

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES, INC.,
Petitioner

v.

AQUILA INNOVATIONS INC.,
Patent Owner

Case IPR2019-01526
Patent 6,895,519

**PETITIONER ADVANCED MICRO DEVICES, INC.’S OPPOSITION TO
PATENT OWNER’S MOTION TO EXCLUDE**

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The evidence of record establishes that each of the challenged Exhibits and testimony are admissible. Patent Owner (“PO”) fails to make even the most basic showing that any of AMD’s evidence in this case should be excluded, relying only on broad, vague, and conclusory statements that contradict the record evidence. Accordingly, PO has failed to meet its burden of establishing Exhibit 1005 and paragraphs 56-62 of Exhibit 1028 as not admissible. *See* 37 C.F.R. § 42.20(c). PO’s motion should be denied in its entirety.

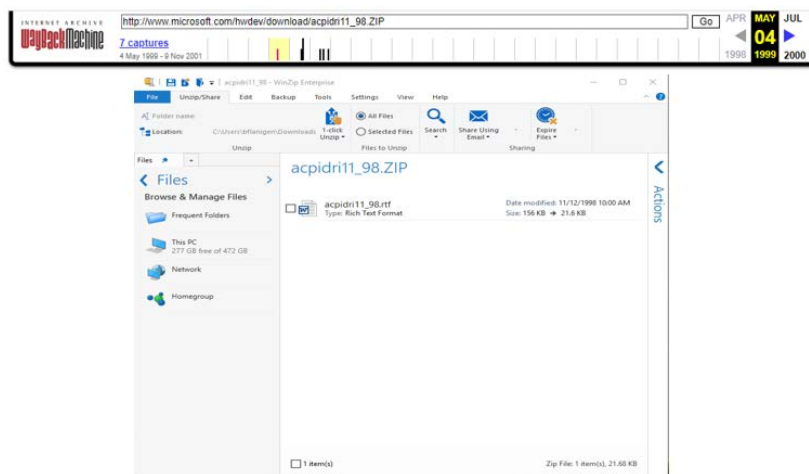
I. PATENT OWNER HAS NOT PROVEN EXHIBIT 1005 IS INADMISSIBLE.

PO seeks to exclude Exhibit 1005 arguing that it is “inadmissible under FRE 901 because Petitioner has not presented evidence showing that the document is what Petitioner claims it to be.” Mot., Paper 31, 2-3. But in doing so, PO fails to acknowledge that “the authentication requirement under Federal Rule of Evidence 901 [is] a ‘low bar.’” *Caterpillar Inc. v. Wirtgen Am., Inc.*, IPR2018-01091, Paper 49 at 72 (P.T.A.B. Nov. 27, 2019) (quoting *United States v. Turner*, 934 F.3d 794, 798 (8th Cir. 2019)). ““The party authenticating the exhibit need only prove a rational basis for that party’s claim that the document is what it is asserted to be.”” *Id.* (quoting *United States v. Needham*, 852 F.3d 830, 836 (8th Cir. 2017)).

AMD overwhelmingly demonstrates that Exhibit 1005 is authentic. Specifically, Dr. Albonesi explicitly confirmed that Exhibit 1005 is authentic in both of his declarations. *See e.g.*, EX1003, ¶43 (“Windows ACPI ... is a white

paper published by Microsoft”); EX1028, ¶61 (“This caused my computer to download a .zip file that included EX1005”). Yet despite having deposed Dr. Albonesi twice, PO never asked him about his opinions on the authenticity of Exhibit 1005, nor does PO even now suggest that his opinions are incorrect. Moreover, AMD also submitted the Affidavit of Mr. Christopher Butler of the Internet Archive’s Wayback Machine (Exhibit 1021) with its Petition, and Mr. Butler declared that Exhibit 1005 is a “true and accurate” copy of Windows ACPI, as it appeared on Microsoft’s website on May 4, 1999. *See* POPR Reply, Paper 11, 3-4; Pet. Reply, Paper 24, 23-25.¹ In fact, simply clicking on the URL referenced in Mr. Butler’s affidavit plainly demonstrates that the Wayback Machine did in fact archive Exhibit 1005 as of May 4, 1999:

¹ The Butler Declaration refers to an attached “Exhibit A” as copies of printouts of the Internet Archives records of the zip files for the listed URLs. EX1021, 1. This is a typographical error that is a vestige of the Internet Archive’s Wayback Machine’s boilerplate affidavit language, as it would be impractical to attach the linked zip files (which are binary files) as a “printout.”



AMD has also satisfied the requirement of demonstrating that Exhibit 1005 is authentic under Fed. R. Evid. 901(b)(4) based on the totality of the circumstances. Fed. R. Evid. 901(b)(4). Indeed, “[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of [Exhibit 1005], taken together with all the circumstances,” demonstrate that Exhibit 1005 is what AMD states it is. Nothing about Exhibit 1005 suggests that it is not what it purports to be, and PO never identifies anything to suggest otherwise. Accordingly, the evidence demonstrates that Exhibit 1005 is authentic under Fed. R. Evid. 901(b)(4). *See Actifio, Inc. v. Delphix Corp.*, IPR2015-00108, Paper 56 at 59 (P.T.A.B. Apr. 29, 2016).

Further, certain evidence is “self-authenticating” and “require[s] no extrinsic evidence of authenticity in order to be admitted.” Fed. R. Evid. 902. Here, Exhibit 1005 is self-authenticating under Fed. R. Evid. 902(7) because it contains a Microsoft trade inscription, copyright symbol, and repeated references to Microsoft

and Microsoft's products. *See Microsoft Corp. v. FG SRC LLC*, IPR2018-01604, Paper 76 at 12-13 (P.T.A.B. Apr. 30, 2020).

Finally, the motion to exclude Exhibit 1005 is notable for what PO fails to argue. Importantly, PO does not claim that Exhibit 1005 is not a true and correct copy of Windows ACPI. Nor does PO present any facts that any of the content of Exhibit 1005 suggests that the document is not what AMD purports it to be, or that it was altered in some way. PO bears the burden as movant to demonstrate the challenged document is not authentic, and summarily saying it is not authentic without more is insufficient to challenge its authenticity. *See 37 CFR § 42.20(c); Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC*, IPR2017-01798, Paper 32 at 103 (P.T.A.B. Jan. 31, 2019). Accordingly, PO's motion to exclude should also be denied because PO does not present any evidence, let alone meet its burden of showing "that any of the content of the exhibits suggest that the documents are not what they purport to be, or that they were altered in some way." *Caterpillar Inc.*, IPR2018-01091, Paper 49 at 71 (denying motion to exclude under Fed. R. Evid. 901).

In sum, AMD has conclusively established that Exhibit 1005 is authentic evidence under Fed. R. Evid. 901(a) because the record unambiguously shows that the exhibit is what AMD asserts it to be—a true and correct copy of Windows

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