

IPR2016-01209
Patent 7,746,916 B2

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC., HTC CORPORATION, HTC AMERICA, INC., MICROSOFT CORPORATION, MICROSOFT MOBILE OY, MICROSOFT MOBILE, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., and ZTE (USA) INC.,

Petitioner,
v.

EVOLVED WIRELESS, LLC,
Patent Owner.

Case IPR2016-01209¹
Patent 7,746,916 B2

Before CHRISTOPHER L. CRUMBLEY, PATRICK M. BOUCHER, and
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

PATENT OWNER EVOLVED WIRELESS, LLC'S
FIRST SET OF OBJECTIONS TO PETITIONER'S EXHIBITS
37 C.F.R. § 42.64(b)(1)

¹ IPR2016-01280 has been consolidated with this proceeding.

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Pursuant to 37 C.F.R. § 42.64(b)(1), Evolved Wireless, LLC (“Patent Owner” or “Evolved Wireless”) objects to Petitioner’s Exhibits 1003, 1017, 1020, 1031, and 1032. Patent Owner further objects to any reference to or reliance on the foregoing, including but not limited to citations in the Petition for *Inter Partes* Review (“Petition”). Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”) as required by 37 C.F.R § 42.62.

I. Exhibit 1003

Patent Owner objects to Petitioner’s Exhibit 1003 (Declaration of Jonathan Wells). Evolved Wireless further objects to any reference to or reliance on Exhibit 1003, including but not limited to citations in the Petition.

Patent Owner’s objections are based on the following grounds: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

The witness providing the declaration attached as Exhibit 1003 provides insufficient underlying facts or data upon which the opinions contained in Exhibit 1003 could legitimately be based, in violation of F.R.E. 702. Accordingly, permitting any reliance on this purported expert testimony in the Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioners under F.R.E. 403.

II. Exhibit 1017

Evolved Wireless objects to Petitioner’s Exhibit 1017 (“N. Abramson, THE ALOHA SYSTEM—Another alternative for computer communications”). Evolved Wireless further objects to any reference to or reliance on Exhibit 1017, including but not limited to citations in the Petition.

Evolved Wireless’s objections are based on the following grounds: 37 C.F.R. § 42.61 (“Admissibility”); F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); F.R.E. 801, 802 (“Hearsay”).

Petitioner has not provided any evidence or declaration to authenticate this document, in violation of F.R.E. 901. Petitioner cites to pages of and statements in Exhibit 1017 as evidence of the ALOHA protocol, thus improperly attempting to offer these statements from Exhibit 1017 to prove the truth of the matter asserted, which is inadmissible hearsay to which Petitioner has not demonstrated any exception. F.R.E. 801, 802. Accordingly, the statements are inadmissible and permitting any reliance on Exhibit 1017 for this purpose in the Petition or other submission of Petitioner would be misleading and unfairly prejudicial to Evolved Wireless under F.R.E. 403.

III. Exhibit 1020

Evolved Wireless objects to Petitioner's Exhibit 1020 ("D.C. Chu, Polyphase codes with good periodic correlation properties"). Evolved Wireless further objects to any reference to or reliance on Exhibit 1020, including but not limited to citations in the Petition.

Evolved Wireless's objections are based on the following grounds: 37 C.F.R. § 42.61 ("Admissibility"); F.R.E. 901 ("Authenticating or Identifying Evidence"); F.R.E. 403 ("Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons"); F.R.E. 801, 802 ("Hearsay").

Petitioner has not provided any evidence or declaration to authenticate this document, in violation of F.R.E. 901. Petitioner cites to pages of and statements in Exhibit 1020 as proof of the development of CAZAC sequences, thus improperly attempting to offer these statements from Exhibit 1020 to prove the truth of the matter asserted, which is inadmissible hearsay to which Petitioner has not demonstrated any exception. F.R.E. 801, 802. Accordingly, the statements are inadmissible and permitting any reliance on Exhibit 1020 for this purpose in the Petition or other submission of Petitioner would be misleading and unfairly prejudicial to Evolved Wireless under F.R.E. 403.

IV. Exhibit 1031

Evolved Wireless objects to Petitioner's Exhibit 1031 ("Motorola, Inc. 2004 Annual Report to Stockholders"). Evolved Wireless further objects to any reference to or reliance on Exhibit 1031, including but not limited to citations in the Petition.

Evolved Wireless's objections are based on the following grounds: 37 C.F.R. § 42.61 ("Admissibility"); F.R.E. 901 ("Authenticating or Identifying Evidence"); F.R.E. 403 ("Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons"); F.R.E. 801, 802 ("Hearsay").

Petitioner has not provided any evidence or declaration to authenticate this document, in violation of F.R.E. 901. Petitioner cites to pages of and statements in Exhibit 1031 as proof that Motorola "touts the global reach of their handset business, and emphasizes its sales to the largest national cellular carrier around the work [sic]," thus improperly attempting to offer these statements from Exhibit 1031 to prove the truth of the matter asserted, which is inadmissible hearsay to which Petitioner has not demonstrated any exception. F.R.E. 801, 802.

Accordingly, the statements are inadmissible and permitting any reliance on Exhibit 1031 for this purpose in the Petition or other submission of Petitioner would be misleading and unfairly prejudicial to Evolved Wireless under F.R.E. 403.

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