asserts that the metadata “does not corroborate” that the Marstons created the documents (Mt.,4), but that is not true. For example, the metadata:

- lists Justin Marston as the “Custodian” (the files came from his computer (EX1043,205:19-206:11)), corroborating his involvement. *See* metadata slip sheet on last page of EX2004-EX2008 & EX2010-EX2012.
- date fields (2004 or 2005) corroborate the Marstons’ testimony about when the documents were created. *Id.*

¹ Additionally, the exhibits are over 20 years old. Fed.R.Evid.901(b)(8).

- “File Name” and “Template” fields list “BlueSpace” (or “Justins Business”), corroborating Justin Marston’s testimony that he worked on them while employed by BlueSpace.² *Id.*; *see also* EX2019-EX2023 & EX2025-EX2027.
- a “File Name” includes Paul Marston’s initials (“pm”) (EX2012,95).
- a “File Name” is “Pauls Formula for Justins Business” (EX2005,10).
- “last saved” field is “Marston.” EX2020,EX2022,EX2023,EX2026,EX2027.

Thus, the metadata confirms authenticity. *E.g.*, *United States v. Cook*, 820 F. App'x 110, 116 (3d Cir. 2020) (finding “last modified” date provided corroboration).

Petitioner also argues, without explanation, that the two sets of metadata³ do not “match.” Mt.,4-5. But Petitioner identifies no discrepancy between any field in the two sets of metadata, and there are none. *Compare, e.g.*, EX2004,35 (metadata listing “create” date as 8/4/2004) *with* EX2019 (same). Although the metadata is **displayed** differently (and Word’s “Properties” has captured more fields), no field is different. Petitioner has not identified a single discrepancy between the two sets.

B. EX2019-EX2023 and EX2025-EX2027 Are Authentic.

Without citation to any authority or explanation, Petitioner asserts that EX2019-EX2023 and EX2025-EX2027 – which are metadata for EX2004-EX2008 and EX2010-EX2012 (Resp.,45) – “lack authentication.” Mt., at 5. The sole basis

² The **content** also confirms authenticity. The exhibits have “BlueSpace” on the first page (*id.*), and numerous drafts use “Justin Marston” as an example user. EX2004,6; EX2006,8; EX2007,8; EX2008,8; EX2010,9; EX2011,9; EX2012,9.

³ One set of metadata is from the “Properties” in Microsoft Word. The other set of metadata was captured from a document review program (Relativity).

for this argument appears to be that there is “no testimony” authenticating the exhibits. But witness testimony is **not** required, and these exhibits are authentic, for several reasons. **First**, the metadata’s distinctive characteristics satisfies the authentication requirement. Fed.R.Evid.901(b)(4) (requirement to authenticate can be satisfied by “contents, substance, ... or other distinctive characteristics of the item, taken together with all the circumstances”); *see Tamares Las Vegas Props., LLC v. Travelers Indem. Co.*, 586 F. Supp. 3d 1022, 1030 (D. Nev. 2022) (granting motion seeking order “deeming accurate and authentic date and time stamps within ... metadata” under Rule 901(b)(4)); *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 548 (D. Md. 2007) (“[M]etadata certainly is a useful tool for authenticating electronic records by use of distinctive characteristics”). **Second**, the metadata is over 20 years old, thereby qualifying as “ancient documents.” Fed.R.Evid.901(b)(8). **Finally**, the metadata is “evidence about a process or system” (the system in Microsoft Word that captures and preserves metadata), and the system “produces an accurate result,” as evidenced by the facts that (1) the two sets of metadata are consistent and (2) the metadata is consistent with the Marstons’ testimony. Fed.R.Evid.901(b)(9); *see also, e.g., Lorraine*, 241 F.R.D. at 549 (“This Rule [Rule 901(b)(9)] recognizes one method of authentication that is particularly useful in authenticating electronic evidence stored in or generated by computers.”). For these reasons, Petitioner is incorrect to assert that these exhibits “lack authentication.”

