

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 REPLY TO PETITIONER'S OPPOSITION
TO MOTION TO EXCLUDE EVIDENCE
UNDER 37 C.F.R. §§ 42.64(B)(1) AND 42.64(C)**

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I. INTRODUCTION

Contrary to Petitioner GTL's assertions in its Opposition to Patent Owner Securus' Motion to Exclude, Exhibit 1008 – an apparent collection of papers from a European DSP in Education and Research Conference (“EDERC”) – does not establish “[o]n its face” that it was published by the IEEE in December 2010. Paper 33 at 1. GTL's untimely supplemental information – a declaration from a third-party custodian at the IEEE, *who had no involvement with the EDERC and did not attend the conference* – is hearsay and, moreover, does not establish a publication date of the papers prior to the date of invention of the '850 patent.

GTL also fails to show that it relies on Exhibits 1008 and 1009 solely for matters other than the truth of the matter asserted or that the exhibits fall under any hearsay exception. GTL does not merely rely on these exhibits to establish notice of their “teachings.” GTL affirmatively relies on Exhibit 1008 for its truth in an attempt to establish its publication date, whereas it relies on Exhibit 1009 for its truth in an attempt to establish the meaning of certain claim language. Further, there is no evidence that Exhibit 1008 is a “reliable authority” or that Exhibit 1009 is “generally relied on by the public or persons of particular occupations.” Accordingly, the Board should exclude Exhibits 1008 and 1009 as irrelevant and inadmissible under FRE 401-403 and inadmissible hearsay under FRE 801-802.

II. ARGUMENTS AND AUTHORITIES

A. **Exhibit 1008 Does Not Support a Publication Date of December 2010.**

Contrary to GTL's argument, Exhibit 1008 does not establish, "[o]n its face," a publication date of December 1 or 2, 2010. Paper 33 at 3. GTL cannot use dates from the document itself to establish a publication date because those dates are inadmissible hearsay. *See* Paper 32 at 4. Moreover, those dates show – at best – that the EDERC occurred from December 1-2, 2010, and are not evidence that the Gotsopoulos paper was actually presented or disseminated at the EDERC or any time before the filing of the '850 patent. *See* Paper 32 at 4-5; *Air Liquide Large Indus. U.S. LP v. Praxair Tech., Inc.*, IPR2016-01079, Paper 14 at 9 (PTAB Nov. 21, 2016) (“A meeting is not published *per se*”).¹

B. **The Grenier Declaration Does Not Establish the Public Availability or Accessibility of Exhibit 1008.**

Although GTL contends that a declaration of Gerard P. Grenier, a custodian of records for IEEE, is “admissible evidence that confirms” Exhibit 1008’s publication date, *the Grenier declaration is not in evidence*. As GTL concedes, the Board has not ruled on its motion to submit the Grenier declaration (Exhibit 1011) as supplemental evidence. Paper 33 at 2 n.1. Because the Grenier declaration is not “evidence,” and GTL failed to demonstrate that it reasonably could not have

¹ *Stored Value Sols., Inc. v. Card Activation Techs., Inc.*, 499 F. App'x 5 (Fed. Cir. 2012), is inapposite, because it did not involve a conference paper like Exhibit 1008, but rather a software manual bearing *multiple copyright dates*. *Id.* at 14.

submitted the declaration with the Petition, it should not be considered by the Board in connection with Securus' Motion to Exclude. *See* Paper 15 at 1-5.

In addition, the Grenier declaration does not demonstrate that Exhibit 1008 was publicly accessible before the filing of the '850 patent. *See* Paper 32 at 3. This case is strikingly similar to *Smart Microwave Sensors GmbH v. Wavetronix, LLC*, where the Board found that a similar declaration from Grenier failed to establish public accessibility of a conference publication as prior art. IPR2016-00488, Paper 57 at 27-28 (PTAB July 17, 2017). Grenier does not testify that he personally attended the EDERC in 2010. *See generally* Ex. 1011. Nor does the declaration demonstrate that Grenier has personal knowledge of the distribution of any papers at EDERC in 2010 or indicate Grenier has any ties to the EDERC whatsoever. *See id.* Grenier's testimony about the EDERC in 2010 is thus inadmissible hearsay. *See Rotec Indus., Inc. v. Mitsubishi Corp.*, 215 F.3d 1246, 1256-57 (Fed. Cir. 2000) (affirming a district court's finding that a declarant's testimony is hearsay if it is based upon hearsay and lack of personal knowledge).

Further, Grenier does not testify that he is the custodian of Exhibit 1008 – only “*certain* records for IEEE.” Ex. 1011 ¶ 4 (emphasis added). Although Grenier states that it is the regular practice of IEEE to publish articles and other writings including article abstracts and make them available to the public through IEEE Xplore, he does not indicate *when* such actions take place. *Id.* ¶ 7. Grenier does not

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