

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NETFLIX, INC. AND HULU, LLC,

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), 37 C.F.R. § 42.23(b), and the Federal Rules of Evidence (F.R.E.), Petitioners submit the following objections to evidence filed by Patent Owner with Patent Owner's Sur-Reply ("SR"). These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1) within five business days of service of the evidence to which the objections are directed. 37 C.F.R. § 42.23(b) (85 Fed. Reg. 79128, Dec. 9, 2020) applies to oppositions, replies, and sur-replies. The Federal Rules of Evidence 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 2025           | <p data-bbox="457 228 1435 688"><u>Hearsay.</u> F.R.E. 801(c) and 802. Patent Owner relies on Exhibit 2025 for out-of-court statements to prove the truth of matters asserted. For example, Patent Owner cites to statements in this exhibit regarding multiple connections and FEC with encryption. <i>See</i> SR, 10, 15. Because the statements in Exhibit 2025 were not made by a declarant in this proceeding, the statements are hearsay. Furthermore, reliance on dates stated within the document, such as the purported 1999 copyright date, constitutes hearsay because they are out-of-court statements offered to prove the truth of when the statements in the document were allegedly made.</p> <p data-bbox="457 741 1446 1247"><u>Relevance.</u> F.R.E. 401-403. Exhibit 2025 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 this exhibit has not been established, nor are the dates or timeline of the events described. Moreover, any alleged value is outweighed by the danger of misleading the fact finder, because it was offered too late for this out-of-context evidence to be tested under the rules. Patent Owner filed this exhibit for the first time as <i>Sur-Reply</i> evidence, at a point in the proceeding when Petitioner has no right under the rules to present competing evidence, direct testimony, or cross-examination.</p> <p data-bbox="457 1297 1406 1415"><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> <p data-bbox="457 1465 1406 1545"><u>Sur-Reply.</u> 37 C.F.R. § 42.23(b). Exhibit 2025 is improper new evidence that may not accompany a Sur-Reply.</p> |

Date: April 23, 2021

Respectfully submitted,

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

### **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on April 23, 2021, a complete and entire copy of the foregoing document was filed with the PTAB through its E2E system and served via email on attorneys of record at the following addresses:

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