

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C.
Petitioner

v.

TQ DELTA LLC
Patent Owner

Case IPR2016-01469
Patent 9,094,268

**PETITIONER'S RESPONSE TO PATENT OWNER'S OBJECTIONS TO
EVIDENCE**

Pursuant to 37 C.F.R. section 42.64(b)(2), Petitioner DISH Network, L.L.C. (“Petitioner”) hereby responds to Patent Owner’s Objections to Evidence (“Objections”) served on February 28, 2017 as follows:

Exhibits 1023-1049 and 1052-1053 are Relevant.

Patent Owner objects that “[n]one of [exhibits 1023-1049, 1052-1053] are relevant under FRE 402, given that none of them were specifically cited or discussed in the Petition or Hoarty declaration.” Objections at 2. This is incorrect. At least the following exhibits were cited in the declaration of Leo Hoarty (“Hoarty Decl.”) (Ex. 1002) in at least the following pages or paragraphs:

Exhibit	Cited in Hoarty Decl. (Ex. 1002) at:
1029	¶ 67 (page 46)
1030	¶ 9, ¶ 67 (page 46)
1031	Page 38 (Figure 2), ¶ 52, Page 42 (Figure 5), ¶ 62, Page 52 (Figure 8), ¶ 76, ¶ 137
1032	Page 52 (Figure 8), ¶ 76
1033	Page 56 (Figure 11), Page 57 (Figure 12), Page 58 (Figure 13), ¶¶ 85-89
1034	¶ 74, ¶ 77
1036	Page 51 (Figure 7), ¶ 75
1037	Page 34 (Table 1), ¶ 45, Page 35 (Figure 1), ¶¶ 48-49
1038	¶ 50, Page 36 (Figure 2)
1042	¶ 92
1043	¶ 92
1044	¶ 161
1045	¶ 169
1046	¶ 164
1047	¶ 168

Hoarty used these exhibits to corroborate facts regarding the state of the art at the time of the invention. Therefore, these exhibits are relevant.

The remaining exhibits are listed in the declaration starting on page 14 and are identified as relevant documents that Hoarty reviewed as part of preparing his declaration. *See, e.g.*, Ex. 1002 at ¶ 24.

Exhibits 1019, 1035, 1036 and 1053 are Admissible.

The above exhibits are *authentic* under FRE 901. Each is considered a periodical and is self-authenticating because it was published by either Electronic Products Magazine or EE Times, both of which are reputable publications. The fact that the articles were found online is irrelevant. Regardless, Petitioner is serving supplemental evidence proving the authenticity of Exhibit 1019. This supplemental evidence is identified as Proposed Exhibit 1057.

Exhibits 1019, 1035, 1036 and 1053 are *not hearsay* under FRE 801-802. As just discussed, these exhibits are periodicals. But even if these exhibits were considered hearsay, experts in *inter partes* review proceedings may rely on hearsay in their declarations. Fed. R. Evid. 703; *Nestle Healthcare Nutrition, Inc. v. Steuben Foods, Inc.*, Case IPR2015-00249, Paper 76 at 13-14 (P.T.A.B. June 2, 2016) (agreeing that hearsay evidence relied upon by expert is admissible because “Federal Rule of Evidence 703 permits an expert to base an opinion on facts or data in the

case that an expert has been made aware of it experts in the field would reasonably have relied on such facts or data in forming an opinion”); *Brose N. Am., Inc. and Brose Fahrzeugteile GmbH & Co. Kg, Hallstadt v. Uusi, LLC*, Case IPR2014-00417, Paper 49 at 26 (P.T.A.B. July 20, 2015) (“... an expert may rely upon evidence regardless of whether the evidence is admissible...”). Therefore, Patent Owner’s hearsay objection has no merit.

Exhibits 1021-1031, 1033, 1038-1039, 1041-1043, 1046, 1047, and 1052 May Be Relied Upon.

For reasons just discussed, Petitioner’s expert, Leo Hoarty, is permitted to rely upon the above-mentioned exhibits regardless of their admissibility. Fed. R. Evid. 703; *see also Brose N. Am.*, Case IPR2014-00417, Paper 49 at 26. Therefore, Patent Owner’s objections related to these exhibits have no merit.

Dated: March 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Sections 42.6, that a complete copy of the attached **PETITIONER'S RESPONSE TO PATENT OWNER'S OBJECTIONS TO EVIDENCE, and related documents**, are being served via electronic mail on the 14th day of March, 2017, upon counsel of record for the Patent Owner as follows:

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