UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO (UNITED STATES) INC. and
MOTOROLA MOBILITY LLC,
Petitioners

v.

THETA IP, LLC
Patent Owner

IPR2023-00697
Patent No. 10,129,825 B2

PETITIONERS' OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE

I. INTRODUCTION

In accordance with 37 C.F.R. § 42.64(b)(1), Lenovo (United States) Inc. and Motorola Mobility LLC (collectively, "Petitioners") hereby submit the following objections to Theta IP, LLC's ("Patent Owner") Exhibits as indicated below, and any reference thereto/reliance thereon, without limitation. Petitioners' objections below apply the Federal Rules of Evidence ("F.R.E.") as required by 37 C.F.R. § 42.62 in connection with the above-captioned *inter partes* review (IPR) proceeding of U.S. Patent No. 10,129,825 B2 ("the '825 patent"). Petitioners' objections apply equally to Patent Owner's reliance on these exhibits in any subsequently-filed documents. These objections are timely, having been filed and served within 10 business days of the filing of the Board's Decision Granting Institution of *Inter Partes* Review dated October 23, 2023 (Paper 10).

The following objections apply to the Exhibits indicated below as they are actually presented by Patent Owner in the context of Patent Owner's Preliminary Response Under 37 C.F.R. § 42.107 ("POPR") and not in the context of any other substantive argument on the merits of the instituted grounds in this proceeding. Petitioner expressly asserts, reserves, and otherwise does not waive any other objections that would be applicable here.

II. OBJECTIONS TO EXHIBITS 2002-2004 AS INADMISSIBLE HEARSAY

Patent Trial and Appeal Board (the "Board") proceedings are governed by the Federal Rules of Evidence. *See* 37 C.F.R. § 42.62(a). Rules 801-807 of the Federal Rules of Evidence govern the admissibility of hearsay, which Rule 801 defines as, "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." F.R.E. 801(c). Absent the applicability of an exception to the rule against hearsay, hearsay is not admissible. F.R.E. 802; *CaptionCall, L.L.C. v. Ultratec, Inc*., IPR2015-01889, Pap. 119 at 15-18 (PTAB Apr. 11, 2017) (granting motion to exclude hearsay evidence).

Petitioners object to Exhibits 2002-2004 under the Federal Rules of Evidence because these Exhibits include inadmissible hearsay. Each of Exhibits 2002-2004 includes evidence that is inadmissible hearsay, because they contain (1) statements by non-declarants in the current proceeding, (F.R.E. 801(c)(1)), (2) which are offered to prove the truth of the matter asserted therein, (F.R.E. 801(c)(2)). Petitioners also object to Exhibits 2002-2004 on the basis of inadmissible hearsay to the extent that they are relied on by Patent Owner's declarants.

III. OBJECTIONS TO EXHIBITS 2002-2004 FOR LACK OF AUTHENTICATION

Petitioners further object to Exhibits 2002-2004 under Rule 901 of the Federal Rules of Evidence because these Exhibits lack authentication.

IV. OBJECTIONS TO EXHIBIT 2005 AS NOT RELIED ON IN THE PATENT OWNER'S PRELIMINARY RESPONSE

Petitioners object to Exhibit 2005 (*e.g.*, ¶¶ 1-47, 49-53, 59, and 73-80) under Rules 401-403 of the Federal Rules of Evidence to the extent Patent Owner does not rely on the identified portions of Exhibit 2005 in the POPR.

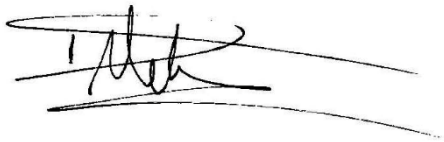
V. OBJECTIONS TO EXHIBITS 2002-2005 AND 2010 AS NOT RELEVANT

Petitioner objects to Exhibits 2002-2005 and 2010 under Rules 401-403 of the Federal Rules of Evidence to the extent these Exhibits contain evidence not relevant to issues in this proceeding, at least because the evidence lacks a nexus to the grounds of invalidity upon which the Board has instituted *inter partes* review.

VI. OTHER OBJECTIONS TO EXHIBIT 2005

Petitioner further objects to Exhibit 2005 to the extent the opinions set forth therein rely upon documents and/or other materials not produced to Petitioners.

Respectfully submitted,



Dated: November 6, 2023

Dinesh N. Melwani (Reg. No. 60,670)
Sangwoo Ahn (Reg. No. 76,905)
Bookoff McAndrews, PLLC
2000 Pennsylvania Ave. NW, Suite 4001
Washington, D.C. 20006
202-808-3497

Attorneys for Petitioners
Lenovo (United States) Inc. and
Motorola Mobility LLC

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned hereby certifies that this "PETITIONERS' OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE" was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via e-mail to the following attorneys of record for the Patent Owner listed below:

Lead Counsel	Aaron R. Hand Reg. No. 80,694 Bunsow De Mory LLP 701 El Camino Real Redwood City, CA 94063 Telephone: 650-351-7248 Facsimile: 415-426-4744 ahand@bdiplaw.com
Back-up Counsel	Corey Johanningmeier Bunsow De Mory LLP 701 El Camino Real Redwood City, CA 94063 Telephone: 650-351-7248 Facsimile: 415-426-4744 cjohanningmeier@bdiplaw.com
Service Email	BDIP_ThetaIP-Lenovo@bdiplaw.com

Dated: November 6, 2023

Respectfully submitted,

By: _____

Dinesh N. Melwani (Reg. No. 60,670)
Counsel for Petitioners