

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOURSQUARE LABS, INC.,
Petitioner,

v.

BOARDACTIVE CORPORATION,
Patent Owner.

IPR2023-00919

U.S. Patent No. 10,692,108 B1

PETITIONER'S OBJECTIONS TO EVIDENCE

37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner, Foursquare Labs, Inc. (hereinafter, "Foursquare"), respectfully submits the following objections to evidence entered by Patent Owner during the proceedings in this *inter partes* review.

Foursquare objects to Patent Owner's reliance upon each of the Patent Owner's Response (Paper 10) and Exhibits 2002, 2003, and 2004, in their entireties, and at least to their portions concerning the follow issues and/or items.

Foursquare objects to Exhibit 2002 and those portions of Petitioner's Response reliant thereon as lacking relevance, as not admissible, and/or as having poor value outweighed by risks to this proceeding. FED. R. EVID. 401, 402, 403.

Exhibit 2002 appears to be Patent Owner's selected portion of a document entitled "The GSM System for Mobile Communication." Exhibit 2002 lacks relevance and/or is not admissible in this proceeding. Assertions based on Exhibit 2002 appear to concern the year 1992 and appear directed to 1992 GSM specifically, the pertinence of which has not been established relative to the appropriate dates and technologies of the present proceeding. For example, the date of concern in the present proceeding is the presumed earliest potential filing date of April 10, 2017, nearly 25 years later. The relevance of particular communication technology, including constraint to 1992 GSM, is unestablished

within the present proceeding, and with respect to the '108 patent and/or the prior art references at issue. For at least similar reasons, the probative value of Exhibit 2002 is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the fact finder, undue delay, wasting time, and/or needlessly presenting cumulative evidence in this proceeding. FED. R. EVID. 403.

Foursquare objects to Exhibit 2003 and those portions of Petitioner's Response reliant thereon as lacking relevance, as not admissible, as having poor value outweighed by risks to this proceeding, and/or as lacking independent and/or self-authentication. FED. R. EVID. 401, 402, 403, 901, 902.

Exhibits 2003 appears to be an un-adopted working document concerning mobile communications technology standards. *See* Ex. 2003, p. 1 ("The present document has not been subject to any approval process by the 3GPP Organizational Partners and shall not be implemented."). Exhibit 2003 lacks relevance and/or admissibility under Rules 401, 402 because it explicitly states that it is not approved and "shall not be implemented," and thus neither has tendency to make a fact more or less probable than it would be without the evidence; nor does it pertain to a fact of consequence in determining this proceeding. Additionally, the probative value of Exhibit 2003 is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the fact finder, undue delay, wasting time, and/or needlessly presenting cumulative evidence in this proceeding.

FED. R. EVID. 403. For example, as Exhibit 2003 is not approved and forbidden from implementation, the contents unfairly prejudice Foursquare, confuse the issues of relevant technologies, mislead the factfinders as to facts/knowledge, waste time, and/or needlessly present information never approved and restricted from adoption. The unusual nature of the unapproved and forbidden implementation of Exhibit 2003 renders its origins and content in question, beyond self-authentication, and yet it also lacks sufficient independent authentication.

FED. R. EVID. 901, 902.

Foursquare objects to Exhibit 2004 as lacking relevance, as not admissible, as having poor value outweighed by risks to this proceeding, as improper opinion, and/or as improper hearsay having no suitable exception.

FED. R. EVID. 401, 402, 403, 701-705, 802. Exhibit 2004 appears to be taken from an entirely different proceeding, having a new exhibit label tacked on.

Exhibit 2004 is not cited to, or even mentioned, by any brief or document in this proceeding and is, therefore, on its face, irrelevant and/or inadmissible. FED. R. EVID. 401, 402. Moreover, written statements within Exhibit 2004 do not address the '108 patent itself, nor the prior art references at issue. Accordingly, Exhibit 2004 neither has tendency to make a fact more or less probable than it would be without the evidence; nor pertains to a fact of consequence in determining this proceeding. The probative value of Exhibit 2004 is substantially

outweighed by a danger of unfair prejudice, confusing the issues, misleading the fact finder, undue delay, wasting time, and/or needlessly presenting cumulative evidence in this proceeding, at least because Exhibit 2004 does not address the '108 patent itself, nor the prior art references at issue. FED. R. EVID. 403.

Exhibit 2004 constitutes improper opinion because it is not offered as a witness' perception, nor as a qualified expert based on facts or data of which the expert has been made properly aware or personally observed, and of the kind that would be reasonably relied-upon. FED. R. EVID. 701-705.

Exhibit 2004 constitutes improper hearsay having no suitable exception because it is an out of court statement not made while the declarant is testifying at the current trial and/or offered for its truth, without suitable exception. FED. R. EVID. 801, 802, 803, 804, 807. This includes statements concerning other documents, and particularly those which are not readily and unequivocally identified, and their sources. Exhibit 2004 is therefore inadmissible under Rule 802.

Foursquare objects to Patent Owner's Response (Paper 10) in its entirety as untimely. 37 C.F.R. § 42.120(b) ("Due date for response"); Paper 8, pp. 9, 11. An electronic notice from PTAB indicating filing of a document suggested that actual and complete filing of the Response may not have occurred until after midnight, at about 12:06 AM (ET) on Friday February 23, 2024, and after the deadline for DUE

DATE 2 of February 22, 2024 as set by the Scheduling Order, Paper 8. To the extent that the Response was not actually and completely filed by the DUE DATE 2, Foursquare objects to the Response as being untimely.

Respectfully submitted,

Date: February 29, 2024

/ Steven D. Shipe /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on this 29th day of February 2024, I caused a true and correct copy of the foregoing PETITIONER'S OBJECTIONS TO EVIDENCE in IPR2023-00919 to be served on Patent Owner via electronic mail at the following addresses of record:

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Date: February 29, 2024

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