

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

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Apple Inc. (“Apple”) hereby objects under the Federal Rules of Evidence (“FRE”) and 37 C.F.R. § 42.62 to the admissibility of Exhibits 2007, 2010-2012, 2105-2110, and 2128-2134 (the “Challenged Exhibits”) cited in Valencell, Inc.’s Patent Owner’s Response (Paper 19) and Conditional Motion to Amend (Paper 20). These objections are being timely filed within five (5) business days of the Patent Owner’s service of the exhibits to which these objections are directed. 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).

1. Exhibit 2007

Petitioner objects to Exhibit 2007, specifically at least ¶¶ 72-79, 82, 84, 86, 91, 94, 96, 118, 138, 140-143, and 147-150 as improper expert testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and the expert has not reliably applied the appropriate principles and methods to the facts of the case. For example, ¶ 82 refers to an Exhibit 2014, which was neither filed with the Board or served on Petitioner’s counsel.

In addition, at least ¶¶ 79 and 106 are inadmissible as irrelevant pursuant to FRE 401, 402, and 403 because they have not been relied upon in support of any argument made in the Patent Owner Response or the Conditional Motion to

Amend. Any arguments not made in the Patent Owner Response are deemed waived. *See* Paper 8 at 3.

Petitioner further objects to Exhibit 2007 to the extent it relies on any other exhibit objected to as set forth herein.

2. Exhibit 2010

Petitioner objects to Exhibit 2010 as irrelevant under FRE 402 and 403. Exhibit 2010 is not cited in either the Patent Owner's Response or the Conditional Motion to Amend. In addition, even if relevant, the probative value of the evidence is outweighed by its tendency to confuse the issues, cause undue delay, and waste the time of the Board and Petitioner.

3. Exhibit 2011

To the extent Patent Owner relies on the contents of Exhibit 2011 for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807. Petitioner further objects to Exhibit 2011 under FRE 901 as lacking proper authentication. Patent Owner has failed to produce any evidence to support a finding that this exhibit is what the Patent Owner claims it is.

4. Exhibit 2012

To the extent Patent Owner relies on the contents of Exhibit 2012 for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807. Petitioner further objects to Exhibit 2012 under FRE 901 as lacking proper authentication. Patent Owner has failed to produce any evidence to support a finding that this exhibit is what the Patent Owner claims it is.

5. Exhibit 2105

Petitioner objects to Exhibit 2105 under 37 C.F.R. § 42.6(d), which states, “[a] document already in the record of the proceeding must not be filed again, not even as an exhibit or an appendix, without express Board authorization.” Exhibit 2105 appears to be a duplicate of previously-filed Exhibit 1001. Existence of such a duplicate exhibit may lead to unnecessary confusion regarding the document being referenced, and was not filed with express Board authorization as required for such a duplicate exhibit.

6. Exhibit 2106

To the extent Patent Owner relies on the contents of Exhibit 2106 for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

Petitioner objects to Exhibit 2106 under FRE 901 as lacking proper authentication. Patent Owner has failed to produce any evidence to support a finding that this exhibit is what the Patent Owner claims it is.

7. Exhibit 2107

To the extent Patent Owner relies on the contents of Exhibit 2107 for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

Petitioner objects to Exhibit 2107 under FRE 901 as lacking proper authentication. Patent Owner has failed to produce any evidence to support a finding that this exhibit is what the Patent Owner claims it is.

8. Exhibit 2108

To the extent Patent Owner relies on the contents of Exhibit 2108 for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

Petitioner objects to Exhibit 2108 under FRE 901 as lacking proper authentication. Patent Owner has failed to produce any evidence to support a finding that this exhibit is what the Patent Owner claims it is.

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