

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOMENTUM DYNAMICS CORPORATION,
Petitioner

v.

WITRICITY CORPORATION,
Patent Owner

Case No. IPR2021-01166
Patent No. 8,304,935

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

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Patent Owner submits the following Reply to Petitioner’s Opposition (Paper 30, the “Opposition”) to Patent Owner’s Motion to Exclude (Paper 28, the “Motion”). As explained herein and in the prior Motion, Petitioner has not provided evidence sufficient to authenticate Exhibit 1007. Thus, the Board should grant the Motion and exclude Exhibit 1007 from the present proceeding.

I. Mr. Pierce’s testimony does not authenticate Exhibit 1007

Mr. Pierce’s declaration (Ex. 1024, the “Pierce Declaration”) is not sufficient to authenticate Exhibit 1007. As noted in the Motion, Mr. Pierce¹ provides no testimony explaining how he concluded that Exhibit 1007 is a true and correct copy of the O’Brien Dissertation. *See* Motion, 6-7; Ex. 1024, [2].

Recognizing this deficiency, Petitioner, in its Opposition, attempts to fill in these gaps with attorney argument, such as by providing a description of the website pointed to by the URL, and a statement that the “information provided in the URL referenced in Mr. Pierce’s declaration matches the contents of Exhibit 1007.”

Opposition, 3. However, such attorney argument should not be considered when deciding whether Petitioner has provided sufficient evidence to authenticate Exhibit 1007 (which, as explained in the Motion, it has not).

¹ Petitioner removed Mr. Pierce as backup counsel on April 28, 2022 (*see* Paper 15)—well after submission of the Pierce Declaration.

In addition, as noted in the Motion, Mr. Pierce’s conclusion that Exhibit 1007 is a “true and correct” copy of the O’Brien Dissertation is factually incorrect, because Exhibit 1007 includes the “Declaration of Irina Hinrichs” (pages 199-201) and an English translation of the title page and page 3 of the PDF (pages 202-205). *See* Motion, 7; Ex. 1005, [38] (describing the inclusion of these materials in Exhibit 1007). The Opposition does not address this factual inaccuracy in Mr. Pierce’s testimony.

Thus, Mr. Pierce’s conclusory and factually inaccurate testimony fails to authenticate Exhibit 1007.

II. Dr. Hall-Ellis’ testimony does not authenticate Exhibit 1007

Neither of Dr. Hall-Ellis’ declarations (Ex. 1005, the “First Hall-Ellis Declaration,” and Ex. 1025, the “Second Hall-Ellis Declaration”) are sufficient to authenticate Exhibit 1007.

With respect to the First Hall-Ellis Declaration, Petitioner confirms that Dr. Hall-Ellis “relied on the contents of Ex. 1007 *compared to library and MARC records*... to verify that Exhibit 1007 is what Momentum purports it to be.” Opposition, 5 (emphasis added). Based on Dr. Hall-Ellis’ testimony, this comparison consisted solely of verifying that the page number of the last page in Exhibit 1007 before the “Declaration of Irina Hinrichs” matched the number of pages listed in the “library and MARC records.” *See* Ex. 1005, p. 19 note 21.

Neither the First Hall-Ellis Declaration nor the Opposition claim that Dr. Hall-Ellis ever reviewed an authentic version of the O'Brien Dissertation, much less performed any comparison between such an authentic version and the contents of Exhibit 1007. *See* Opposition, 4-7; Ex. 1005, [38] (Dr. Hall-Ellis "obtained" Exhibit 1007 "from counsel."). Thus, the First Hall-Ellis Declaration is insufficient to authenticate Exhibit 1007.

Regarding the Second Hall-Ellis Declaration, Petitioner, in the Opposition, states that it "served Dr. Hall-Ellis' declaration from" a different proceeding "in this proceeding in response to Patent Owner's authenticity objection to Exhibit 1016." Opposition, p. 6 note 2. Petitioner did not provide this or any explanation when it served the Second Hall-Ellis Declaration in response to Patent Owner's objections. Thus, Patent Owner's arguments in the Motion with respect to the Second Hall-Ellis Declaration were not "fundamentally misleading and disingenuous" as Petitioner claims, but were in fact based on the (lack of) information Patent Owner received regarding the intended use of the document. Regardless, at best, as the Opposition admits, the Second Hall-Ellis Declaration "is simply not relevant," and thus is insufficient to the authenticate Exhibit 1007.

III. Exhibit 1007 is not self-authenticating

The Opposition argues, without evidence, that Exhibit 1007 is self-authenticating because "Exhibit 1007 contains a Shaker Verlag trade inscription,

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