

Filed on behalf of TQ Delta LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

TQ DELTA, LLC,
Patent Owner.

Case IPR2016-01009
Patent No. 8,238,412 B2

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Patent Owner Objections to Evidence
IPR2016-01009
Patent No. 8,238,412

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner TQ Delta, LLC (“Patent Owner”) hereby files and serves the following objections to evidence that Petitioner Dish Network, LLC (“Dish”) served on Patent Owner with its Reply on June 8, 2017. A chart listing Patent Owner’s objections and its bases for the objections is provided below.

| Exhibit(s) | Objection |
|-----------------------------|---|
| Ex. 1102 (internet article) | <p>Hearsay: The exhibit is hearsay under FRE 801-802, as it is being relied upon for the truth of the matter asserted. It does not fall within any of the exceptions of FRE 803; it is not a statement in a learned treatise or periodical. <i>See, e.g., Combs v. Washington</i>, 2014 U.S. Dist. LEXIS 121320 (W.D. Wash. June 11, 2014) (“Internet articles are independently inadmissible hearsay under Rule 801(c).”); <i>Stewart v. Wachowski</i>, 574 F. Supp. 2d 1074, 1105 (C.D. Cal. 2005) (same).</p> <p>Authenticity: Petitioner has not provided any evidence that this exhibit is authentic under FRE 901. The exhibit does not fall within any of the self-authenticating exceptions of FRE 902; it is not a newspaper or periodical. <i>See, e.g., Adobe Sys. v. Christenson</i>, 2011 U.S. Dist. LEXIS 16977, *26 (D. Nev. Feb. 7, 2011) (“Courts do not treat printouts from internet websites as self-authenticating or admit them without foundation or authentication.”); <i>In re Homestore.com., Inc. v. Securities Litigation</i>, 347 F.Supp.2d 769, 782-783</p> |

Patent Owner Objections to Evidence
IPR2016-01009
Patent No. 8,238,412

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| | <p>(C.D. Cal. 2004 (“Printouts from a web site do not bear the indicia of reliability demanded for other self-authenticating documents under Fed.R.Evid. 902. To be authenticated, some statement or affidavit from someone with knowledge is required; for example, Homestore's web master or someone else with personal knowledge would be sufficient.”))</p> |
| <p>Ex. 1103 (Short Declaration)</p> | <p>Hearsay: The exhibit is hearsay under FRE 801-802. It does not fall within any of the exceptions of FRE 803. The declaration is not from an expert to this proceeding, and Petitioners have not shown that Mr. Short was unavailable for deposition in connection with this proceeding. If Petitioners had wished to introduce testimony from Mr. Short in this proceeding, they were required to seek his deposition in this proceeding. Expert reports, affidavits, declarations, and deposition transcripts from other proceedings are not admissible. <i>See, e.g., Kirk v. Raymark Indus., Inc.</i>, 61 F.3d 147 (3d Cir. 1995) (an expert’s deposition in a prior, unrelated case could not be used against party in pending case); <i>Estate of Miller v. Ford Motor Co.</i>, No. 2:01-cv-545-FtM-29DNF, 2004 U.S. Dist. LEXIS 29846, at *28 (M.D. Fla. July 22, 2004) (deposition testimony from employees of a party in a separate lawsuit is not admissible absent a showing of unavailability).</p> |
| <p>Ex. 1109 (FCC filing by Alcatel)</p> | <p>Hearsay: The exhibit is hearsay under FRE 801-802. It does not fall within any of the exceptions of FRE 803; for example, it is not a public record or report <i>of</i> a public</p> |

Patent Owner Objections to Evidence

IPR2016-01009

Patent No. 8,238,412

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| | <p>office or agency, but rather a statement by an unrelated non-party. <i>See, e.g., Transunion Risk & Al. Data Sols., Inc. v. MacLachlan</i>, 2016 U.S. Dist. LEXIS 24569 at *16 n. 6 (S.D. Fla. Feb. 29, 2016) (with respect to “statements in a nonparty’s proxy statement filed with the SEC,” defendant “correctly notes that the proxy statement is hearsay and [Plaintiff] fails to cite any hearsay exception rendering it admissible.”); <i>Rivera v. Metro Transit Auth.</i>, 750 F. Supp. 2d 456, 2010 U.S. Dist. LEXIS 120289, *6-7 (S.D.N.Y. 2010) (“An unsworn statement by a non-party in a complaint in another lawsuit is hearsay when offered to prove the truth of that statement. It is not admissible”).</p> <p>Authenticity: Petitioner has not provided any evidence that this exhibit is authentic under FRE 901. The exhibit does not fall within any of the self-authenticating exceptions of FRE 902. Under FRE 901(7), if a document is alleged to be a writing filed in a public office, evidence must be presented to that effect.</p> |
| Ex. 1100 (Second Kiaei Declaration) | <p>Lack of Relevance and Prejudice: Portions of the declaration constitute improper new evidence that exceeds the permissible scope of Reply evidence. As such, the testimony is not relevant under FRE 401-402 and/or prejudicial under FRE 403. Improper new testimony includes: ¶¶ 8, 16-17, 29-31, 39, 45, 48, 50-51, 54-58, and 62-68.</p> |
| Each of Exhibits 1101-1109 | <p>Lack of Relevance and Prejudice: The exhibits constitute improper new evidence</p> |

Patent Owner Objections to Evidence
IPR2016-01009
Patent No. 8,238,412

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| | that exceeds the permissible scope of Reply evidence. As such, the testimony is not relevant under FRE 401-402 and/or prejudicial under FRE 403. |
| Portions of 6/8/17 Reply relying on objectionable evidence or arguments | Pages: 9, 15-16, 18-19, 19-20, 20-22, 30. |

Dated: June 15, 2017

/Peter J. McAndrews/

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