C. EX2032-EX2036, EX2038-EX2039, EX2043-EX2045, EX2047-EX2050, EX2054, EX2056-EX2062, EX2065-EX2069, and EX2073-EX2074 Have Been Authenticated.

Petitioner moves to exclude these exhibits because the “author” metadata field is either blank or lists a third party as an author. Mt.,⁵ Petitioner cites no authority requiring that, to authenticate a document, there must be “metadata” “confirm[ing]” authorship. To the contrary, authentication is a “low bar” that can be satisfied by testimony, which Patent Owner provided for every exhibit. *See* EX2030, ¶¶22-23, 26, 29-31, 39-43, 45, 58-59, 61-63; EX2031, ¶¶12, 19, 21, 23-30, 33-37.

Also, Petitioner's premise is incorrect: the metadata **confirms** the Marston' involvement. For example, the “Custodian” metadata field confirms that the exhibits came from the Marstons' files (*see* “metadata slip sheet” on last page of EX2032-EX2039, EX2010,⁴ EX2047-EX2062, EX2065-EX2069, EX2073-EX2074); “File Names” reference “BlueSpace,” “TransMail,” or “Paul” (*id.*); “File Names” contain the Marstons' initials (e.g., last page of EX2032; EX2034-2036; EX2059-2062; EX2065-2069; EX2074); and “Marston” “Last Saved” many documents. EX2034; EX2048-2050; EX2054; EX2058-2062; EX2065-2069; EX2073-2074.

For Exhibits 2047-48, 2050, and 2056-58, Petitioner argues that, because third parties' names are in the “author” field, they are not authentic. Mt.,⁶ Petitioner cites

⁴ The metadata for EX2010 is the same as the metadata for EX2043-EX2045, because EX2043-EX2045 **are** EX2010 (i.e., EX2043-EX2045 were generated from the native of EX2010 to show which user made each comment).

no authority in support, and the Marstons explained why these third parties' names appear in the metadata. EX2031, ¶¶19&24-26; EX2030, ¶¶58-59&62. That third parties received or commented upon the exhibits does not make them inauthentic.

In sum, the exhibits are authentic, and Petitioner cites no authority to the contrary. Moreover, because the exhibits are authentic, there is no reason to basis for Petitioner's request (Mt.,7-8) to exclude the Marstons' testimony about them.

III. The Conception Documents *Themselves* Are Evidence of Conception.

Petitioner asserts that the inventors' testimony about conception is "uncorroborated." Mt.,6. But the Board already found that "the Conception Documents *themselves* are evidence of conception, which do not require further corroboration." Paper 14, at 33 (citing *Price v. Symsek*, 988 F.2d 1187, 1195 (Fed. Cir. 1993) ("'[C]orroboration' is not necessary to establish what a physical exhibit before the board includes. Only the inventor's testimony requires corroboration.")). Petitioner does not address the Board's finding or cited case law. *See* Mt. Instead, despite the Board's explanation that "[o]nly the inventor's testimony requires corroboration," *id.*, Petitioner insists that the documents also require corroboration.

In addition to the Conception Documents, which themselves are evidence of conception, Patent Owner also provided metadata, which is additional corroborating evidence. Paper 14, at 33 (finding PO's argument about the metadata to be "reasonably based on the manner in which metadata is created, namely, by the

computing system which created it"). Nevertheless, Petitioner asserts that the metadata cannot corroborate conception because "it does not identify either of them as the author." Mt.,8. Petitioner cites no authority in support. *See id.*

Petitioner also asserts that the Marstons are "self-interested and biased" and that, therefore, their testimony establishing conception "should be disregarded." Mt.,6. Again, however, the Board already found that "the Conception Documents *themselves* are evidence of conception"; further "corroboration" is not required.

