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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVEMARKET, INC. D/B/A LOCATION LABS
Petitioner

v.

LOCATIONET SYSTEMS, LTD.
Patent Owner

Case No. IPR2014-00199
U.S. Patent 6,771,970

**LOCATIONET SYSTEMS, LTD.'S SUPPLEMENTAL EVIDENCE AND
RESPONSE TO PETITIONER'S EVIDENTIARY OBJECTIONS
PURSUANT TO 37 C.F.R. § 42.64**

*****Service Only*****

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(2), Patent Owner Locationnet Systems, Ltd. hereby serves its response and supplemental evidence to Petitioner Wavemarket, Inc. d/b/a Location Labs' evidentiary objections ("Petitioner's Objections"). Patent Owner's response and supplemental evidence is being served within ten business days from the date Petitioner's Objections were served on Patent Owner.

Petitioner's evidentiary objections lack specificity, are conclusory, and contrary to law and fact. Federal case law is clear: evidentiary objections to pages from common dictionaries are not proper. *See Freight Train Adver., LLC v. Chi. Rail Link, LLC*, 11-cv-2803, 2012 U.S. Dist. LEXIS 162330, at *5 n. 4 (N.D. Ill. Nov. 14, 2012) ("[A] page from a common dictionary does not pose a problem of hearsay, foundation and authentication."). Exhibits 2017, 2018 and 2019 are pages from common dictionaries and do not pose a problem of authentication or hearsay. Indeed, each of the Exhibits 2017, 2018 and 2019 bears the indicia of authenticity and is subject to judicial notice. Furthermore, Exhibits 2017, 2018 and 2019 are admissible because they fall within hearsay exceptions under the Federal Rules of Evidence ("Rules"). Finally, other than conclusory attorney argument, Petitioner has failed to show how the Declaration of Dr. Mandayam In Support of Locationnet Systems, Ltd.'s Patent Owner Response ("Declaration" or "Exhibit 2016") does not constitute admissible

expert opinion and testimony. Petitioner's objections to his Declaration are also misplaced because they are premised on a misrepresentation of the facts.

Accordingly, Petitioner's evidentiary objections are meritless and should be withdrawn. Pursuant to 37 C.F.R. § 42.12(a), the Board can impose sanctions against Petitioner for advancing such frivolous objections and misrepresenting facts.

II. PATENT OWNER'S RESPONSE TO PETITIONER'S OBJECTIONS TO EXHIBITS 2017-2019

A. Exhibits 2017, 2018 And 2019 Are Properly Authenticated And Subject to Judicial Notice

Contrary to the Petitioner's assertion, Exhibits 2017, 2018 and 2019 are properly authenticated and admissible under Rule 901 for numerous reasons.

First, Exhibits 2017, 2018 and 2019 do not pose a problem of authentication. *Freight Train Adver.*, 2012 U.S. Dist. LEXIS 162330, at *5 n. 4 (“[A] page from a common dictionary does not pose a problem of hearsay, foundation and authentication.”). Exhibits 2017, 2018 and 2019 are pages from common dictionaries bearing the indicia of authenticity, and Petitioner has failed to proffer any evidence to the contrary. For example, each of the Exhibits 2017, 2018 and 2019 bears (1) a book title; (2) an International Standard Book Number (“ISBN”), a unique numeric commercial book identifier issued by an ISBN registration agency; (3) an

identification of the publisher; and (4) a copyright date,¹ all of which indicate the authenticity of the Exhibits 2017, 2018 and 2019. *See* Fed. R. Evid. 901(b)(4) (“Authenticity may be established through a variety of means, such as based upon “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.”). The indicia of authenticity on the face of Exhibits 2017, 2018, and 2019 render them admissible under Rule 901. *See In re McLain*, 516 F.3d 301, 308 (5th Cir. 2008) (authentication “merely requires some evidence” in support (quoting *United States v. Jimenez Lopez*, 873 F.2d 769, 772 (5th Cir. 1989))); *United States v. Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007) (“The bar for authentication of evidence is not particularly high.”).

Second, Exhibits 2017, 2018, and 2019 are subject to judicial notice pursuant to Rule 201. Numerous federal courts have held that dictionary definitions are the proper subjects of judicial notice. *See Taza Sys., LLC v. Taza 21 Co., LLC*, No. 2:11-cv-0732013, U.S. Dist. LEXIS 130974, at *27 (W.D. Pa. Sept. 13, 2013) (“We take judicial notice of such dictionary definitions.”); *Sklar v. Clough*, No. 1:06-CV-0627-JOF, 2007 U.S. Dist. LEXIS 49248, at *15 (N.D. Ga. July 6, 2007) (same); *Krohmer-Burkett v. Hartford Life and Accident Insurance Co.*, No. 803-cv-873T30-MAP, 2005 U.S. Dist. LEXIS 35225, 2005 WL 2614503, *2 n.6 (M.D. Fla. Oct. 14, 2005) (taking

¹ In addition, Exhibits 2018 and 2019 bear the publication editions; Exhibit 2019 identifies “Donald Spencer” for compiling the dictionary; and Exhibit 2018 identifies “Philip E. Margolis” for compiling the dictionary.

judicial notice of the Merriam Webster Medical Dictionary's website's definition of "stenosis"); *Caveman Foods, LLC v. Lester*, No. C 12-1587 RS, 2013 U.S. Dist. LEXIS 185237, at *10 (N.D. Cal. Feb. 14, 2013) ("[a] dictionary definition is a proper subject of judicial notice"). Indeed, the Board can take judicial notice of the definitions of "database" and "engine" set forth in Exhibits 2017, 2018 and 2019.

Third, Patent Owner provides supplemental evidence to support the authenticity of Exhibits 2017, 2018 and 2019 in the form of the sworn Declaration of Yue Li, attached hereto as Exhibit A, attesting to the authenticity of Exhibits 2017, 2018 and 2019. *See* Fed. R. Evid. 901(b)(1). In addition, Patent Owner is willing to make originals of the complete dictionaries identified in Exhibits 2017, 2018 and 2019 available to Petitioner for inspection and copying upon Petitioner's request.

B. Petitioner's Argument That Exhibits 2017, 2018 And 2019 Constitute Inadmissible Hearsay Is Contrary To Law and Fact

Exhibits 2017, 2018 and 2019—pages from common computer dictionaries—also do "not pose a problem of hearsay." *Freight Train Adver.*, 2012 U.S. Dist. LEXIS 162330, at *5 n. 4. Pages from common computer dictionaries are admissible because they fall within multiple hearsay exceptions.

1. Exhibits 2017, 2018 and 2019 are admissible for the truth of the matters asserted

- a. Exhibits 2017, 2018 and 2019 are admissible under Federal Rule of Evidence 803(18) – Learned Treatises Exception

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