

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEALTH, INC.
Petitioner,

v.

VANILLA TECHNOLOGIES INC.,
Patent Owner.

PGR2026-00042
U.S. Patent No. 12,353,917

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner objects to the following exhibits submitted by Petitioner:

Exhibit	Description
1004	Declaration of Jules White, Ph.D. (cited as “White Decl.”).
1012	Wayne Xin Zhao et al., <i>A Survey of Large Language Models</i> , <i>arXiv:2303.18223v13</i> (Nov. 24, 2023).
1014	Internet Archive Record of Krystal Hu, ChatGPT Sets Record for Fastest Growing User Base - Analyst Note, REUTERS (Feb. 2, 2023),
1019	Internet Archive Record of Sawdah Bhaimiya, ChatGPT may be the fastest-growing consumer app in internet history, reaching 100 million users in just over 2 months, UBS report says, BUSINESS INSIDER (Feb. 2, 2023), https://web.archive.org/web/20230203044225/https://www.businessinsider.com/chatgpt-may-be-fastest-growing-app-in-history-ubs-study-2023-2 (captured Feb. 3, 2023).
1022	Internet Archive Record of Kyle Wiggers, OpenAI releases GPT-4, a multimodal AI that it claims is state-of-the-art, TECHCRUNCH (with “Mar. 14, 2023” date), https://web.archive.org/web/20250817160037/https://techcrunch.com/2023/03/14/openai-releases-gpt-4-ai-that-it-claims-is-state-of-the-art/ (captured Aug. 17, 2025).
1026	Declaration of Ingrid Hsieh-Yee, Ph.D. (cited as “Hsieh-Yee Decl.”).

I. OBJECTIONS TO EXHIBIT 1004

Patent Owner objects to Exhibit 1004 under **FRE 401, 402, 403, and 702** to the extent Petitioner relies on Dr. White as an expert qualified to offer opinions

beyond the specialized knowledge, skill, experience, training, or education established in his declaration.

Dr. White repeatedly opines about what a person of ordinary skill in the art would have understood at the relevant time concerning the claimed technology, which involves a structured machine-learning (“ML”) architecture. *See, e.g.*, ¶¶ 96, 112-13, 118, 121-23, 142, 148, 159, 166-67, 184, 197, 204, 211, 231, 237, 255-56, 265, 307, 313, 327, 342, 344-45, 347, 351-57, 363, 369, 371, 382, 388, 390, 400, 406-07, 412, 416, 424-25, 430, 434-50, 457, 461-63, 469-70, 476, 479, 486, 489-92, 497, 508-10, 512. Dr. White also offers opinions and analyses concerning wills, trusts, estate planning, property interests, and related legal concepts. *See, e.g.*, ¶¶ 92, 118-21, 131-32, 136, 158-59, 165-69, 181, 243-44, 273, 292, 316-18, 341, 349-51, 399, 406, 429-31, 435-44, 455-57, 461-62, 469, 475, 484, 489-91. Petitioner has not established that Dr. White is qualified to offer expert opinions across this full range of technical and legal subject matter.

Patent Owner also objects to Exhibit 1004 under **FRE 602 and 701** to the extent it presents as fact testimony assertions outside Dr. White’s personal knowledge. This objection includes, without limitation, assertions concerning historical facts, industry practices, legal matters, or activities of third parties for which the declaration does not establish Dr. White’s personal knowledge. *See, e.g.*,

¶¶ 317-18 (trusts, trustees, creditors, and estate distributions), 435-44 (the legal validity and amendment of wills), 455-57 (state laws governing wills).

Patent Owner also objects to Exhibit 1004 under **FRE 801 and 802** to the extent it repeats or relies on out-of-court statements for their truth and Petitioner seeks admission of those statements for their truth, rather than solely as materials an expert may permissibly consider under FRE 703. *See, e.g.*, ¶¶ 32, 38, 75-86, 344-47, 354-55, 435-38, 447-48, and the materials cited therein (addressing, among other things, the historical adoption, prevalence, capabilities, and uses of ML technologies and multimodal ML systems, asset-valuation techniques, and evaluation of will provisions). Patent Owner further objects under **FRE 703** to the extent Exhibit 1004 discloses otherwise inadmissible underlying material to the Board for its substantive truth rather than for the limited purpose of explaining the basis for an expert opinion.

Patent Owner further objects to Exhibit 1004 under **FRE 401 and 705 and 37 C.F.R. § 42.65(a)** to the extent the declaration states conclusions without sufficiently identifying the supporting facts or data. This objection includes, without limitation, assertions that particular technologies, techniques, or claimed features were “well-understood, routine, and conventional” or required only “routine programming knowledge,” as well as assertions that modifications, inputs, or combinations would have been understood, logical, obvious, or reasonably expected to succeed, to the extent those conclusions exceed or lack adequate support in the

facts and evidence identified in the declaration. *See, e.g.*, ¶¶ 69, 74-86, 123, 255-56, 353-57, 369-72, 388-91, 406, 441, 461-62, 486, 489-91.

