

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

VALENCELL, INC.
Patent Owner

Case IPR2017-00317
U.S. Patent No. 8,989,830

**PETITIONER APPLE INC.'S OBJECTIONS TO EVIDENCE SUBMITTED
WITH PATENT OWNER'S PRELIMINARY RESPONSE**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioner Apple Inc. (“Apple”) hereby objects under the Federal Rules of Evidence (“FRE”) and 37 C.F.R. § 42.62 to Exhibits 2001, 2002, 2003, and 2004 (the “Challenged Exhibits”) cited in Valencell, Inc.’s Patent Owner Preliminary Response (Paper 6). Apple timely objects within the allowed ten business days of the June 5, 2017 Institution of the Trial in this matter under 37 C.F.R. § 42.64(b)(1). Apple files and serves Valencell with these objections to provide notice that Apple may move to exclude the Challenged Exhibits under 37 C.F.R. § 42.64(c).

I. IDENTIFICATION OF CHALLENGED EXHIBITS AND GROUNDS FOR OBJECTIONS

1. Valencell Exhibit 2001: S. LeBoeuf, et al., Earbud-Based Sensor for the Assessment of Energy Expenditure, HR, and VO2max, OFFICIAL J. AM. C. SPORTS M., 2014, 1046–1052

Apple objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402 because it does not relate to a fact that is of consequence in determining the action and also is dated too far past the relevant date as to be probative. Apple also objects to this document as prejudicial, confusing, and potentially misleading under FRE 403 because this document is not relevant to any issue in this proceeding, such as patentability of the subject matter, broadest reasonable interpretation of the claims, or obviousness of the claims in view of the prior art, and because the document was created by a biased party.

To the extent Valencell relies on the contents of this document for the truth of the matter asserted, Apple objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Apple objects to this document as not properly authenticated under FRE 901 because Valencell has not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

2. **Valencell Exhibit 2002: Biometrics Lab: Performance of Leading Optical Heart Rate Monitors During Interval Exercise Conditions**

Apple objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402 because it does not relate to a fact that is of consequence in determining the action, and also is dated too far past the relevant date as to be probative. Apple also objects to this document as prejudicial, confusing, and potentially misleading under FRE 403 because this document is not relevant to any issue in this proceeding, such as patentability of the subject matter, broadest reasonable interpretation of the claims, or obviousness of the claims in view of the prior art, and because the document was created by a biased party.

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Apple objects to this document as not properly authenticated under FRE 901 because Valencell has not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

3. Valencell Exhibit 2003: Valencell Website
(<http://valencell.com/customers/>)

Apple objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402 because it does not relate to a fact that is of consequence in determining the action, and also is dated too far past the relevant date as to be probative. Apple also objects to this document as prejudicial, confusing, and potentially misleading under FRE 403 because this document is not relevant to any issue in this proceeding, such as patentability of the subject matter, broadest reasonable interpretation of the claims, or obviousness of the claims in view of the prior art, and because the document was created by a biased party.

To the extent Valencell relies on the contents of this document for the truth of the matter asserted, Apple objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Apple objects to this document as not properly authenticated under FRE 901 because Valencell has not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

4. **Valencell Exhibit 2004: CTA - It Is Innovation (i3) Magazine 2016
Innovation Entrepreneur Awards**

Apple objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402 because it does not relate to a fact that is of consequence in determining the action, and also is dated too far past the relevant date as to be probative. Apple also objects to this document as prejudicial, confusing, and potentially misleading under FRE 403 because this document is not relevant to any issue in this proceeding, such as patentability of the subject matter, broadest reasonable interpretation of the claims, or obviousness of the claims in view of the prior art, and also appears to be incomplete.

To the extent Valencell relies on the contents of this document for the truth of the matter asserted, Apple objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Apple objects to this document as not properly authenticated under FRE 901 because Valencell has not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

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