

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 served by Patent Owner on December 28, 2020. 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
2021	<u>Hearsay.</u> F.R.E. 801(c) and 802. This declaration includes layers of hearsay. Patent Owner relies on out of court statements to prove the truth of matters asserted. For example, reliance on alleged publication dates of the exhibits discussed within this declaration constitute hearsay because they are out-of-court statements offered to prove the truth of when the exhibits were allegedly published. The alleged publication dates of the exhibits are hearsay, and this declaration's reliance on the alleged publication dates also constitutes hearsay. <u>Personal Knowledge.</u> F.R.E. 602, 701, 801, and 802 and 37 C.F.R. § 42.61. This declaration includes testimony that is not shown to be based on first-hand knowledge or rationally based on the witness's perception. The declarant has no personal knowledge regarding the creation, publication, maintenance, or authenticity of the exhibits discussed therein. The declaration includes speculation and contains inadmissible hearsay, including for example the authenticity of websites and articles, and publication dates associated with those websites and articles. <u>Relevance.</u> F.R.E. 401-403. This declaration is not relevant to any issue in this IPR proceeding, and any probative value of this declaration is substantially outweighed by unfair prejudice, confusing the issues, and/or wasting time in that the authenticity and publication dates of the exhibits discussed in this declaration have not been established. <u>Authentication.</u> F.R.E. 901(a). Patent Owner has not produced evidence sufficient to support a finding that the exhibits discussed within this declaration are what Patent Owner claims them to be.

Date: December 31, 2020

Respectfully submitted,

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 31, 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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