

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC
Petitioner

v.

MEMORYWEB, LLC
Patent Owner

Case No. IPR2021-01413
Patent 10,621,228

**PETITIONER'S OBJECTIONS TO EVIDENCE ACCOMPANYING
PATENT OWNER'S SUR-REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), 37 C.F.R. § 42.23(b), and the Federal Rules of Evidence (“FRE”), Petitioner Unified Patents, LLC (“Petitioner”) hereby objects to Exhibits 2041-2045, which were submitted by Patent Owner MemoryWeb, LLC (“Patent Owner”) with its Sur-Reply (Paper 35) on October 11, 2022. These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1) within five business days of service of evidence to which the objection is directed.

1. Objections under 37 C.F.R. § 42.23(b)

Exhibits 2041-2045 are objected to under 37 C.F.R. § 42.23(b). “A sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” 37 CFR § 42.23(b); *Consolidated Trial Practice Guide*, p. 73. Exhibits 2041-2045 are not deposition transcripts. Therefore, Exhibits 2041-2045 constitute improper new evidence.

2. Objections under the FRE

Exhibit Number(s)	Objections
EX2041, EX2042	<p>Exhibits 2041–2042 appear to be definitions from an online dictionary indirectly offered as evidence for claim constructions taken by Patent Owner. Petitioner states the following objections:</p> <p>FRE 106: Petitioner objects to this Exhibit as being incomplete. The Exhibit appears to constitute only a portion of the document it purports to be as text on multiple pages is obstructed and unreadable. Fairness requires consideration of the entire document.</p> <p>FRE 401, 402, and 403: Petitioner objects to this evidence as irrelevant and because any probative value is substantially outweighed by a danger of unfair prejudice, confusing the</p>

issues, and wasting time. Patent Owner has not provided any foundation for what this Exhibit is, how it was maintained, whether it is accurate, whether the information therein is reflective of the state of the art at the time of the patent, whether any date printed thereon is accurate, nor whether it was ever actually published or publicly available prior to the priority date of the '228 Patent.

FRE 801-807: Petitioner objects to this Exhibit as constituting hearsay offered for a hearsay purpose to which no valid exception applies.

FRE 901 and 902: Petitioner objects to this Exhibit as being an unauthenticated document that is not self-authenticating under FRE 902. Patent Owner has not submitted an authenticating declaration explaining what this Exhibit is, how it was acquired, or how it was made.

EX2043	<p>Exhibit 2043 appears to be a definition from a different online dictionary from Exhibits 2041–2042, again indirectly offered as evidence for claim constructions taken by Patent Owner. Petitioner states the following objections:</p> <p>FRE 401, 402, and 403: Petitioner objects to this evidence as irrelevant and because any probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, and wasting time. Patent Owner has not provided any foundation for what this Exhibit is, how it was maintained, whether it is accurate, whether the information therein is reflective of the state of the art at the time of the patent, whether any date printed thereon is accurate, nor whether it was ever actually published or publicly available prior to the priority date of the '228 Patent.</p>
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