

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

VALENCELL, INC.
Patent Owner

Case IPR2017-00321
U.S. Patent No. 8,923,941

**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 2010, 2012-2015, 2108, 2109, 2115-2116, and 2126-2138 (the “Challenged Exhibits”) cited in Valencell, Inc.’s Patent Owner’s Response (Paper 23) and Conditional Motion to Amend (Paper 24). 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 2010

Petitioner objects to Exhibit 2010, specifically at least ¶¶ 40, 53, 82-83, and 87-92, 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.

Petitioner objects to Exhibit 2010, specifically at least ¶¶ 37-39, 41-52, 54, 56-65, 70-71, 79-80, 85-86, and 92-95, 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 12 at 3.

2. 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.

3. Exhibit 2013

To the extent Patent Owner relies on the contents of Exhibit 2013 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 2013 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 2014

To the extent Patent Owner relies on the contents of Exhibit 2014 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 2014 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 2015

To the extent Patent Owner relies on the contents of Exhibit 2015 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 2015 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.

6. 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 further 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.

7. Exhibit 2109

To the extent Patent Owner relies on the contents of Exhibit 2109 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 2109 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 2115

Petitioner objects to Exhibit 2115 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 2115 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.

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