

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLING TV, L.L.C., et al.,
Petitioners

v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner

Case IPR2018-01342
Patent 8,934,535

PETITIONER'S OBJECTIONS TO EVIDENCE

Petitioners Sling TV L.L.C., Sling Media, L.L.C., DISH Network L.L.C., and DISH Technologies, L.L.C. (collectively “Petitioner” or “DISH”) submit the following objections to evidence filed by Realtime Adaptive Streaming LLC (“Patent Owner” or “Realtime”) in conjunction with the Patent Owner’s Response filed on May 30, 2019 (Paper 19). Pursuant to 37 C.F.R. § 42.64(b)(1), these objections are made within five business days from service of the Patent Owner’s Response. *See* Paper 19 (confirming that the “document was served on May 30, 2019, by filing this document through the Patent Trial and Appeal Board End to End System as well as delivering a copy via electronic mail”).

Pursuant to **FRE 401, 402, and 403**, Petitioner objects to the admissibility of Exhibit 2012 and Exhibit 2013 as irrelevant and prejudicial to Petitioner in the context of this proceeding. Exhibit 2012 is a declaration filed by Dr. Alan Bovik in connection with a federal litigation currently pending in the U.S. District Court for the District of Colorado, in which Dr. Bovik offers opinions based on a claim construction of one of the terms of the challenged claims under a different claim construction standard than is applied in this proceeding.¹ Exhibit 2013 is a

¹ Patent Owner also introduced Exhibit 2012 as Exhibit 2 to the deposition of Dr. Scott Acton in IPR2018-01331 held on May 10, 2019. Ex. 2015 at 47:19-48:6. Petitioner timely objected to the introduction and use of this Exhibit during Dr.

Markman order from the same litigation in the District of Colorado, in which the district court sets forth its claim construction analysis and adopts various claim constructions, again under a different claim construction standard. Realtime's and Dr. Zeger's reliance upon and citation to certain opinions of Dr. Bovik and the district court's claim construction analysis are entirely irrelevant to *this* proceeding, because the analyses provided therein are premised on an entirely different claim construction standard that is inapplicable to the instant proceeding. Specifically, Exhibits 2012 and 2013 apply the claim construction standard required by 35 U.S.C. § 282(b), as set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), rather than the broadest reasonable interpretation ("BRI") standard applied in this proceeding. *See* 37 C.F.R. § 42.100; *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Further, any limited probative value offered by Realtime's and Dr. Zeger's reliance upon Exhibits 2012 and 2013 is substantially outweighed by the likely confusion caused by the analysis provided in those Exhibits under a different claim construction standard. Realtime's and Dr. Zeger's specific reliance upon certain citations to Exhibits 2012 and 2013 are Acton's deposition in IPR2018-01331 pursuant to 37 C.F.R. § 42.64(a), on the basis that the Exhibit was outside of the scope of the record of that proceeding, and relies upon different legal and claim construction standards than applied in that proceeding. *See* Ex. 2015 at 50:5-9, 58:20-59:9.

therefore highly prejudicial to Petitioner. Exhibits 2012 and 2013 should therefore be excluded under FRE 401, 402, and 403.

Pursuant to **FRE 801** and **802**, Petitioner further objects to the admissibility of Exhibit 2012 as hearsay. Realttime relies on Dr. Bovik's statements in Exhibit 2012 for the truth of its contentions that the '535 patent provides an express definition of an "asymmetrical compression algorithm," and that this definition provides the proper constructions of the terms "asymmetric compressors" and "asymmetric data compression" appearing in the challenged claims of the '535 patent. Paper 19 at 12. As noted above, Exhibit 2012 is a declaration offered by Dr. Bovik in an entirely different and unrelated case under different legal and claim construction standards. Therefore, Exhibit 2012 constitutes hearsay for the purpose Patent Owner relies upon it. *See* FED. R. EVID. 802-804, 807.

Pursuant to **FRE 702**, Petitioner objects to the admissibility of all paragraphs of Exhibit 2010 that reference Exhibit 2012 or Exhibit 2013. *See, e.g.,* Ex. 2010 at ¶¶ 55-56. Exhibit 2010 is the Expert Declaration of Kenneth A. Zeger. Dr. Zeger's Declaration relies on Exhibits 2012 and 2013 to support his position regarding the proper claim construction of the terms "asymmetric compressors" and "asymmetric data compression." *Id.* In doing so, Dr. Zeger relies on evidence that addresses a different claim construction standard than is applied in this proceeding. Specifically, Exhibits 2012 and 2013 relied on by Dr. Zeger address

the *Phillips* standard for claim construction applied in the federal district courts, rather than the BRI standard applied in this proceeding. Accordingly, these paragraphs of Exhibit 2010 are inadmissible under FRE 702, because the legal conclusions that Dr. Zeger purports to reach are not based on a reliable application of the proper principles and methods, and therefore will not help the Board to understand the evidence or to determine any fact in issue.

Petitioner further objects to the admissibility of all paragraphs of Exhibit 2010 that reference Exhibit 2012 or Exhibit 2013 pursuant to **FRE 703**,. *See, e.g.*, Ex. 2010 at ¶¶ 55-56. As discussed above, Exhibits 2012 and 2013 should be excluded, as their limited probative value does not outweigh their prejudice to Petitioner or the confusion resulting from their analysis under a different claim construction standard than is applied in this proceeding. As a result, FRE 703 prohibits all paragraphs of Exhibit 2010 that reference Exhibit 2012 or Exhibit 2013 from being disclosed to the finder of fact.

Petitioner further objects to the admissibility of all paragraphs of Exhibit 2010 that reference Exhibit 2012 or Exhibit 2013 pursuant to **FRE 401, 402, and 403**. *See, e.g.*, Ex. 2010 at ¶¶ 55-56. The opinions provided in Exhibits 2012 and 2013 are based on a different claim construction standard than applied in this proceeding. As a result, any limited probative value conferred by Dr. Zeger's reliance upon Exhibits 2012 and 2013 in his Declaration is substantially

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