

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC. and VIZIO, INC.,
Petitioner

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner

Case IPR2021-01406
U.S. Patent No. 6,411,941

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

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Pursuant to 37 C.F.R. § 42.64(b)(1), Roku, Inc. and Vizio, Inc. (collectively “Petitioner”) hereby object under the Federal Rules of Evidence (“FRE”) to the admissibility of Exhibits 2003-2006, 2010, 2012, 2013, and 2017, filed with the Patent Owner’s Preliminary Response on December 17, 2021 (“POPR”). Petitioner timely objects under 37 C.F.R. § 42.64(b)(1) within 10 business days of institution of trial in this proceeding, and Petitioner serves these objections to provide notice that Petitioner may move to exclude Exhibits 2003-2006, 2010, 2012, 2013, and 2017, or portions thereof, under 37 C.F.R. § 42.64(c).

I. EXHIBIT 2003

Petitioner objects to Exhibit 2003, “Deposition Excerpts of Jon Weissman, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919,” as inadmissible hearsay under FRE 802. This exhibit is a transcript of a deposition taken by Ancora of an expert witness presented by an unrelated third party. The subject deposition was taken in a district court proceeding to which Petitioner is not a party. Ancora has not offered the witness for cross-examination in this proceeding.

Petitioner also objects to this exhibit as irrelevant under FRE 401/402 because it contains opinions and testimony from an expert presented by an unrelated third party in a proceeding to which Petitioner is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POPR, 23), which are irrelevant to the present proceeding.

II. EXHIBIT 2004

Petitioner objects to Exhibit 2004, “Declaration of Ian Jestice, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919,” as inadmissible hearsay under FRE 802. Exhibit 2004 is the declaration of an expert witness presented by Ancora in its litigation with an unrelated third party. The declaration was prepared for a district court proceeding to which Petitioner is not a party. Ancora has not offered the witness for cross-examination in this proceeding.

III. EXHIBIT 2005

Petitioner objects to Exhibit 2005, “Brief of Appellees HTC America, Inc. and HTC Corporation, *Ancora Technologies, Inc. v. HTC America, Inc., HTC Corporation*, Case No. 18-1404,” as irrelevant under FRE 401/402. The exhibit appears to be an appellate brief filed by an unrelated third party in an appellate court proceeding to which Petitioner is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POPR, 23), which are irrelevant to the present proceeding.

IV. EXHIBIT 2006

Petitioner objects to Exhibit 2006, “Declaration of Jon Weissman, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919,” as inadmissible hearsay under FRE 802. Exhibit 2006 is an expert declaration of an expert witness presented by an unrelated third party. The declaration was prepared for a district court proceeding to which Petitioner is not a party. Ancora has not offered the

witness for cross-examination in this proceeding. Petitioner also objects to this exhibit as irrelevant under FRE 401/402 because it contains opinions and testimony from an expert presented by an unrelated third party in a proceeding to which Petitioner is not a party. Though submitted with the POPR, Ancora does not appear to cite to this exhibit (*see generally* POPR), further demonstrating its irrelevance.

V. EXHIBIT 2010

Petitioner objects to Exhibit 2010, “PC Magazine Encyclopedia, definition of ‘Agent,’ <https://www.pcmag.com/encyclopedia>,” because Ancora has failed to authenticate the exhibit under FRE 901. Specifically, Ancora has failed to produce evidence sufficient to support a finding that this exhibit is what Ancora claims it to be.

Petitioner also objects to this exhibit as irrelevant under FRE 401/402 because Ancora failed to show the date on which this purported webpage was first publicly available. The only date marking on the document is for December 10, 2015. Ancora has thus failed to show that this exhibit was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the challenged patent. Accordingly, this exhibit is irrelevant and inadmissible.

VI. EXHIBIT 2012

Petitioner objects to Exhibit 2012, “Joint Claim Construction Chart, Ancora

Technologies, Inc. v. TCT Mobile (US) Inc., Huizhou TCL Mobile Communication Co., Ltd., and Shenzhen TCL Creative Cloud Technology Co., Ltd., Case No. 8-19- cv-02192 (Dkt. #49, 49-1, 49-2),” as irrelevant under FRE 401/402. This exhibit contains a joint statement by Ancora and an unrelated third party in a district court proceeding to which Petitioner is not a party. Though submitted with the POPR, Ancora does not appear to cite to this exhibit (see generally POPR), further demonstrating its irrelevance.

VII. EXHIBIT 2013

Petitioner objects to Exhibit 2013, “Declaration of Dr. David Martin, Ph.D., *Sony Mobile Communications AB, Sony Mobile Communications, Inc., Cony Electronics Inc., and Sony Corporation v. Ancora Technologies, Inc.*, IPR2021-00663, Ex. 2015,” as inadmissible hearsay under FRE 802. Exhibit 2013 is an expert declaration of an expert witness presented by Ancora in an IPR proceeding with an unrelated third party and to which Petitioner is not a party. Ancora has not offered the witness for cross-examination in this proceeding.

VIII. EXHIBIT 2017

Petitioner objects to Exhibit 2017, “Declaration of Ian Jestice, *Ancora Technologies Inc. v. LG Electronics Inc., LG Electronics U.S.A. Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.*, Case No. 1:20-cv- 00034 (Dkt. # 44-8),” as inadmissible hearsay under FRE 802. This exhibit is an expert

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