

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NESPRESSO USA, INC.
Petitioner

v.

K-FEE SYSTEM GMBH
Patent Owner

Case: IPR 2023-00485

U.S. Patent No. 11,230,430

**PETITIONER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64(B)(1)**

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

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“F.R.E.”), the undersigned counsel, on behalf of Petitioner, hereby serves and submits the following objections to evidence submitted by Patent Owner accompanying Patent Owner’s Preliminary Response and Sur-Reply. These objections are timely because they are filed within ten days of institution of trial.

II. OBJECTIONS

A. Exhibit 2001 (Declaration of Laurens Howle)

Petitioner objects to Exhibit 2001, and any reference to or reliance on this exhibit, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

37 C.F.R. § 42.65 (Expert Testimony): This exhibit includes expert testimony that does not disclose the underlying facts or data on which the opinion is based.

F.R.E. 403 (Excluding relevant evidence for prejudice, confusion, waste of time, needlessly presenting cumulative evidence or for other reasons): This exhibit includes information whose probative value to any ground upon which this proceeding was instituted is substantially outweighed by the danger of unfair

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

F.R.E. 702/703 (Expert witness opinion testimony): This exhibit includes statements and testimony on topics that are based on insufficient facts or data, and are not the product of reliable principles and method. Moreover, the witness is not qualified as an expert on the subject matter at issue by knowledge, skill, experience, training, or education.

B. Exhibits 2002, 2003, 2008 2009, 2010, 2011, 2013, 2014, 2015 (File History Excerpts from Related Applications)

Petitioner objects to Exhibits 2002, 2003, 2008, 2009, 2010, 2011, 2013, 2014, and 2015, and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are not relevant to any ground upon which this trial was instituted. These exhibits are excerpts from the lengthy prosecution histories of related patents that contain claims that differ from the challenged claims of the patent-at-issue. Moreover, these exhibits reference issues and prior art that have no bearing on the grounds for institution of this trial. Therefore, they are irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): These exhibits include information whose probative value to any ground upon which this proceeding was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits are short and incomplete excerpts from lengthy prosecution histories of patents that, though related to the patent-at-issue in this trial, have claims that differ from the challenged claims. As such, they are unfairly prejudicial and likely to cause confusion and a waste of time.

F.R.E. 801/802/805 (Hearsay): These exhibits, which were not merely offered to show what was presented or discussed during prosecution, but rather were offered for their truth, are inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

C. Exhibit 2004 and 2005 (Documents filed in a district court infringement action involving related patents)

Petitioner objects to Exhibits 2004 and 2005 and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are not relevant to any ground upon which this trial was instituted. These exhibits are documents filed in connection with a district court patent infringement action pertaining to patents that, though related to the patent-at-issue in this trial, have claims and prosecution histories that differ from it. These exhibits have no bearing on the basis for institution of this trial and, therefore, are irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): These exhibits include information whose probative value to any ground upon which this trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits are documents filed in connection with a district court patent infringement action pertaining to patents that are not at issue in this trial. Thus, these exhibits are unfairly prejudicial and likely to cause confusion and a waste of time.

F.R.E. 801/802/805 (Hearsay): These exhibits are inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

D. Exhibits 2006 and 2007 (Related Patents)

Petitioner objects to Exhibits 2006 and 2007, and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are not relevant to any ground upon which this trial was instituted. These exhibits are patents that, though related to the patent-at-issue, contain claims and prosecution histories that differ from the claims challenged in this trial. These exhibits have no bearing on the basis for institution of this trial and, therefore, are irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): These exhibits include information 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. These exhibits are patents that, though related to the patent-at-issue, contain claims and prosecution histories that differ from the claims challenged in this trial and are unfairly prejudicial and likely to cause confusion and a waste of time.

E. Exhibit 2012 (File history of U.S. Patent No. 11,254,491)

Petitioner objects to Exhibit 2012, and any reference to or reliance on this exhibit, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon which this trial was instituted. This exhibit corresponds to the lengthy file history of a patent application that, though related to the patent-at-issue in this trial, contain claims that differ from the challenged claims. Therefore, this exhibit has no bearing on the basis for institution of this trial and, therefore, is irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): This exhibit includes information 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 consists of the lengthy file history of a patent that is not at issue in this trial. Thus, this exhibit is unfairly prejudicial, confusing to the issues in this proceeding and a waste of time.

F.R.E. 801/802/805 (Hearsay): This exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

F. Exhibit 2016 (Suggestion for Declaration of Interference, Appl. No. 13/697,297)

Petitioner objects to Exhibit 2016, and any reference to or reliance on this exhibit, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon which this trial was instituted. This exhibit concerns a pre-AIA suggestion for declaration of interference, which was not brought by the Petitioner, was never adjudicated by the Patent Office, and which involved claims of differing scope than those challenged in the present trial. Thus, this exhibit is not relevant to whether the challenged claims are unpatentable under the instituted grounds.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): This exhibit includes information 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 is likely to cause unfair prejudice and confusion of the issues given that it relates to a different type of proceeding, different challenged claims, and different prior art.

F.R.E. 801/802/805 (Hearsay): This exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

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F.R.E. 901 (Authentication and Identification): This exhibit is not of the kind that is self-authenticated, and has not been properly authenticated or identified as to support a finding that the item is what the proponent claims it to be.

III. CONCLUSION

For at least the foregoing reasons, Petitioner objects to Exhibits 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

Dated: September 27, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2023, a copy of the attached **PETITIONER’S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(B)(1)** was served by electronic mail to the attorneys of record, at the following addresses:

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