

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner

v.

PERSONALIZED MEDIA COMMUNICATIONS LLC

Patent Owner

Case No. IPR2016-00755

U.S. Patent No. 8,191,091

**PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED
BY THE PETITIONER WITH ITS REPLY**

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Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner Personalized Media Communications LLC (“PMC”) hereby objects pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of certain purported evidence served by Petitioner Apple Inc. on March 13, 2017 in connection with its Reply to Patent Owner’s Response to Petition for *Inter Partes* Review. The exhibits objected to, and grounds for PMC’s objections, are listed below. PMC also objects to Petitioner’s reliance on or citations to any objected evidence in its papers.

PMC objects to the Petitioner’s exhibits as follows:

Exhibit	Basis of Objection
1055	FRE 401-403 (Relevance, No probative value) – PMC objects to this exhibit to the extent it includes or relies on irrelevant or inadmissible information and to the extent that it includes or relies on information the probative value of which is substantially outweighed by the danger of unfair prejudice, wasting time, or needlessly presenting cumulative evidence. PMC further objects to this declaration as improper reply evidence pursuant to 37 C.F.R. § 42.23(b), which limits replies to arguments raised in the patent owner response. <i>See</i> also Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial

	<p>Review of Patent Trial and Appeal Board Decisions; Final Rule, 77 Fed. Reg. 48612, 48620 (Aug. 14, 2012) (“Rules of Practice”) (“Oppositions and replies may rely upon appropriate evidence to support the positions asserted. Reply evidence, however, must be responsive and not merely new evidence that could have been presented earlier to support the movant’s motion.”). This declaration is improper at a minimum to the extent it addresses Apple’s evidence submitted with its petition, new evidence submitted in Apple’s Reply, and/or introduce claim construction issues that should have been raised with Apple’s petition.</p>
1056	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding.</p>
1057	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding.</p>
1058	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding. This exhibit was allegedly published in 1988 and, therefore, bears no relevance to</p>

	<p>what the person of ordinary skill in the art would have known by the relevant date. Furthermore, this exhibit at best purports to reflect a layperson’s understanding of “processor” rather than what a person of ordinary skill in the art would understand. Therefore, Exhibit 1058 should be excluded.</p>
1059	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding. This exhibit was allegedly published in 1979 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Furthermore, this exhibit at best purports to reflect a layperson’s understanding of “processor” rather than what a person of ordinary skill in the art would understand. Therefore, Exhibit 1059 should be excluded.</p>
1061	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding.</p>
1062	<p>FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding.</p>

1063	FRE 401-403 (Relevance, No probative value) – This exhibit is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this proceeding.
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In addition to the above general objections regarding Mr. Wechselberger’s Reply Declaration (Ex. 1055), PMC further objects to specific paragraphs, as set forth below:

Paragraph(s)	Basis of Objection
4, 6	Fed. R. Evid. 702/703 (Bases/Reliability of an Expert’s Opinion Testimony); Fed. R. Evid. 705 and 37 C.F.R. § 42.65 (Failure to Disclose Facts or Underlying Data).
9-12	37 C.F.R. § 42.23(b); Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions; Final Rule, 77 Fed. Reg. 48612, 48620 (Aug. 14, 2012) (Exceeds Scope of Reply Evidence); Fed. R. Evid. 702/703 (Bases/Reliability of an Expert’s Opinion Testimony); Fed. R. Evid. 705 and 37 C.F.R. § 42.65 (Failure to Disclose Facts or Underlying Data).

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