

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONY INTERACTIVE ENTERTAINMENT LLC,  
Petitioner,

v.

QUANTUM IMAGING LLC,  
Patent Owner.

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Case IPR2023-00954  
Patent 8,458,028

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**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE**  
*37 C.F.R. §§42.62, and 42.64*

Pursuant to Pursuant to 37 C.F.R. §§42.62, and 42.64, and the Federal Rules of Evidence, as applied by the Board, Patent Owner Quantum Imaging LLC (“Quantum”) provides the following objections to evidence submitted by Petitioner Sony Interactive Entertainment LLC (“SIE”). These objections are timely served within ten (10) business days.

Quantum serves SIE with these objections to provide notice that Quantum may move to exclude the challenged evidence under 37 C.F.R. § 42.64(c) unless SIE cures the defects associated with the challenged evidence identified below. That Quantum has not objected below to certain pieces of evidence or certain portions of certain evidence provides no indication that Quantum agrees to the positions asserted therein. In addition, Quantum reserves the right to present further objections to this or additional evidence submitted by SIE, as allowed by the applicable rules or other authority.

## **I. PATENT OWNER’S OBJECTIONS TO EVIDENCE**

### *Exhibit 1004 – Declaration of David Crane*

Patent Owner objects to the Declaration of David Crane (“Declarant”) Exhibit 1004 under Fed. R. Evid. 106, 401–403, 602, 702–703, 705, 901-902 and 37 C.F.R. § 42.63, § 42.65(a), and § 42.104(b)(5). Patent Owner specifically objects to (1) paragraphs 66-68 and 70-72 of Exhibit 1004 on the grounds that they lack

authentication and foundation under Fed. R. Evid. 602 and 901-902 and are an improper form of evidence under 37 C.F.R. § 42.63; (2) paragraphs 18, 69, 72, 82-84, 102, 104, 111, 119, 135, and 149 of Exhibit 1004 on the grounds that they are irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403, 702-703, and 705; (3) paragraphs 70-72, 82, 84, 86, 90, 96-97, 103, 112, 136, 142, 146, 149, 161, 212-213, and 226-228 on the grounds that they contain “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based” in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702–703, and 705; and (4) paragraphs 1-4, 21-42, 44-46, 50-63, 73-76, 85-86, 96-97, and 239-240 on the grounds that they are not cited to or relied upon by the Petition (Paper 2) in violation of 37 C.F.R. §42.104(b)(5). These evidentiary failures cannot be cured because Petitioner is time-barred from filing another Petition under 35 U.S.C. §315(b). As explained above, the fact that Patent Owner has not objected to certain paragraphs of Exhibit 1004 provides no indication that Patent Owner agrees to the positions asserted therein.

*1. Objections to Evidence in Improper Form and Lacking Foundation and Authentication*

Patent Owner objects to paragraphs 66-68 and 70-72 of Exhibit 1004 under Fed. R. Evid. 901-902 as there has not been a sufficient foundation laid for the

admission of the evidence alleged to support the statements and images appearing in these paragraphs. The Petitioner has not submitted required witness testimony or evidence to demonstrate that the evidence cited in these paragraphs is authentic, and it is not self-authenticating. No declarant has personal knowledge under Fed. R. Evid. 602 of the evidence's creation, authorship, or any other required foundational aspect of this evidence.

Specifically, the evidence relying on the citation to “the 1996 Doubleclick citation” in paragraph 66 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 C.F.R. § 42.63.

Further, the evidence relying on the citation to <https://www.imdb.com/title/tt5987646/> in paragraph 67 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the evidence relying on the citation to <https://www.mobygames.com/game/682/cool-spot/> in paragraph 67 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the evidence relying on the citation to <https://www.mobygames.com/game/16472/chase-the-chuck-wagon/> in paragraph 68 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the image appearing after paragraph 68 allegedly from [https://www.youtube.com/watch?v=0mhRqCfD\\_mY](https://www.youtube.com/watch?v=0mhRqCfD_mY) at 2:57 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the image appearing after paragraph 68 allegedly from <https://www.mobygames.com/game/682/cool-spot/screenshots/dos/> is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the image appearing after paragraph 68 allegedly from <https://www.mobygames.com/game/16472/chase-the-chuckwagon/screenshots/atari-2600/> is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

Further, the evidence relying on the citation to [https://macromedia.fandom.com/wiki/Macromedia\\_Shockwave\\_Player](https://macromedia.fandom.com/wiki/Macromedia_Shockwave_Player) in paragraphs 70-72 is not authenticated nor is there any foundation for admission of this evidence, which has not been properly submitted in the form of an exhibit, as required under 37 CFR § 42.63.

