UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP
Petitioner

v.

BRAGI GmbH
Patent Owner

Case IPR2023-00901

PETITIONER'S NOTICE OF OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), K/S HIMPP ("Petitioner") hereby submits its notice of objections to certain evidence that BRAGI GmbH ("Patent Owner") included with its Patent Owner's Preliminary Response ("POPR") filed August 23, 2023 in connection with Trial No. IPR2023-00901. The following objections are timely filed within ten (10) business days of November 13, 2023, which is the date on which the Board granted institution of *inter partes* review of U.S. Patent No. 10,635,385 (the "'385 patent").[1] *See* 37 C.F.R. § 42.64(b)(1).

A. Exhibit 2005 (Bloomberg Article, Fitness Tracker or Bionic Ear? The Dash Wireless Earbuds Might Be Both: https://www.bloomberg.com/news/articles/2015-01-06/fitness-tracker-or-bionic-ear-the-dash-wireless-ear-buds-might-be-both#xj4y7vzkg, dated January 6, 2015)

Petitioner objects to this exhibit under Fed. R. Evid. ("FRE") 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking foundation and lacking authentication to the extent that Patent Owner

[1] November 23, 2023 was a federal holiday (Thanksgiving Day).

contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

B. Exhibit 2006 (Bragi Kickstarter with video published, available at: https://www.kickstarter.com/projects/hellobragi/the-dash-wireless-smart-in-ear-headphones/posts/1273891, dated June 24, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking foundation and lacking authentication to the extent that Patent Owner contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

C. Exhibit 2007 (Kickstarter post with video of complete unboxing: https://www.kickstarter.com/projects/hellobragi/the-dash-wireless-smart-in-ear-headphones/posts/1340666, dated September 10, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking

foundation and lacking authentication to the extent that Patent Owner contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

D. Exhibit 2008 (Kickstarter with video post touring office: https://www.kickstarter.com/projects/hellobragi/the-dash-wireless-smart-in-ear-headphones/posts/1159785, dated April 1, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking foundation and lacking authentication to the extent that Patent Owner contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

E. Exhibit 2009 (Kickstarter update post with video of technical updates: https://www.kickstarter.com/projects/hellobragi/the-dash-wireless-smart-in-ear-headphones/posts/1254265, dated June 5, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking foundation and lacking authentication to the extent that Patent Owner contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

F. Exhibit 2010 (YouTube Field Test Video: https://www.youtube.com/watch?v=lXuFDv2p1w0, dated September 22, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. Petitioner further objects to this exhibit under FRE 602 and 901-903 as lacking foundation and lacking authentication to the extent that Patent Owner contends this document reflects disclosure by the inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor.

G. Exhibit 2011 (Engadget Article, An exclusive look at Bragi's ambitious smart headphones: https://www.engadget.com/2015-01-05-bragi-dash-exclusive.html, dated January 5, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

H. Exhibit 2012 (The Verge Article, The First Truly Wireless Earbuds are Here, and They're Awesome: https://www.theverge.com/2015/1/9/7512829/wireless-earbuds-ces-2015-bragi-dash, dated January 9, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

I. Exhibit 2013 (Engadget Article, Presenting the Best of CES 2015 winners!: https://www.engadget.com/2015-01-08-best-of-ces-2015-winners.html, dated January 8, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

J. Exhibit 2014 (Wired Article, Bragi's in-ear assistant wants to make you healthier and happier: https://www.wired.co.uk/article/bragi-in-ear-assistant, dated October 29, 2015)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

K. Exhibit 2015 (Engadget Article, Bragi's Dash headphones are finally here, The multi-sport smart earbuds have a lot of hype to live up to: https://www.engadget.com/2016-01-05-bragi-dash-headphones-are-here.html, dated January 5, 2016)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

L. Exhibit 2016 (The Verge Article, Bragi's truly wireless earbuds are finally here, and they're actually good, The wireless earbuds of my dreams: https://www.theverge.com/2016/1/7/10730300/bragi-dash-real-wireless-earbuds-ces-2016, dated January 7, 2016)

Petitioner objects to this exhibit under FRE 801-803 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of the matter described therein. Petitioner also objects to this exhibit under FRE 401-403 as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial.

Respectfully submitted, /Haixia Lin/

Haixia Lin, Reg. No. 61,318

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2023, I caused a true and correct copy of the attached Petitioner's Notice of Objections to Evidence to be served via electronic mail to the attorneys of record at the following email addresses:

rkamprath@mckoolsmith.com

khoffner@mckoolsmith.com

Bragi_IPR@mckoolsmith.com

Respectfully Submitted,

/Trishan Esram/
Trishan Esram
Registration No. 74,075