

Filed on behalf of Securus Technologies, Inc.

By: Justin B. Kimble (JKimble-IPR@bcpc-law.com)  
Jeffrey R. Bragalone (jbragalone@bcpc-law.com)  
Daniel F. Olejko (dolejko@bcpc-law.com)  
Terry A. Saad (tsaad@bcpc-law.com)  
Nicholas C. Kliewer (nkliewer@bcpc-law.com)  
Bragalone Conroy PC  
2200 Ross Ave., Suite 4500W  
Dallas, TX 75201  
Tel: 214.785.6670  
Fax: 214.786.6680

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

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**PATENT OWNER'S RESPONSE IN OPPOSITION TO PETITIONER'S  
MOTION TO EXPUNGE EXHIBIT 2010**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. COUNTERSTATEMENT OF THE FACTS .....1

III. EXHIBIT 2010 DEMONSTRATES THAT EXHIBIT 1021 IS IRRELEVANT  
AND INADMISSIBLE UNDER FRE 401-403.....4

IV. PETITIONER HAS NO AUTHORITY SUPPORTING ITS MOTION – IT  
MERELY SEEKS TO EXPUNGE UNFAVORABLE EVIDENCE. ....5

## I. INTRODUCTION

GTL's motion is nothing more than an improper attempt to remove important evidence that demonstrates why Exhibit 1021 is irrelevant, and should be excluded. GTL's primary purported basis for seeking to expunge the declaration of Securus' technical expert, Prof. Ioannis Kakadiaris, PhD, is that it did not have an opportunity to depose Prof. Kakadiaris on issues raised in the exhibit. This is simply false. GTL had every opportunity to cross-examine Prof. Kakadiaris regarding Exhibit 1021 and the issues addressed in his declaration, but GTL meticulously avoided any substantive questions about those issues during Prof. Kakadiaris' deposition. Now faced with Prof. Kakadiaris' declaration, GTL complains of thorns on the tree that it planted, and seeks to expunge the very testimony it could have elicited earlier in the case. The Board should not permit such gamesmanship, especially when its regulations expressly permit the submission of uncompelled direct testimony at any time to support a motion.

## II. COUNTERSTATEMENT OF THE FACTS

On March 17, 2017, Securus served its Patent Owner Response, along with the expert declaration of Prof. Kakadiaris. *See* Paper 17 at 4. Prof. Kakadiaris' declaration discloses that he is widely published in the area of biometrics and facial recognition and includes a copy of his curriculum vitae ("CV"), which provides an extensive list of his publications and co-publications, including, *inter alia*,

9.† G. Toderici, G. Passalis, T. Theoharis, and I.A. Kakadiaris, “Bidirectional relighting for 3D-aided 2D face recognition,” in *Multibiometrics for Human Identification*, B. Bhanu and V. Govindaraju, Eds. Cambridge University Press, 2010, pp. 258 – 274.

Ex. 2004 at 92 (hereinafter “Toderici”).

Securus made Prof. Kakadiaris available for deposition on May 12, 2017.

Ex. 1022. During the deposition, GTL specifically questioned Prof. Kakadiaris about his CV and his publications relating to identification and authentication.

Ex. 1022 at 25:23-26:17. Prof. Kakadiaris listed, among other works, Toderici, but he did not state that Toderici involved the same type of face detection disclosed in the ’420 patent. *Id.* at 27:5-6. To the contrary, Prof. Kakadiaris testified that his “publications are focused on recognizing the identity of the individual duplicated in the image,” not on “identifying a human face.” *Id.* at 24:6-25:18.

Despite being aware of Toderici well before the deposition, GTL did not ask Prof. Kakadiaris a single substantive question about Toderici, let alone attempt to introduce the publication as an exhibit. *See generally id.* Instead, GTL laid behind the proverbial “log” and waited until its Petitioner’s Reply to attached Exhibit 1021, a purported copy of the Toderici article. *See Paper 19 at ii.* GTL then argued, without any evidentiary support, that an isolated five-word phrase from Exhibit 1021 supports its interpretation of “actual face” in the ’420 patent. *See id.* at 7.

Because Toderici’s use of that phrase is completely irrelevant to any issue in this proceeding, Securus submitted the Declaration of Prof. Kakadiaris in Support of

Patent Owner's Motion to Exclude.<sup>1</sup> *See* Exhibit 2010. Therein, Prof. Kakadiaris explains how Exhibit 1021 is fundamentally different than the '420 patent, how GTL takes the phrase "actual geometry of the face" out of context, and how no person of ordinary skill would have considered Exhibit 1021 relevant to understanding the '420 patent. *Id.* ¶¶ 3-7. Prof. Kakadiaris' testimony directly supports Securus' argument that Exhibit 1021 is irrelevant and inadmissible under the Federal Rules of Evidence. Paper 23 at 2-7.

During the parties' meet and confer on July 17, 2017, GTL could not identify any statute, regulation, or case prohibiting the submission of evidence (testimonial or otherwise) in support of a motion to exclude. Instead, GTL argued that the submission deprived it of any opportunity to cross-examine Prof. Kakadiaris regarding his opinions. Because GTL had every opportunity to question Prof. Kakadiaris regarding Toderici at his earlier deposition, Securus indicated that it did not believe further cross-examination was necessary. Nevertheless, Securus asked GTL whether it wished to depose Prof. Kakadiaris a second time. While Prof. Kakadiaris was available on multiple dates in July, GTL's counsel *declined* to depose Prof. Kakadiaris, and has never attempted to notice a second deposition.

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<sup>1</sup> Despite its native filename (which is irrelevant to its contents), Exhibit 2010 is not referenced as a "supplemental" declaration anywhere in the record.

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