UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC. and HULU, LLC,
Petitioner

v.

DIVX, LLC
Patent Owner

Case IPR2020-00558
Patent 10,225,588

PATENT OWNER'S OBJECTIONS 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 ("FRE"), Patent Owner objects to the following documents submitted by Petitioners Netflix, Inc. and Hulu, LLC.

Nothing in this paper should be construed as an admission that any rights of Patent Owner would have been waived or forfeited had the paper or any objection herein not been filed, or that 37 C.F.R. § 42.64(b) applies to any of the objections herein if § 42.64(b) would not otherwise apply. The objections herein are premised upon § 42.64 potentially being determined to apply to the document in question and are submitted solely to preserve the rights of Patent Owner should § 42.64(b) be determined to apply.

1. Petitioner's Reply.

Patent Owner objects to the Reply. Under the Trial Practice Guide, the Reply's arguments are untimely because they are cited in an attempt to establish a case-in-chief and could have been submitted with the Petition.

2. Exhibits 1016, 1018, 1020, 1025-1028, 1030.

Under the Trial Practice Guide, this exhibit is untimely because it is relied upon to establish Petition's case-in-chief and could have been submitted with the Petition. Patent Owner further objects to this exhibit under FRE 801/802 as inadmissible hearsay to the extent that this document is relied upon for the truth of the matter asserted. Patent Owner further objects to this exhibit under FRE

401/402/403 as irrelevant and inadmissible because, among other things, its probative value is outweighed by other considerations including prejudice, confusion and waste of time.

3. <u>Exhibits 1017, 1021, 1023.</u>

Under the Trial Practice Guide, this exhibit is untimely because it is relied upon to establish Petition's case-in-chief and could have been submitted with the Petition. Patent Owner further objects to this exhibit under FRE 801/802 as inadmissible hearsay to the extent that this document is relied upon for the truth of the matter asserted. Patent Owner further objects to this exhibit under FRE 401/402/403 as irrelevant and inadmissible because, among other things, its probative value is outweighed by other considerations including prejudice, confusion and waste of time. Patent Owner also objects to this exhibit under FRE 901, as this document is inadmissible because it has not been shown to be authenticated or identified. Furthermore, the document is relied upon as evidence of prior art or of common knowledge or understanding of persons in the art at the priority date at issue, but is inadmissible because it has not been shown to qualify as prior art under, *inter alia*, 35 U.S.C. § 311(b), and there is a lack of supporting documentation to demonstrate common knowledge or understanding as of the priority date.

4. Exhibit 1019.

Under the Trial Practice Guide, this exhibit is untimely because it is relied upon to establish Petition's case-in-chief and could have been submitted with the Petition. Patent Owner further objects to this exhibit under FRE 801/802 as inadmissible hearsay to the extent that this document is relied upon for the truth of the matter asserted. Patent Owner further objects to this exhibit under FRE 401/402/403 as irrelevant and inadmissible because, among other things, its probative value is outweighed by other considerations including prejudice, confusion and waste of time. Patent Owner also objects to this exhibit under FRE 901, as this document is inadmissible because it has not been shown to be authenticated or identified. Furthermore, the document is relied upon as evidence of prior art or of common knowledge or understanding of persons in the art at the priority date at issue, but is inadmissible because it has not been shown to qualify as prior art under, *inter alia*, 35 U.S.C. § 311(b), and there is a lack of supporting documentation to demonstrate common knowledge or understanding as of the priority date. Under FRE 106/1001, 35 U.S.C. § 312(a)(3) & (5), and 37 C.F.R. § 42.51(b)(1), this document is incomplete and is not a copy which accurately reproduces the original. Patent Owner further objects to this exhibit as being improperly incorporated by reference in violation of 37 C.F.R. § 42.6(a)(3) since it is not cited or discussed in Petitioner's Reply.

5. Exhibit 1022.

Under the Trial Practice Guide, this exhibit is untimely because it is relied upon to establish Petition's case-in-chief and could have been submitted with the Petition. Patent Owner further objects to this exhibit under FRE 801/802 as inadmissible hearsay to the extent that this document is relied upon for the truth of the matter asserted. Patent Owner further objects to this exhibit under FRE 401/402/403 as irrelevant and inadmissible because, among other things, its probative value is outweighed by other considerations including prejudice, confusion and waste of time. Patent Owner also objects to this exhibit under FRE 901, as this document is inadmissible because it has not been shown to be authenticated or identified. Furthermore, the document is relied upon as evidence of prior art or of common knowledge or understanding of persons in the art at the priority date at issue, but is inadmissible because it has not been shown to qualify as prior art under, *inter alia*, 35 U.S.C. § 311(b), and there is a lack of supporting documentation to demonstrate common knowledge or understanding as of the priority date. Patent Owner further objects to this exhibit as being improperly incorporated by reference in violation of 37 C.F.R. § 42.6(a)(3) since it is not cited or discussed in Petitioner's Reply.

6. Exhibit 1024 – IPR2020-00511 Nielson Depo. Tr.[1]

Under FRE 401/402/403, this document is inadmissible as irrelevant because, among other things, it relates to another matter, a different patent, a different specification and different technology, and its probative value, if any, is outweighed by other considerations including prejudice, confusion and waste of time.

7. Exhibit 1031.

Under FRE 401/402/403/702, this document 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.

Under FRE 602/701/801/802 and 37 C.F.R. § 42.61, this document 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.

[1] This transcript appears to be incorrectly captioned as relating to IPR2020-00052.

Under FRE 401/705 and 37 C.F.R. § 42.65, this document includes testimony on patent law and practice.

Respectfully submitted,

____/ Kenneth J. Weatherwax /_____
Kenneth J. Weatherwax, Reg. No. 54,528
LOWENSTEIN & WEATHERWAX LLP

Date: March 17, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by agreement between the parties, on the date signed below:

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

The names and address of the parties being served are as follows:

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Respectfully submitted,

/ Jason Linger /

Date: March 17, 2021