

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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FIRST ALERT, INC. AND BRK BRANDS, INC.,

Petitioners

v.

WALTER KIDDE PORTABLE EQUIPMENT INC.,

Patent Owner

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U.S. Patent No. 7,525,445

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**DECLARATION OF MARK DEVINE IN SUPPORT OF PETITION FOR  
*INTER PARTES* REVIEW OF U.S. PATENT NO. 7,525,445**

**I. INTRODUCTION**

I, Mark A. Devine, declare as follows:

1. I am over the age of 18, and am competent to make the following declaration.
2. Unless otherwise noted, my testimony made herein is based on my personal knowledge, and if called to testify about this declaration, I could and would do so competently and truthfully.
3. I was an employee of Petitioners for more than 13 years.
4. I continue to work for Petitioners as an outside consultant in both a litigation support and non-litigation support way.
5. I have been asked to submit this declaration to, at a high level, describe what happens during the process of the promulgation of standards by Underwriters Laboratories, Inc. (“UL”), which I understand is now referred to as UL Standards and Engagement, Inc. (“ULSE”).
6. More specifically, I have been asked to provide testimony regarding the authenticity and dates of public accessibility of a documents related to the development of standards published by UL as I was Petitioners’ representative on the Standards Technical Panel (“STP”) for UL 217 standard. The UL 217 Standard is entitled “Single and Multiple Station Smoke Alarms.”

7. I have reviewed Exhibit 1008, which is similar to the type of materials that I encounter in the course of my employment as Petitioners' representative on the STP for UL 217. I have reviewed other documents that refreshed my memory that I in fact received a copy of Exhibit 1008 around the time of its creation.

8. As I describe in more detail below, Exhibit 1008 was a document that was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art (that is, people who were involved in the design of smoke alarms) exercising reasonable diligence can locate it.

## **II. UL 217 STP MEMBERSHIP AND PROCEDURES**

9. I was Petitioners' representative on the STP for UL 217 in August 2003, which I have been informed is the priority date of certain patents that Petitioners are requesting *inter partes* review for.

10. I was also Petitioner's representative on the STP for UL 217 in March, 2003, which is the date of the meeting described in Exhibit 1008 and in April, 2003, which is when Exhibit 1008 was disseminated to the STP.

11. Because the meeting took place in March 2003 and the report issued in April 2003, Exhibit 1008 is an accurate record generated near in time to the March 2003 meeting by those with knowledge of the March 2003 meeting.

12. Based on my years of experience serving on the STP for UL 217, I am familiar with the regular business practices of the STP relating to technical documents—including reports generated from meetings of the STP.

13. Exhibit 1008, which is a “Report of the Meeting of the Standards Technical Panel of UL for Smoke Detectors and Alarms,” is representative of reports issued by a STP after a meeting based on my experience and the STP regularly generated these reports during the course of standard development. Furthermore, generating meeting reports is a regular activity of the STP. As a member of the STP in April 2003, I would have received this document. Other members and other interested parties would have either received or been able to receive this document.

**A. Membership of the STP for UL 217**

14. In 2003, the STP membership was comprised of a group of individuals representing a variety of interest categories that had an interest in the development of smoke alarms, the subject matter of UL 217. The STP was the way these interested parties provided feedback on proposals to amend the standard because the STP is where these standard-related issues were discussed so that the group could reach consensus on amendments to the standard.

15. I understand that ULSE recently produced documents which refreshed my memory regarding membership on the STP in April 2003. At that time, various smoke alarm manufacturers or “producers” had representatives on the STP at that

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time, including Petitioners, Patent Owner, Gentex Corporation, Invensys Climate Controls Americas, Siemens Building Technologies, Inc., Honeywell Fire Solutions, and more.

16. The STP also had members of the public on the panel, including fire chiefs of various municipalities around the country, including New York City, San Diego, and Fort Worth, as well as various states, including the State of Wisconsin.

17. There were other members representing various interests as well, including insurance companies, universities, UL itself, and consulting companies. UL generally tries to keep a balance between members on the STP; for example, there would have been an appropriate number of manufacturers as members from academia and members from the general public. This ensures a balance so no one group (e.g., manufacturers) or consortium would have the ability for undue influence.

18. As I understand the regulations pertaining to membership on a UL STP, the STP is intentionally made up of members in various groups, including producers, users, and general members. I understand this is an ANSI requirement.

19. Overall, the STP process I described above (and in particular, the diverse group of appropriately weighted members from different parts of the industry and the public) would have ensured that a broad range of individuals

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interested in the development of smoke alarms was present at the March 2003 meeting to consider proposed amendments.

**B. UL 217 STP Procedures for Creating, Distributing, and Storing the March 7, 2003 Meeting Report (Exhibit 1008)**

20. Before the March 7, 2003 meeting, Isaac Papier, the Chair of the STP at the time, called for a meeting to vote on proposed amendments by sending a STP meeting notice. As stated on page 2 of the Ex. 1008, Appendix A to the report is “proposed requirements for the Standard” and these amendments were discussed at the meeting.

21. Meetings of UL STP groups were not closed and members of the public were allowed to join. The documents produced by ULSE in the co-pending litigation further reminded me of the individuals present at the March 7, 2003 meeting of the STP for UL 217.

22. This meeting was attended by at least 45 people from a variety of organizations, including the organizations discussed above. Mr. Joseph Deluca, who I understand is listed as an inventor of the patents that are the subject of *inter partes* review, was an attendee of this meeting. In addition, representatives from media outlets in Des Moines, IA, Dallas/Fort Worth, TX, Milwaukee, WI, and Chicago, IL were present at this meeting.

23. As required by UL standards, the Chair ensured that a report of what was discussed at the March 2003 meeting was promptly issued. Furthermore, the

Chair would have ensured that a copy of meeting reports was preserved in a manner that would allow the meeting report to be readily found by those interested in the history of UL 2017.

24. Finally, Exhibit 1008 states that it was to sent to the STP for UL 217 (a group which included myself), subscribers to UL's standards for UL 217, UL 268, and UL 268A, and other interested parties.

25. As noted above, the STP itself consisted members from a variety of interests, including many of the major manufacturers of smoke alarms at that time. The attendee list also suggests an even broader range of "interested parties." Thus, Exhibit 1008 was distributed to a range of individuals interested in the smoke alarms, including individuals that normally do not sit on the STP for UL 217.

### **III. CONCLUSION**

26. In summary, Exhibit 1008 is a report generated by UL and sent to a variety of parties, including members of the STP. This particular report related to UL 217 was distributed to a range of individuals and entities interested in the smoke alarms. Also, the information listed in the report was presented before the STP at a meeting in March 2003 that was attended by an even wider range of interested parties.

27. For these reasons, Exhibit 1008 is a document that was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled

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in the subject matter or art (that is, people who were involved in the design of smoke  
alarms) exercising reasonable diligence can locate it.

28. Pursuant to Section 1746 of Title 28 of United States Code, I declare  
under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct and that the foregoing is based upon personal  
knowledge and information and is believed to be true.

29. I also declare that all statements made herein of my own knowledge are  
true and that all statements made on information and belief are believed to be true;  
and further that these statements were made with the knowledge that willful false  
statements and the like so made are punishable by fine or imprisonment, or both,  
under Section 1001 of Title 18 of the United States Code.

Executed on May 30, 2023

By: /s/ Mark A. Devine

Mark A. Devine