

Filed on behalf of Securus Technologies, Inc.

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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
U.S. Patent No. 9,007,420

**PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE
EVIDENCE UNDER 37 C.F.R. §§ 42.64(B)(1) AND 42.64(C)**

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I. INTRODUCTION

The unrefuted evidence demonstrates that that Exhibit 1021 is irrelevant to the interpretation of the '420 patent because the exhibit's use of "actual geometry of the face" is particular to its context, and entirely distinct from the use of "actual face" in the claims of the '420 patent. Because GTL cannot refute the evidence on the merits, it resorts to a procedural attack on the supporting declaration. But GTL's argument is bereft of any authority to expunge it. Further, Exhibit 1021's distinctive characteristics only undermine its authenticity, since the date of publication that appears on the document is contradicted by other evidence of record. Exhibit 1021 is also inadmissible hearsay because GTL seeks to show that it describes an "actual geometry of the face." Accordingly, the Board should exclude Exhibit 1021.

II. GTL Ignores That Exhibit 1021 Uses the Word "Actual" in a Fundamentally Different Way Than the '420 Patent.

GTL contends that Exhibit 1021 is relevant because it allegedly shows how a person of ordinary skill would understand the word "actual" and allegedly contradicts Prof. Kakadiaris' testimony. Paper 24 at 2-4. But GTL did not make these arguments in its Reply. Paper 19 at 7. Instead, GTL attempted to use Exhibit 1021 to show that Dr. Beigi's understanding of "actual" is consistent with how Prof. Kakadiaris "has used the word in his own writing related to face detection and recognition." *Id.* But that alleged consistency is simply not relevant to the interpretation of "actual face" in the '420 patent or Prof. Kakadiaris' credibility

because Exhibit 1021 uses “actual” in an entirely different context.

GTL does not meaningfully attempt to refute Prof. Kakadiaris’ explanation of the fundamental differences between Exhibit 1021 and the ’420 patent. Instead, GTL contends that Exhibit 1021 is relevant because it relates to the broad topic of facial recognition. Paper 24 at 3. But GTL ignores the fact that “actual” has different meanings within the art, depending upon the context. Paper 23 at 2-5. By attempting to rely on the use of “actual geometry of the face” in prior art from a different context to support its construction of “actual face” in the ’420 patent, GTL makes the same error as the Board in *In re NuVasive, Inc.*, --- F. Appx. ---, 2017 WL 2365257, at *5 (Fed. Cir. May 31, 2017). Paper 23 at 5-6.

Like the prior-art patent in *NuVasive* that “disclose[d] a species of anterior approach that does not involve traversing the nerve-rich part of the psoas,” the portion of Exhibit 1021 highlighted by GTL does not involve verifying that an “actual face” is present in an image. *Compare* 2017 WL 2365257, at *5, with Paper 23 at 3-5. Indeed, Exhibit 1021 uses “actual geometry of the face” to refer to geometric information (x , y , and z components of a vertex in R^3) in the context of enrolling a 3D facial mesh into a model. Paper 23 at 3-5; Exhibit 2010 ¶¶ 4-7. Thus, unlike the ’420 patent, the “actual geometry of the face” in Exhibit 1021 refers to the existence of geometric data, not the presence of an “actual face” in an image.

GTL does not contend otherwise. Instead, it argues that “[w]hat the

'420 patent is saying when it describes 'verify[ing] that an actual face was present in the image' is verifying whether the image includes the likeness, or geometry of the face." Paper 24 at 4. But GTL fails to demonstrate that the '420 patent verifies whether an image includes an "actual geometry of the face" in the context of Exhibit 1021. Nor could it. The '420 patent discloses verifying the presence of an "actual face" in an image, not the existence of geometric information from a 3D facial mesh. *See* Ex. 2004 ¶¶ 150-52.

GTL's attempt to distinguish *NuVasive* fails. Although GTL posits that it is not asking the Board to rely on and adopt any statements from Prof. Kakadiaris for the meaning of "actual face," GTL is clearly relying on Exhibit 1021 to support its interpretation of "actual" in the '420 patent, just like the Board erroneously relied on testimony about the prior-art patent to support its construction in *NuVasive*. 2017 WL 2365257, at *3-7. Because Exhibit 1021 uses "actual" in an entirely different context than the '420 patent, it would be highly prejudicial (and in fact erroneous) to consider the reference when evaluating the parties' competing constructions of "actual face" or the credibility of Prof. Kakadiaris.

III. Exhibit 1021 Is Not Authentic and Is Inadmissible Hearsay.

GTL contends that "Securus completely ignores [Exhibit 1021]'s intrinsic characteristics," which show it is a book chapter referenced in Prof. Kakadiaris' CV. Paper 24 at 8. But Exhibit 1021 states that it was "[f]irst published in 2011," a year

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