II. OBJECTIONS TO EXHIBIT 1012

Patent Owner objects to Exhibit 1012 under **FRE 901** to the extent Petitioner relies on it as an authentic copy of the particular version of the Zhao reference allegedly probative of the state of the art before the November 29, 2023 priority date.

Exhibit 1012 identifies itself as “Version: v13” and states that it underwent a “major update on November 23, 2023.” *See* Ex. 1012, 1. The submitted arXiv copy is dated November 24, 2023, only days before the November 29, 2023 priority date. *Id.* Petitioner has not submitted testimony, certification, version history, or other evidence establishing when this particular version became publicly available, what substantive material was added or changed in the November 23 “major update” or whether the specific disclosures on which Petitioner and Dr. White rely appeared in an earlier publicly available version. Yet Dr. White cites Exhibit 1012 as evidence that aspects of the claimed ML architecture were already widespread, routine, conventional, or understood by a person of ordinary skill in the art as of November 29, 2023. *See, e.g.*, Ex. 1004, ¶¶ 32, 35, 38, 69, 76, 256.

Patent Owner therefore objects to the use of Exhibit 1012 to establish the state of the art or the knowledge of a person of ordinary skill in the art as of November 29, 2023, absent a sufficient foundation showing that the specific material relied

upon was publicly available before the priority date and is probative of what was known or understood at that time.

III. OBJECTIONS TO EXHIBIT 1014 AND EXHIBIT 1019

Patent Owner objects to Exhibits 1014 and 1019 under **FRE 801, 802, and 805** to the extent Petitioner relies on statements in those exhibits for their truth, including statements concerning ChatGPT’s user count, adoption rate, or relative growth rate. Exhibits 1014 and 1019 are news reports that attribute the relevant statistics to a third-party “UBS study,” which in turn relies on data from the third-party analytics firm “Similar Web.” *See* Ex. 1014, 1-2; Ex. 1019, 1-3. Exhibit 1014 states that “Similar Web did not immediately respond to a request to confirm the figures.” Ex. 1014, 2. Petitioner has not established an exception to the rule against hearsay for each level of hearsay. Authentication of an archived webpage does not establish the admissibility or truth of the substantive assertions displayed on that webpage.

Patent Owner also objects to Exhibits 1014 and 1019 under **FRE 401 and 403** to the extent Petitioner relies on ChatGPT’s reported consumer adoption as evidence that any feature of the claimed ML architecture was well-understood, routine, conventional, or otherwise within the knowledge of a person of ordinary skill in the art. Dr. White cites the assertion that ChatGPT had “reached 100 million users by February 2023” to support his opinion that ML models were “well-understood,

routine, and conventional” as of November 29, 2023. *See, e.g.*, Ex. 1004, ¶¶ 32, 69, 74-76. Generalized consumer-adoption statistics, however, do not establish the prevalence, conventionality, or understanding in the pertinent art of the particular features recited in the challenged claims.

IV. OBJECTIONS TO EXHIBIT 1022

Patent Owner objects to Exhibit 1022 under **FRE 901** to the extent Petitioner offers it as evidence of the TechCrunch webpage’s content, or of publicly available information concerning GPT-4, in March 2023 or at any other time before the November 29, 2023 priority date. Although the webpage displays a “March 14, 2023” publication date, Petitioner’s submitted Internet Archive record reflects a capture dated August 17, 2025. Ex. 1022, 1. Authentication of the webpage as captured in 2025 does not, without additional foundation, establish that the same content appeared on the webpage or was publicly accessible in the same form in March 2023 or at any other relevant earlier date.

Patent Owner also objects to Exhibit 1022 under **FRE 801 and 802** to the extent Petitioner relies on statements in the exhibit concerning GPT-4’s release, technical capabilities, functionality, performance, or other characteristics for their truth. Exhibit 1022 is a third-party news article reporting substantive assertions concerning OpenAI and GPT-4, including that GPT-4 could accept text and image inputs, performed at a “human level” on certain benchmarks, and was more reliable

and capable than GPT-3.5. *See* Ex. 1022, 1-2. The article attributes several assertions to OpenAI or other third parties, and Petitioner has not established an applicable hearsay exception for the substantive assertions for which the exhibit is offered.

Patent Owner further objects to Exhibit 1022 under **FRE 401 and 402** to the extent Petitioner relies on the 2025 archived copy as evidence of what a person of ordinary skill in the art knew as of November 29, 2023. Dr. White cites Exhibit 1022 as evidence that GPT-4 was released in “March 2023” and “could accept both text and image inputs,” and he uses that asserted historical capability to opine that multimodal ML systems were “well-known and well-understood” by November 29, 2023 and that combining text and image processing “had become routine practice by mid-2023.” *See, e.g.*, Ex. 1004, ¶¶ 354-55. Petitioner has not established that the content shown in the August 17, 2025 archive capture was publicly available in the same form at the earlier time on which Dr. White’s opinions depend.

