UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

CHESTNUT HILL SOUND INC.

Patent Owner

Case IPR2016-00794

Patent 8,090,309

PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO EXCLUDE

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TABLE OF AUTHORITIES

Cases

Rules

Petitioner misapprehends the evidentiary goals of this Board, sitting as a non-jury tribunal with a limited discovery scope. The Board has previously noted that "the Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to the evidence presented in this trial, without resorting to formal exclusion that might later be held reversible error." *Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, CBM2012-00002, Paper 66 at 70 (January 23, 2014) (citing e.g., *S.E.C. v. Guenthner*, 395 F. Supp. 2d 835, 842 n.3 (D. Neb. 2005)). The Board should liberally construe the rules of evidence, here, and consider Patent Owner's evidence of secondary considerations because that non-hearsay evidence is properly authenticated, relevant, and appropriate for Board examination.

I. Exhibits 2004, 2015, and 2016 Are Not Hearsay and Are Properly Authenticated.

Although addressed separately by Petitioner, Exhibits 2015 and 2016 (collectively) are the same as Exhibit 2004. The papers that were filed together as Exhibit 2004 were simply separated into two separate exhibits for easier reference in the later filings. Those exhibits consist of press releases. The objections to all three of those exhibits[1] are addressed together, here.

[1] Petitioner addresses these exhibits on pages 1-4 and 11-15 for Exhibit 2004 and Exhibits 2015 and 2016, respectively. *See* Petitioner's Motion to Exclude, Paper No. 23.

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