

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

GOTV STREAMING, LLC,
Patent Owner.

Case IPR2023-00758
Patent No. 8,478,245

PETITIONER'S MOTION TO EXCLUDE EXHIBITS 2023-2028

Pursuant to 37 C.F.R. § 42.64(c), Petitioner Netflix, Inc., files this motion to exclude Exhibits 2023, 2024, 2025, 2026, 2027, and 2028. Consistent with its obligations under 37 C.F.R. § 42.64(b)(1), Netflix filed timely objections to those exhibits. Paper 22 at 3-4. In short, Exhibits 2023-2028 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 2023-2028 are screenshots of dictionary entries obtained from various online sources. *See* Exs. 2023-2028. Patent Owner attempts to rely on these definitions as extrinsic evidence in support of its claim construction positions. Paper 21 at 20, 32-33, 54. 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 '245 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”).¹

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, 2026, and 2028 do not expressly provide *any* date, but navigating to the URLs² listed in those three exhibits reveals a copyright date of

¹ 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 ’245 patent was filed on August 1, 2007, and the patent issued on July 2, 2013. Regardless of which date is chosen, Exhibits 2023-2028 lack relevance with respect to a POSITA’s understanding of the claim terms at that time.

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

2024 in each instance. Finally, Exhibit 2027 states on its face that it “was last edited on 3 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 ’245 patent was filed and issued.

Although Exhibits 2023 and 2024 recite other dates purportedly from before the issuance of the ’245 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 2023-2028 were contemporaneous with the ’245 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 32-33 (citing Paper 10 at 70). 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.

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Finally, even if the Board finds that Exhibits 2023-2028 have some minimal probative value as to how a POSITA would understand the claims of the '245 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 2023-2028 should be excluded. Should the Board admit Exhibits 2023-2028, they should be ascribed substantially less weight as they are non-contemporary sources of extrinsic evidence.

Dated: July 16, 2024

By: / Aliza George Carrano /
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