

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Google LLC,  
Petitioner,

v.

WAG Acquisition, L.L.C.,  
Patent Owner.

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IPR2022-01412

U.S. Patent No. 9,742,824 B2

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Google LLC,  
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WAG Acquisition, L.L.C.,  
Patent Owner.

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IPR2022-01413

U.S. Patent No. 9,762,636 B2

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**PETITIONER'S DEMONSTRATIVE SLIDES**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

# Motion to Exclude

Cooley

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

## The Declarations and Transcripts from Experts Not Involved in These Proceedings are Inadmissible Hearsay

Declarations and transcripts for experts not involved in these proceedings are indisputably out-of-court statements in their entirety

- **Exhibit 2003** – Declaration of Dr. Henry Houh – *The Walt Disney Co. v. WAG Acquisition, L.L.C.*, IPR2022-01228, Ex. 1002.
- **Exhibit 2004** – May 23, 2023 Deposition of Dr. Kevin Jeffay – *Amazon.com, Inc. v. WAG Acquisition, L.L.C.*, IPR2022-01430 and -01433.
- **Exhibit 2009** – Evidentiary Hearing testimony of Dr. Kevin Jeffay – *In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same*, Inv. No. 337-TA-1265, Evidentiary Hearing - Volume III (ITC March 14, 2022).

Exhibits and exhibit numbers are the same for IPR2022-01412 and -1413.

## The Declarations and Transcripts from Experts Not Involved in These Proceedings are Inadmissible Hearsay

Patent Owner and Mr. Hoarty are attempting to rely on this out-of-court testimony for the truth of the matter asserted:

Testimony that Mr. Hoarty cites (EX2009-637:10-639-7) *obliterates* any “merency” assertion:

- Disagrees that, “if Camel ... is transmitting a request via HTTP, then that request necessarily identifies the requested file stored by the video server.” EX2009-637:10-16.
- Explains that, “HTTP is famously the best example of a giant Swiss Army knife protocol that we have on the Internet.... There are many ways to get content sent to you by HTTP.” EX2009-637:18-22.

– PO 824 Sur-Reply (1412 Paper No.17) at 11-12.  
PO 636 Sur-Reply (1413 Paper No. 16) at 11-13.

server could send sequential portions of the content,” citing and explaining referenced detailed testimony by Dr. Jeffay (Amazon’s expert). EX2002 ¶ 53-54.

– PO 824 Sur-Reply (1412 Paper No.17) at 11.  
PO 636 Sur-Reply (1413 Paper No. 16) at 11.

<sup>9</sup> Patent Owner’s expert agrees with the characterization in prior testimony of Dr. Kevin Jeffay (an expert in two of the co-pending IPRs accompanying this one),

– 824 POR (1412 Paper No.11) at fn. 9.  
636 POR (1413 Paper No.10) at fn. 10.

## The PTAB Regularly Excludes This Type of Hearsay – Out-of-Court Testimony from Uninvolved Experts

“Exhibit 1029 is the testimony of co-inventor Dr. George E. Seidel, Jr. in a related district court proceeding, and Exhibit 1032 is Dr. Siedel’s *curriculum vitae*. Petitioner cites Dr. Seidel’s testimony in five places in its Petition[, including]: . . . (4) To support Petitioner’s contention that a POSA would have recognized that buffered solutions including a citric acid were as good, or better, than buffered solutions containing phosphates in maintaining the viability of fresh and frozen-thawed sperm; and (5) [t]o support Petitioner’s position on the ultimate issue that it would have been obvious to adapt a flow cytometry technique disclosed in the prior art to ‘sort bovine sperm to select a buffer to use in the extender and sheath fluids that includes a citric acid.’

. . . Petitioner contends that Dr. Siedel’s testimony supporting these five contentions is not hearsay because it is not being offered for the truth of the matter asserted. According to Petitioner, it cites Dr. Seidel’s testimony ‘to show that a skilled person (one of the inventors, no less) holds an opinion on these issues, not to prove that they are necessarily true.’ **We are not persuaded.** Although the fact that Dr. Seidel is ‘a skilled person’ and ‘one of the inventors’ may lend credibility to his assertions, it does not, by itself, convey relevance to his testimony independent of the truth of the matters asserted. **Petitioner does not identify, and we do not find, any relevance to the above assertions other than to prove what the inventor said was true—i.e., that citrate and citric acid are interchangeable (contention 1), that the benefits of citrate with respect to bull semen were known (contentions 2-4), and that the alleged innovation of the claimed method would have been obvious (contention 5). Accordingly, we agree with Patent Owner that the above statements are hearsay.**

*ABS Global, Inc. v. XY, LLC*, IPR2018-01224, Paper No. 28, 16-18 (P.T.A.B. Dec. 9, 2018)

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