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

Case IPR2023-00697
U.S. Patent No. 10,129,825

PATENT OWNER'S OBJECTIONS TO PETITIONER'S REPLY EVIDENCE

Pursuant to the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1), Patent Owner Theta IP, LLC ("Theta") objects to the admissibility of the following evidence submitted by Petitioners on April 30, 2024 with its Petitioner's Reply. These objections are timely as made within five business days of service of the evidence. Theta objects to the evidence as follows:

Each of the exhibits is improper under the rules of evidence, and submitted in contravention to the rules of practice and procedure here. Theta hereby provides notice to Petitioner that Theta will move to strike (if authorized) and/or to exclude these exhibits as improper evidence.

I. Exhibit 1016: David A. Johns & Ken Martin, Analog Integrated Circuit Design (1997)

Theta objects to this exhibit and any reference to or reliance thereon.

Theta objects to this exhibit as untimely because Petitioner should have and could have introduced it in the Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b).

Theta objects to this exhibit because Petitioner has failed to state its relevance or to identify specific portions of the evidence that support any challenge. *See* 37 C.F.R. § 42.104(b).

Theta objects to this document under FRE 401, 402 and 403 because Petitioner has not demonstrated that this exhibit tends to make any fact of

consequence more or less probable. The exhibit is objected to as cumulative, irrelevant, confusing, beyond the proper scope of the Petition or Opposition, and of minimal probative value under FRE 401, 402 and 403—including because the exhibit is offered without explanatory testimony to establish any relevant purpose.

In addition, the exhibit is objected to as cumulative, irrelevant, confusing, beyond the proper scope of the Petition, and of minimal probative value under FRE 401, 402 and 403—including because the exhibit appears to be nowhere relied upon, discussed, or cited in any brief.

To the extent Petitioner relies on the contents of this exhibit for the truth of the matter asserted, Theta also objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Theta objects to this exhibit and any argument submitted on or about this exhibit, including because such argument would not meet the personal knowledge foundation requirements of FRE 602, and would be improper expert testimony under FRE 702 and 703.

In addition, the exhibit is objected to as prejudicial far in excess of any probative value under FRE 403—including because it is offered with no opportunity for Theta to cross-examine the evidence. The exhibit is presented for the first time after expert testimony has been given and cross-examination has occurred, and is

introduced via testimony that Theta has not yet been given an opportunity to cross-examine. As such, Theta has been denied a meaningful opportunity to respond pursuant to the requirements of Due Process and the Administrative Procedure Act.

In addition, the exhibit is objected to because Petitioners have not sought authorization to, have failed to, and cannot, meet the requirements of 37 C.F.R. § 42.123 for the admission of supplemental information more than one month after the date of institution. The exhibit is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

II. Exhibit 1017: Lawrence E. Larson, RF and Microwave Circuit Design for Wireless Communications (1997)

Theta objects to this exhibit and any reference to or reliance thereon.

Theta objects to this exhibit as untimely because Petitioner should have and could have introduced it in the Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b).

Theta objects to this exhibit because Petitioner has failed to state its relevance or to identify specific portions of the evidence that support any challenge. *See* 37 C.F.R. § 42.104(b).

Theta objects to this document under FRE 401, 402 and 403 because Petitioner has not demonstrated that this exhibit tends to make any fact of consequence more or less probable. The exhibit is objected to as cumulative,

irrelevant, confusing, beyond the proper scope of the Petition or Opposition, and of minimal probative value under FRE 401, 402 and 403—including because the exhibit is offered without explanatory testimony to establish any relevant purpose.

To the extent Petitioner relies on the contents of this exhibit for the truth of the matter asserted, Theta also objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Theta objects to this exhibit and any argument submitted on or about this exhibit, including because such argument would not meet the personal knowledge foundation requirements of FRE 602, and would be improper expert testimony under FRE 702 and 703. No witness has been provided to testify about, or with personal knowledge of, the exhibit. Petitioner's counsel is unqualified as an expert to provide technical opinions of, or about the knowledge of, a person skilled in the art. As such, and in the absence of any expert testimony from a qualified expert about the exhibit, any argument from counsel about the exhibit constitutes opinions that are inadmissible under FRE 602 and FRE 702—including because they lack foundation, and are conclusory, do not disclose underlying facts or data in support, and are unreliable.

In addition, the exhibit is objected to as prejudicial far in excess of any probative value under FRE 403—including because it is offered with no opportunity

for Theta to cross-examine the evidence. Moreover, the exhibit is presented for the first time after expert testimony has been given, and without testimony in support from any expert or other witness—who can be cross-examined about the exhibit or its alleged import. As such, Theta has been denied a meaningful opportunity to respond pursuant to the requirements of Due Process and the Administrative Procedure Act.

In addition, the exhibit is objected to because Petitioners have not sought authorization to, have failed to, and cannot, meet the requirements of 37 C.F.R. § 42.123 for the admission of supplemental information more than one month after the date of institution. The exhibit is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

III. Exhibit 1018: Transcript of Cross-Examination of Lawrence E. Larson, Ph.D. taken on April 18, 2024

Theta objects to this exhibit and any reference to or reliance thereon.

Theta objects to this exhibit as untimely because Petitioner should have and could have introduced it in the Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b).

Theta objects to this exhibit because Petitioner's questioning of Professor Larson repeatedly and improperly strayed beyond "the scope of the direct testimony" and as such was not proper cross-examination. *See* 37 CFR § 42.53 (d)(5)(ii).

Theta objects to this document under FRE 401, 402 and 403 because Petitioner has not demonstrated that this exhibit tends to make any fact of consequence more or less probable. The exhibit is objected to as cumulative, irrelevant, confusing, beyond the proper scope of the Petition or Opposition, and of minimal probative value under FRE 401, 402 and 403—including because large portions of the exhibit contain improper examination outside the scope of Professor Larson's declaration.

IV. Exhibit 1019: Declaration of R. Jacob Baker, P.E., Ph.D. in Support of Petitioners' Replies to Patent Owner's Responses

Theta objects to this exhibit and any reference to or reliance thereon.

Theta objects to this exhibit as untimely because Petitioner should have and could have introduced it in the Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b).

Theta objects to this document under FRE 401, 402 and 403 because Petitioner has not demonstrated that this exhibit tends to make any fact of consequence more or less probable. The exhibit is objected to as cumulative, irrelevant, confusing, beyond the proper scope of the Petition or Opposition, and of minimal probative value under FRE 401, 402 and 403—including because the exhibit contains new argument and testimony that should have been included with the Petition and is not offered in response or rebuttal to any opposition argument.

To the extent Petitioner relies on the contents of this exhibit for the truth of the matter asserted, Theta also objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

In addition, the exhibit is objected to as prejudicial far in excess of any probative value under FRE 403—including because it is offered with no opportunity for Theta to cross-examine the evidence. The exhibit is presented for the first time after expert testimony has been given and cross-examination has occurred, and contains testimony that Theta has not yet been given an opportunity to cross-examine. As such, Theta has been denied a meaningful opportunity to respond pursuant to the requirements of Due Process and the Administrative Procedure Act.

In addition, the exhibit is objected to because Petitioners have not sought authorization to, have failed to, and cannot, meet the requirements of 37 C.F.R. § 42.123 for the admission of supplemental information more than one month after the date of institution. The exhibit contains supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Dated: May 7, 2024

/s/ Aaron R. Hand

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CERTIFICATE OF SERVICE

Petitioners have consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on May 7, 2024, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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