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 IPR2016-01362
U.S. Patent No. 9,083,850

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

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c) and the Board's Scheduling Order (as modified by stipulation in Paper 19), Patent Owner Securus Technologies, Inc. ("Securus") hereby files this motion to exclude Exhibits 1008 and 1009. Exhibit 1008 is irrelevant and inadmissible under Federal Rules of Evidence 401-403 because Petitioner Global Tel*Link Corporation ("GTL") has not demonstrated that the exhibit was actually published or publicly accessible before the filing date of the '850 patent. Thus, Exhibit 1008 does not qualify as prior art under any subsection of 35 U.S.C. § 102 and cannot be used by GTL to support any ground of the Petition. Further, both Exhibits 1008 and 1009 are submitted for the truth of the matter asserted and should therefore be excluded as hearsay under Federal Rules of Evidence 801-802. Accordingly, the Board should exclude Exhibits 1008 and 1009.

II. PROCEDURAL BACKGROUND

GTL filed the Petition against the '850 patent on July 5, 2016. Paper 1. GTL relies on Exhibit 1008 to support Grounds 3 and 4 of the Petition, which relate to its allegations of obviousness against claims 6, 7, 10, 11, 12, 19 and 20. *Id.* at 4. GTL relies on Exhibit 1009 in an attempt to support its interpretation of the claim term "f-stop." *Id.* at 45-46.

Exhibit 1008 purports to be an excerpt of the European DSP in Education and Research Conference Proceedings, which contains a paper titled *Remote Controlled*

DSP Based Image Capturing and Processing System Featuring Two-Axis Motion by M. Gotsopoulos. Ex. 1008 at 32. Exhibit 1009 purports to be a copy of *The American Heritage Dictionary of the English Language*, Fifth Edition. Ex. 1009 at 1-4.

Securus filed timely objections to Exhibits 1008 and 1009 on January 24, 2017, pursuant to 37 C.F.R. § 42.64(b)(1), after the Board instituted this proceeding on January 9, 2017. *See* Papers 11 and 13. Securus objected to Exhibits 1008 and 1009 because, *inter alia*, Exhibit 1008 is irrelevant and inadmissible under Federal Rules of Evidence 401-403 and Exhibits 1008 and 1009 are hearsay under Federal Rules of Evidence 801-802. Paper 13 at 1-4.

III. ARGUMENTS AND AUTHORITIES

A. Exhibit 1008 Is Irrelevant and Inadmissible Under Federal Rules of Evidence 401-403 Because It Does Not Qualify as Prior Art Under Any Subsection of 35 U.S.C. § 102.

Federal Rule of Evidence 401 provides that "[e]vidence 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. "Relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." Fed. R. Evid. 401, advisory committee note. "Whether the relationship exists depends upon principles evolved by experience or science, applied logically to the situation at hand." *Id.*

While GTL relies on Exhibit 1008 in support of its grounds of unpatentability, it fails to demonstrate that the exhibit qualifies as prior art to the '850 patent under any subsection of 35 U.S.C. § 102. Exhibit 1008, therefore, lacks a relationship to the patentability of the '850 patent and is irrelevant and inadmissible under Federal Rules of Evidence 401-403. *See* 35 U.S.C. § 311(b) (stating that a petition for *inter partes* review can request cancellation of a claim "only on a ground that could be raised under section 102 or 103 and only on the basis of ***prior art*** consisting of patents or printed publications") (emphasis added).

Whether a reference qualifies as a "printed publication" depends on whether the reference was "sufficiently accessible to the public interested in the art" before the critical date. *Smart Microwave Sensors GmbH v. Wavetronix LLC*, IPR2016-00488, Paper 57 at 23-24 (PTAB July 17, 2017) (citing *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). "A given reference is 'publicly accessible' upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it." *Id.* (citing *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008)).

GTL contends that Exhibit 1008 "is at least prior art under [§] 102(a)(1) because it published at least of December 1, 2010, prior to the earliest priority date of the '850 patent." Paper 1 at 4. Yet the Petition includes no evidence that

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