

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.,

Petitioner,

v.

APPLIED CAPITAL, INC.,

Patent Owner

IPR2023-00418

Patent 8,378,817

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Motorola Solutions, Inc. (“MSI”) objects to the following evidence submitted by Patent Owner Applied Capital, Inc. (“ACI”) with its Preliminary Response (Paper No. 8). In addition to the specific objections below, each of the exhibits is also objected to under Rules 401-403 as irrelevant and unfairly prejudicial to the extent the exhibits are relevant only to issues waived by Patent Owner and/or to the extent the exhibits are relevant only to testimony that is withdrawn by Patent Owner.

<u>Evidence</u>	<u>Objection(s)</u>
Ex. 2001 – Declaration of Dr. Jun Zheng	602/702/703: Patent Owner has not established that Dr. Zheng is an expert in the area of security and monitoring systems and alert/notification generation at the relevant timeframe, and Patent Owner has not met its burden to show that his testimony on this issue is helpful to the Board. <i>See, e.g.</i>, Ex. 2001, ¶¶ 4-11. Moreover, Dr. Zheng’s opinions are not based on sufficient facts or data. <i>See, e.g.</i>, Ex. 2001, ¶¶ 44-45, 48, 55-56, 64-65, 71, 74-75, 80-81, 82-85, 88-99, 101-103, 105, and 107-109. Moreover, Dr. Zheng fails to reliably apply reliable principles to the facts. <i>See, e.g.</i>, Ex. 2001, ¶¶ 44-45, 48, 55-56, 64-65, 71, 74-75, 80-81, 82-85, 88-99, 101-103, 105, and 107-109. 801/802/901: MSI objects to Ex. 2001 to the extent it cites to and incorporates evidence that has not been authenticated or incorporates hearsay. <i>See, e.g.</i>, Ex. 2001, ¶¶ 41-43.
Ex. 2003 – Patentability Order	401-403: Ex. 2003 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this Patentability Order regarding the subject matter eligibility of the Asserted Patents (U.S. Patent Nos.

<u>Evidence</u>	<u>Objection(s)</u>
	8,378,817 and 9,728,082) under 35 U.S.C. § 101, which cannot be considered in IPR proceedings. <i>See</i> 35 U.S.C. §311(b). 801/802: MSI objects to Ex. 2003 to the extent it cites to or incorporates hearsay. ACI has not laid the foundation for any hearsay exception.
Ex. 2005 – Notice of Allowability	401-403: Ex. 2005 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. The Petition relies on prior art references entirely different from the prior art references discussed in the Notice of Allowability. 801/802: MSI objects to Ex. 2005 to the extent it cites to or incorporates hearsay. ACI has not laid the foundation for any hearsay exception.
Ex. 2006 – Institution Denial	401-403: Ex. 2006 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. The Petition relies on prior art references, arguments, and grounds for invalidity that are entirely different from those discussed in Ex. 2006. 801/802: MSI objects to Ex. 2006 to the extent it cites to or incorporates hearsay. ACI has not laid the foundation for any hearsay exception.
Ex. 2007 – Rehearing Denial	401-403: Ex. 2007 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. The Petition relies on prior art references, arguments, and grounds for invalidity that are entirely different from those discussed in Ex. 2007. 801/802: MSI objects to Ex. 2007 to the extent it cites to or incorporates hearsay. ACI has not laid the foundation for any hearsay exception.

<u>Evidence</u>	<u>Objection(s)</u>
Ex. 2008 – SVG 1.1 Specification	401-403: Ex. 2008 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with a discussion of image formats (<i>see</i> POPR at p. 32) but has failed to establish any connection to the disclosure of the Asserted Patents. 801/802/901/1002/1003: MSI objects to Ex. 2008 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, ACI has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. MSI further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.
Ex. 2009 – Barker Appeal Brief	401-403: Ex. 2009 is irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. 801/802/901/1002/1003: MSI objects to Ex. 2009 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, ACI has neither authenticated this exhibit, nor laid the foundation for any hearsay exception. MSI further objects to this exhibit because Patent Owner has not shown that it is an original document or authentic duplicate.

Dated: August 22, 2023

/ Eliot D. Williams /

Eliot D. Williams Reg. No. 50,822
eliot.williams@bakerbotts.com
Katharine M. Burke (PHV forthcoming)
BAKER BOTTS L.L.P.
700 K Street Northwest Suite 900,
Washington, DC 20001-5692
202.639.7700

Robert Maier, Reg. No. 54,291
Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112
Phone: (212) 408-2538
Fax: (212) 259-2538
Robert.maier@bakerbotts.com

Michael Knierim, Reg. No. 78,268
Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112
Phone: (212) 408-2584
Fax: (212) 259-2584

*Counsel for Petitioner
Motorola Solutions, Inc.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 22nd day of August, 2023, **Petitioner's Objections to Patent Owner's Evidence Submitted With Patent Owner's Preliminary Response** was served by email on the following counsel for Patent Owner:

Luis M. Ortiz, Lead Counsel
USPTO Reg. No. 36,230
Ortiz & Lopez, PLLC
6605 Uptown Blvd NE, Suite 240
Albuquerque, NM 87110
Telephone: (505) 314-1310
Facsimile: (505) 314-1311
Email: lortiz@olpatentlaw.com

Kermit D. Lopez, Back-Up Counsel
USPTO Reg. No. 41,953
Ortiz & Lopez, PLLC
6605 Uptown Blvd NE, Suite 240
Albuquerque, NM 87110
Telephone: (505) 314-1310
Facsimile: (505) 314-1312
Email: klopez@olpatentlaw.com

Dated: August 22, 2023

/ Eliot D. Williams /
Eliot D. Williams, Reg. #50,822
BAKER BOTTS L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94304
T: (650) 739-7511
F: (650) 739-7611

*Counsel for Petitioner Motorola
Solutions, Inc.*