Paper No. 34 Filed: June 3, 2019

#### UNITED STATES PATENT AND TRADEMARK OFFICE

#### **BEFORE THE PATENT TRIAL AND APPEAL BOARD**

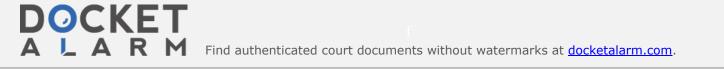
SONOS, INC. Petitioner

v.

IMPLICIT, LLC Patent Owner

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

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE



## **TABLE OF CONTENTS**

TAB	LE OF CONTENTS	i
TABI	LE OF AUTHORITIES	i <b>i</b>
I.	IMPLICIT FAILED TO OFFER INDEPENDENT EVIDENCE OF AUTHENTICATION	1
II.	IMPLICIT IMPROPERLY INCORPORATED BY REFERENCE	5

## **TABLE OF AUTHORITIES**

## CASES

Cisco Systems, Inc. v. C-Cation Technologies, LLC, IPR2014-00454, Paper 12 (P.T.A.B. Aug. 29, 2014)5	
Horton v. Stevens, 7 U.S.P.Q.2d 1245, 1988 WL 252359 (B.P.A.I. 1988)1	
IBG LLC v. Trading Technologies, Inc., CBM2016-00054, Paper 36 (P.T.A.B. Apr. 7, 2017)5	
<i>Microsoft Corp. v. Surfcast, Inc.</i> , IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295, Paper 33 (PTAB Oct. 14, 2014)1, 3, 4	
<i>Neste Oil OYJ v. REG Synthetic Fuels, LLC,</i> IPR2013-00578, Paper 52 (PTAB Mar. 12, 2015)1, 4	

### I. <u>IMPLICIT FAILED TO OFFER INDEPENDENT EVIDENCE OF</u> <u>AUTHENTICATION</u>

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

<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

## DOCKET A L A R M



# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

#### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.