Petitioner asserts that Justin Marston is not credible because he allegedly provided "inconsistent" testimony. Regarding his testimony about Exhibit 2014, there is no "inconsistency": in both proceedings, he testified that preparing EX2014 was a joint effort between himself and counsel. EX1043, 200:18-201:6 (testifying that he "prepared [EX2014] with assistance ... from counsel") & EX1041, 211:3-312:9 (testifying that the attorneys created EX2014 and he "validate[d]" it for accuracy). With respect to the testimony about Justin Marston's position with BlueSpace in 2005 and 2006, Petitioner does not dispute that Justin Marston was working at BlueSpace at the time the exhibits were created (Petitioner only questions his role). *E.g.*, EX2015,¶10. Petitioner does not explain why it matters what role Justin Marston held at BlueSpace; it is irrelevant to any issue in this proceeding.

IV. Paragraphs 15-30 of EX2003 Should Not Be Excluded.

Petitioner seeks to exclude portions of Justin Marston's testimony on the basis

that he is not a PHOSITA. Mt.,8-9. The Board should ignore this argument because Petitioner fails to apply the correct definition of a PHOSITA. The Board's definition of a PHOSITA is that a PHOSITA "would have had a bachelor's degree in electrical engineering, computer engineering, computer science, or a similar field, and two to three years of experience with systems estimating relevance for various types of content" and further that, "[m]ore work experience could substitute for education and vice versa." Paper 14, at 7-8. Instead of applying that definition, Petitioner applies **three other** definitions. Mt.,8-9. Petitioner's argument should be disregarded because Petitioner does not apply the correct definition of a PHOSITA.

When the correct definition of a PHOSITA is applied, Justin Marston can satisfy the definition of a PHOSITA. At the time of the invention, he had experience with computer programming, including computer programming work that was published in NATURE and coding used to build a system at British Nuclear Fuels (EX1050,56:1-58:9). In addition, at the time of the invention, Justin Marston had **four years** of experience working on an email-based management system at BlueSpace. EX2043,32:20-33-11&56:1-58:9; EX2015-2018. Petitioner argues that he has no "software experience," is "not a software developer," and did not do "coding" for BlueSpace (Mt.,9), but the PHOSITA definition does not require that. With respect to education, although his degrees are in chemistry, he has **more** than the required number of years' work experience, which can "substitute for education"

under the Board's PHOSITA definition. Paper 14, at 7-8.

In any event, he has relevant technical experience. *See SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010), *overruled on different grounds* (district court did not abuse its discretion by admitting testimony in a patent dispute involving a deep fryer, where witness "[wa]s not skilled in designing deep fryers" but had relevant technical experience); *eSpeed, Inc. v. Brokertec USA, L.L.C.*, 404 F. Supp. 2d 575, 579–80 (D. Del. 2005) (allowing testimony where witness was not a POSITA because witness had an understanding of relevant industry and was "able to render a helpful opinion").

V. Paul Marston's Testimony Is Not Hearsay and Has Foundation.

Petitioner asserts that the following sentence is hearsay: "I [Paul Marston] asked [Dr. Morton-Jones] to review for me the formulas that I had prepared." EX1031, ¶19. The sentence is not a "statement"; at most, it is a non-assertive **question**. *United States v. Pulliam*, 973 F.3d 775, 783 (7th Cir. 2020), *as amended* (Sept. 8, 2020); *United States v. Jackson*, 88 F.3d 845, 848 (10th Cir. 1996) (question was not a hearsay "statement" where it could not reasonably "be construed to be an intended assertion"). Petitioner also asserts that the following sentence is hearsay: "Tony Morton-Jones did not prepare any of the formulas in the draft (or final) provisional patent application." EX1031, ¶19. Again, this sentence is not a "statement"; it describes an **action** that someone did not perform.

Petitioner also seeks to exclude Paul Marston's testimony regarding Jon Fernyhough in Paragraph 24. But that paragraph contains no "statement"; it simply reflects his understanding of Fernyhough's role. EX1031, ¶24; Fed.R.Evid.801(a).

