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 No. IPR2023-00502
U.S. Patent No. 10,994,923

PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S PETITION FOR INTER PARTES REVIEW

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner K-fee System GMBH ("K-fee") respectfully asserts the following objections to the evidence proffered with Petitioner's Petition for *Inter Partes* Review ("Petition") filed by Petitioner Nespresso USA, Inc. ("Nespresso") regarding the claims of U.S. Patent No. 10,994,923 (the "'923 Patent"). The Federal Rules of Evidence ("FRE") apply to these proceedings according to the provisions of 37 C.F.R. § 42.62(a), and these rules, along with relevant case law and PTAB Rules, form the basis of objections contained herein. Patent Owner's objections apply equally to Petitioner's reliance on or citation to any objected evidence in its papers, including expert declarations. These objections are being served and filed within 10 business days from the institution of trial on September 13, 2023.

Evidence	Description
Ex. 1002	Exhibit 1002 purports to be the Prosecution History of U.S. Patent No. 10,994,923. Patent Owner objects to this exhibit as an incomplete portion of a writing under FRE 106. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1003	Exhibit 1003 is the Declaration of Michael Jobin. Patent Owner objects to this exhibit under FRE 702 because the witness is not qualified as an expert on the subject matter at issue by knowledge, skill, experience, training, or education. Patent Owner also objects to this exhibit as not based on sufficient facts or data

Evidence	Description
	under FRE 702(b); as not being the product of reliable principles and methods under FRE 702(c); and as not reliably applying the principles and methods to the facts of this case under FRE 702(d). Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1004	Exhibit 1004 is U.S. Patent Pub. US2010/0239734A1. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed.
Ex. 1005	Exhibit 1005 is U.S. Patent Pub. US2013/0064937A1. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed.
Ex. 1006	Exhibit 1006 is U.S. Patent Pub. US2013/0064929A1. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed.
Ex. 1007	Exhibit 1007 is PCT Pub. WO2010/026053A1. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed.
Ex. 1008	Exhibit 1008 is U.S. Patent Pub. US2012/0269933A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.

Evidence	Description
Ex. 1009	Exhibit 1009 is U.S. Patent Pub. 2008/0105131. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed.
Ex. 1010	Exhibit 1010 is PCT Pub. WO2005/079638A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1011	Exhibit 1011 is U.S. Patent Pub. 2006/0233921. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1012	Exhibit 1012 is titled "National Coffee Association." Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit under FRE 402 and 403 because it is not referenced or explained in the Petition.
Ex. 1013	Exhibit 1013 is U.S. Patent Pub. 2002/0078831 Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403. Patent Owner further objects to this exhibit under FRE 402 and 403 because it is not referenced or explained in the Petition.
Ex. 1014	Exhibit 1014 is U.S. Patent No. 726,793 Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403. Patent Owner further objects to this exhibit under FRE 402 and 403 because it is not referenced or explained in the Petition.

Evidence	Description
Ex. 1015	Exhibit 1015 is U.S. Patent Pub. 2009/0007793. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1016	Exhibit 1016 is U.S. Patent No. 3,387,553 Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403. Patent Owner further objects to this exhibit under FRE 402 and 403 because it is not referenced or explained in the Petition.
Ex. 1017	Exhibit 1017 is U.S. Patent No. 3,631,793 Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403. Patent Owner further objects to this exhibit under FRE 402 and 403 because it is not referenced or explained in the Petition.
Ex. 1018	Exhibit 1018 is U.S. Patent No. 4,136,202. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1019	Exhibit 1019 is U.S. Patent No. 6,142,063. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1020	Exhibit 1020 is U.S. Patent No. 4,389,925. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1021	Exhibit 1021 is U.S. Patent No. 6,655,260.

Evidence	Description
	Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1022	Exhibit 1022 is U.S. Patent Pub. 2006/0230941. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1023	Exhibit 1023 is U.S. Patent Pub. 2009/0249961. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1024	Exhibit 1024 is U.S. Patent Pub. 2004/0089158. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1025	Exhibit 1025 is PCT Pub. WO 2010/034663. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1026	Exhibit 1026 purports to be ASM Handbook, Volume 14B: Metalworking: Sheet Forming, S.L. Semiatin, editor. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1027	Exhibit 1027 is titled "Coated Aluminum for Coffee Capsules"

Evidence	Description
	Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1028	Exhibit 1028 is EU Patent App. EP2145759A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1029	Exhibit 1029 purports to be Penix J.A. (1991) Thermoforming of Plastic Film and Sheet. In: Berins M.L.(eds) SPI Plastics Engineering Handbook of the Society of the Plastics Industry, Inc. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1030	Exhibit 1030 is U.S. Patent No. 3,437,253. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1031	Exhibit 1031 is U.S. Patent No. 5,261,558. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1032	Exhibit 1032 is U.S. Patent No. 5,243,164.

