

Petitioners' Objections to Evidence
IPR2021-00144 (U.S. Patent No. 8,095,879)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., AND
APPLE INC.

Petitioners,

v.

NEONODE SMARTPHONE LLC

Patent Owner.

Case IPR2021-00144
Patent No. 8,095,879

**PETITIONERS' OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (“Samsung-Petitioners”) and Apple Inc. (“Apple-Petitioner”) (collectively, “Petitioners”), object under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of Exhibits 2005 through 2042 submitted by Neonode Smartphone LLC (“Patent Owner”) on March 25, 2022.

The Board Granted Institution of *Inter Partes* Review on December 3, 2021. Paper No. 26. These objections come within five business days of service of the evidence to which the objection is directed. Thus, Petitioners’ objections are timely under 37 C.F.R. § 42.64(b)(1). Petitioners serve Patent Owner with these objections to provide notice that Petitioners will move to exclude these exhibits as improper evidence. Where the underlying objections relate to Confidential Exhibits, those objects are made only on behalf of Samsung-Petitioners.

I. EXHIBIT 2007 – ROSENBERG SECOND DECLARATION

Petitioners object to the admissibility of Exhibit 2007 for at least the following reasons:

1. Petitioners object to Exhibit 2007 because the statements contained within are based on other otherwise objectionable exhibits for which Patent Owner has not authenticated or established that the proffered evidence meets the requirements of **FRE 901**.

2. Petitioners object to Exhibit 2007 because the statements contained within are based on other otherwise objectionable exhibits that constitute inadmissible hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
3. Petitioners object to Exhibit 2007 as inadmissible under **FRE 403** because the statements within confuse the issues and mislead the fact-finder. The declarant relies on other otherwise objectionable evidence including statements by another declarant who is not testifying as an expert and does not limit their opinion to one that is rationally based on the witness's perception, helpful to clearly understand the witness' testimony or determine a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of **FRE 702**. Exhibit 2005 relies on statements offered by other declarants that merely state a legal conclusion in a way that says nothing about the facts and are therefore objectionable under **FRE 704**.
4. For example, Dr. Rosenberg's Declaration relies on the otherwise inadmissible evidence in numerous places, including Ex. 2008 (¶¶ 39, 41, 52); Ex. 2012 (¶ 43); Ex. 2013 (¶ 46); Ex. 2014 (¶ 44); Ex. 2015 (¶ 44); Ex. 2016 (¶ 44); Ex. 2017 (¶ 44); Ex. 2018 (¶ 47); Ex. 2020 (¶ 47); Ex. 2021 (¶ 44); Ex. 2022 (¶¶ 38, 48); Ex. 2023 (¶ 40); Ex. 2024 (¶¶ 45, 48); Ex. 2025 (¶ 48); Ex. 2026 (¶¶ 45, 48); Ex. 2028 (¶ 48).

II. EXHIBIT 2008 – NEONODE N2 INSTRUCTIONS FILM

Petitioners object to the admissibility of Exhibit 2008 for at least the following reasons:

1. Petitioners object to Exhibit 2008 because the video and the information it contains has not been authenticated and Patent Owner has not established that the proffered evidence meets the requirements of **FRE 901**. For example, the video bears no date. Patent Owner has not offered testimony of one with personal knowledge of the creation of the video, its source, or its availability.
2. Petitioners object to Exhibit 2008 because it contains hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
3. Petitioners object to Exhibit 2008 as inadmissible under **FRE 402** because the document lacks any tendency to make a fact more or less probable than it would be without the evidence, or any alleged fact is not of consequence in determining the proceeding. For example, Patent Owner has not established any nexus between the device they contend is the subject of the video and any challenged claim.

III. EXHIBITS 2012 AND 2013 – PEN COMPUTING MAGAZINE

Petitioners object to the admissibility of Exhibits 2012 and 2013 for at least the following reasons:

1. Petitioners object to Exhibits 2012 and 2013 because the documents have not been authenticated and Patent Owner has not established that the proffered evidence meets the requirements of **FRE 901**. The Patent Owner has not provided sufficient evidence to show that the document and the information it contains is what the Patent Owner claims it is, namely that the proffered information is truthful and accurate and would have been the same at the purported time.
2. Petitioners object to Exhibits 2012 and 2013 because the documents contain hearsay under **FRE 801** and do not fall within a hearsay exception under **FRE 802** or **FRE 803**. For example, the Exhibits purport to describe the operation of the device, the history and actions of the company, and the state of the market.
3. Petitioners object to Exhibits 2012 and 2013 as inadmissible under **FRE 402** because the documents lack any tendency to make a fact more or less probable than it would be without the evidence, or any alleged fact is not of consequence in determining the proceeding. For example, Patent

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