

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

NEONODE SMARTPHONE LLC,

Patent Owner.

U.S. Patent No. 8,095,879

Case No. IPR2021-01041

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Google LLC submits the following objections to certain exhibits filed by Patent Owner Neonode Smartphone LLC (“Neonode”) on October 18, 2021, with Patent Owner’s Preliminary Response. Petitioner’s objections apply equally to Patent Owner’s reliance on these exhibits in any subsequently-filed documents, and Petitioner’s objections to a particular exhibit apply to any other exhibits relying upon the objected-to exhibit. These objections are timely, having been served within ten business days of the institution of the trial. 37 C.F.R. § 42.64(b)(1). Petitioner objects to the following exhibits:

- Declaration of Ulf Martesson (Ex. 2007);
- Declaration of Marcus Backlund (Ex. 2009);
- Declaration of Per Bystedt (Ex. 2011); and
- Neonode Confidential Investment Memorandum (Ex. 2012).

I. Declaration of Ulf Martesson (Exhibit 2007)

Petitioner objects to the Declaration of Ulf Martesson under Federal Rules of Evidence (“FRE”) 401-403 as irrelevant or, in the alternative, prejudicial, confusing, and/or a waste of time. At ¶ 6 of Exhibit 2007, declarant makes several statements regarding “commercial sales” of the purported N1 and N2 handsets. For example, the declarant states that “[t]he Excel spreadsheet documents sales of 26,991 units of the Neonode N2 phone.” Ex-2007, ¶ 6. At least some of these

statements are incorrect and therefore excludable under FRE 401-403. On December 3, 2021, declarant Ulf Martesson testified in IPR2021-00145, Exhibit 1054, regarding a substantially similar declaration. Declarant testified that the number of Neonode N2 phones sold is *not* 26,991 units, as stated in Exhibit 2007, and should instead be much lower. The statements in ¶ 6 that “Neonode’s records presently available document approximately sales of approximately 40,000 N1 and N2 phones” and “a total of 34,991 units of the N2 phone” are also incorrect based on the declarant’s deposition testimony. The statements in Exhibit 2007 are thus irrelevant or, in the alternative, prejudicial, confusing, and/or a waste of time. FRE 401–403.

II. Declaration of Marcus Backlund (Ex. 2009)

Petitioner objects to the Declaration of Marcus Backlund under FRE 801 as containing hearsay and does not fall within a hearsay exception under FRE 802 or FRE 803. For example, at ¶ 4 of Exhibit 2009, declarant recounts what others “told us,” and ¶ 12 recites what alleged representatives “told us.” In ¶¶ 8, 11, and 13, declarant refers “characterize[at]ions,” mental beliefs, and expressions of others. These statements are inadmissible hearsay under FRE 801 for which no exception applies.

Petitioner further objects to the Declaration of Marcus Backlund under FRE 602 because declarant offers testimony that he lacks personal knowledge of. In

¶ 15, declarant offers testimony relating to the Neonode’s failure in 2008. As stated in ¶ 7, declarant worked at Neonode until around October 2005. Declarant thus does not have any personal knowledge on what led to Neonode’s failure in 2008, and these statements are inadmissible under FRE 602.

III. Declaration of Per Bystedt (Ex. 2011)

Petitioner objects to the Declaration of Per Bystedt under FRE 801 as containing hearsay and does not fall within a hearsay exception under FRE 802 or FRE 803. For example, at ¶ 5 of Exhibit 2011, declarant begins a statement with “they told me,” and at ¶ 9 declarant begins statements with “Ki Tai Lee ... told us,” and “Mr. Lee told Samsung’s negotiators.” These statements are inadmissible hearsay under FRE 801 for which no exception applies.

Petitioner further objects to the Declaration of Per Bystedt under FRE 702 as inappropriate expert testimony and under FRE 704 as offering legal conclusions not helpful to the trier of fact, for example, in ¶¶ 3 and 5. Declarant is not testifying as an expert and expert testimony is improper. These statements are inadmissible under FRE 702 and FRE 704.

IV. Neonode Confidential Investment Memorandum (Ex. 2012)

Petitioner objects to the Neonode Confidential Investment Memorandum (Ex. 2012) under FRE 901. Patent Owner failed to provide authentication for this exhibit.

Date: January 28, 2022

Respectfully submitted,

/Kevin D. Rodkey/

Kevin Rodkey

Reg. No. 65,506

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.