

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIEMENS MOBILITY, INC., GROUND TRANSPORTATION SYSTEMS USA,
INC., HUMATICS CORP., and PIPER NETWORKS, INC.

Petitioners,

v.

METROM RAIL, LLC
Patent Owner.

Case No. IPR2023-00470
Patent No. 8,812,227

**PETITIONERS' OBJECTIONS UNDER 37 C.F.R. § 42.64
TO EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE**

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners object to the following exhibits filed with the Patent Owner's Response as follows:¹

Exhibit	Objections
2007	Petitioners maintain the objections that were made on the record. <i>See</i> 37 C.F.R. § 42.64(a).
2008	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein. Fed. R. Evid. 402/602/702/703. Mr. Marchi, the witness offering declaration testimony (a) lacks the knowledge, skill, experience, training, or education to testify as an expert in a manner that is helpful to the Board; (b) provides opinions that are not based on sufficient facts or data, or ones that he has been made aware of or personally observed; (c) has not applied reliable principles and methods; and (d) has not reliably applied such principles and methods to the facts of the case. (<i>See, e.g.</i>, ¶¶ 15 (opining regarding railroad industry resistance to change), 25-26 (opining on Metrom sales with no underlying facts or data), 27-29 (speculating on Piper actions with no foundation or underlying facts or data).) 37 C.F.R. § 42.65(a): Mr. Marchi fails to identify with particularity the underlying facts or data on which his opinions are based. (<i>See, e.g.</i>, ¶¶ 25-26 (opining on Metrom sales with no underlying facts or data), 27-29 (speculating on Piper actions with no foundation or underlying facts or data).) Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time.

¹ Petitioners' objections apply equally to Patent Owner's reliance on these exhibits including in any documents filed in this proceeding.

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	Patent Owner has not provided a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2009	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein. Fed. R. Evid. 402/602/702/703. Mr. Gunther, the witness offering declaration testimony (a) provides opinions that are not based on sufficient facts or data, or ones that he has been made aware of or personally observed; (b) has not applied reliable principles and methods; and (c) has not reliably applied such principles and methods to the facts of the case. (<i>See, e.g.</i>, ¶¶ 22-34 (opining on AURA CAS system with no underlying facts or data), 35-41 (opining on industry skepticism with no underlying facts or data), 42-47 (speculating on Piper's access to AURA CAS with no foundation or underlying facts or data).) 37 C.F.R. § 42.65(a): Mr. Gunther fails to identify with particularity the underlying facts or data on which his opinions are based. (<i>See, e.g.</i>, ¶¶ 22-34 (opining on AURA CAS system with no underlying facts or data), 35-41 (opining on industry skepticism with no underlying facts or data), 42-47 (speculating on Piper's access to AURA CAS with no foundation or underlying facts or data).) Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. (<i>See, e.g.</i>, ¶¶ 35-41.) Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2011	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein.

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	Fed. R. Evid. 402/602/702/703. Dr. Cooklev, the witness offering declaration testimony (a) provides opinions that are not based on sufficient facts or data, or ones that he has been made aware of or personally observed; (b) has not applied reliable principles and methods; and (c) has not reliably applied such principles and methods to the facts of the case. (<i>See, e.g.</i>, ¶¶ 31-41 (opining on the level of ordinary skill in the art and nexus without reviewing any prior art or the file history of the '227 Patent, expressly refusing to define the level of ordinary skill in the art, and speculating on Piper actions with no foundation or underlying facts or data).) 37 C.F.R. § 42.65(a): Dr. Cooklev fails to identify with particularity the underlying facts or data on which his opinions are based. (<i>See, e.g.</i>, ¶ 38 (speculating on Piper actions with no foundation or underlying facts or data).) Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. (<i>See, e.g.</i>, ¶¶ 19 (“I have also relied on my conversations with Mr. Karl Gunther and Mr. James Marchi.”), 41 (“Based on my discussions with Mr. James Marchi . . . From my conversations with Mr. Kurt Gunther.”).) Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2012	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein. Fed. R. Evid. 402/602/702/703. Mr. Conti, the witness offering declaration testimony (a) provides opinions that are not based on sufficient facts or data, or ones that he has been made aware of or personally observed; (b) has not applied reliable principles and methods; and (c) has not reliably applied such principles and methods to the facts of the case. (<i>See, e.g.</i>, ¶¶ 37-126 (opining on the level of ordinary skill in the art and the instituted grounds

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	without reviewing any prior art of the '227 Patent), 41-50 (opining on UWB with no underlying facts or data or based on information from after the priority date of the '227 Patent), 69-72 (opining on GPS with no underlying facts or data), 100, 102 (opining on radio technology, range, and power loss with no underlying facts or data).) 37 C.F.R. § 42.65(a): Mr. Conti fails to identify with particularity the underlying facts or data on which his opinions are based. (<i>See, e.g.</i>, ¶¶ 41-50 (opining on UWB with no underlying facts or data or based on information from after the priority date of the '227 Patent), 69-72 (opining on GPS with no underlying facts or data), 100, 102 (opining on radio technology, range, and power loss with no underlying facts or data).) Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. (<i>See, e.g.</i>, ¶¶ 41-50.) Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2013	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified this document, and has not established the publication date. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2014	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 403. The probative value of this exhibit is

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2015	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2016	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2017	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2018	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a nexus for any information disclosed in this document to any claim of the '227 Patent.
2019	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay,

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified this document, and has not established the publication date. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2020	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified this document, and has not established the publication date. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2021	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein (<i>see, e.g.</i>, Exs. 2019-2020). Fed. R. Evid. 402. This exhibit includes statements, or relies on evidence, not relevant to any ground upon which the trial was instituted. Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified information that this exhibit relies on or incorporates, and has not established the publication date of the

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	information. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2022	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein. Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified information that this exhibit relies on or incorporates, and has not established the publication date of the information. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2023	Petitioners object to this exhibit to the extent it relies on or incorporates inadmissible exhibits to which the Petitioners object herein. Fed. R. Evid. 802. This exhibit relies on or incorporates inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified information that this exhibit relies on or incorporates, and has not established the publication date of the information.

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

	Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227 Patent.
2024	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified this document, and has not established the publication date. Fed. R. Evid. 402. This exhibit is not relevant to any ground upon which this trial was instituted. For example, the published date listed on the document is significantly after the alleged May 19, 2011 priority date of the '227 Patent. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. For example, the published date listed on the document is significantly after the alleged May 19, 2011 priority date of the '227 Patent.
2025	Fed. R. Evid. 802. This exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> Fed. R. Evid. 801-807. Fed. R. Evid. 901. Patent Owner has not properly authenticated or identified this document, and has not established the publication date. Fed. R. Evid. 402. This exhibit is not relevant to any ground upon which this trial was instituted. For example, this exhibit does not include any dates on it. Fed. R. Evid. 403. The probative value of this exhibit is substantially outweighed by confusion, delay, and wasted time. Patent Owner has not provided a publication date or a nexus for any information disclosed in this exhibit to any claim of the '227

Petitioners' Objections to Patent Owner's Response Evidence
U.S. Patent No. 8,812,227

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Respectfully submitted,

Dated: September 22, 2023

By: /Joshua H. James/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 22, 2023, a true and correct copy of the foregoing Petitioners' Objections Under 37 C.F.R. § 42.64 to Evidence Submitted with Patent Owner's Response was served by electronic mail on the following email address:

MetromIPR@mcandrews-ip.com

Respectfully submitted,

Dated: September 22, 2023

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