

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TWITTER, INC.

Petitioner

v.

VIDSTREAM, LLC

Patent Owner

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Case IPR2017-01131  
U.S. Patent No. 8,464,304  
(Claims 1, 4-5, 8-9, 11-17, 19-26, and 28-30)

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**PATENT OWNER'S EVIDENTIARY OBJECTIONS**

**PURSUANT TO 37 C.F.R. § 42.64**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner, VidStream, LLC, respectfully asserts the following objections to the evidence proffered with Petitioner’s Reply filed August 10, 2018 (“Reply”). These objections are being provided within five business days from the date of service of the Reply, and are thus timely pursuant to 37 C.F.R. § 42.64(b)(1). The Federal Rules of Evidence (FRE) apply to these proceedings according to the provisions of 37 C.F.R. § 42.62(a), and these rules form the basis of the objections contained herein.

<b>Ex. Number and Petitioner Description</b>	<b>Objections</b>
1033. Fonearena.com Nokia E50 specifications, October 21, 2006	<p><u>Hearsay</u>. Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters described therein, the statements are hearsay: <i>e.g.</i>, that “the E50 was capable of recording at multiple resolutions,” and that the exhibit “indicates that the E50 could also record video using at least two different resolutions.” <i>See</i> Reply at 9 and Exhibit 1052 at ¶ 12. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance</u>. Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, (2) Petitioner has not shown the exhibit to be prior art or otherwise a</p>

Ex. Number and Petitioner Description	Objections
	<p>reliable reference, and (3) the purported date this exhibit was available is after the alleged February 2006 date of publication of Ex. 1006.</p> <p><u>Untimely.</u> Patent Owner objected to this exhibit during Dr. Olivier’s deposition because it was not authenticated, was untimely offered as supplemental information, and was not shown to have been published; yet Petitioner failed to offer any supplemental evidence during the deposition as required by 37 C.F.R. § 42.64(a). Also, to the extent this exhibit is relied upon to support the grounds for rejection, Petitioner’s submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.</p>
<p>1034. CNET.com document entitled “Nokia E50-1 - smartphone - GSM Series Specs” - (Identified at Dr. Olivier’s Deposition on July 24, 2018. Not Filed)</p>	<p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice and/or a waste of time, particularly because: (1) this exhibit is not cited in Petitioner’s Reply or in any declaration paragraph cited in Petitioner’s Reply, and (2) Petitioner has not demonstrated this exhibit was available prior to the alleged February 2006 date of publication of Ex. 1006.</p> <p><u>Untimely.</u> Patent Owner objected to this exhibit during Dr. Olivier’s deposition because it was not authenticated, was untimely offered as supplemental information, and was not shown to have been published; yet Petitioner failed to</p>

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	offer any supplemental evidence during the deposition as required by 37 C.F.R. § 42.64(a). Also, to the extent this exhibit is relied upon to support the grounds for rejection, Petitioner's submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.
1035. Mobile88.com Nokia N73 Specification - (Identified at Dr. Olivier's Deposition on July 24, 2018. Not Filed)	<p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice and/or a waste of time, particularly because: (1) this exhibit is not cited in Petitioner's Reply or in any declaration paragraph cited in Petitioner's Reply, and (2) Petitioner has not demonstrated this exhibit was available prior to the alleged February 2006 date of publication of Ex. 1006.</p> <p><u>Untimely.</u> Patent Owner objected to this exhibit during Dr. Olivier's deposition because it was not authenticated, was untimely offered as supplemental information, and was not shown to have been published; yet Petitioner failed to offer any supplemental evidence during the deposition as required by 37 C.F.R. § 42.64(a). Also, to the extent this exhibit is relied upon to support the grounds for rejection, Petitioner's submission of supplemental information is untimely and unauthorized. 37 C.F.R. § 42.123.</p>
1036. Article entitled "Samsung Starts Selling World's First 10	<u>Hearsay.</u> Fed. R. Evid. 801(c) and Fed. R. Evid. 802. To the extent Petitioner relies on this exhibit to prove the truth of matters

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Megapixel Camera Phone”, October 10, 2006	<p>described therein, the statements are hearsay: <i>e.g.</i>, that “the Samsung SCH-V770 and the Samsung SCH-B600 each could record video at 15-30 fps,” and “by 2006 [Samsung] was selling at least two mobile phones that could record video at 15-30 frames per second.” <i>See</i> Reply at 13, Exhibit 1052 at ¶ 15. Petitioner has not offered evidence sufficient to demonstrate that the exhibit falls within any exception to the rule against hearsay.</p> <p><u>Relevance.</u> Fed. R. Evid. 401-403. This exhibit is irrelevant under FRE 401, and thus inadmissible under FRE 402, or inadmissible as unfairly prejudicial, confusing, and/or a waste of time under FRE 403, because: (1) it is inadmissible under FRE 801, 802, and 901 as explained above, (2) Petitioner has not shown the exhibit to be prior art or otherwise a reliable reference, and (3) the purported date this exhibit was available is after the alleged February 2006 date of publication of Ex. 1006.</p> <p><u>Untimely.</u> Patent Owner objected to this exhibit during Dr. Olivier’s deposition because it was not authenticated, was untimely offered as supplemental information, and was not shown to have been published; yet Petitioner failed to offer any supplemental evidence during the deposition as required by 37 C.F.R. § 42.64(a). Also, to the extent this exhibit is relied upon to support the grounds for rejection, Petitioner’s submission of</p>

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