

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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APPLE INC.,  
Petitioner,

v.

MEMORYWEB, LLC,  
Patent Owner.

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Case No. IPR2022-00031  
U.S. Patent No. 10,621,228

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**PETITIONER'S OBJECTIONS TO EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby submits initial objections to certain evidence Patent Owner provided (by agreement) on October 9, 2023, as contemplated exhibits in support of Patent Owner's Reply in support of its motion to terminate, which is due to be filed later today. While Petitioner may serve additional objections once it has had an opportunity to review Patent Owner's Reply (after it is filed), and may, as appropriate, seek leave from the Board to file a motion to exclude or strike, Petitioner provides these initial objections in light of the compressed schedule currently in place (Date 6 currently provides for both the Reply and any Motions to Exclude to be filed at the same time (today), and thus Petitioner cannot yet fully address Patent Owner's evidence newly submitted with the Reply or file a responsive motion to exclude or strike). The discussion below identifies the late-filed and otherwise improper evidence of which Petitioner is currently aware to which Petitioner initially objects. It further summarizes the initial objections, including the Federal Rules of Evidence or other rules, which serve as the basis for Petitioner's objections.

**1. Ex. 2122 (“Usermanual.wiki PDF”) and Ex. 2123, ¶5 (“Declaration of Angelo J. Christopher”)**

Petitioner objects to Ex. 2122 and to paragraph 5 of Ex. 2123 (which, *inter alia*, refers to Ex. 2122) because they are not relevant to any issue in this proceeding, and any theoretical relevance is outweighed by the risks of confusion, substantial danger of unfair prejudice, and/or misleading the fact finder. *See Fed.*

R. Evid. 401-403. Among other things, (i) Ex. 2122 (bearing a 2010 copyright date and containing different text and images<sup>1</sup>) is a different document from Ex. 1005 (“A3UM,” bearing a 2009 copyright date) that was utilized in the Petition, (ii) there is an absence of evidence that Ex. 2122 was available to an ordinarily skilled searcher at the URL <https://usermanual.wiki/apple/Aperture3.1938174072> on or before September 3, 2021, and (iii) there is no evidence when, if at all, Ex. 2122 became available such that it would qualify as prior art in these proceedings. *See, e.g.*, Ex. 2108 at 2 (“© 2023 UserManual.wiki”); Ex. 2111, ¶23 (Patent Owner’s “expert” defining “relevant timeframe” as “on or before September 3, 2021”); Ex. 1115, 135:22-136:8, 149:6-152:20. Petitioner further objects to this evidence as untimely and improper reply evidence. Patent Owner and its expert were fully aware of the cited URL that Patent Owner asserts leads to Ex. 2122 at the time of the submission of Patent Owner’s motion (*see, e.g.*, Ex. 2111, ¶49; Ex. 1115, 149:6-152:20) and chose not to submit Ex. 2122 or Ex. 2123, ¶5 with the motion, thereby depriving Petitioner of any opportunity to address them through cross-examination or briefing. Indeed, at the deposition of Mr. Lhymn, counsel for MemoryWeb expressly stated on the record that it “[did not] believe there’s

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<sup>1</sup> Compare, *e.g.*, Ex. 1005 at 40 with Ex. 2122 at 47-48 and Ex. 1005 at 118 with Ex. 2122 at 118.

anything that [Patent Owner was] relying on that [Petitioner did not] already have.” Ex. 1115, 181:6-18; *see also id.* 125:9-127:14. Patent Owner’s submission of Ex. 2122 and Ex. 2123, ¶5 with its reply brief is in violation of the applicable rules governing this proceeding and is unfairly prejudicial to Petitioner, and any attempted reliance thereon is similarly in violation of the applicable rules and unfairly prejudicial to Petitioner (*see Fed. R. Evid. 403*). Petitioner expressly asserts, reserves, and does not waive any other objections that would be applicable in such a context.

**2. Exs. 2120 (“Salvador URL”), 2121 (“Salvador URL Result”) and 2123, ¶¶2-4 (“Declaration of Angelo J. Christopher”)**

Petitioner objects to Exs. 2120-2121 and paragraphs 2-4 of Ex. 2122 (which, *inter alia*, refer to Exs. 2120-2121) because they are not relevant to any issue in this proceeding, and any theoretical relevance is outweighed by the risks of confusion, substantial danger of unfair prejudice, and/or misleading the fact finder. *See Fed. R. Evid. 401-403*. Among other things: (i) Exs. 2120 and 2121 are not the subject of any testimony by Patent Owner’s purported expert, Mr. Eugene Lhymn, regarding an allegedly reasonably diligent search by an ordinarily skilled searcher; (ii) the declarant of Ex. 2123, Mr. Christopher, does not purport to have any expert qualifications or basis to testify as to a reasonably diligent search by an ordinarily skilled searcher on or before September 3, 2021; and (iii) there is an absence of evidence that Ex. 2121 would result from the described activities on or before

September 3, 2021 (*see, e.g.*, EX2111 ¶23 (Patent Owner’s “expert” defining “relevant timeframe” as “on or before September 3, 2021”)). Petitioner further objects to this evidence as untimely and improper reply evidence. Patent Owner and its expert were fully aware of the cited URL at the time of submission of the motion to terminate (*see, e.g.*, Ex. 2111, ¶42; Ex. 2101, 1; Ex. 1115, 95:24-97:15) and chose not to visit it or search archive.org for that URL, or to submit any results of doing so with Patent Owner’s motion, thereby depriving Petitioner of any opportunity to address Exs. 2120-2121 and Ex. 2123, ¶¶2-4 through cross-examination or briefing. Patent Owner’s submission of Exs. 2120-2121 and Ex. 2123, ¶¶2-4 is in violation of the applicable rules governing this proceeding and is unfairly prejudicial to Petitioner, and any attempted reliance thereon is similarly in violation of the applicable rules and unfairly prejudicial to Petitioner (*see* Fed. R. Evid. 403). Petitioner expressly asserts, reserves, and does not waive any other objections that would be applicable in such a context.

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Petitioner submits these initial objections subject to and without waiver of its right to provide different or further objections under the applicable rules and as may otherwise be permitted by the Board, including after Petitioner has had an opportunity to review Patent Owner’s Reply, which is due to be filed later today but has not yet been filed. As stated above, while Petitioner may as appropriate

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