

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and
NINTENDO OF AMERICA INC.,
Petitioner

v.

POLARIS POWERLED TECHNOLOGIES, LLC,
Patent Owner

Case IPR2023-00778
U.S. Patent No. 8,223,117

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Polaris PowerLED Technologies, LLC (“Patent Owner”) objects under the Federal Rules of Evidence (“FRE”) to the admissibility of Exhibits 1002, 1008, 1010, 1014, 1015, 1018, 1022, 1023, 1026, 1029, 1034, and 1035, which Petitioner filed with its Petition.

Patent Owner timely objects under 37 C.F.R. § 42.64(b)(1) within the allowed ten business days of the institution of trial.

I. EXHIBIT 1002

Patent Owner objects to Exhibit 1002 to the extent Dr. Baker relies on Exhibits 1008, 1010, 1014, 1015, 1018, 1022, 1023, 1026, 1029, 1034, and 1035 for the same reasons as provided below, and/or because Exhibits 1008, 1010, 1014, 1015, 1018, 1022, 1023, 1026, 1029, 1034, and 1035 are not qualified to be the basis for an expert opinion under FRE 703. Therefore, these portions of Exhibit 1002 are inadmissible under FRE 702 and FRE 703.

Patent Owner also objects to Exhibit 1002, including at least ¶¶ 25, 68, 73, 116–117, 138–144, 147–158, 160–228, 230–233, 235–238, 241–246, 248–251, 253–265, 268–337, 339–341, 343–344, and 346–350, as improper expert testimony under FRE 702, 703 and 37 C.F.R. § 42.65. There has not been an adequate showing that Dr. Baker’s testimony is based on sufficient facts or data, is the product of reliable principles or methods, or that the testimony will help the Board understand the evidence or determine a fact in issue.

Patent Owner further objects to ¶¶ 20–22, 26–27, 32–48, 51–57, 59–61, 66–67, 69–70, 72–133, 176, 188, 208–209, 214, 220, 223, 229–230, 239–241, 243–248, 251–252, 266–268, 270, 272–274, 284–285, 291, 322–323, 325–327, 338, 342, 345, and 352–354 of Exhibit 1002 as being irrelevant under FRE 401, 402, and 403 because they have not been relied upon in support of any argument made in the Petition.

II. EXHIBITS 1014 AND 1015

Patent Owner objects to each of Exhibits 1014 and 1015 under FRE 106 as being incomplete and Petitioner has not produced or otherwise made available the full content of the documents to Patent Owner, and under FRE 106 as omitting the remainder of writings that ought to be considered at the same time as Exhibits 1014 and 1015.

III. EXHIBITS 1008, 1010, 1018, 1022, AND 1023

Patent Owner objects to Exhibits 1008, 1010, 1018, 1022, and 1023 under FRE 401, 402, and 403 for including information that is irrelevant or 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.

Patent Owner also objects to Exhibits 1008, 1010, 1018, 1022, and 1023 as impermissible hearsay under FRE 801 and 802 to the extent these exhibits are

offered for the truth of the matters asserted. Petitioner has not identified any applicable exception or exclusion to the rule against hearsay that applies to these exhibits.

Patent Owner further objects to Exhibits 1008, 1010, 1018, 1022, and 1023 under FRE 901 because Petitioner has not presented evidence sufficient to support a finding that the documents in question are what Petitioner claims them to be. There is no evidence that the documents are self-authenticating under FRE 902.

Patent Owner further objects to each of Exhibits 1008 and 1018 under FRE 106 as being incomplete and Petitioner has not produced or otherwise made available the full content of the documents to Patent Owner, and under FRE 106 as omitting the remainder of writings that ought to be considered at the same time as Exhibits 1008 and 1018.

IV. EXHIBITS 1026, 1034, AND 1035

Under FRE 401/402/403, Exhibits 1026, 1034, and 1035 are inadmissible as irrelevant because, among other things, they do not form a basis of the instituted grounds, and their probative value is outweighed by other considerations including prejudice, confusion and waste of time. Under FRE 801/802, these documents constitute and contain inadmissible hearsay that does not fall under any exception.

V. EXHIBIT 1029

Patent Owner also objects to Exhibit 1029, including at least ¶¶ 29–80, as improper expert testimony under FRE 702, 703 and 37 C.F.R. § 42.65. There has not been an adequate showing that Dr. Hsieh-Yee’s testimony is based on sufficient facts or data, is the product of reliable principles or methods, or that the testimony will help the Board understand the evidence or determine a fact in issue.

Patent Owner further objects to ¶¶ 1–28, 82–83 of Exhibit 1029 as being irrelevant under FRE 401, 402, and 403 because they have not been relied upon in support of any argument made in the Petition.

Patent Owner also objects to the Appendices attached to Exhibit 1029 as impermissible hearsay under FRE 801 and 802 to the extent these documents are offered for the truth of the matters asserted. Petitioner has not identified any applicable exception or exclusion to the rule against hearsay that applies to these documents. Patent Owner further objects to the Appendices attached to Exhibit 1029 under FRE 901 because Petitioner has not presented evidence sufficient to support a finding that the documents in question are what Petitioner claims them to be. There is no evidence that the documents are self-authenticating under FRE 902.

Respectfully submitted,

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/Jason A. Fitzsimmons/

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Date: November 1, 2023

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)** was served electronically via e-mail on November 1, 2023, in its entirety on the following:

Matthew J. Brigham (Lead Counsel)
Andrew C. Mace (Back-up Counsel)
Patrick W. Lauppe (Back-up Counsel)
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Respectfully Submitted,

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