UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GLOBAL TEL*LINK CORPORATION
Petitioner

v.

SECURUS TECHNOLOGIES, INC.
Patent Owner

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

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**PETITIONER'S MOTION
TO EXPUNGE EXHIBIT 2010**

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I.   Introduction

Pursuant to an authorization from the Board dated July 28, 2017, Petitioner GTL moves to expunge a declaration from Securus's expert Dr. Kakadiaras labeled Exhibit 2010 that was filed with Patent Owner's Motion to Exclude (Paper 23).[1] Securus's allegations that Exhibit 2010 supports its Motion to Exclude are merely pretext in attempt to present an unauthorized sur-reply. The Rules of Practice state, "The Board may expunge any paper directed to a proceeding … that is not authorized under this part or in a Board order or that is filed contrary to a Board order." 37 C.F.R. § 42.7. Securus never sought, and the Board never issued, an order authorizing the filing of Exhibit 2010. Exhibit 2010 is not authorized by any other rule of practice either. The filing of Exhibit 2010 is, in fact, impossible to reconcile with other rules surrounding the timing of depositions and cross-examination. For these reasons, the Board should expunge Exhibit 2010.

II.   Statement of Facts

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

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[1] Petitioner GTL acknowledges that many of these issues were briefed in GTL's prior filed Opposition to Securus's Motion to Exclude (Paper 24, 11-12) and Securus's corresponding Reply (Paper 26, 4-5). However, now GTL requests expungement in a motion as provided for by 37 C.F.R. § 42.20(a).

face such as a photograph." (Paper 17, 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.)

With its reply, GTL submitted as Exhibit 1021 a book chapter authored by Securus's expert Dr. Kakadiaris that used the word "actual" in connection to face recognition. (Ex. 1021, 260.) In Exhibit 1021, Dr. Kakadiaris uses the word "actual" in a manner that, all parties agree, is in connection to face recognition and inconsistent with Securus's construction of the term. (*See* Paper 23, 4.) Securus filed a Motion to Exclude Exhibit 1021. (Paper 23.) Accompanying the Motion to Exclude, Securus filed a supplemental[2] declaration from Securus's expert Dr. Kakadiaras, labeled Exhibit 2010. (Ex. 2010.) Securus did not request a sur-reply or seek permission to submit additional evidence.

Promptly, on the next business day after Securus filed Exhibit 2010, GTL

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[2] Securus has taken issue with GTL referring to Exhibit 2010 as a "supplemental" declaration. (Paper 26, 5.) However, tellingly, the filename of the document Securus served to GTL and to the Board is "EX. 2010 - Supplemental Declaration of Prof. Kakdiaris.pdf."

indicated to Securus that it did not believe that filing of Exhibit 2010 was allowed by the rules and that, if not expunged, Exhibit 2010 would deny GTL the right to effective cross-examination. Securus disagreed, indicating in part that it did not believe that cross-examination was necessary. Later that day, GTL sent an email to the Board requesting authorization for this motion to expunge Exhibit 2010. The Board granted that request on July 28, 2017.

III. Exhibit 2010 does not support relevance and Securus's claim that it is pretext.

The Official Trial Practice Guide states: "A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay) but *may not be used to challenge the sufficiency of the evidence to prove a particular fact*." 77 Fed. Reg. 48,767. Here, Dr. Kakadiaris's supplemental declaration is NOT in support of Securus's contentions for Fed. R. Evid. 401. The reason for this is simple. Dr. Kakadiaris's declaration should not be credited for the reasons GTL set forth in its Opposition to the Motion to Exclude. (Paper 24, 4-5.) But even if everything in Dr. Kakadiaris's declaration were accepted as true, then the declaration would only go to weight, not to admissibility, of GTL's Exhibit 1021. 77 Fed. Reg. 48,757. Securus's contention that it needs Exhibit 2010 to support its Motion to Exclude is simply pretext in attempt to get late evidence into the record.

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