

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,

Petitioner,

v.

QUALCOMM INCORPORATED,

Patent Owner.

Case IPR2018-01281
U.S. Patent No. 8,768,865

**PATENT OWNER'S OBJECTIONS TO PETITION EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Qualcomm Incorporated, respectfully asserts the following objections to the evidence proffered with Petitioner's Petition for *Inter Partes* Review submitted on June 29, 2018 ("Petition"). These objections are being provided within ten business days from the institution of the trial, 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.

Ex. Number and Petitioner's Description	Objections
<p>1005: Wang et al, "A Framework of Energy Efficient Mobile Sensing for Automatic User State Recognition", Proceedings of the 7th international conference on Mobile systems, applications, and services, pp. 179-192 , Kraków, Poland — June 22 - 25, 2009 ("Wang")</p>	<p><u>Authentication</u>. Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is what Petitioner purports it to be: <i>e.g.</i>, an ACM conference article published in 2009. Petition at 5-6.</p> <p><u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. To the extent that Petitioner relies on this exhibit to prove the truth of matters described therein, it is hearsay: <i>e.g.</i>, that Ex. 1005 "provides a copyright notice indicating a 2009 publication date" and "presents a 'design framework for an Energy Efficient Mobile Sensing System (EEMSS).'" <i>See</i> Petition at 5-6, 16. Petitioner has not offered evidence sufficient to demonstrate that this 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,</p>

Ex. Number and Petitioner's Description	Objections
	because it is inadmissible under FRE 801, 802, and 901 as explained above.
1010: Webpage of "Nokia N95 8GB - Full phone specifications" (Archive.org version dated 05/26/2009, http://web.archive.org/web/20090526054459/http://www.gsmarena.com:80/nokia_n95_8gb-2088.php) ("Nokia N95")	<p><u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. To the extent that Petitioner relies on this exhibit to prove the truth of matters described therein, it is hearsay: <i>e.g.</i>, that "the Nokia N95 includ[ed] 'CPU Dual ARM 11 332 MHz processor; 3D Graphics HW Accelerator.'" Petition at 20.</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 it is inadmissible under FRE 801 and 802 as explained above.</p>
1016: Declaration of Mr. Scott Delman for Wang/APPLE-1005	<p><u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. The statements in Mr. Delman's declaration are hearsay because the declaration does not establish that Mr. Delman's statements are based on personal knowledge, and does not sufficiently establish that the business records exception of FRE 803(6) or any other exception would apply, and expressly indicates that at least some such statements are based on second-hand hearsay statements from others. <i>See, e.g.</i>, Ex. 1016 at ¶ 1 ("I make this declaration based on my personal knowledge, information contained in the business records of ACM, <u>or</u> confirmation with other responsible ACM personnel with such knowledge.")</p> <p>Thus, to the extent that Petitioner relies on this exhibit to prove the truth of matters described therein, it is hearsay: <i>e.g.</i>, "that the earliest <u>online</u> publication date for [Ex. 1005] was June 23, 2009." Ex. 1016 at ¶ 2; Petition at 6 (citing Ex. 1010). Petitioner has not offered evidence sufficient to demonstrate that this</p>

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	<p>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 it is inadmissible under FRE 801 and 802 as explained above.</p>
<p>1017: Cohn, D., Caruana, R., & McCallum, A. <i>Semi-supervised clustering with user feedback in Constrained Clustering: Advances in Algorithms, Theory, and Applications</i>, 4(1), 17-32 (2009). (“Cohn”)</p>	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is what Petitioner purports it to be: <i>e.g.</i>, an excerpt of a book published in 2009. Petition at 3, 66.</p> <p><u>Hearsay.</u> Fed. R. Evid. 801(c) and 802. To the extent that Petitioner relies on this exhibit to prove the truth of matters described therein, it is hearsay: <i>e.g.</i>, that Ex. 1017 was published in 2009 and “involving user input or feedback in identifying an irrelevant pattern is a well-known implementation among a finite number of identified, predictable solutions in pattern recognition (i.e., identifying the irrelevant pattern either automatically or manually) and have been known to improve recognition accuracy and save computational resource and improve computational efficiency.” Petition at 3, 66. Petitioner has not offered evidence sufficient to demonstrate that this 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 it is inadmissible under FRE 801, 802, and 901 as explained above.</p>

Ex. Number and Petitioner's Description	Objections
<p>1018: Ruzzelli, A., Nicolas, C. Schoofs, A., O'Hare, G. Real-time recognition and profiling of appliances through a single electricity sensor, Proc. 7th Annual IEEE Conference on Sensor Mesh (SECON), Boston. MA 2010. ("Ruzzelli")</p>	<p><u>Authentication.</u> Fed. R. Evid. 901(a). Petitioner has not produced evidence sufficient to support a finding that this exhibit is what Petitioner purports it to be: <i>e.g.</i>, an IEEE conference paper published in 2010. Petition at 3, 46, 66. Similarly, Petitioner has not produced evidence sufficient to authenticate the purported "ResearchGate" or "Research Repository UCD" documents at pages 10/11 and 11/11, respectively, of Ex. 1018.</p> <p><u>Hearsay.</u> Fed. R. Evid. 801(c) and 802. To the extent that Petitioner relies on this exhibit to prove the truth of matters described therein, it is hearsay: <i>e.g.</i>, that Ex. 1018 was published in 2010 and that "[s]uch an implementation is a well-known, commonly adopted practice in the art to implement pattern recognition to perform the same function (<i>e.g.</i>, storing the pre-trained pattern for later comparison and matching) in substantially the same way, and produce substantially the same results." Petition at 3, 44-45; <i>see also</i> Petition at 66. Similarly, to the extent Petitioner relies on the purported "ResearchGate" or "Research Repository UCD" documents at pages 10/11 and 11/11, respectively, of Ex. 1018 to prove the truth of the matters asserted, it is also hearsay: <i>e.g.</i>, that Ex. 1018 was dated "July 2010" or published in "2010-06". Petitioner has not offered evidence sufficient to demonstrate that this 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 it is inadmissible under FRE 801, 802, and 901 as explained above.</p>

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