

Case IPR2017-01977
Patent No. 8,755,376

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELESIGN CORPORATION
Patent Owner,

v.

TWILIO INC.
Patent Owner

Case IPR2017-01977
Patent 8,755,376

PATENT OWNER'S MOTION TO EXCLUDE

I. INTRODUCTION

Patent Owner moves to exclude Exhibits 1017, 1018, 1019, and 1020 under the Federal Rules of Evidence. Petitioner relies on Exhibits 1017 and 1018 for the truth of statements made by its co-founder Stacy Stubblefield in out-of-court email chains. Therefore, these constitute inadmissible hearsay. Exhibit 1019 is a supplemental declaration from Petitioner's expert that is irrelevant, prejudicial, and outside the proper scope of this proceeding. Finally, Patent Owner objects to a portion of the Reply brief that relies on incomplete excerpts of Exhibit 2004 under FRE 106. *See* Paper 30, 8. Patent Owner timely objected to these exhibits (Paper 31).

II. REASONS THE REQUESTED RELIEF SHOULD BE GRANTED

A. Federal Rules of Evidence

The Federal Rules of Evidence (FRE) apply to *inter partes* reviews. 37 C.F.R. § 42.62. FRE 801-802 provide that hearsay is not admissible. FRE 401 and 402 provide that only relevant evidence is admissible. FRE 403 allows exclusion for evidence whose probative value is substantially outweighed by a danger of "unfair prejudice" or "confusing the issues." FRE 106 allows an adverse party to introduce other parts of a writing "that in fairness ought to be considered at the same time" as the part introduced by the other party.

B. Exhibits 1017 and 1018 are statements from Petitioner's co-founder and constitute inadmissible hearsay.

Patent Owner objects to Exhibits 1017 and 1018 as inadmissible hearsay under FRE 801 and 802 that do not fall under any exceptions.

Exhibits 1017 and 1018 are both email chains between employees of Patent Owner (Evan Cooke) and Petitioner (Stacy Stubblefield). Petitioner relies on these exhibits for the truth of the matters asserted in Exhibit 1018 by Ms. Stubblefield—namely, to assert an alternative reason why Petitioner and Patent Owner entered into a non-disclosure agreement on February 28, 2010 (EX2041). Paper 30 at 25-26. These out-of-court statements are the epitome of hearsay. If Petitioner wanted to rely on statements from Ms. Stubblefield in this proceeding, it should have submitted direct testimony from Ms. Stubblefield herself and made her available for cross-examination by Patent Owner. Ms. Stubblefield is a co-founder of Petitioner and is currently employed by Petitioner. She is an available declarant, yet Petitioner chose to rely on hearsay and add its own interpretation of her statements through attorney argument. Petitioner even had the opportunity to serve a declaration from Ms. Stubblefield as supplemental evidence after Patent Owner filed its hearsay objections, but Petitioner chose not to do so—apparently to protect Ms. Stubblefield from deposition and to be able to push its attorney argument interpretation of the hearsay statements without any opportunity for

Patent Owner to cross-examine Ms. Stubblefield on the subject. *See* 37 CFR § 42.64(b)(2). Exhibits 1017 and 1018 should be excluded.

C. Exhibit 1019 is irrelevant, prejudicial, and untimely.

Exhibit 1019 is a supplemental declaration from Petitioner's expert, Dr. Nielson that for the first time applies a construction of "REST API" that it could have and should have addressed in the Petition. *See* Paper 35, 4-5. Because Dr. Nielson's new opinions cannot support Petitioner's grounds submitted in the Petition, they are irrelevant under FRE 401-402. And because they constitute new grounds (which would require Petitioner to submit responsive argument and potentially new expert testimony), they are unduly prejudicial under FRE 403.

Exhibit 1019 is also untimely and outside the proper scope of reply; Patent Owner filed a motion to strike Exhibit 1019 on this basis. *See* Paper 35 at 4-5.

D. Portions of Petitioner's Reply Brief (Paper 30) relying on Ex. 2004 (Paper 30, 8) are incomplete under FRE 106.

Patent Owner objects to portions of the Reply relying on Exhibit 2004 (Paper 30 at 8) as incomplete under FRE 106. Petitioner relies on an incomplete excerpt of the claim construction hearing transcript from the district court proceeding. Paper 30, 8. Without their full context, the statements Petitioner identifies are incomplete and should be excluded.

Case IPR2017-01977
Patent No. 8,755,376

Date: October 12, 2018

Respectfully submitted,
BAKER BOTTS L.L.P.

/Wayne O. Stacy/
Wayne Stacy
Lead Counsel

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.