

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and FITBIT, INC.
Petitioner

v.

VALENCELL, INC.
Patent Owner

Case IPR2017-00318¹
U.S. Patent No. 8,886,269

**PETITIONER APPLE INC.'S OBJECTIONS TO EVIDENCE SUBMITTED
WITH PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO
PATENT OWNER'S CONDITIONAL MOTION TO AMEND**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

¹ Case IPR2017-01554 has been joined with this proceeding.

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 Exhibits 2151-2153 (the “Challenged Exhibits”) cited in Valencell, Inc.’s Patent Owner’s Reply in Support of its Conditional Motion to Amend (Paper 37). Apple timely objects under 37 C.F.R. § 42.64(b)(1) within the allowed five business days from of service of evidence.² 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

A. Exhibit 2151: Supplemental Declaration of Albert H. Titus in Support of Valencell’s Motions to Amend under 37 C.F.R. § 42.121

Apple objects to Exhibit 2151, specifically at least ¶¶ 5, 11, 14, 17, 18, 25, 30, 31, and 38 as improper expert testimony under FRE 702 and 703. The testimony is conclusory, 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. Apple further objects to these conclusory paragraphs as prejudicial, confusing, and potentially misleading under FRE 403.

² Monday, January 1, 2018 was a Federal holiday.

In addition, at least ¶¶ 5, 10-18, 25-27, 36, and 38 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's Reply in Support of its Conditional Motion to Amend.

Petitioner further objects to Exhibit 2151 to the extent it relies on any other exhibit objected to as set forth herein.

B. Exhibit 2152: Analog Devices Datasheet for ADXL311 Rev A

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 further objects to this document as not properly authenticated under FRE 901 because Valencell has not presented evidence sufficient to support a finding that the document in question is what Valencell claims. There is no evidence that the document is self-authenticating under FRE 902.

C. Exhibit 2153: Analog Devices Datasheet for ADXL311 Rev B

Apple objects to this document as prejudicial, confusing, and potentially misleading under FRE 403. In particular, the document includes a watermark indicating that it is "OBSOLETE."

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 further objects to this document as not properly authenticated under FRE 901 because Valencell has not presented evidence sufficient to support a finding that the document in question is what Valencell claims. There is no evidence that the document is self-authenticating under FRE 902.

II. CONCLUSION

To the extent that Valencell fails to correct the defects associated with the Challenged Exhibits in view of Apple's objections herein, Apple may file one or more motions to exclude the Challenged Exhibits under 37 C.F.R. § 42.64(c).

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Michael D. Specht/

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Date: January 8, 2018
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CERTIFICATION OF SERVICE (37 C.F.R. §§42.6(e))

The undersigned hereby certifies that a true and correct copy of the above-captioned **PETITIONER APPLE INC.'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO PATENT OWNER'S CONDITIONAL MOTION TO AMEND** was served electronically via email in its entirety on January 8, 2018 on the following:

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