

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,

Petitioners

v.

STERLING COMPUTERS CORPORATION,

Patent Owner.

IPR2025-00430

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

**PETITIONER'S REPLY IN SUPPORT OF
ITS MOTION TO EXCLUDE**

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I. EX2014 Is Indisputably Improper “Summary” Evidence That PO Incorporates By Reference

Labeling EX2014 a “summary chart,” (Opp., 1), PO essentially concedes its briefing improperly incorporated conception arguments *summarized* in a claim chart. PO had the burden to make those arguments *in its briefs*, not an exhibit incorporated by reference. 37 C.F.R. § 42.6(a)(3); *Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App’x 654, 658 (Fed. Cir. 2020); *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1369-72 (Fed. Cir. 2023). PO has no response to this caselaw.

PO argues that its briefing contains “no improper incorporation by reference” because it “describes EX2014.” Opp., 1 (citing POR, 45 as stating that EX2014 shows how “[t]hese Conception Documents disclose each limitation of the Challenged Claims”). Such conclusory arguments are “are insufficient to meet [PO’s] burden of establishing prior conception.” *Gen. Access*, 811 F. App’x at 658.

The sole case PO cites to defend its use of a claim chart says nothing about incorporation by reference, because the claim chart in that case was properly *contained within the Patent Owner’s briefing*. *Unified Pats., LLC v. Flexiworld Techs., Inc.*, No. IPR2022-00775, Paper 16, 10-27 (Jan. 31, 2023). In *Unified Patents*, the Patent Owner’s Response used 17 pages to map its conception evidence to the claims—this was found to be sufficient to carry their burden of demonstrating conception. *Id.*, Paper 41, 13 (Nov. 1, 2023). By contrast, Sterling’s EX2014 has 35 *pages* of attorney argument surrounding conception, which it did not present in its

briefing. Thus, unlike the claim chart approved in *Unified Patents*, PO's EX2014 constitutes improperly incorporated attorney argument that merits exclusion.

Sterling argues that statements within EX2014 about a POSITA's understanding of the claim are consistent with its expert's discussion of the claims. Opp. 1 (citing EX2029, ¶¶20-43). But PO's expert did not provide opinions about conception, nor does his declaration cite EX2014. PO's Sur-Reply, 14; EX2001; EX2029. Thus, statements within EX2014 trying to connect how a POSITA would understand the claims *to conception documents* reflect attorney argument, not evidence. *See, e.g.*, EX2014, 3-6, 9-10, 13-17, 20, 31-32; *Garmin Int'l, Inc. v. Cardiacsense Ltd.*, IPR2025-00195, Paper 10, 22 (May 23, 2025).

Sterling also tries to justify these statements about a POSITA's understanding of the claims because Justin Marston is allegedly a POSITA and "verified Exhibit 2014." Opp., 1-2. First, any argument about Justin Marston is irrelevant given he did not provide any testimony whatsoever about the substance of EX2014. EX2003; EX2015; EX2030. Second, Justin Marston is not a POSITA, such that even if he had provided such testimony about EX2014, it would be unreliable and irrelevant. *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1376-77 (Fed. Cir. 2022); *infra* §II.

II. Justin Marston Is Not a Person of Skill in the Art

Regardless of the definition proposed in this IPR, Mr. Marston is not qualified

to provide opinions from the perspective of a POSITA because he (1) lacks any relevant degree, and (2) lacks any relevant work experience developing software, including with “systems estimating relevance for various types of content.” Mot., 9; EX2003, ¶¶15-30. PO superficially asserts that Mr. Marston’s work as BlueSpace’s CEO (and/or his high school project on “chaos theory” involving computer programming) provided sufficient “work experience” to overcome his lack of relevant education. Opp., 9-10. But Justin Marston *himself* contradicted PO’s attorney argument, agreeing he was not a software developer and lacked “the software experience to be able to develop this content relevance technology.” EX1041, 195:11-17, 315:15-316:8.

PO’s cases confirm that a witness like Justin Marston, who lacks any relevant experience, cannot provide testimony from the perspective of a POSITA. Opp., 10. For example, in *SEB*, the expert had significant experience about the polymers central to the parties’ dispute about deep fryers. *SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010), *aff’d sub nom. Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011). Similarly, *eSpeed* rejected that the expert was not a POSITA, concluding they had “an adequate understanding of trading” and “an exceptional grasp of the requisite programming issues related to trading.” *eSpeed, Inc. v. Brokertec USA, L.L.C.*, 404 F. Supp. 2d 575, 579-80 (D. Del. 2005). These cases do not suggest an unqualified witness like Mr. Marston can testify from the

perspective of a POSITA.

III. Non-Authentic and Non-Corroborated Evidence from PO's Inventors Should Be Excluded

Numerous exhibits from PO should be excluded, not simply because they omit the “author” field, but because that field (and others) do not corroborate PO’s conception arguments. Mot., 3-6; *Google LLC v. Ikorongo Tech. LLC*, No. IPR2021-00204, Paper 40, 20-21 (Jan. 20, 2023) (citing *Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1295 (Fed. Cir. 2018)) (finding documents and associated metadata unreliable where “the date of conception is not corroborated by any evidence other than to [the inventor’s] own statements and documents”).

PO essentially argues that because its exhibits *have* metadata then they must be authentic (Opp., 3-7), regardless of whether that metadata corroborates that the inventors created or edited them (it does not). Looking to EX2004, its metadata lists “Revision number 88” with a total editing time of “154:56:00” and reflects that it was last saved by “Bal”; similarly, EX2006 reflects “Revision number 25” with a total editing time of “134:28:00,” listing “.” as its author and “n/a” under “Last Saved By.” EX2003, ¶6; EX2019 (metadata for EX2004); EX2021 (metadata for EX2006).¹ Without metadata establishing who contributed to these documents

¹ As reflected in EX2014, PO’s conception arguments focus on EX2004 and EX2006. EX2014; *see also* EX2030, ¶5.

across 88 and 25 revisions, respectively, PO’s evidence merely reflects that Justin Marston, as BlueSpace’s former CEO, retained certain BlueSpace documents, not that he and his father, alone, created or contributed to them—this stands in stark contrast to the evidence approved in *Sonos*, opinion cited by PO (Opp., 3), which included a “CVS repository” tracking “the dates, users, and versions” of each exhibit. *Sonos, Inc. v. Implicit, LLC*, No. IPR2018-00767, Paper 40, 52 (Sept. 16, 2019)).

IV. PO Incorporates EX2032-EX2039 and EX2041-EX2078 by Reference

PO broadly asserts that because its briefing “describes” certain of these exhibits *en masse* that they were not improperly incorporated by reference. Opp., 13-14. PO’s own citations illustrate precisely how it attempts to incorporate thousands of pages of evidence through broad statements like “EX2032-EX2074 are ‘evidence that both corroborates Justin Marston’s testimony and shows reasonable diligence.’” *Id.* PO also ignores the caselaw in Petitioner’s Motion establishing that attorney-generated logs of documents are not evidence, arguing that Justin Marston “authenticated” them. Opp. 15. While PO lists the passages in Mr. Marston’s declaration that mention EX2041 or EX2042, none includes testimony authenticating those documents or explaining why their contents can be trusted. Opp. at 14-15 (citing EX2030, ¶¶10, 19, 25, 36, 49, 50, 53-55).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2026 true and correct copies of the foregoing
PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE were
served via electronic mail upon the following counsel of record for Patent Owner:

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