Petitioner also asserts that Paragraphs 24-26 should be excluded for "lack of foundation" because Paul Marston never "spoke directly with Mr. Fernyhough." Mt.,10-11. But he has personal knowledge of Jon Fernyhough's role because, for example, they exchanged correspondence. *See* EX2063 & EX2070-71.

VI. Justin Marston's Testimony Is Not Hearsay and Has Foundation.

Petitioner asserts that the following sentence is hearsay: "I [Justin Marston] understand that ... Paul Marston asked his friend, Tony Morton-Jones, to review the formulas that Paul Marston had prepared." Paper 44, at 11. Again, this is not a "statement"; asking Morton-Jones to review a formula is **a non-assertive question**, not a "statement." *Supra*, 10. And, the sentence that "Morton-Jones did not prepare any of the formulas himself" is a comment upon an **action**, not a "statement."

Petitioner also seeks to exclude Paragraphs 59 and 62 – i.e., Justin Marston's testimony that Rick Turner and Tim Couper "did not contribute ... to the inventions" – on the alleged basis that the testimony lacks foundation. Mt.,11-12. But Justin Marston worked with Turner and Couper at BlueSpace (EX2030, ¶¶59, 62) and, thus, he had personal knowledge of their roles. He also is an inventor on the Patent and, thus, has personal knowledge of who contributed what. His testimony that

Turner and Couper did not contribute to the invention is consistent with the documents, which establish that the Marstons were the two people working on the invention and that the roles of any third parties were limited to the Marstons running their ideas by them. Petitioner was free to ask Justin Marston about their roles (which they did), but there is no question he had personal knowledge of their roles.

VII. EX2047-48, EX2050, and EX2056-2058 Are Not “Based on” Testimony.

Petitioner asserts that exhibits should be excluded because they are “based on” the hearsay “discussed in the inventors’ declarations.” Mt.,12. This makes no sense. The exhibits were prepared decades before the Marstons submitted testimony in 2025 and, therefore, cannot possibly be “based upon” the Marstons’ testimony.

VIII. There Is No Basis to Exclude EX2079-EX2083.

Petitioner asserts that EX2079-EX2083 are “inadmissible hearsay” not subject to any exception. But the articles are not being offered for their truth; they are offered as evidence of secondary considerations. *See Quanergy Sys., Inc. v. Velodyne Lidar, Inc.*, No. IPR2018-00255, 2019 WL 2237114, at *17 (P.T.A.B. May 23, 2019) (articles submitted as evidence of industry praise and commercial success were not offered for their truth); *Hynix Semiconductor Inc. v. Rambus Inc.*, No. C-00-20905 RMW, 2009 WL 112834, at *14 (N.D. Cal. Jan. 16, 2009), *aff’d*, 645 F.3d 1336 (Fed. Cir. 2011) (article referencing industry praise not hearsay because it “was admitted not for its truth, but as a proper secondary consideration”); *HTC Corp. v.*

Tech. Props., No. 5:08-cv-00882-PSG, 2013 U.S. Dist. LEXIS 129263, at *16 (N.D. Cal. Sep. 6, 2013) (evidence of “industry acclaim” served a non-hearsay purpose).

An independent basis for admitting the statements in EX2082 and EX2083 – regarding Meta's products Facebook and Instagram – is that the relevant statements are statements by a party opponent. Fed.R.Evid.801(d)(2); EX2082, at 3 (statements by Facebook Engineering Manager); EX2083, at 5-18 (Instagram screen captures).

Exhibit Nos. 2079-81 are articles that identify when Twitter moved to a relevancy-based algorithm. These market reports and commercial publications are generally relied upon by the public and, therefore, are subject to a hearsay exception. Fed.R.Evid.803(17). Petitioner argues these exhibits are not relevant because they are not “about Petitioner.” Mt.,12. But most secondary considerations focus on the industry (e.g., industry demand), instead of the actions of a single alleged infringer.

