

Filed on Behalf of Valencell, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC. and FITBIT, INC.

Petitioners

v.

VALENCELL, INC.

Patent Owner

Case IPR2017-00318¹

U.S. Patent No. 8,886,269

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION
TO EXCLUDE EVIDENCE**

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Alexandria, Virginia 22313-1450

¹ IPR2017-01554 has been joined to this current proceeding.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARD 2

III. GOOD CAUSES EXISTS FOR EXCUSAL OF VALENCELL’S
LATE SERVICE OF SUPPLEMENTAL EVIDENCE BY ONE
DAY 2

IV. EXHIBITS 2152 AND 2153 ARE AUTHENTIC 4

 A. Exhibits 2152 and 2153 Have Been Properly Authenticated 4

 B. Exhibits 2152 and 2153 Are Self-Authenticating and
 Admissible 6

V. EXHIBITS 2152 AND 2153 ARE NOT HEARSAY
BECAUSE BOTH EXHIBITS FALL WITHIN EXCEPTIONS
TO THE HEARSAY RULE 8

VI. PETITIONER’S OBJECTION THAT EXHIBIT 2153 IS
NOT ADMISSIBLE UNDER FED. R. EVID. 403 IS
MISPLACED 11

VII. CONCLUSION 13

TABLE OF AUTHORITIES

Cases

ACCO Brands, Inc. v. PC Guardian Anti-Theft Prods., Inc., 592
F.Supp. 2d 1208 (N.D. Cal. 2008).....6

Alexander v. CareSource, 576 F.3d 551 (6th Cir. 2009).....6

Donnelly Garment Co. v. NLRB, 123 F.2d 215 (8th Cir. 1941)..... 13

Laird Techs., Inc. v. Graftech Inter. Holdings, Inc., IPR2014-
00023, Paper 49 (PTAB March 25, 2015)..... 12

Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.,
CBM2012-00002, Paper 66 (P.T.A.B. Jan. 23, 2014) 13

*Liberty Mutual Insurance Co. v. Progressive Casualty Insurance
Co.*, CBM2012-00002, Paper 66 (January 23, 2014).....2, 11

Pass & Seymour, Inc. v. Hubbell Inc., 532 F. Supp. 2d 418
(N.D.N.Y. 2007)6

United States v. Hassan, 742 F.3d 104 (4th Cir. 2014).....4

United States v. Holmquist, 36 F.3d 154 (1st Cir. 1994).....5

Vibrant Media, Inc. v. General Electric Co., IPR2013-00170,
Paper 56 (Jun. 26, 2014) 11

Wall Data Inc. v. Los Angeles County Sheriff's Dep't, 447 F.3d
769 (9th Cir. 2006) 12

Federal Rules of Evidence

Fed. R. Evid. 803(17)..... 9

Fed. R. Evid. 803(6)..... 9

Fed. R. Evid. 803(6)(A)-(C) 10

Fed. R. Evid. 803(6)(D) 11

Fed. R. Evid. 803(6)(E) 11
Fed. R. Evid. 901 4
Fed. R. Evid. 901(a)..... 5
Fed. R. Evid. 901(b)(1)..... 5
Fed. R. Evid. 901(b)(4)..... 6, 8
Fed. R. Evid. 902(7)..... 6, 8

Rules

37 C.F.R § 42.64 12
37 C.F.R. § 42.20(c) 1, 2
37 C.F.R. § 42.5(c)(3)..... 2
37 C.F.R. § 42.64(b)(2)..... 2

I. INTRODUCTION

Pursuant to the Board's Scheduling Order (Paper No. 29), Patent Owner Valencell, Inc. ("Valencell") hereby responds to Petitioner Apple, Inc.'s ("Petitioner") Motion to Exclude Exhibits 2152 and 2153, filed on February 9, 2018 (Paper 44).

Petitioner's Motion seeks to exclude Exhibits 2152 (Analog Devices' ADXL311 Rev. A Datasheet) and 2153 (Analog Devices' ADXL311 Rev. B Datasheet) submitted by Valencell.² In particular, Petitioner contends that Exhibits 2152 and 2153 should be excluded under Federal Rule of Evidence ("Fed. R. Evid.") 901 as not properly authenticated; and that Exhibits 2152 and 2153 should be excluded under Fed. R. Evid. 801 and 802 as inadmissible hearsay. In addition, Petitioner adds that Exhibit 2153 should also be excluded under Fed. R. Evid. 403 on the grounds of purported prejudice and confusion. Petitioner bears the burden to show that they are entitled to the relief requested, i.e., prove Exhibits 2152 and 2153 are inadmissible. 37 C.F.R. § 42.20(c). But Petitioner fails to carry this burden. For the reasons set forth herein, the evidence submitted by Valencell is admissible under

² Valencell notes that Exhibits 2152 and 2153 were timely filed with Patent Owner's Reply in Support of its Conditional Motion to Amend (Paper 37) on December 29, 2017. Subsequently, Valencell served Petitioner with its Supplemental Evidence on January 24, 2018, authenticating both Exhibit 2152 and 2153 filed previously with the Board.

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