

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROKU, INC. and VIZIO, INC.,
Petitioner

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner

Case IPR2021-01406
U.S. Patent No. 6,411,941

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

Mail Stop “Patent Board”

Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Roku, Inc. and Vizio, Inc. (collectively “Petitioner”) hereby object under the Federal Rules of Evidence (“FRE”) to the admissibility of Exhibits 2018, 2022, 2025, 2027, 2029, 2031, 2032, 2035, 2037, 2042, 2043, 2044, and 2046, filed with the Patent Owner’s Response on May 3, 2022 (“POR”). Petitioner timely objects under 37 C.F.R. § 42.64(b)(1) within 5 business days of service of evidence to which the objection is directed, and Petitioner serves these objections to provide notice that Petitioner may move to exclude Exhibits 2018, 2022, 2025, 2027, 2029, 2031, 2032, 2035, 2037, 2042, 2043, 2044, and 2046, or portions thereof, under 37 C.F.R. § 42.64(c).

I. EXHIBIT 2018

FRE 401, 402, and 403: Petitioner objects to Exhibit 2018, “Declaration of Dr. David Martin (May 3, 2022),” for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 702: Petitioner objects to Exhibit 2018 because Dr. Martin does not have sufficient scientific, technical, or other specialized knowledge to help the trier of fact to understand the evidence or to determine a facts in issue, because his

testimony is based on insufficient facts or data, and because his testimony is the product of unreliable principles and methods.

FRE 702 and 703: Petitioner objects to Exhibit 2018 to the extent Patent Owner relies on Exhibits 2025, 2042, 2044, and 2046 for the same reasons as provided below, and because Exhibits 2025, 2042, 2044, and 2046 would not be reasonably relied on to be the basis for an expert opinion under FRE 703. Therefore, the portions of Exhibit 2018 relying on these Exhibits are inadmissible under FRE 702 and FRE 703.

II. EXHIBIT 2022

FRE 401, 402, and 403: Petitioner objects to Exhibit 2022, “*Ancora Techs., Inc. v. Apple, inc.* [sic], Case No. 4:11-cv-06357 (Dkt. # 171-3) [Apple Inc.’s N.D. Cal. L.R. 3-3 (Invalidity) Disclosures],” as irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. The exhibit appears to be invalidity contentions filed by an unrelated third party in an appellate court proceeding to which Petitioner is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (*see, e.g.*, POR, 58, 70), which are irrelevant to the present proceeding.

III. EXHIBIT 2023

FRE 401, 402, and 403: Petitioner objects to Exhibit 2023, identified as “Petition, HTC Corp. v. Ancora Techs. Inc., Case No. CBM2017-00054, Paper 1 (PTAB May 26, 2017)” as irrelevant because it contains positions presented by an unrelated third party in a Covered Business Method Review proceeding to which Nintendo is not a party. Ancora uses this exhibit to characterize positions taken by unrelated third parties (see, e.g., POR at 27), which is irrelevant to the present proceeding.

IV. EXHIBIT 2025

FRE 401, 402, and 403: Petitioner objects to Exhibit 2025, “Croucher, ‘The BIOS Companion’ (1997) (Excerpts),” as irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2025 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

V. EXHIBIT 2027

FRE 401, 402, and 403: Petitioner objects to Exhibit 2027, “Joint News Release (February 14, 2005),” as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: This exhibit includes characterizations of an alleged product offering by Ancora and characterizations of some aspects of technology related to Ancora’s product offering. To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner also objects to Exhibit 2027 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

VI. EXHIBIT 2029

FRE 401, 402, and 403: Petitioner objects to Exhibit 2029 as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2029 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

VII. EXHIBIT 2031

FRE 401, 402, and 403: Petitioner objects to Exhibit 2031 as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2031 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

VIII. EXHIBIT 2032

FRE 401, 402, and 403: Petitioner objects to Exhibit 2032 as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of

unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2032 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

IX. EXHIBIT 2035

FRE 401, 402, and 403: Petitioner objects to Exhibit 2035, “AIPLA statistics,” as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2035 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

X. EXHIBIT 2037

FRE 401, 402, and 403: Petitioner objects to Exhibit 2037 as irrelevant be-

cause it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

XI. EXHIBIT 2042

FRE 401, 402, and 403: Petitioner objects to Exhibit 2042, “Barron’s Dictionary of Computing and Internet Terms (5th Ed. 1996),” as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2042 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

XII. EXHIBIT 2043

FRE 401, 402, and 403: Petitioner objects to Exhibit 2043, “Decision Granting Institution, Case No. IPR2020-01609, Paper 7 (PTAB Feb. 16, 2021),” as irrelevant.

evant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

XIII. EXHIBIT 2044

FRE 401, 402, and 403: Petitioner objects to Exhibit 2044, “Free On-Line Dictionary of Computing (June 6, 1999), available at <http://foldoc.org/bios>,” as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. For example, Ancora has failed to show the date on which the copied excerpts were first publicly available. The only date marking on the document is “1999-06-09.” 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.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2044 as inadmissible hearsay under FRE 801 and 802 that does not fall under any excep-

tion.

FRE 901: Petitioner also objects to Exhibit 2044 because Ancora has failed to authenticate the exhibit 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.

XIV. EXHIBIT 2046

FRE 401, 402, and 403: Petitioner objects to Exhibit 2046, “Paul C. Kocher, *Timing Attacks on Implementations of DiffieHellman, RSA, DSS, and Other Systems*, Proceedings of 16th Annual Int’l Cryptology Conf. (Aug. 18–22, 1996),” as irrelevant because it includes information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioner objects to Exhibit 2046 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Jon E. Wright/

Jon E. Wright (Reg. No. 50,720)
Attorney for Petitioner

Date: May 10, 2022

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing
PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1) were served electronically via e-mail on
May 10, 2022, in its entirety on the following counsel for Patent Owner:

David A. Gosse
Nicholas T. Peters
Karen J. Wang
FITCH, EVEN, TABIN & FLANNERY LLP
ancora-ipr@fitcheven.com
dgosse@fitcheven.com
ntpete@fitcheven.com
kwang@fitcheven.com

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Jon E. Wright/

Jon E. Wright (Reg. No. 50,720)
Attorney for Petitioner

Date: May 10, 2022

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600