V. OBJECTIONS TO EXHIBIT 1026

Patent Owner objects to Exhibit 1026 under **FRE 401, 402, 403, and 702** to the extent Petitioner relies on Dr. Hsieh-Yee as qualified to offer expert opinions beyond the specialized knowledge, skill, experience, training, or education established in her declaration. Dr. Hsieh-Yee identifies expertise in “library cataloging and classification,” “metadata schema design and implementation,” “information retrieval,” “information organization,” “online catalogs, databases,

search engines,” and related fields. *See* ¶¶ 4-7. Petitioner has not established that she is qualified to opine on what a person of ordinary skill in the art would have known, done, or understood at the relevant time concerning the claimed ML architecture. *See, e.g.,* ¶¶ 12-14, 27, 43, 48-52, 63. Nor has Petitioner established that she is qualified to opine on the historical operation, indexing, or search results of particular Internet search engines and repositories, or on what interested users could or likely would have discovered through those systems at particular times. *See, e.g.,* ¶¶ 23, 27, 30-31, 43, 47-52, 62-64. Exhibit 1026 does not identify sufficient historical search, indexing, ranking, or other data showing that the referenced materials would have been returned or otherwise discoverable through the identified mechanisms at the relevant times, and it does not identify a reliable methodology for determining which searches or discovery paths would have enabled an interested user to locate those materials on those dates.

Patent Owner also objects to Exhibit 1026 under **FRE 602 and 701** to the extent Petitioner offers Dr. Hsieh-Yee’s statements concerning historical search-engine indexing, search results, user behavior, or the historical discoverability of particular materials as fact testimony based on personal knowledge rather than expert opinion. *See, e.g.,* ¶¶ 23, 27, 30-31, 43, 47-52, 62-64. Those paragraphs address what users “could” have discovered through Google, Internet Archive, arXiv, ACL Anthology, and other repositories at particular historical times and the

paths users “could” have taken to locate particular materials. Exhibit 1026 does not establish that Dr. Hsieh-Yee personally observed the historical operation, indexing, or search results of those systems on the relevant dates. *See, e.g.*, ¶¶ 4-7, 15, 21-27, 39-52. Instead, the declaration describes her qualifications and the records and archived materials she reviewed to form retrospective opinions regarding public accessibility and discoverability.

Patent Owner also objects to Exhibit 1026 under **FRE 801 and 802** to the extent it repeats or relies on out-of-court statements for their truth and Petitioner seeks admission of those statements for their substantive truth, rather than solely as materials an expert may permissibly consider under FRE 703. *See, e.g.*, ¶¶ 18-19, 21-28, 34-37, 39-43, 45-64. Patent Owner further objects under **FRE 703** to the extent Exhibit 1026 discloses otherwise inadmissible underlying material to the Board for its substantive truth rather than for the limited purpose of explaining the basis for an expert opinion. This objection includes, without limitation, statements concerning publication, submission, posting, or archive dates; download counts and citation or usage records; search and indexing functionality; and other historical facts derived from Internet Archive, ACL Anthology, arXiv, SSRN, Google Scholar, Google Patents, and other third-party records. *See, e.g.*, ¶¶ 18-19, 21-28, 30-31, 34-37, 40-43, 45-64.

Patent Owner also objects to Exhibit 1026 under **FRE 702 and 901** to the extent Dr. Hsieh-Yee purports independently to authenticate Exhibits 1008 or 1011 based on copies provided to her by counsel, the absence of visible irregularities, or comparison with copies obtained from Internet sources. *See, e.g.*, ¶¶ 16-20, 29, 32-38, 61. Dr. Hsieh-Yee states that she received Exhibits 1008 and 1011 from counsel and bases her authenticity opinions in part on the absence of apparent missing pages or visible alterations and on comparison with copies obtained from Internet Archive and other Internet sources. *See, e.g., id.* Patent Owner objects to the extent Petitioner contends that receipt from counsel, visual inspection, or comparison with other Internet copies, without an adequate foundation, independently establishes that a document is what Petitioner claims it to be.

Patent Owner also objects to Exhibit 1026 under **FRE 401 and 705 and 37 C.F.R. § 42.65(a)** to the extent Dr. Hsieh-Yee states conclusions concerning authenticity, historical public accessibility or discoverability, or what interested users could or would have discovered without sufficiently identifying the supporting facts or data. *See, e.g.*, ¶¶ 20, 23, 27, 29-31, 38, 43, 47-53, 60-64. This objection includes, without limitation, conclusions that materials were publicly discoverable or accessible by specified dates, that interested users could or would have located them through particular search engines, repositories, or discovery paths, or that citation or usage records demonstrate public accessibility, to the extent those

conclusions lack adequate support in the identified evidence or methodology. *See, e.g., id.*

Respectfully submitted,

LEE, SULLIVAN, SHEA & SMITH LLP

Dated: October 7, 2026

By: */Rory P. Shea/*

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CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing Objections to Petitioner's Evidence was served on October 7, 2026 via email directed to counsel of record for the Petitioner at the following:

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