

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC., and COX COMMUNICATIONS, INC.,
Petitioners

v.

C-CATION TECHNOLOGIES, LLC,
Patent Owner

CASE IPR2015-00635¹
Patent 5,563,883

**PATENT OWNER'S REPLY IN SUPPORT
OF ITS MOTION TO EXCLUDE EVIDENCE**

¹ Cox Communications, Inc., who filed a Petition in IPR2015-01796, has been joined as a petitioner in this proceeding.

Table of Contents

I. INTRODUCTION..... 1

II. ARGUMENT..... 1

 A. Exhibits 1005-1007 and 1010 Are Not Admissible Under Fed. R. Evid.
 803(16) Because They Have Not Been Authenticated 1

 1. Exhibits 1005-1007 and 1010 Are Neither Self-Authenticating Under
 Fed. R. Evid. 902(5) Nor Authenticated as Public Records Under Fed.
 R. Evid. 901(b)(7)(B) 1

 2. Exhibits 1005-1007 and 1010 Are Not Authenticated Under Fed. R.
 Evid. 901(b)(8) 3

 3. Exhibits 1005-1007 and 1010 Do Not Fall Under the Residual
 Exception to the Hearsay Rule 3

 4. Patent Owner Properly Objected to Exhibit 1010..... 4

 B. Petitioners Implicitly Concede That Exhibits 1018, 1019 and 1026-1032 Are
 Inadmissible to Prove That the MPT Specifications, Alleged to be Prior Art,
 Were Published Between 1991 and 1992..... 4

 C. Exhibits 1033 and 1034 Are Irrelevant to Show a Purported Inconsistency in
 C-Cation’s Positions..... 5

III. CONCLUSION..... 5

Table of Authorities

Cases

Bedingfield v. Deen, 487 F. App'x 219 (5th Cir. 2012).....3

Compass Bank v. Intellectual Ventures II LLC, IPR2014-00724, Paper 41
(P.T.A.B. Nov. 5, 2015).....4

Rules

FED. R. EVID. 8033

Treatises

30 CHARLES ALLEN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND
PROCEDURE § 7057 (2d ed.).....3

31 CHARLES ALLEN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND
PROCEDURE § 7104 (2d ed.).....2

5 JACK B. WEINSTEIN & MARGARET A. BERGER, WEINSTEIN'S FEDERAL EVIDENCE §
803.18 (2d ed. 1997)3

Regulations

37 C.F.R. § 1.682

37 C.F.R. § 42.22

37 C.F.R. § 42.53(a).....2

I. INTRODUCTION

C-Cation submits this Reply in response to the Petitioners' Opposition ("Opposition") (Paper 46) to C-Cation's Motion to Exclude Evidence (Paper 43). To the extent that C-Cation does not specifically address an argument of Petitioners here, C-Cation rests on its motion.

II. ARGUMENT

A. Exhibits 1005-1007 and 1010 Are Not Admissible Under Fed. R. Evid. 803(16) Because They Have Not Been Authenticated

Exhibits 1005-1007 are the MPT Specifications that Petitioners contend are prior art. C-Cation objected to these exhibits not with respect to what they disclose, but rather with respect to Petitioner's reliance on the truth of assertions in them, *i.e.*, that they were "published." For that purpose, they are hearsay. C-Cation also objected to Exhibit 1010 because it is offered only to prove the truth of assertions regarding the alleged publication of the MPT Specifications.

Petitioners rely solely on the ancient documents exception to the hearsay rule, Fed. R. Evid. 803(16), to establish admissibility, but have failed to meet the authentication requirement under that rule for each exhibit.

1. Exhibits 1005-1007 and 1010 Are Neither Self-Authenticating Under Fed. R. Evid. 902(5) Nor Authenticated as Public Records Under Fed. R. Evid. 901(b)(7)(B)

Petitioners rely on the unsworn certificates of Ms. Julia Fraser to establish that the "Radiocommunications Agency" was a "public authority" under Rule

902(5) and to authenticate Exhibits 1005-1007 and 1010 under Rule 901(b)(7)(B). “In determining whether a matter is authentic, a court only may consider evidence that is itself admissible.” 31 CHARLES ALLEN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND PROCEDURE § 7104 (2d ed.).

Here, the Fraser certificates are not admissible testimony because they do not comply with the Board’s rules. *See* 37 C.F.R. § 42.53(a) (“Uncompelled direct testimony must be submitted in the form of an affidavit.”); 37 C.F.R. § 42.2 (“Affidavit means affidavit or declaration under § 1.68 of this chapter.”); *see also* 37 C.F.R. § 1.68 (declarant must be “warned that willful false statements and the like are punishable by fine or imprisonment, or both”). Pursuant to 28 U.S.C. § 1746, an unsworn declaration executed outside the United States may be used instead of an affidavit, but must include the following statement by the witness: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.” The Fraser certificates do not include this statement.

The Fraser certificates also do not comply with Rule 902(3), which requires purported foreign public documents to be accompanied by “a final certification that certifies the genuineness of the signature and official position of the signer or attester.”

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.