

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TCT MOBILE (US), INC.; TCT MOBILE (US) HOLDINGS, INC.;
HUIZHOU TCL MOBILE COMMUNICATION CO. LTD.; AND TCL
COMMUNICATION, INC.,
Petitioners

v.

FUNDAMENTAL INNOVATION SYSTEMS INTERNATIONAL LLC,
Patent Owner

U.S. Patent No. 7,834,586
Issue Date: November 16, 2010
Title: MULTIFUNCTIONAL CHARGER SYSTEM AND METHOD
Case No. IPR2021-00599

**PETITIONERS' MOTION TO EXCLUDE EVIDENCE PURSUANT
TO 37 C.F.R. § 42.64(c)**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

TABLE OF AUTHORITIES

Page(s)

Cases

Netflix, Inc. v. DivX, LLC,
IPR2020-00511, Paper 46 (FWD) 1

Other Authorities

37 C.F.R. § 42.64 1
37 CFR § 42.23(b) 1, 2
85 Fed. Reg. 79128, Dec. 9, 2020..... 1

Petitioners' Exhibit List

<i>Exhibit</i>	<i>Description</i>
1001	U.S. Patent No. 7,834,586 to Fischer et al., "Multifunctional Charger System and Method," filed Feb. 26, 2010 (the "'586 Patent")
1002	U.S. Patent File History of the '586 Patent (the "'586 File History")
1003	Declaration of Dr. Jacob Baker regarding U.S. Patent No. 7,834,586 ("Baker")
1004	<i>Curriculum Vitae</i> of Dr. Jacob Baker
1005	U.S. Patent No. 7,239,111 ("Fischer")
1006	U.S. Provisional Application No. 60/273,021 (the "'021 provisional")
1007	U.S. Provisional Application No. 60/330,486 (the "'486 provisional")
1008	Universal Serial Bus Specification, Revision 1.1, September 23, 1998 ("USB 1.1")
1009	Universal Serial Bus Specification, Revision 2.0, April 27, 2000 ("USB 2.0")
1010	U.S. Patent No. 6,531,845 ("Kerai")
1011	U.S. Patent No. 6,625,738 ("Shiga")
1012	U.S. Patent Application Publication No. 2003/0135766 ("Zyskowski")
1013	U.S. Patent No. 6,625,790 ("Casebolt")
1014	Cypress CY7C63722/23 CY7C63742/43 enCoRe™ USB Combination Low-Speed USB & PS/2 Peripheral Controller, by Cypress Semiconductor Corporation, published May 25, 2000 ("Cypress enCoRe" or "Cypress Datasheet")
1015	Japanese Patent Application No. 2000-165513A ("Morita")
1016	Amended Complaint, <i>Fundamental Innovation Systems Int'l LLC v. TCT Mobile (US) Inc. et al.</i> , No. 1-20-cv-00552-CFC (D. Del. Sep. 11, 2020) ("Complaint")
1017	U.S. Patent No. 6,668,296 ("Dougherty")
1018	U.S. Patent No. 5,923,146 ("Martensson")

<i>Exhibit</i>	<i>Description</i>
1019	Japanese Patent Application No. 2000-165513A (“Morita”) with updated Certificate of Accuracy
1020	Japanese Patent Application No. 2000-165513A (“Morita”) with corrected Certificate of Accuracy
1021	Deposition Transcript of Dr. Kenneth Fernald, taken on February 18, 2022
1022	U.S. Des. Patent No. 353,371 (“Delhaes”)
1023	U.S. Des. Patent No. 335,861 (“Tattari”)
1024	U.S. Des. Patent No. 349, 899 (“Siddoway”)
1025	U.S. Patent No. 6,708,278 (“Howard”)
1026	Reply Declaration of Dr. Jacob Baker regarding U.S. Patent No. 7,834,586 (“Baker Reply”)
1027	IBM, Personal System/2, Model 95 XP 486, Technical Reference (1990)
1028	Email Thread, A. Zhong to J. Lang, dated March 16, 2022

In accordance with 37 C.F.R. § 42.64, and the Scheduling Order (Paper 9), Petitioner moves to exclude Patent Owner’s Exhibit 2030 based on Petitioner’s Objection to Patent Owner’s Evidence (Paper 26).¹ Patent Owner (“PO”) filed and relied on this exhibit with Paper 24 (its sur-reply). Paper 24 at 1, n. 2, 13, 30.

PO introduced Exhibit 2030 during the deposition of Dr. Baker and filed Exhibit 2030 for the first time with its sur-reply. Ex. 2025 at 46:6-14; Paper 24 at 30. PO relies on Exhibit 2030 in its sur-reply—but does not even cite corresponding deposition testimony about Exhibit 2030. Paper 24 at 1, n. 2, 13, 30.

Exhibit 2030 constitutes new evidence prohibited for sur-reply. The rules are clear: “[a] sur-reply ... may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” 37 CFR § 42.23(b) (85 Fed. Reg. 79128, Dec. 9, 2020); *see also* Trial Practice Guide (November 2019) at 73-74 (“The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”). Exhibit 2030 was filed with PO’s sur-reply and therefore must be excluded under 37 CFR § 42.23(b). *Netflix, Inc. v. DivX, LLC*, IPR2020-00511, Paper 46 (FWD), at 52-56.

¹ Petitioner also objected during deposition when Patent Owner entered Exhibit 2030. Ex. 2025 at 46:6-14.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.