

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

NETFLIX, INC.,  
Petitioner,

v.

GOTV STREAMING, LLC,  
Patent Owner.

---

Case IPR2023-00757  
Patent No. 8,989,715

---

**PETITIONER'S MOTION TO EXCLUDE EXHIBITS 2023-2027**

Pursuant to 37 C.F.R. § 42.64(c), Petitioner Netflix, Inc., files this motion to exclude Exhibits 2023, 2024, 2025, 2026, and 2027. Consistent with its obligations under 37 C.F.R. § 42.64(b)(1), Netflix filed timely objections to those exhibits. Paper 23 at 3-4. In short, Exhibits 2023-2027 are inadmissible because they are not relevant; that is, they do not have any tendency to make a fact of consequence in this proceeding more or less probable. *See* Fed. R. Evid. 401, 402. To the extent the exhibits have some minimal probative value, they should also be excluded under Federal Rule of Evidence 403 due to the risk of unfair prejudice and confusion of the issues. *See* Fed. R. Evid. 403.

Exhibits 2023-2027 are screenshots of dictionary entries obtained from various online sources. *See* Exs. 2023-2027. Patent Owner attempts to rely on these definitions as extrinsic evidence in support of its claim construction positions. Paper 21 at 16, 29. However, the definitions in those exhibits reflect, at best, what a POSITA would understand those terms to mean *today*, not at the time of the '715 patent. As the Federal Circuit has made clear, dictionary definitions are relevant only to the extent that they reflect a POSITA's understanding of the term at the time of the patent. *See, e.g., Inverness Med. Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1370 (Fed. Cir. 2002) (considering dictionary definition "as of the date the patents issued"); *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202-03 (Fed. Cir. 2002) ("Dictionaries, encyclopedias and

treatises, publicly available at the time the patent is issued, are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the terms of the claims by those of skill in the art”).<sup>1</sup>

A simple examination of the exhibits confirms Netflix’s position. Exhibit 2023 states on its face that the captured page was “[u]pdated” on November 22, 2023. Ex. 2023. Exhibit 2024 lists on its face a copyright date of “2023.” Ex. 2024. Exhibits 2025 and 2026 do not expressly provide *any* date, but navigating to the URLs<sup>2</sup> listed in those two exhibits reveals a copyright date of 2024 in each instance. Finally, Exhibit 2027 states on its face that it “was last edited on 3

---

<sup>1</sup> Additional Federal Circuit case law suggests that the relevant date is the filing date, not the issue date of the patent. *See Inverness*, 309 F.3d at 1370 n.1 (citing *Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1353 (Fed. Cir. 2000)). In any event, the application that led to the ’715 patent was filed on April 18, 2013, and the patent issued on March 24, 2015. Regardless of which date is chosen, Exhibits 2023-2027 lack relevance with respect to a POSITA’s understanding of the claim terms at that time.

<sup>2</sup> <https://www.merriam-webster.com/dictionary/customized>; <https://www.merriam-webster.com/dictionary/from>.

January 2023.” Ex. 2027. Put simply, these exhibits all provide purported definitions of certain terms as of no earlier than 2023. They cannot be credible evidence of how a POSITA would have understood those terms as of nearly a decade prior, when the ’715 patent was filed and issued.

Although Exhibits 2023 and 2024 recite other dates purportedly from before the issuance of the ’715 patent, they have not been authenticated in any respect (*e.g.*, via the Wayback Machine); they appear to be merely screenshots or PDF print-outs of webpages taken prior to the filing of the POR. Patent Owner has failed to establish when, and to what extent, the webpages in those exhibits may have last been updated—and the more recent dates listed on those webpages are strong evidence that they may have been modified as recently as 2023.

More importantly, even if the dictionary definitions in Exhibits 2023-2027 were contemporaneous with the ’715 patent, they have minimal probative value on the ultimate issues of invalidity. For example, Patent Owner relies on Exhibit 2025 to refute the Board’s Institution Decision discussion of the word “from,” which appears in the claim limitation “generated in part from.” Paper 21 at 29-30 (citing Paper 11 at 79). The word “from” is sufficiently clear on its face that the Board did not and does not need extrinsic evidence to understand its meaning. The same generally applies to the other definitions on which Patent Owner relies.

IPR2023-00757  
Patent 8,989,715

Finally, even if the Board finds that Exhibits 2023-2027 have some minimal probative value as to how a POSITA would understand the claims of the '715 patent, the Board should exclude those exhibits under Rule 403 because any minimal probative value that the exhibits may have is “substantially outweighed” by the unfair prejudice and potential confusion of the issues that may occur if the exhibits are allowed to remain in evidence. *See* Fed. R. Evid. 403.

For the reasons set forth above, Exhibits 2023-2027 should be excluded. Should the Board admit Exhibits 2023-2027, they should be ascribed substantially less weight as they are non-contemporary sources of extrinsic evidence.

Dated: July 16, 2024

By: / Aliza George Carrano /  
Aliza George Carrano  
PTO Reg. No. 70,637  
**Counsel for Petitioner**

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.