

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

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I. Introduction

In its Opposition (Paper 30), Securus does not dispute the facts needed for admissibility, and does not attempt to show how cross-examination and briefing on the cross-examination could fairly have been conducted in the two week window described in GTL's Motion (Paper 27). Because the facts to establish a foundation for relevance are not in dispute, Dr. Kakadiaris's supplemental declaration can only go to weight. If the Board allows Dr. Kakadiaris's supplemental declaration, it would invite other patent owners to use a motion to exclude as a vehicle to respond to rebuttal evidence that a petitioner submits with its reply, without having to request Board permission for a surreply. Securus's main response to the contention that GTL cannot fairly cross-examine is that it should have anticipated Dr. Kakadiaris's later direct testimony, which is absurd. And Securus's contention that it can introduce new direct testimony with its Motion to Exclude is incorrect. Each of these points is addressed below.

II. Because the facts to establish a foundation for relevance are not in dispute, Dr. Kakadiaris's supplemental declaration can only go to weight, and thus does not support a Motion to Exclude.

As shown in GTL's Opposition to Securus's Motion to Exclude, Exhibit 1021 is relevant both for impeachment and for substantive purposes to show usage of the word "actual" in connection with face recognition. (Paper 24, 2-6.) Struggling to explain why it thinks Dr. Kakadiaris's supplemental declaration

shows this not to be the case, Securus tries to analogize Exhibit 1021 with Leo Tolstoy's *War and Peace*, stating: "Leo Tolstoy's *War and Peace* uses 'actual' on more than one occasion, but no person of ordinary skill would have considered that work relevant to understanding the '420 patent." (Paper 30, 4.) This, however, is a false analogy. The reasons are simple.

First, Mr. Tolstoy, having been dead for a century, did not submit a declaration in this case. Hence, *War and Peace* would have no value for impeachment purposes. Exhibit 1021, on the other hand, is authored by a person who submitted a declaration in this proceeding. Securus did not dispute this in its Motion to Exclude or its Reply in support of that Motion (Papers 23 and 26) and Dr. Kakadiaris did not dispute this in his supplemental declaration (Ex. 2010). And Dr. Kakadiaris has admitted that in Exhibit 1021 he used the term "actual" differently from how he alleges a skilled artisan would read the term in the '420 patent. (Ex. 2010, ¶ 3.) Thus, the salient facts to lay a foundation showing Exhibit 1021's relevance for impeachment—that it is authored by Dr. Kakadiaris and are inconsistent with that he said—are undisputed.

Second, Mr. Tolstoy was not a person of skill the art, nor is *War and Peace* a work in the art of face recognition. Hence, *War and Peace* would not show how those skilled in the art used the word "actual" in connection with face recognition. However, both Securus and Dr. Kakadiaris admitted that Exhibit 1021 relates to

face recognition. (Paper 23, 5; Ex. 2010, ¶ 5.) Thus, Exhibit 1021 does serve to show how those skilled in the art used the term. Again, the salient facts to lay a foundation showing Exhibit 1021's relevance for the meaning of the word "actual" in the context of face recognition are undisputed.

Because the salient facts to establish a foundation for relevance are not in dispute, Dr. Kakadiaris's supplemental declaration can only go to weight. And, as set forth previously, it should be given none.¹ It has no bearing on a Motion to Exclude.

¹ Dr. Kakadiaris's explanation for inconsistent usage of the word "actual" was that the '420 patent uses the phrase "actual face," while Exhibit 1021 uses the phrase "actual geometry of a face." (Ex. 2010, *passim*.) But the '420 patent describes and claims "verify[ing] that an actual face was present in the image." (Ex. 1001, 11:10-11 ("to verify that an actual face was present in the image"); *see also* 11:49-50, FIG. 4, Abstract, 1:45-48, 1:54-59, 8:66-9:2.) A face, physical or otherwise, cannot be "present" in the image in the same way that a face can be present in a mask. What 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. (*See* Ex. 2004, ¶¶ 87-96.) There is no genuine difference between usage of "actual" in the '420 patent and in Exhibit 1021.

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