

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC.,

Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,

Patent Owner.

PTAB Case No. IPR2021-01338

Patent No. 6,411,941 B1

**PETITIONERS' OBJECTIONS TO PATENT OWNER'S
EVIDENCE IN A PRELIMINARY PROCEEDING
UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Nintendo Co., Ltd. and Nintendo of America Inc. ("Nintendo") objects to evidence submitted during a preliminary proceeding by Patent Owner Ancora Technologies, Inc. ("Ancora") with its Preliminary Response (Paper 7) ("POPR") filed November 18, 2021. The objections are based on 37 C.F.R. Part 42, and the relevant portions of Federal Rules of Evidence ("FRE") that are applicable to post-grant review proceedings under 37 C.F.R. § 42.62. These objections have been timely filed and served within ten business days of the institution of trial.

I. Exhibit 2003

Ancora indicates that this exhibit is Deposition Excerpts of Jon Weissman, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919.

Nintendo objects to this exhibit as inadmissible hearsay under FRE 802. As demonstrated by Ancora's description and the content of the exhibit itself, this exhibit is a transcript of a deposition taken by Ancora of an expert witness presented by an unrelated third party. The subject deposition was not taken during the present proceeding, but rather in a district court proceeding to which Nintendo is not a party. Neither Nintendo nor Ancora purports to offer the witness, Jon Weissman, for cross-examination in this proceeding.

Nintendo objects to this exhibit as irrelevant under FRE 401/402. As described above, this exhibit contains opinions and testimony from an expert

presented by an unrelated third party in a proceeding to which Nintendo is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POPR at 23), which is irrelevant to the present proceeding.

II. Exhibit 2004

Ancora indicates that this exhibit is Declaration of Ian Jestice, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919.

Nintendo objects to this exhibit as inadmissible hearsay under FRE 802. As demonstrated by Ancora's description and the content of the exhibit itself, this exhibit is an expert declaration of an expert witness presented by Ancora in its litigation with an unrelated third party. The declaration was not prepared for the present proceeding, but rather in a district court proceeding to which Nintendo is not a party. Neither Nintendo nor Ancora purports to offer the witness, Ian Jestice, for cross-examination in this proceeding.

III. Exhibit 2005

Ancora indicates that this exhibit is Brief of Appellees HTC America, Inc. and HTC Corporation, *Ancora Technologies, Inc. v. HTC America, Inc., HTC Corporation*, Case No. 18-1404.

Nintendo objects to this exhibit as irrelevant under FRE 401/402. This exhibit contains an appellate brief filed by an unrelated third party in an appellate court proceeding to which Nintendo is not a party. Ancora uses this exhibit to

characterize positions taken by unrelated third parties (*see, e.g.*, POPR at 23), which is irrelevant to the present proceeding.

IV. Exhibit 2006

Ancora indicates that this exhibit is Declaration of Jon Weissman, *Ancora Technologies, Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919.

Nintendo objects to this exhibit as inadmissible hearsay under FRE 802. As demonstrated by Ancora's description and the content of the exhibit itself, this exhibit is an expert declaration of an expert witness presented by an unrelated third party. The declaration was not prepared for the present proceeding, but rather in a district court proceeding to which Nintendo is not a party. Neither Nintendo nor Ancora purports to offer the witness, Jon Weissman, for cross-examination in this proceeding.

Nintendo objects to this exhibit as irrelevant under FRE 401/402. As described above, this exhibit contains opinions and testimony from an expert presented by an unrelated third party in a proceeding to which Nintendo is not a party. Though submitted with the POPR, Ancora does not appear to cite to this exhibit (*see generally* POPR), further demonstrating its irrelevance.

V. Exhibit 2010

Ancora indicates that this exhibit is PC Magazine Encyclopedia, definition of "Agent," <https://www.pcmag.com/encyclopedia>.

Nintendo objects to this exhibit as unauthenticated and inadmissible under FRE 901. Specifically, Ancora has failed to produce evidence sufficient to support a finding that this exhibit is what Ancora claims it to be.

Nintendo objects to this exhibit as irrelevant under FRE 401/402. Ancora failed to show the date on which this purported webpage was first publicly available. The only date marking on the document is for December 10, 2015. As such, Ancora has failed to show that this exhibit was disseminated or available such that persons of ordinary skill in the art would have been able to locate and access it before the priority date of the challenged patent. Accordingly, this exhibit is irrelevant and inadmissible.

VI. Exhibit 2012

Ancora indicates that this exhibit is Joint Claim Construction Chart, *Ancora Technologies, Inc. v. TCT Mobile (US) Inc., Huizhou TCL Mobile Communication Co., Ltd., and Shenzhen TCL Creative Cloud Technology Co., Ltd.*, Case No. 8-19-cv-02192 (Dkt. #49, 49-1, 49-2).

Nintendo objects to this exhibit as irrelevant under FRE 401/402. This exhibit contains a joint statement by Ancora and an unrelated third party in a district court proceeding to which Nintendo is not a party. Though submitted with the POPR, Ancora does not appear to cite to this exhibit (*see generally* POPR), further demonstrating its irrelevance.

VII. Exhibit 2013

Ancora indicates that this exhibit is Declaration of Dr. David Martin, Ph.D., *Sony Mobile Communications AB, Sony Mobile Communications, Inc., Sony Electronics Inc., and Sony Corporation v. Ancora Technologies, Inc.*, IPR2021-00663, Ex. 2015.

Nintendo objects to this exhibit as inadmissible hearsay under FRE 802. As demonstrated by Ancora's description and the content of the exhibit itself, this exhibit is an expert declaration of an expert witness presented by Ancora in an IPR proceeding with an unrelated third party. The declaration was not prepared for the present proceeding, but rather in an IPR proceeding to which Nintendo is not a party. Neither Nintendo nor Ancora purports to offer the witness, Dr. David Martin, for cross-examination in this proceeding.

VIII. Exhibit 2017

Ancora indicates that this exhibit is Declaration of Ian Jestice, *Ancora Technologies Inc. v. LG Electronics Inc., LG Electronics U.S.A. Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.*, Case No. 1:20-cv-00034 (Dkt. # 44-8).

Nintendo objects to this exhibit as inadmissible hearsay under FRE 802. As demonstrated by Ancora's description and the content of the exhibit itself, this exhibit is an expert declaration of an expert witness presented by Ancora in its

litigation with an unrelated third party. The declaration was not prepared for the present proceeding, but rather in a district court proceeding to which Nintendo is not a party. Neither Nintendo nor Ancora purports to offer the witness, Ian Jestice, for cross-examination in this proceeding.

These objections have been timely filed and served within ten business days of the institution of the trial.

Dated: February 10, 2022

Respectfully submitted,

/Kyle Canavera/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing PETITIONERS' OBJECTIONS TO PATENT OWNER'S EVIDENCE was served in its entirety this 10th day of February 2022 by electronic mail on the Patent Owner via its attorneys of record:

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Respectfully submitted,

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