Petitioner argues that Patent Owner “has not established that any of these exhibits relate to the patented technology” (Mt.,12), but Patent Owner provided evidence identifying where each limitation is found in Meta's and X Corp.'s products and showed how their products use the “*cognate*” limitation. Resp.57-58.

IX. EX2032-EX2039 and EX2041-EX2078 Are Not Improperly Incorporated by Reference.

Petitioner contends that these exhibits should be excluded as improper incorporation by reference. Mt.,13. To the contrary, Patent Owner's briefs explained exactly what each exhibit is. *See, e.g.*, Sur-Reply,14 (EX2032-EX2039 & EX2056-

EX2074 are “drafts of the provisional and documents showing Paul Marston’s work on math”); *id.*,¹⁵ (EX2041-EX2042 show that “Justin Marston was managing BlueSpace’s operations”); *id.* (EX2041,Nos.27-28 show that Justin Marston was securing funding for BlueSpace); *id.*,¹⁶ (EX2041-EX2042 are “logs showing his work for BlueSpace,” showing that he was working on his “daily occupation” during the critical period); *id.*,¹⁵ (EX2075-2078 show that “Paul Marston was working full-time as a lecturer on statistics”); Resp.,⁴⁹ (EX2032-EX2074 are “evidence that both corroborates Justin Marston’s testimony and shows reasonable diligence”); *id.*,⁵⁰ (EX2042 is “log of privilege communications”); *id.* (EX2041 is “log of BlueSpace work”); *id.* (EX2076-2078 show “P. Marston background”). Petitioner complains that Patent Owner did not “substantively discuss[]” each exhibit, but the details of the work he performed each day is not necessary. What is relevant is that they were working reasonably continuously on the invention, and these exhibits show that.

Petitioner also seeks to exclude Exhibit 2041 and Exhibit 2042 on the basis that they are not authentic because there is no “witness testimony” about them. Mt.,¹³⁻¹⁴. But Justin Marston testified about these exhibits, explaining what they are. EX2030, ¶¶^{10,19,25,36,53} (describing EX2041 as “the log of my BlueSpace documents” listing “saved to my BlueSpace folder” and showing “work to support TransMail” and “work[] on BlueSpace documents” during the critical period); *id.*, ¶¶^{19,25,36,49,50,53-55} (describing EX2042 as a “privilege log” listing “e-mails

maintained by counsel” that “show that we exchanged correspondence with counsel for BlueSpace regarding BlueSpace matters” during the critical period). Therefore, both exhibits have been properly authenticated. Fed.R.Evid.901(b)(1).

Petitioner also argues that Exhibit 2041 and 2042 are not “evidence,” but Petitioner does not articulate what Rule of evidence allegedly makes the Exhibits inadmissible. *See* Mt.,13. In terms of admissibility, the logs (1) are relevant to the issue of diligence; (2) do not contain any hearsay “assertions”; and (3) have been authenticated through Justin Marston’s testimony. Moreover, Exhibit 2041 was provided to summarize voluminous evidence (which was produced to Petitioner during discovery). Fed.R.Evid.1006. Exhibit 2042 consists primarily of metadata from e-mails, but Petitioner cites no authority that metadata cannot be “evidence.”

Finally, Petitioner asserts that EX2042 is “prejudicial given that Petitioner could not explore the contents of those documents.” Mt., 14. But there is no prejudice. This is because, as the Board has already found, Patent Owner has **not** relied upon the substance of any of the logged documents; instead, Patent Owner is relying upon the fact that certain communications took place on certain dates – i.e., information can be extracted from the metadata alone. IPR2025-00299, Paper 31, at 5-6 (finding that the cited portions of Justin Marston’s testimony “at most, confirm email subject lines listed on the privilege log, rather than discuss specific email content” and that Justin Marston “merely relies on the *existence* of those emails).

Respectfully submitted,

Dated: April 29, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 29th day of April, 2026, a true and correct copy of the foregoing **Patent Owner's Opposition to Petitioner's Motion to Exclude** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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