

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YMAX CORPORATION,
Petitioner

v.

FOCAL IP, LLC,
Patent Owner

Case IPR2016-01260

Patent Number: 8,457,113

PETITIONER'S EVIDENTIARY OBJECTIONS
UNDER 37 C.F.R. § 42.64(b)

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner YMAX CORPORATION hereby objects as follows to the admissibility of Patent Owner's evidence:

1. Ex. 2020 (La Porta Dep.):

a. Petitioner objects to this evidence under FRE 801 and FRE 802 as hearsay having no applicable exception:

i. FRE 32 states that "all or part of a deposition may be used against a party" only if all of (A)-(C) are satisfied. FRE 32(A) requires that "the party was present or represented at the taking of the deposition or had reasonable notice of it." This Exhibit is a deposition taken in a completely different IPR. Petitioner was not "present or represented at the taking of the deposition," nor did the Patent Owner provide Petitioner "reasonable notice of it."

ii. FRE 804 states that former testimony may only be "offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination." Petitioner (and Petitioner's predecessor in interest) never had

"an opportunity and similar motive to develop [this former testimony] by direct, cross-, or redirect examination."

- b. Petitioner further objects to this evidence under FRE 403, as "its probative value is substantially outweighed by a danger of" "unfair prejudice." This Exhibit is a deposition taken in a completely different IPR. Petitioner was never given the opportunity to cross-examine the Expert in this Exhibit.
- c. Petitioner further objects to this evidence as being an incomplete copy of the deposition. Under FRE 32(A)(6), Petitioner "require[s]" the Patent Owner to file a full and complete copy of the deposition.

2. Ex. 2021 (Willis Dep.):

- a. Petitioner objects to this evidence under FRE 801 and FRE 802 as hearsay having no applicable exception:
 - i. FRE 32 states that "all or part of a deposition may be used against a party" only if all of (A)-(C) are satisfied. FRE 32(A) requires that "the party was present or represented at the taking of the deposition or had reasonable notice of it." This Exhibit is a deposition taken in a completely different IPR. Petitioner was not "present or represented at the taking of the deposition," nor

did the Patent Owner provide Petitioner "reasonable notice of it."

ii. FRE 804 states that former testimony may only be "offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination." Petitioner (and Petitioner's predecessor in interest) never had "an opportunity and similar motive to develop [this former testimony] by direct, cross-, or redirect examination."

b. Petitioner further objects to this evidence under FRE 403, as "its probative value is substantially outweighed by a danger of" "unfair prejudice." This Exhibit is a deposition taken in a completely different IPR. Petitioner was never given the opportunity to cross-examine the Expert in this Exhibit.

c. Petitioner further objects to this evidence as being an incomplete copy of the deposition. Under FRE 32(A)(6), Petitioner "require[s]" the Patent Owner to file a full and complete copy of the deposition.

3. Ex. 2023 (-01261 Pet.):

- a. Petitioner objects to this evidence under FRE 401 as irrelevant. This Exhibit is a Petition from a third party in another IPR. Thus, it is the legal argument and opinion of a party that is completely unrelated to the Petitioner. Petitioner was not involved in the drafting or filing of the Petition included in this Exhibit. As such, this Exhibit does not have any "tendency to make a fact more or less probable than it would be without the evidence."
- b. To the extent this Exhibit is determined to have some relevancy, Petitioner further objects to this evidence under FRE 403, as "its probative value is substantially outweighed by a danger of" "unfair prejudice." This Exhibit is the argument and unsworn opinion of a party that is completely unrelated to the Petitioner. Petitioner was not involved in the drafting or filing of the Petition included in this Exhibit. As such, allowing it to be used against the Petitioner would result in unfair prejudice to the Petitioner, and this unfair prejudice would substantially outweigh any potential minor probative value the Exhibit may provide.

4. Ex. 2024 (-01254 Pet.):

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