

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DISH NETWORK L.L.C.  
Petitioner

v.

TQ DELTA LLC  
Patent Owner

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Case IPR2016-01469  
Patent 9,094,268

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**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO  
EXCLUDE**

## I. INTRODUCTION

Patent Owner TQ Delta's Motion to Exclude ("Motion") should be denied for the reasons that follow.

## II. EXHIBITS 1019, 1035, 1036 AND 1052 ARE ADMISSIBLE

The above exhibits are *authentic* under FRE 901. Each is considered a periodical and is self-authenticating because it was published by either Electronic Products Magazine or EE Times, both of which are reputable publications. The fact that the articles were found online is irrelevant. The cases that Patent Owner cites to on page 1 of its Motion, which hold that "print-outs from the Internet" are not self-authenticating, are not applicable here because the Internet print-outs in those cases (a) were not published online by any reputable publication, and (b) would not have been considered a self-authenticating periodical even if published in physical form.

Regardless, exhibits 1019, 1035, 1036 and 1052 have distinctive characteristics that sufficiently authenticate webpages. FRE 901(b)(4). The standard for admissibility under FRE 901 is "slight." *United States v. Turner*, 718 F.3d 226, 232 (3d Cir. 2013). Distinctive characteristics include "dates, websites, trademarks, copyright notices, and URL links" indicating the document is what it purports to be. *SAP America, Inc. v. Lakshmi Arunachalam*, IPR2013-00195, Paper 60 at 22 (PTAB Sept. 18, 2014). Exhibit 1019 bears Electronic Products Magazine's logo, copyright notice and the date the article was posted to the

website. Exhibits 1035, 1036 and 1052 each bear the EE Times URL and logo, a copyright notice, the date and time the article was posted to the website, and a retrieval date. Patent Owner provides no showing these characteristics are untrustworthy. *See SDI Techs., Inc. v. Bose Corp.*, IPR2013-00350, Paper 36, at 16-18 (PTAB Nov. 7, 2014).

Regarding exhibit 1019 in particular, on March 14, 2017, Petitioner served an authenticated version of this document as supplemental evidence on Patent Owner in accordance with 37 C.F.R. § 42.64(b)(2). This supplemental evidence is filed here as exhibit 1063. Patent Owner does not dispute the authenticity of this document in its Motion – in fact, it does not mention this document at all. Regardless, exhibit 1063 is a printed version of the October 1997 edition of *Electronic Products*, which includes the article in exhibit 1019. (Exhibit 1063, 3, 5.) Exhibit 1063 further includes a date stamp of October 14, 1997 from the University of Maryland, College Park Library. (Ex. 1063, 1.) Thus, exhibit 1019 is authentic under FRE 901.

Patent Owner also suggests that exhibits 1019, 1035, 1036 and 1052 are *hearsay*. (Motion, 3.) But, as just discussed, these exhibits are self-authenticating periodicals and therefore not hearsay. The exhibits are also “offered for what they *describe*, and *not* to prove the truth of the matter asserted;” as a result, they cannot be considered hearsay. *EMC Corp. v. PersonalWeb Techs, LLC et al.*, IPR2013-

00087, Paper 69 at 42-43 (PTAB May 15, 2014) (“prior art references are not hearsay because they are offered for what they *describe*, and *not* to prove the truth of the matters asserted”) (citing *Joy Techs., Inc. v. Manbeck*, 751 F. Supp. 225, 233 n. 2 (D.D.C. 1990), *judgement aff'd*, 959 F.2d 226 (Fed. Cir. 1992)). For example, exhibit 1019 is cited by Petitioner's expert to corroborate that the Motorola CopperGold chip set described in Bowie (Ex. 1004, 3:44-47) implements ADSL technology. (Ex. 1002, ¶ 162.) Exhibit 1036 is cited in the technology tutorial section of Petitioner's expert declaration to describe ADSL technology generally. (Ex. 1002, ¶ 75.) Exhibits 1035 and 1052 are listed solely in the “materials considered” section of the Petitioner's expert declaration because they are relevant “references [that] accurately characterize the state of the art at the relevant time” and were considered by Petitioner's expert as part of preparing his declaration. (Ex. 1002, ¶ 24.)

Regardless, even if these exhibits were considered hearsay, experts in *inter partes* review proceedings may rely on hearsay in their declarations. Fed. R. Evid. 703; *Nestle Healthcare Nutrition, Inc. v. Steuben Foods, Inc.*, Case IPR2015-00249, Paper 76 at 13-14 (P.T.A.B. June 2, 2016) (agreeing that hearsay evidence relied upon by expert is admissible because “Federal Rule of Evidence 703 permits an expert to base an opinion on facts or data in the case that an expert has been made aware of it experts in the field would reasonably have relied on such facts or data in

forming an opinion”); *Brose N. Am., Inc. and Brose Fahrzeugteile GmbH & Co. Kg, Hallstadt v. Uusi, LLC*, Case IPR2014-00417, Paper 49 at 26 (P.T.A.B. July 20, 2015) (“... an expert may rely upon evidence regardless of whether the evidence is admissible...”). For these reasons, Patent Owner’s hearsay argument has no merit.

**III. EXHIBITS 1021-1031, 1033, 1038-1043, 1045-1048 AND 1051 ARE ADMISSIBLE.**

These exhibits are not hearsay. They are offered for what they describe, and not to prove the truth of the matter asserted; and, as a result, they cannot be considered hearsay. *See EMC Corp.* at 42-43 (PTAB May 15, 2014). For example, exhibits 1021, 1022, 1029-1031, 1033, 1038, 1042 and 1043 are merely cited in the technology tutorial section of Petitioner’s expert declaration to describe ADSL technology generally. (*See, e.g.*, Ex. 1002, ¶¶ 50, 62, 66, 85, 92, page 46.) Exhibit 1046 is cited by Petitioner’s expert to simply corroborate that Bell Telephone developed a video phone in 1964. (Ex. 1002, ¶ 164.) Exhibit 1045 is cited to corroborate that Internet providers were streaming videos to mobile devices by 1998. (Ex. 1002, ¶ 169.) Exhibit 1047 is cited to corroborate that power conservation techniques were added to the 2002 version of the ADSL Standard. (Ex. 1002, ¶ 168.) And exhibit 1051, which is a patent, is cited to corroborate that ADSL devices in 1995 required synchronization. (Ex. 1002, ¶ 171.) Exhibits 1023-1028, 1040, 1041, and 1048 are listed solely in the “materials considered” section

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