

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HULU, LLC AND NETFLIX, INC.,

Petitioners,

v.

DIVX, LLC,

Patent Owner.

Case No. IPR2020-00558

U.S. Patent No. 10,225,588

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

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence, Petitioners submit the following objections to evidence filed by Patent Owner with Patent Owner’s Preliminary Response (POPR). These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1) within ten business days of the institution of the trial. The Federal Rules of Evidence (F.R.E.) apply to these proceedings according to 37 C.F.R. § 42.62(a), and these rules form the basis of the objections contained herein.

| Exhibit Number | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2010           | <p><u>Hearsay.</u> F.R.E. 801(c) and 802. Patent Owner relies on this exhibit to prove the truth of matters described therein. For example, Patent Owner cites to this exhibit and argues that “the ‘retrieval’ of information can have many meanings” and states that “One textbook example—literally—of ‘retriev[ing]’ information is, simply, ‘to read through’ the collected works of William Shakespeare ‘to determine which plays of Shakespeare contain the words Brutus AND Caesar AND NOT Calpurnia.’” Because these statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitute hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made or published.</p> <p><u>Personal Knowledge.</u> F.R.E. 602. This exhibit contains testimony regarding matters for which the authors do not have personal knowledge.</p> <p><u>Improper Opinion.</u> F.R.E. 701. This exhibit contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception and for which the declarant lacks personal knowledge. Examples of such impermissible opinion testimony include alleged definitions or characterizations</p> |

| Exhibit Number | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                | <p>of the concept of “retrieval.” Patent Owner has not established that the authors are qualified to provide expert testimony.</p> <p><u>Relevance.</u> F.R.E. 401-403. This exhibit is not relevant to any issue in this IPR proceeding, and any probative value of the exhibit is substantially outweighed by unfair prejudice, confusing the issues, and/or wasting time because, for example, the publication date of its content has not been established.</p> <p><u>Authentication.</u> F.R.E. 901(a). Patent Owner has not produced evidence sufficient to support a finding that this exhibit is what Patent Owner claims it to be.</p> |

Date: September 8, 2020

Respectfully submitted,

/Harper Batts/

Harper Batts (Reg. No. 56,160)  
Attorney for Petitioners

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 8, 2020, a complete copy of the foregoing document was served via email to all parties to this proceeding at the addresses indicated:

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