

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.
Petitioner,

v.

AT HOME BONDHOLDERS' LIQUIDATING TRUST
Patent Owner.

Case IPR2015-00657¹
Patent 6,286,045 B1

OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)

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¹ Case IPR2015-00660 has been consolidated with this proceeding.

Petitioner Google Inc. hereby makes the following objections to the admissibility of documents submitted with Patent Owner's Response (POR). (Paper 24.)

1. Google objects to AHBLT-2015 under FRE 403. AHBLT-2015 is cumulative of the POR. The probative value of his testimony is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Google also objects to AHBLT-2015 under FRE 702 and 703 because the declaration includes statements and testimony not based on scientific, technical, or other specialized knowledge. These statements and testimony are based on insufficient facts or data, and is not the product of reliable principles and methods. Further, the relied upon facts and data are not those on which experts in this field would reasonably rely.
2. Google objects to AHBLT-2016 and its Exhibits A-C under FRE 403. Declarant Mr. Griffiths is the first named inventor of the '045 patent. The probative value of his uncorroborated testimony is substantially outweighed by the danger of unfair prejudice, leading to confusion and waste of time. Google also objects to AHBLT-2016 under 37 C.F.R. § 42.65 because the declaration includes expert testimony that does not

- disclose the underlying facts or data on which the opinion is based. Google further objects to AHBLT-2016 under FRE 702 and 703 because the declaration includes statements and testimony not based on scientific, technical, or other specialized knowledge. These statements and testimony are based on insufficient facts or data, and is not the product of reliable principles and methods. Further, the relied upon facts and data are not those on which experts in this field would reasonably rely.
3. Google objects to Ex. A of AHBLT-2016 as inadmissible hearsay (FRE 801, 802). The document's authors are not under oath and are not subject to cross-examination in this proceeding. Because Ex. A of AHBLT-2016 is an out-of-court statement offered for its truth, and does not fall within any exception to the rule against hearsay, it is inadmissible hearsay. Also, Ex. A of AHBLT-2016 purports to quote Matchlogic Inc. to show that Matchlogic "plans to introduce software that *it [Matchlogic] says* will solve the problem, allowing accurate counts of how many people see a Web ad." (AHBLT-2016 at Ex. A.) Ex. A of AHBLT-2016 further purports to quote Dick Bennett "agreeing that [Matchlogic] technology did what they were claiming it did" and quote Philip Guarascio saying the "technology is going to give us what we think is the most accurate headcount." (AHBLT-2016 at Ex. A.) Thus, Ex. A of AHBLT-2016

contains hearsay within hearsay and no part of the combined statements conforms with an exception to the rule against hearsay. Google also objects to Ex. A of AHBLT-2016 under FRE 403 at least because Ex. A of AHBLT-2016 is duplicative of AHBLT-2002. The probative value of this exhibit is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Google further objects to Ex. A of AHBLT-2016 under FRE 401 and 402. Exhibit A is irrelevant because it provides no relationship between the referenced Matchlogic, Inc. software and the '045 patent claims.

4. Google objects to Ex.B of AHBLT-2016 as inadmissible hearsay (FRE 801, 802). Patent Owner uses Ex.B of AHBLT-2016 to show that MatchLogic's technology allegedly raised the bar in terms of providing more complete activity reporting. (Paper 24, pp. 38-40.) The document's authors are not under oath and are not subject to cross-examination in this proceeding. Because Ex.B of AHBLT-2016 is an out-of-court statement offered for its truth, and does not fall within any exception to the rule against hearsay, it is inadmissible hearsay. Also, Ex.B of AHBLT-2016 purports to quote Michael Lavery to show MatchLogic allegedly raised the bar in terms of providing more complete activity reporting. (AHBLT-

- 2016 at Ex. B.) Ex.B of AHBLT-2016 further purports to quote Evan Neufeld to show TrueCount allegedly was widely adopted. (AHBLT-2016 at Ex. B.) Thus, Ex.B of AHBLT-2016 contains hearsay within hearsay and no part of the combined statements conforms with an exception to the rule against hearsay. Google also objects to Ex. B of AHBLT-2016 under FRE 403 at least because Ex. B of AHBLT-2016 is duplicative of AHBLT-2003. The probative value of this exhibit is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Google further objects to Ex. B of AHBLT-2016 under FRE 401 and 402. Exhibit B is irrelevant because it provides no relationship between the referenced TrueCount and the '045 patent claims.
5. Google objects to Ex.C of AHBLT-2016 as inadmissible hearsay (FRE 801, 802). The document's authors are not under oath and are not subject to cross-examination in this proceeding. Because Ex.C of AHBLT-2016 is an out-of-court statement offered for its truth, and does not fall within any exception to the rule against hearsay, it is inadmissible hearsay. Also, Ex.C of AHBLT-2016 purports to quote analysts to show caching allegedly becoming an integral part of the Internet. (AHBLT-2016 at Ex. C.) Thus, Ex.C of AHBLT-2016 contains hearsay within hearsay and no

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