

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARRIS GROUP, INC., and COX COMMUNICATIONS, INC.,  
Petitioners

v.

C-CATION TECHNOLOGIES, LLC,  
Patent Owner

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CASE IPR2015-00635<sup>1</sup>  
Patent 5,563,883

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**PATENT OWNER'S MOTION TO EXCLUDE  
EVIDENCE UNDER 37 C.F.R. § 42.62(c)**

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<sup>1</sup> Cox Communications, Inc., who filed a Petition in IPR2015-01796, has been joined as a petitioner in this proceeding.

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## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner C-Cation Technologies, LLC (“C-Cation”) moves to exclude Exhibits 1005-1007, 1010, 1014, 1015, 1018-1019 and 1026-1034 submitted and relied upon by Arris Group, Inc. and Cox Communications, Inc. (collectively “Petitioners”).

## II. ARGUMENT

The admissibility of exhibits submitted in a PTAB proceeding is governed by the Federal Rules of Evidence. 37 C.F.R. § 42.62(a) (“the Federal Rules of Evidence shall apply to a proceeding”).

### A. Exhibits 1005-1007 Should Be Excluded as Evidence of the Truth of Their Contents Under Fed. R. Evid. 802

Exhibits 1005-1007 should be excluded as evidence of the truth of their contents because the statements in them on which Petitioners rely constitute inadmissible hearsay under Fed. R. Evid. 802. C-Cation timely objected on this ground in “Patent Owner’s First Set of Objections to Petitioner’s Exhibits” (“PO First Objections”). Paper No. 22 at 1-3.

Exhibits 1005-1007, which are the alleged prior art documents in this IPR, each contain the words “First published 1988,” followed by the words “Revised and reprinted” and a date in 1991. Petitioners rely on these statements to support their position that Exhibits 1005-1007 were made publicly accessible between 1991 and 1992, and therefore, rely on them for their truth. Petition at

16-17. Accordingly, these statements constitute hearsay. *See* FED. R. EVID. 801(c).

No hearsay exception applies. For example, the public records exception of Fed. R. Evid. 803(8) does not apply as Petitioners have failed to establish any information “about the circumstances under which the documents were created, the duty of the authors to prepare such documents, the procedures and methods used to reach the stated conclusions, and ... the identities of the authors.” *See, e.g., United States v. El-Mezain*, 664 F.3d 467, 499 (5th Cir. 2011), *as revised* (Dec. 27, 2011). Similarly, the ancient documents exception, Fed. R. Evid. 803(16), does not apply as this exception requires that authenticity be established under Fed. R. Evid. 901(b)(8), which Petitioners have failed to do. Among other things, Fed. R. Evid. 901(b)(8) requires that the proponent produce evidence that the document “was in a place where, if authentic, it would likely be.” However, Petitioners have not produced any evidence of where Exhibits 1005-1007 were located. Therefore, Exhibits 1005-1007 have not been authenticated under this sub-paragraph of rule 901. *See, e.g., Dartez v. Fibreboard Corp.*, 765 F.2d 456, 464 (5th Cir.1985) (finding that the court did not abuse discretion in excluding meeting minutes when plaintiff failed to demonstrate the source of the minutes).

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