

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS INC.,
Petitioner,

v.

IMMERVISION, INC.,
Patent Owner.

Case No. IPR2020-00195

U.S. Patent No. 6,844,990

**PETITIONER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64(b)(1)**

Petitioner LG Electronics Inc. (“Petitioner” or “LGE”) hereby serve the following objections pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to evidence submitted by Patent Owner ImmerVision, Inc. (“Patent Owner” or “ImmerVision”) with its Patent Owner Response. These objections are timely presented as they are being served and filed within five business days of service of the exhibits to the Response on August 4, 2020. (*See* Paper No. 12).

**IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR
OBJECTIONS**

A. Exhibit 2007

LGE objects to Exhibit 2007 as not being accompanied by a proper translation as required by 37 C.F.R. § 42.63(b). Rule 42.63(b) states: “[w]hen a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” *Id.* Although Patent Owner filed what purports to be a translation of Exhibit 2007 as Exhibit 2008, the translation (Exhibit 2008) should be excluded for the reasons stated below. Once Exhibit 2008 is removed, there is no translation in the record for Exhibit 2007. In light of the foregoing issues, Exhibit 2007 also fails to meet the requirements of the Federal Rules of Evidence. Without a proper translation,

Exhibit 2007 is irrelevant and inadmissible under FRE 402. The document is also prejudicial under FRE 403 for similar reasons. Finally, regardless of whether Exhibit 2007 is properly translated, Patent Owner provides no basis for authenticating Exhibit 2007 under FRE 901. For example, if Exhibit 2007 is a foreign public record, Patent Owner has failed to provide a certified copy under FRE 902(3) or FRE 902(4).

B. Exhibit 2008

LGE objects to Exhibits 2008 because it fails to comply with 37 C.F.R. § 42.63(b), which requires that “[w]hen a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” *Id.* An affidavit is defined as an “affidavit or declaration under §1.68 of this chapter.” 37 C.F.R. § 42.2. Rule 1.68 requires, among other things, that the statements be made under oath, that the declarant is “warned that willful false statements and the like are punishable by fine or imprisonment” and that “all statements made of the declarant’s own knowledge are true and that all statements made on information and belief are believed to be true.” Exhibit 2008 fails to include a sworn statement of the accuracy of the translation. In addition, the person who “verified” the translation does not appear to be the one

who actually translated the document. The verification page appears to be signed by the Director of the Foreign Language Institute, Inc. and avers that the translation “is a true and accurate translation performed to the best of *our* ability.” Ex. 2008 at 1 (emphasis added). The particular translator(s) are not identified and there is no indication that Mr. Lichtman was involved in the translation or can competently translate from Japanese to English.

In light of the foregoing issues, Exhibit 2008 also fails to meet a number of requirements under the Federal Rules of Evidence. Because it appears the translation is not attested to by someone with personal knowledge of the translation, Exhibit 2008 is irrelevant and inadmissible under FRE 402. The translation is also prejudicial under FRE 403 for similar reasons. In addition, the translation and its “verification” are inadmissible hearsay under FRE 802 because they are statements from a non-testifying witness (*i.e.*, the actual translator) that are offered for the truth of the matter asserted and not subject to any hearsay exception. Finally, Exhibit 2008 is not authenticated under FRE 901 because Mr. Lichtman does not appear to have any basis for authenticating the translation.

Dated: August 11, 2020

Respectfully Submitted,

/Dion M. Bregman/
Dion M. Bregman (Reg. No. 45,645)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Objections to Evidence Under 37 C.F.R. § 42.64(b)(1) was served on August 11, 2020 via email on Patent Owner's counsel at the email addresses below:

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Dated: August 11, 2020

Respectfully Submitted,

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