

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Duration Media LLC
Petitioner,

v.

Rich Media Club LLC
Patent Owner.

US Patent No. 11,443,329

Filing Date: May 11, 2021

Issue Date: September 13, 2022

Title: System And Method For Creation, Distribution And tracking Of Advertising
Via Electronic Networks

PETITIONER'S OBJECTIONS TO EVIDENCE

Petitioner objects pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of evidence submitted by Patent Owner in connection with Patent Owner Response (“POR”). The evidence and grounds for the objections is listed below. Petitioner also objects to Patent Owner’s reliance on or citation to any objected evidence in its response, declarations, or any other paper. The following identifies the challenged evidence and grounds for objection:

**A. Exhibit 2026 (Second Tchibirev Declaration),
Exhibit 2045 (Sherwood Declaration), and POR**

Petitioner objects to EX2026 (¶7) and EX2045 (¶94) under 401 and 402 (relevance), and 37 C.F.R. § 42.6(a)(3) (“[a]rguments must not be incorporated by reference from one document into another document.”). EX2026 improperly incorporates by reference 44 pages of claim charts in Exhibits 2046–49. The POR does the same at pages 37 and 53. Patent Owner has also not shown the relevance of the claim charts to any properly considered secondary consideration of nonobviousness.

Petitioner also objects to the same exhibits and POR under FRE 801/802 as relying on argumentative claim charts containing attorney argument, which is offered to prove allegedly the truth of the matter asserted.

B. Exhibits 2025–27, and 2045

Petitioner objects to exhibits EX2025, EX2026, EX2027 and EX2045 under FRE 401/402 and 801/802 because they are not sworn testimony under 35 U.S.C. § 25.

Petitioner also objects to these exhibits under FRE 602 because testimony concerning the authenticity of certain exhibits lacks personal knowledge and foundation. *See e.g.*, EX2025, ¶¶ 20–21; EX2026, ¶¶ 3 and 8; EX2027, ¶¶ 23, 29–30, 41, and 43; and EX2045, p. 3.

C. Exhibits 2008, 2028–37, 2051–52, and 2054

Petitioner objects to exhibits EX2008, EX2028, EX2029, EX2030, EX2031, EX2032, EX2033, EX2034, EX2035, EX2036, EX2037, EX2051, EX2052 and EX2054 under FRE 901 because there is no evidence that demonstrates sufficiently that the exhibits are what the Patent Owner claims that they are. Furthermore, any purported authentication of these documents is improper because the proponent lacks personal knowledge and foundation under FRE 602.

Petitioner also objects to these exhibits under FRE 401/402 because the exhibits are unauthenticated and are therefore irrelevant to the proceeding.

D. Exhibits 2008, 2013–14, 2017–18, 2022–24, 2028–43, 2051–54, and 2057–60

Petitioner objects to exhibits EX2008, X20113, EX2014, EX2017, EX2018, EX2022, EX2023, EX2024, EX2028, EX2029, EX2030, EX2031, EX2032,

EX2033, EX2034, EX2035, EX2036, EX2037, EX2038, EX2039, EX2040, EX2041, EX2042, EX2043, EX2051, EX2052, EX2053, EX2054, EX2057, EX2058, EX2059 and EX2060 under FRE 801/802 because Patent Owner relies on the exhibits to prove allegedly the truth of the matter asserted. These exhibits are out of court statements that do not fall under any of the hearsay exceptions.

Petitioner also objects to these exhibits under FRE 401/402 because the exhibits are hearsay and are therefore irrelevant to the proceeding. The exhibits are also irrelevant because the Patent Owner has failed to demonstrate the requisite nexus between the documents and any secondary indicia of nonobviousness of the claims.

E. Exhibit 2025

Petitioner objects to ¶¶ 9, 14, and 21, of exhibit EX2025 under FRE 401/402 and 801/802 because they rely on hearsay and are therefore irrelevant to this proceeding.

F. Exhibits 2036–37 and 2057

Petitioner objects to exhibits EX2036, EX2037 and EX2057 under FRE 401/402 because Patent Owner never discussed the relevance of these exhibits.

G. Exhibits 2046–49

Petitioner objects to exhibits EX2046, EX2047, EX2048 and EX2049 under 401 and 402 (relevance), and 37 C.F.R. § 42.6(a)(3) (“[a]rguments must not be incorporated by reference from one document into another document.”). EX2026

improperly incorporates by reference 44 pages of claim charts in Exhibits 2046–49. The POR does the same at pages 37 and 53. Patent Owner has not shown the relevance of the claim charts to any properly considered secondary consideration of nonobviousness.

Petitioner also objects to these exhibits under FRE 801/802 because they are hearsay not falling under any of the hearsay exceptions.

Dated: December 13, 2023

Respectfully submitted,

/Kevin Greenleaf/
Kevin Greenleaf
Reg. No. 64,062

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing objections were served on December 13, 2023, via email on the following correspondence address of record for the Patent Owner.

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Dated: December 13, 2023

Respectfully submitted,

/Kevin Greenleaf/
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