2. Objections to Irrelevant, Misleading, Unduly Prejudicial and Confusing Testimony

Patent Owner objects to Exhibit 1004 as unsupported and conclusory testimony that is irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403 and purported expert opinion that is pure speculation in violation of Fed. R. Evid 702, 703, and 705. Specifically, Patent Owner objects to paragraphs 18, 69, 72, 82-84, 102, 104, 111, 119, 135, and 149 for relying on conclusory statements that are unsupported by factual evidence and which is pure speculation and/or unsupported by facts or data of a type reasonably relied upon by experts in the field in order to form the opinion or inferences made therein.

In paragraph 18, Declarant purely speculates, without providing any supporting evidence, “More than 50 of the games noted in my CV (those listed as “Online Games”) integrated advertising into the browser page serving the game,

integrated advertising into the game itself, or both. More than a dozen of these games integrated advertising into the game-playing experience prior to the year 2002.”

In paragraph 69, Declarant purely speculates, without providing any supporting evidence, “As of the priority date of the ’028 Patent, a POSITA was well aware that branded business-related content proliferated online in at least the form of advertising; a POSITA was well aware of online advertising that redirected a user to an advertiser’s website through a user action such as a mouse click; and a POSITA was well aware of seeing advertising (i.e., branded business-related content) imbedded into video games.”

In paragraph 72, Declarant purely speculates, without providing any supporting evidence, “Note that a Web Browser is a computer program that resides locally on a player’s personal computer. The Shockwave and/or Flash plug-ins were downloaded from Macromedia and automatically installed as part of the browser program functionality. Prior to the priority date of the ’028 Patent, the Shockwave plug-in was installed in the browser programs on millions of computers, turning each browser program into a game-playing program. The playing of browser-based games was well known in the art, and a POSITA would have recognized that a browser program that resides on a game player’s computer served as a locally executed game application.”

In paragraph 83, Declarant purely speculates, without providing any supporting evidence, “Both illustrated embodiments indicate the communication path for customized advertisements, which represent business-related content.”

In paragraph 84, Declarant purely speculates, without providing any supporting evidence, “the customized advertisements taught by Angles can be integrated into online games, including those played on a locally executed game application (i.e., a Web Browser, aka “the consumer browser module”).”

In paragraph 102, Declarant purely speculates, without providing any supporting evidence, “Angles teaches integrating business-related content into an electronic game, as well as teaching connecting and navigating to an advertiser’s website mirroring fundamental elements of the alleged invention of the ’028 Patent.”

In paragraph 104, Declarant purely speculates, without providing any supporting evidence, “[n]ot only would a POSITA have been motivated to combine and collectively consider the teachings of Angles with well-known industry knowledge to arrive at the subject matter claimed by the ’028 Patent, a POSITA would have had a reasonable expectation of success when doing so.”

In paragraph 111, Declarant purely speculates, without providing any supporting evidence the alleged equivalency between a Web Browser and a game application.

In paragraph 119, Declarant purely speculates, without providing any supporting evidence, “A POSITA would understand that re-directing a user to a web page means displaying the web page to the user on a computer associated with the user, e.g., the consumer computer 12 associated with a consumer as shown in FIGs. 1 and 9 of Angles. It was well known in the art that in the context of viewing a web page or operating a Web Browser, “re-directing” simply meant to direct the user’s electronic device to display a different web page - basically re-directing the attention of the user, through the computer’s display, to a different page. As stated, this was well known, also referred to as “linking” such as when activating a ‘hyperlink.’”

In paragraph 135, Declarant purely speculates, without providing any supporting evidence, “As an initial matter, a POSITA would understand that executing game-related user actions in said game application as a result of user choices is inherent in playing any game. For example, in a car racing game, the player is making user choices throughout the game: steering, accelerating, braking, passing to the left or right, choosing to take a pit stop, etc. Every user choice made during play determines what future game-related actions will be required in the game. And certain choices will expose a player to a different set of billboards.”

In paragraph 149, Declarant purely speculates, without providing any supporting evidence, “In addition, Angles teaches the dissemination (to providers of

business-related content) of both the demographic/preference profile and the interaction profile discussed for element 5[b] above.”

Accordingly, such unsupported and conclusory testimony is objected to as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403 and pure speculation in violation of Fed. R. Evid. 702, 703 and 705.

