

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC. AND HULU, LLC,

Petitioners,

v.

DIVX, LLC,

Patent Owner.

Case No. IPR2020-00558

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

**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 Response (POR). These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1) within five business days of service of the evidence. 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
2012	<u>Hearsay.</u> F.R.E. 801(c) and 802. Exhibit 2012 relies on documents that constitute or contain inadmissible hearsay, because the documents contain out-of-court statements that are offered for the truth of the matters asserted therein. <u>Qualification of Expert Witness.</u> F.R.E. 401, 402, 403, and 702. This exhibit includes testimony not relevant to the instituted review, because, among other things, it has not been shown that the purportedly expert declarant is qualified to testify competently regarding the matters the opinions are said to address, or that the declarant's testimony is based on sufficient facts or data or arrived at by reliable principles, procedures, or methods reliably applied to the facts of this case, or that the declarant's opinion will assist the trier of fact to understand the evidence or to determine any fact in issue and does not have a greater potential to mislead than to enlighten. <u>Personal Knowledge.</u> F.R.E. 602, 701, 801, and 802 and 37 C.F.R. § 42.61. This exhibit includes testimony that is not shown to be based on first-hand knowledge including of how relied-upon data was generated, is based on speculation, and constitutes and contains inadmissible hearsay. <u>Underlying Facts and Data.</u> F.R.E. 401 and 705 and 37 C.F.R. § 42.65. This exhibit does not disclose underlying facts and data and includes testimony on patent law and practice. <u>Authentication.</u> F.R.E. 901(a). Exhibit 2012 relies on exhibits for which Patent Owner has not produced evidence sufficient to support a finding that this exhibit is what Patent Owner claims it to be.
2015	<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 or the date on which it was allegedly published.

Exhibit Number	Objections
2016	<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 statements in this purported online article to argue: “a global key system can be compromised in its entirety even where one of the many licensees who use the product inadvertently does not secure the key.” POR, 50. Because the statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made. <u>Personal Knowledge.</u> F.R.E. 602. Exhibit 2016 contains testimony regarding matters for which the declarant does not have personal knowledge. <u>Improper Opinion.</u> F.R.E. 701. Exhibit 2016 contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception. Examples of such impermissible opinion testimony include technical opinions on DVD copy protection and the hearsay statements described above. Patent Owner has not established that the declarant is qualified to provide expert testimony. <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 in that the publication date of the purported online article has not been established. <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 or the date on which it was allegedly published.

Exhibit Number	Objections
2017	<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 statements in this purported webpage to argue: “[y]ou can’t make systems secure by tacking on cryptography as an afterthought’ and that, rather, ‘[y]ou have to know what you are doing every step of the way, from conception through installation.’” POR, 17. Because the statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made. <u>Personal Knowledge.</u> F.R.E. 602. Exhibit 2017 contains testimony regarding matters for which the declarant does not have personal knowledge. <u>Improper Opinion.</u> F.R.E. 701. Exhibit 2017 contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception. Examples of such impermissible opinion testimony include technical opinions on cryptography and the hearsay statements described above. Patent Owner has not established that the declarant is qualified to provide expert testimony. <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 in that the publication date of the purported webpage has not been established. <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 or the date on which it was allegedly published.

Exhibit Number	Objections
2018	<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 statements in this purported promotional material to argue: “[y]ou can’t make systems secure by tacking on cryptography as an afterthought’ and that, rather, ‘[y]ou have to know what you are doing every step of the way, from conception through installation.’” POR, 17. Because the statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made. <u>Personal Knowledge.</u> F.R.E. 602. Exhibit 2018 contains testimony regarding matters for which the declarant does not have personal knowledge. <u>Improper Opinion.</u> F.R.E. 701. Exhibit 2018 contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception. Examples of such impermissible opinion testimony include technical opinions on cryptography and the hearsay statements described above. Patent Owner has not established that the declarant is qualified to provide expert testimony. <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 in that the publication date of the purported promotional material has not been established. <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 or the date on which it was allegedly published.

Exhibit Number	Objections
2019	<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 statements in this purported paper to argue: “DVDs were encrypted using a global key—until the key was compromised and the entire system was rendered obsolete.” POR, 49-50. Because the statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made. <u>Personal Knowledge.</u> F.R.E. 602. Exhibit 2019 contains testimony regarding matters for which the declarant does not have personal knowledge. <u>Improper Opinion.</u> F.R.E. 701. Exhibit 2019 contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception. Examples of such impermissible opinion testimony include technical opinions on DVD content protection and the hearsay statements described above. Patent Owner has not established that the declarant is qualified to provide expert testimony. <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 in that the publication date of the purported paper has not been established. <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 or the date on which it was allegedly published.

Exhibit Number	Objections
2020	<u>Hearsay.</u> F.R.E. 801(c) and 802. Patent Owner relies on this exhibit with out-of-court statements by anonymous contributors to prove the truth of matters described therein. For example, Patent Owner cites to statements in this purported webpage to argue: “when media is broadcast without the need for any restriction (e.g., geographical restriction), it is broadcast as ‘free-to-air,’ which has no encryption whatsoever.” POR, 49. Because the statements were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made. <u>Personal Knowledge.</u> F.R.E. 602. Exhibit 2020 contains testimony regarding matters for which the unknown declarant does not have personal knowledge. <u>Improper Opinion.</u> F.R.E. 701. Exhibit 2020 contains impermissible opinion testimony that is based on scientific, technical, or other specialized knowledge and is not rationally based on the declarant’s perception. Examples of such impermissible opinion testimony include technical opinions on media broadcasting and the hearsay statements described above. Patent Owner has not established the identity or qualifications of the declarant. Patent Owner has not established that the unknown declarant is qualified to provide expert testimony. <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 in that the publication date of its content has not been established. Even the purported publication date of this purported webpage, based on hearsay statements within the purported webpage itself, post-dates the 2011 timeframe. <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.

Date: December 11, 2020

Respectfully submitted,

/Harper Batts/

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 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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