

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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APPLE INC.,  
Petitioner,

v.

MEMORYWEB, LLC,  
Patent Owner.

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Case No. IPR2022-00032  
U.S. Patent No. 9,552,376

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

**TABLE OF CONTENTS**

**I. INTRODUCTION .....1**

**II. ARGUMENT.....1**

    A. Undisputed Evidence Demonstrates the Authenticity of the A3UM HTML File Set ..... 1

    B. EX1005 Is an Authentic Copy of the A3UM HTML File Set on the v3.0 Aperture 3 Installer DVD .....3

        1. Mr. Birdsell’s Testimony Demonstrates that EX1005 Is an Authentic Copy of the A3UM File Set .....4

        2. Dr. Terveen’s Testimony Demonstrates that EX1005 Is an Authentic Copy of the A3UM File Set .....6

        3. EX1005 Has Indicia and Attributes that Confirm its Authenticity .....8

    C. The Evidence Uniformly Supports the Authenticity of EX1005.....10

    D. Patent Owner’s Remaining Concerns Do Not Warrant Exclusion of EX1005 .....12

**III. CONCLUSION .....14**

## I. INTRODUCTION

The evidence in this record uniformly establishes that Exhibit 1005 is admissible. Because Patent Owner has not met its burden of establishing it is not, *see* 37 C.F.R. § 42.20(c), *FLIR Sys., Inc. v. Leak Surveys, Inc.*, IPR2014-00411, Paper 113 at 5 (PTAB Sept. 3, 2015), its Motion to exclude should be denied.

## II. ARGUMENT

Patent Owner moves to exclude Exhibit 1005, contending it has not been proven to be an authentic copy of the Aperture 3 User Manual (“A3UM”) under Federal Rule of Evidence 901 and 902. *See* Paper No. 35 (“Mot.”). But Patent Owner mischaracterizes the relevant inquiry, which is whether the *PDF* that is EX1005 is an authentic copy of what is undisputed to be the Aperture 3 User Manual (“A3UM”) in February of 2010—the set of interlinked HTML files with their associated resources (e.g., images) on the v3.0 Aperture 3 installation DVD (the “A3UM HTML file set”). EX1020, ¶¶ 9-10, 12-14, 17-18. The totality of the evidence demonstrates that EX1005 is authentic.

### A. Undisputed Evidence Demonstrates the Authenticity of the A3UM HTML File Set

In its motion, Patent Owner does *not dispute* several key facts.

*First*, Patent Owner does not dispute that the A3UM HTML file set is present on the v3.0 Aperture 3 installation DVD. Mr. Birdsell and Dr. Terveen both testified that it is, identified where it is located on the DVD, and described

how it can be retrieved. E1020, ¶¶ 12-16; EX2026, 29:3-9; EX1003, ¶¶ 74-75, 78-85, 91-93, 95-97. Patent Owner's expert, Dr. Surati also successfully repeated the steps that Dr. Terveen performed to retrieve the A3UM HTML file set from a v3.0 Aperture 3 installation DVD. EX2025, ¶ 117-118, 124; EX1089, 139:20-140:1.

**Second**, Patent Owner does not dispute that the A3UM HTML file set on the v3.0 Aperture 3 installation DVD existed prior to February 2010. As its expert admitted, "all the files on the Installer DVD existed by January 21, 2010 and could not be modified after that date." EX1089, 125:3-25; EX1073, 1. Because the files that make up the A3UM HTML file set are on that v3.0 Aperture installer DVD and cannot be modified, they are authentic.

**Third**, Patent Owner does not address, much less present any evidence contrary to, the testimony of Mr. Matthew Birdsell that the A3UM HTML file set on the v3.0 Aperture 3 installation DVD is a "one-for-one" copy of A3UM HTML file set loaded onto Apple's documentation servers on February 10, 2010. EX2026, 40:15-41:21, 34:10-35:8, 35:16-37:25.

The evidence thus demonstrates that, as of February 10, 2010, the same A3UM HTML file set existed on (i) the v3.0 Aperture 3 installation DVD and (ii) Apple documentation servers.

**B. EX1005 Is an Authentic Copy of the A3UM HTML File Set on the v3.0 Aperture 3 Installer DVD**

Patent Owner's sole basis for excluding EX1005 is its contention that EX1005 was not "properly" authenticated as a "true and correct copy of A3UM publicly available as of February 2010." Mot., 1. But Patent Owner identifies *no evidence* that contradicts the testimony of two witnesses or other evidence in this record establishing that EX1005 is an accurate and complete copy of the A3UM HTML file set. At bottom, Patent Owner's motion is based on nothing more than *unsubstantiated speculation* that the PDF that is EX1005 *might* not be a complete copy of the A3UM HTML file set. That cannot justify exclusion of Exhibit 1005.

To authenticate an item of evidence, Fed. R. Evid. 901(a) requires only that "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(b) also provides that "testimony of a witness with knowledge 'that an item is what it is claimed to be' may satisfy the authentication requirement." *Mylan Pharm. Inc. v. Regeneron Pharm. Inc.*, IPR2021-00881, Paper 94 at 48 (PTAB Nov. 9, 2022) (quoting Fed. R. Evid. 901(b)(1)). The PTAB recognizes that authentication is "not an especially high hurdle for a party to overcome." *Fox Factory, Inc. v. SRAM, LLC*, IPR2016-01876, Paper 59 at 63 (PTAB Apr. 2, 2018); *see also Advanced Micro Devices, Inc. v. Aquila Innovations, Inc.*, IPR2019-01526, Paper 37 at 99 (PTAB Mar. 10, 2021) ("[A]uthentication is a low bar, requiring only a rational basis that [Exhibit

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