3. *Objections to Purported Expert Testimony That Does Not Disclose the Underlying Facts or Data on Which the Opinion is Based*

Patent Owner further objects to Exhibit 1004 as including “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based” in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702–703, and 705.

Specifically, statements in paragraphs 70-72, 82, 84, 86, 90, 96-97, 103, 112, 136, 142, 146, 149, 161, 212-213, and 226-228 cite to references that fail to provide support for the statements and/or opinions being proffered, and this testimony is accordingly objected to for failing to provide the underlying facts or data on which such opinion is based.

Further, paragraph 82 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant’s statements regarding implementation of a

computerized system, but no evidence supports the equivalency between, “a CONTENT PROVIDER COMPUTER 14, which is also coupled to an ADVERTISEMENT PROVIDER COMPUTER 18” and “**at least one secondary electronic device.**”

For example, paragraph 84 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant’s statements regarding online games, but no evidence supports the statement that “[t]he customized advertisements taught by Angles can be integrated into online games, including those played on a locally executed game application (i.e., a Web Browser, aka “the consumer browser module”).”, including, but not limited to, the statement that the web browser is a consumer browser module, or that a locally executed game applications is equivalent to the foregoing.

Further, paragraph 86 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant’s statements regarding the billboards of Angles, but no evidence supports “that said billboards can redirect a player to a

business' website for more information on the company's goods or services based upon a user action.”

For example, paragraph 90 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1008 as support for Declarant's statements regarding the server object 330, but no evidence supports the statement that “a single user computer is a ‘server object 330.’”

For example, paragraph 96 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1008 as support for Declarant's statements regarding a “Persistent Client kernel 465” but no evidence supports the Persistent Client kernel 465 manages the serving of business-related content or captures information about the user.

For example, paragraph 97 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1008 as support for Declarant's statements regarding a user profile, but no evidence supports the statement that “The Persistent Client also serves to identify a

particular user's computer and to profile the user, generating and disseminating a profile of a user to a related e-commerce supplier.”

For example, paragraph 103 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites its own declaration (Section IX.A) as support for Declarant's statements regarding a POSITA's knowledge, but no evidence supports that a “POSITA would have been motivated to combine and collectively consider the teachings of Angles with his knowledge of the state of the art of advertising in video games to arrive at the subject matter claimed by the '028 Patent.”

For example, paragraph 112 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant's statements regarding electronic document, but no evidence supports the “electronic document” is equivalent with “content” and “offering.”

For example, paragraph 112 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites

Exhibit 1007 as support for Declarant's statements regarding online games, but no evidence supports the statement that "A POSITA would have understood that upon downloading an online game offering into the locally executed browser software, said online game would be **initiated**."

For example, paragraphs 136, 142, and 149 fail to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant's statements regarding user profiles, but no evidence supports that Angles discloses demographic or an interaction user profile.

For example, paragraph 146 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant's statements regarding player-specific profile, but no evidence supports that the player profile is specific to a user.

For example, paragraph 161 fails to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1007 as support for Declarant's statements regarding customized

advertisement and a consumer's profile, but no evidence supports that "an advertising provider computer generates a customized advertisement based on a consumer's profile."

For example, paragraphs 212-213 fail to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1008 as support for Declarant's statements regarding user profile information, but no evidence supports that Robinson teaches user profile information.

For example, paragraph 226-228 fail to provide underlying facts or data on which statements and/or the opinion is based by citing to a reference that fails to provide support for the statement and/or opinion proffered. For example, Declarant cites Exhibit 1008 as support for Declarant's statements regarding "benefits", but Exhibit 1008 provides no statements regarding benefits under Declarant's own definition.

Accordingly, for at least the foregoing reasons, this testimony of Exhibit 1004 is inadmissible under Fed. R. Evid. 702–703, and 705 and is further objected to as misleading and confusing under Fed. R. Evid. 401–403.

4. *Objections to Testimony Not Cited to or Relied Upon by the Petition*

Patent Owner further objects to Exhibit 1004 as to the extent the testimony provided by Declarant in paragraphs 1-4, 21-42, 44-46, 50-63, 73-76, 85-86, 96-97, and 239-240 is not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5). Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Date: December 26, 2023

Respectfully Submitted,  
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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §42.6 the undersigned hereby certifies that the above-captioned Patent Owner's Objections to Petitioner's Evidence was served via electronic mail on December 26, 2023 upon the following parties:

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