

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SONOS, INC.  
Petitioner

v.

IMPLICIT, LLC  
Patent Owner

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IPR2018-00767  
U.S. Patent No. 8,942,252

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**PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE**

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## I. IMPLICIT FAILED TO OFFER INDEPENDENT EVIDENCE OF AUTHENTICATION

Implicit attempts to recast the standard for authentication as being a low bar. But, as previously explained, the authentication standard is not a low bar when the documents are being used, as they are here, to corroborate inventor testimony for purposes of antedating a prior art reference. Mot. at 3. When documents are being used for this purpose, something more is required for authentication.

Indeed, *Microsoft* and *Neste Oil* instruct that inventor testimony is not sufficient to authenticate a document used to corroborate that inventor’s testimony – rather, *independent* evidence of authenticity is required (i.e., evidence that is independent of the inventor). *Neste Oil OYJ v. REG Synthetic Fuels, LLC*, IPR2013-00578, Paper 52 (PTAB Mar. 12, 2015) (“[B]ecause [Patent Owner] relies on these exhibits to corroborate the testimony of [inventor] Mr. Abhari, in an attempt to prove invention prior to the Dindi prior art reference, *independent evidence* of authenticity is required.”);<sup>1</sup> *Microsoft Corp. v. Surfcast, Inc.*, IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295, Paper 33 (PTAB Oct. 14, 2014) (“*Inventor testimony is not sufficient to authenticate* a document offered to corroborate the inventor’s testimony.”); *see also Horton v. Stevens*, 7 U.S.P.Q.2d 1245, 1988 WL 252359, \*4 (B.P.A.I. 1988) (“the testimony of a

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<sup>1</sup> All emphasis added, except where indicated.

witness *other than the inventor*, who is shown to have understood the recorded information, is generally *necessary to authenticate* the document's contents”).

Implicit has not provided independent evidence of authenticity, such as a document that comes from someone other than the inventor or the testimony of a witness other than the inventor. Instead, Implicit attempts to circumvent the requirement for independent evidence by throwing more unauthenticated inventor documents on top of the documents at issue, as well as pointing to other parts of the documents themselves. But, neither of these attempts satisfies *Microsoft's* and *Neste Oil's* requirement for independent evidence of authenticity.

For instance, Implicit attempts to pile on additional documents, such as a manual explaining how the CVS works, a 15,000+ page printout of the CVS log, and a laptop of native files. But, Implicit fails to explain how or why these documents satisfy the requirement for *independent* evidence of authenticity. In fact, these documents all come from the same “records custodian” – Balassanian – who is also the founder of Implicit, the inventor of the patents, and the sole source of testimony for which all these documents are meant to corroborate. Thus, these additional Balassanian documents are not independent evidence of authenticity.

Moreover, Implicit attempts to use portions of the documents themselves as a substitute for the requirement for independent evidence of authenticity. But, these documents are not inherently self-authenticating, and Implicit fails to explain

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