

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC.,

Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,

Patent Owner.

PTAB Case No. IPR2021-01338

Patent No. 6,411,941 B1

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Nintendo Co., Ltd. and Nintendo of America Inc. (“Nintendo”) objects to evidence submitted by Patent Owner Ancora Technologies, Inc. (“Ancora”) with its Patent Owner Response (Paper 23) (“POR”) filed May 3, 2022. The objections are based on 37 C.F.R. Part 42, and the relevant portions of Federal Rules of Evidence (“FRE”) that are applicable to post-grant review proceedings under 37 C.F.R. § 42.62. These objections have been timely filed and served within five business days of introduction of the exhibits into the record.

I. Exhibit 2022

Ancora indicates that this exhibit is *Ancora Techs. Inc. v. Apple, Inc.*, Case No. 4:11-cv-06357 (Dkt. # 171-3) [Apple Inc.’s N.D. Cal. L.R. 3-3 (Invalidity) Disclosures].

Nintendo objects to this exhibit as irrelevant under FRE 401/402. This exhibit contains invalidity positions presented by an unrelated third party in a district court proceeding to which Nintendo is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POR at 27–28, 58, 70), which is irrelevant to the present proceeding.

II. Exhibit 2023

Ancora indicates that this exhibit is Petition, *HTC Corp. v. Ancora Techs. Inc.*, Case No. CBM2017-00054, Paper 1 (PTAB May 26, 2017).

Nintendo objects to this exhibit as irrelevant under FRE 401/402. This exhibit contains positions presented by an unrelated third party in a Covered Business Method Review proceeding to which Nintendo is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POR at 27), which is irrelevant to the present proceeding.

III. Exhibit 2027

Ancora indicates that this exhibit is Joint News Release (February 14, 2005). Nintendo objects to this exhibit as inadmissible hearsay under FRE 801/802. This exhibit includes characterizations of an alleged product offering by Ancora and characterizations of some aspects of technology related to Ancora's product offering. To the extent that Ancora relies on this exhibit for the alleged truth of the information stated therein, this exhibit is inadmissible hearsay.

IV. Exhibit 2029

This is an exhibit filed under seal. Nintendo objects to this exhibit as irrelevant under FRE 401/402/403. This exhibit includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

V. Exhibit 2031

This is an exhibit filed under seal. Nintendo objects to this exhibit as irrelevant under FRE 401/402/403. This exhibit includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

VI. Exhibit 2032

This is an exhibit filed under seal. Nintendo objects to this exhibit as irrelevant under FRE 401/402/403. This exhibit includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

These objections have been timely filed and served within five business days of introduction of the exhibit into the record.

Dated: May 10, 2022

Respectfully submitted,

/ Kyle R. Canavera /

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