Evidence	Description
	Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1033	Exhibit 1033 is U.S. Patent No. 6,645,537. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1034	Exhibit 1034 is EU Patent App. EP1849718A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1035	Exhibit 1035 is PCT Pub. WO2010/041179A2. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1036	Exhibit 1036 is EU Patent App. EP0455337B1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1037	Exhibit 1037 is U.S. Patent Pub. 2002/0048621A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1038	Exhibit 1038 is U.S. Patent Pub. 2007/0203587A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1039	Exhibit 1039 is U.S. Patent Pub. 2005/0150391A1.

Evidence	Description
	Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1040	Exhibit 1040 is PCT Pub. WO2005/044067A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1042	Exhibit 1042 is US Patent Pub. 2009/0205747. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1043	Exhibit 1043 is U.S. Patent Pub. 2010/0078480A1. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1044	Exhibit 1044 is U.S. Patent Pub. 2013/0099597. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1048	Exhibit 1048 is *K-Fee System GmbH v. Nespresso USA, Inc. et al.,* Case No. 2:22-cv-00525. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1049	Exhibit 1049 is *K-Fee System GmbH v. Nespresso USA, Inc. et al.,* Case No. 2:22-cv-00525 – Supplemental Disclosure of Infringement Contentions (July 11, 2022). Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.

Evidence	Description
Ex. 1050	Exhibit 1050 is Excerpt from Prosecution History of U.S. Appl. No. 13/744,623. Patent Owner objects to this exhibit as an incomplete portion of a writing under FRE 106. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403, at least because it is an excerpt from the prosecution history of a patent that is not at issue in this trial.
Ex. 1051	Exhibit 1051 purports to be https://nestle-nespresso.com/our_products/product. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1052	Exhibit 1052 is *K-Fee System GmbH v. Nespresso USA, Inc. et al.,* Case No. 2:21 -cv-3402; Dkt. 111. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1053	Exhibit 1053 is an Excerpt from Prosecution History of U.S. Appl. No. 16/438,818. Patent Owner objects to this exhibit as an incomplete portion of a writing under FRE 106. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403, at least because it is an excerpt from the prosecution history of a patent that is not at issue in this trial.

Evidence	Description
	Patent Owner further objects to this exhibit under FRE 802 as constituting inadmissible hearsay for which no exception has been established to the extent the exhibit is offered by Patent Owner to prove the truth of any matter asserted therein.
Ex. 1054	Exhibit 1054 is *K-Fee System GmbH v. Nespresso USA, Inc. et al.,* Case No. 2:21-cv-3402; Dkt. 211. Patent Owner objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1055	Exhibit 1055 purports to be Food Packaging and Shelf Life: A Practical Guide (2009), Chapter 11 – "Packaging and the Shelf Life of Coffee." Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Ex. 1056	Exhibit 1056 purports to be Illy, Andrea, and Rinantonio Viani, eds., *Espresso coffee: the science of quality.* Academic Press, 2005. Patent Owner objects to this exhibit as not authenticated, *e.g.*, under FRE 901. For instance, Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is, including that it existed as of the date claimed. Patent Owner further objects to this exhibit as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403.
Exs. 1057 – 1061	Exhibits 1057 – 1061 are Excerpts from Prosecution History of U.S. Appl. No. 16/538,752.

Evidence	Description
	Patent Owner objects to these exhibits as an incomplete portion of a writing under FRE 106. Patent Owner objects to these exhibits as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403, at least because it is an excerpt from the prosecution history of a patent that is not at issue in this trial.
Exs. 1061 – 1064	Exhibits 1061 – 1064 are Excerpts from Prosecution History of U.S. Appl. No. 16/860,441. Patent Owner objects to these exhibits as an incomplete portion of a writing under FRE 106. Patent Owner objects to these exhibits as irrelevant under FRE 402, and prejudicial, misleading, confusing, and/or a waste of time under FRE 403, at least because it is an excerpt from the prosecution history of a patent that is not at issue in this trial.

Date: September 27, 2023

Respectfully submitted,

By: */Michael P. Chu/*

Michael P. Chu, Lead Counsel
Reg. No. 37,112
Attorneys/Agents for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above-captioned **PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S PETITION FOR INTER PARTES REVIEW** was served in its entirety on September 27, 2023 on Counsel for Petitioner via filing through the PTAB E2E System, as well as by delivering a copy via electronic mail to the following:

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Respectfully submitted,

/Michael P. Chu/
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