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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE EXHIBITS 2023-2027

In its opposition to Petitioner's motion to exclude Exhibits 2023-2027, Patent Owner does not seriously dispute the substantive proposition that dictionary definitions that are not contemporary with the challenged patent are not proper extrinsic evidence for purposes of claim construction. *See, e.g.*, *Inverness Med. Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1370 (Fed. Cir. 2002). Each of Exhibits 2023-2027 presents a definition that is nearly *a decade* removed from the date of the '715 patent. Given that fact, the exhibits are simply not relevant and should be excluded.

Patent Owner's suggestion that it did not rely on Exhibits 2023-2027 directly, but instead relied on the declaration of Mr. Lipoff (who in turn relied on the exhibits) is unavailing. *See* Paper 32 at 1. First, the Patent Owner Response cites Exhibit 2025 directly, rather than citing Mr. Lipoff's testimony regarding that exhibit. POR, 29. Second, although Mr. Lipoff claimed his analysis was "as of the effective priority date" of the '715 patent, he did not account for the temporal distance between the dates of the exhibits and the date of the '715 patent. EX2022, ¶¶ 41, 116–17, 121. In short, Mr. Lipoff's declaration functions as a vehicle to allow Patent Owner to rely on otherwise inadmissible evidence.

Patent Owner also misleadingly suggests that "the PTAB often cites modern dictionaries when construing claim terms from older patents." Paper 32 at 2. That assertion ignores, however, that the Board's reliance on dictionary evidence was

not seriously disputed in *any* case cited by Patent Owner. *See, e.g.*, *Amazon.com, Inc. v. Swarm Tech. LLC*, IPR2022-00633, Paper 36 at 15 (P.T.A.B. Aug. 28, 2023); *LinkedIn Corp. v. eBuddy Techs. B.V.*, IPR2022-00165, Paper 40 at 12 (P.T.A.B. June 30, 2023); *Packers Plus Energy Servs. Inc. v. Baker Hughes Oilfield Ops., Inc.*, IPR2016-01099, Paper 30 at 13-14 (P.T.A.B. Dec. 12, 2019); *Vivint, Inc. v. SB IP Holdings LLC*, IPR2022-01365, Paper 8 at 13 (P.T.A.B. Apr. 26, 2023). Here, on the other hand, Petitioner objects to the use of non-contemporary dictionary evidence, and Patent Owner has provided no basis to believe that evidence is relevant to the construction of any claim term as of the date of the '715 patent.

Moreover, Patent Owner's sweeping assertion that Federal Rule of Evidence 403 is "not applicable here" is incorrect. Paper 32 at 5. Although "the risk of unfair prejudice is diminished" when the Board acts as fact-finder, *see Trend Micro Inc. v. Cupp Computing AS*, IPR2019-00765, Paper 30 at 4–5 (P.T.A.B. Aug. 25, 2020), the Board has never adopted a blanket rule prohibiting the application of Rule 403. At its core, Rule 403 presents a balancing test, requiring the Board to determine whether the "probative value" of evidence "is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." F.R.E. 403. Petitioner's position is that Exhibits 2023-2027

are not relevant, *i.e.*, they have no probative value. To the extent the Board concludes that the exhibits have some minimal probative value, that probative value is outweighed by any unfair prejudice that would inure to Petitioner from relying on evidence that is not contemporary with the '715 patent.

For the reasons explained in Petitioner's Motion to Exclude (Paper 31), Exhibits 2023-2027 are not relevant because they are non-contemporary dictionary definitions used to support Patent Owner's faulty claim construction positions. Accordingly, the Board should exclude those exhibits under Rules 401, 402, and 403. Should the Board admit any of Exhibits 2023-2027, Petitioner maintains its position that the exhibits lack any probative value regarding a fact of consequence in this proceeding.

Dated: July 30, 2024

By: */ Aliza George Carrano /*
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on July 30, 2024, a copy of the foregoing document was served by email directed to the following counsel of record and distribution list:

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