

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBAL TEL*LINK CORPORATION
Petitioner

v.

SECURUS TECHNOLOGIES, INC.
Patent Owner

Case: IPR2016-01220
Patent: 9,007,420

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION
TO EXCLUDE**

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I. Introduction

In its Patent Owner Response, Securus argued that “term ‘actual face’ should be construed as referring to the user’s physical face and not a facsimile of a face such as a photograph.” (POR, 11.) Based on this construction, Securus argued that the ’420 patent recites distinguishing a “face” from an “actual face” to prevent “circumvention attempts ... known as ‘spoofing.’” (*Id.*, 30.) In contrast, GTL’s expert Dr. Beigi had stated that, in the context of the ’420 patent the word “actual” in the phrase “actual face” distinguishes between “[a] face and something of its like.” (Ex. 2006, 120:23.) In support of its proposed construction of “actual face,” Securus cited to a dictionary definition of the word “actual,” arguing it to be probative of the term’s plain meaning, and to testimony from its expert Dr. Kakadiaris, who opined on what one of skill in the art would have thought the phrase “actual face” meant. (POR, 11-17.)

During cross-examination, Dr. Kakadiaris identified on his CV a citation to a document that relates to face recognition. (Ex. 1022, 27:5-6.) The document described an “*actual* geometry of the face” (Ex. 1021, 260), yet Dr. Kakadiaris admitted at deposition that the document did not relate to anti-spoofing. (Ex. 1022, 20:1-5) GTL submitted a copy of the document with its Reply as Exhibit 1021 on June 22, 2017. Securus did not request a sur-reply or seek permission to submit additional evidence.

On July 15, 2017, Securus submitted a Motion to Exclude GTL's Exhibit 1021 (Paper 23), which referenced a supplemental declaration from Dr. Kakadiaris (Exhibit 2010). Securus argued that Exhibit 1021 should be excluded for failing to comply with Fed. R. Evid. 401, 403, 901 and 802. As set forth below, each of Securus's contentions fails, and Dr. Kakadiaris's supplemental declaration (Ex. 2010) should not be considered and should be expunged as unauthorized and untimely.¹

II. Exhibit 1021 is relevant in compliance with Fed. R. Evid. 401.

Fed. R. Evid. 401 states: "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Securus argues that Exhibit 1021, which Securus acknowledges uses the word "actual" in connection to face recognition, is irrelevant. (Paper 23, 2, 5.) In particular, Securus argues that the word "actual" is irrelevant to the question of how a person skilled in the art would understand the term "actual face" in the '420 patent. (*Id.*, 2-7.) Securus's arguments fail because Exhibit 1021 is illustrative of how a skilled artisan would understand the word "actual" in the art of face recognition. Dr. Kakadiaris's self-serving allegations in his supplemental declaration that Exhibit

¹ As set forth in an email to the Board dated July 17, 2017, GTL is also seeking leave to make a motion to expunge Exhibit 2010.

1021 is in a materially different context from the '420 patent should not be credited. But even if accepted as true, that would only go to the document's weight and not its admissibility.

In its Motion, Securus acknowledges that Dr. Kakadiaris has admitted that a document citing Exhibit 1021 "related to the broad topic of facial recognition." (Paper 23, 5.) Dr. Beigi opines that a skilled artisan is merely someone with "a BS degree in computer science or equivalent field, as well as at least 2 to 3 years of academic or industry experience in software development, or comparable industry experience." (Ex. 1006, ¶ 23.) And Dr. Kakadiaris admits that a skilled artisan would have "knowledge of available facial detection and facial recognition technologies in the market." (Ex. 2004, ¶ 66.) Exhibit 1021 is relevant because it shows the vernacular used by those skilled artisans in connection with face recognition technology, in particular demonstrating usage of the word "actual." Securus and Dr. Kakadiaris acknowledge that Exhibit 1021 does not use the word "actual" to refer to "a real, physical face, as opposed to a photograph or other facsimile of a person's face." (Paper 23, 4.) Instead, Securus states that Exhibit 1021 uses the word "actual" merely to "refer to the existence of geometric information about face." (*Id.*, 4.) Thus, by Securus's own admission the authors of Exhibit 1021 use the word "actual" in a manner consistent with how Dr. Beigi asserts the term should be read in the '420 patent and inconsistent with how Dr.

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