UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner, v.

DDC TECHNOLOGY, LLC,

Patent Owner.

IPR2023-00709

U.S. Patent 10,528,199

PATENT OWNER'S OBJECTIONS TO EVIDENCE IN CONNECTION WITH PETITIONER'S REPLY

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner DDC Technology, LLC hereby submits its notice of objections to certain evidence that Petitioner Google LLC submitted with its Reply dated April 24, 2024, in connection with the above-captioned proceedings.

Patent Owner objects to the following items:

1. Patent Owner objects to Exhibit 1023 under FRE 401, FRE 106 and for lack of completeness because Petitioner did not file all exhibits to the deposition transcript, including at least one exhibit relevant to issues raised by Petitioner in its Reply, and because Petitioner did not file the errata sheets submitted by Mr. Buckley in connection with the deposition transcript. Accordingly, to the extent Petitioner relies on Exhibit 1023, it is prejudicial, unreliable due to its lack of completeness, and irrelevant.

2. Patent Owner objects to Exhibit 1024 under FRE 901 because Petitioner failed to properly authenticate the exhibit in accordance with FRE 901(a) and has failed to produce evidence sufficient to support a finding that it is what Petitioner claims it is. Patent Owner also objects to Exhibit 1024 under FRE 802 because this exhibit contains out-of-court statements offered for the truth of the matter asserted and is inadmissible hearsay. Patent Owner also objects to Exhibit 1024 under FRE 106 and for lack of completeness because it does not include all relevant information contained in Petitioner's internal system about the sales purportedly referenced in this document, nor did Petitioner provide the native

version of this document that it represents in Exhibit 1025 to have been produced in the district court litigation between Petitioner and Patent Owner. Therefore, to the extent Petitioner relies on Exhibit 1024 or any part thereof to support any argument, the exhibit is not relevant (*see* FRE 401) because it is unreliable due to lack of authentication and completeness.

3. Patent Owner objects to Exhibit 1025 pursuant to FRE 602 because, in Paragraph 4 of Exhibit 1025, Petitioner's trial counsel purports to offer testimony regarding Exhibit 1024 without providing evidence sufficient to support a finding that he has personal knowledge of the matter. For example, Petitioner's trial counsel provides no explanation as to how he has personal knowledge regarding sales of Google Cardboard viewers by both Google and third-party members of the Works With Google Cardboard program. Nor does Petitioner's trial counsel provide any explanation for how he has personal knowledge of Google's internal system from which Exhibit 1024 was purportedly downloaded. Nor does Petitioner's trial counsel provide any explanation for how he has personal knowledge that Exhibit 1024 contains accurate (or complete) sales information for WWGC members or that it was maintained by the team managing the Cardboard and WWGC program in the ordinary course of Google's business. Patent Owner also objects to Exhibit 1024 because, were Petitioner permitted to rely on the testimony of its trial counsel, it would run afoul of USPTO Rule of Professional Conduct § 11.307, which states that "[a] practitioner shall not act as an advocate at

a proceeding before a tribunal in which the practitioner is likely to be a necessary witness unless: (1) The testimony relates to an uncontested issue; (2) The testimony relates to the nature and value of legal services rendered in the case; or (3) Disqualification of the practitioner would work substantial hardship on the client." This testimony relates to a contested issue. The reason Petitioner submitted this testimony (and Exhibit 1024, to which the testimony pertains) is to dispute evidence submitted by Patent Owner in connection with its Response. Therefore, it would be improper to permit Petitioner to rely on this testimony from its trial counsel in this proceeding.

4. Patent Owner objects to Petitioner's assertion that it assisted in the development of the claimed invention (Reply at 25-26, 28-29) under FRE 901 and FRE 403 as lacking foundation and causing unfair prejudice, confusing the issues, and misleading the finder of fact. Petitioner's assertion is contrary to the only evidence of record. For example, while Petitioner suggests that the inventor of the challenged patent filed his first provisional application after Google engineers met with him and provided tips Petitioner had learned from its own development work, the only evidence of record affirms that the provisional application was filed <u>before</u> the meeting Petitioner references. EX2033, ¶2; EX1023, 64:14-21. Moreover, Petitioner provided no evidence of any "tips" relevant to the claimed invention that it provided the inventor.

Conclusion

To the extent Petitioner does not expunge the evidence identified above as well as any reliance on and reference to that evidence from its papers, Patent Owner may file a motion to exclude under 37 C.F.R. § 42.64(c) and/or a motion to strike.

Dated: May 1, 2024

Respectfully submitted,

/Cortney S. Alexander/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a) and (b), I certify that on the date indicated below, a true and accurate copy of the foregoing document was served on the following counsel for Petitioner via e-mail, pursuant to Petitioner's consent to e-mail service:

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Dated: May 1, 2024

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