

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT LLC,
Petitioner,

v.

QUANTUM IMAGING LLC,
Patent Owner.

Case IPR2023-00954
Patent 8,458,028

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

Pursuant to 37 C.F.R. §§42.62, and 42.64, and the Federal Rules of Evidence (“Fed. R. Evid.”), Patent Owner, Quantum Imaging, LLC (“Patent Owner”), submits the following objections to evidence submitted by Petitioner, Sony Interactive Entertainment LLC (“Petitioner”) in connection with Petitioner’s Reply (Paper 30), filed June 10, 2024 in the *Inter Partes* Review of U.S. Patent No. 8,458,028. These objections are timely served within five (5) business days of service of evidence in support of the Reply. The fact that Patent Owner has not objected below to certain pieces of evidence or certain portions of certain evidence provides no indication that Patent Owner agrees to the positions asserted therein. In addition, Patent Owner reserves the right to present further objections to this or additional evidence submitted by Petitioner, as allowed by the applicable rules or other authority.

I. PATENT OWNER’S OBJECTIONS TO EVIDENCE

Exhibit 1025 -- “SUPPLEMENTAL DECLARATION OF MR. DAVID CRANE”

Patent Owner objects to Exhibit 1025 under Fed. R. Evid. 106, 401–403, 702–703, 705, and 37 C.F.R. § 42.65(a), § 42.104(b)(5), and § 42.23(b). Patent Owner specifically objects to:

(1) Paragraphs 9, 12, 14, 33-42 of Exhibit 1025 on the grounds that they are irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403;

(2) Paragraphs 11-32, and 33-42 of Exhibit 1025 on the grounds that the probative value of the testimony contained therein is outweighed by a danger of prejudice and confusion under Fed. R. Evid. 403 and to the extent that at least some of these paragraphs fail to include all related parts “that in fairness ought to be considered at the same time” under Fed. R. Evid. 106;

(3) Paragraphs 8-42 of Exhibit 1025 on the grounds that they contain purported expert testimony by a Declarant who is not qualified as an expert on these issues in violation of Fed. R. Evid. 702–703;

(4) Paragraphs 14, 16, 18-19, 22-25, 29-32, 36-37, 40-41, 43, 45, and 48-50 of Exhibit 1025 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;

(5) All paragraphs of Exhibit 1025 to the extent that they are offered to prove the truth of the matter asserted on the grounds that they contain inadmissible hearsay, specifically paragraphs 9-10, 33-42, and 47-48;

(6) Paragraphs 33-42 on the grounds that they exceed the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b);

(7) Paragraphs 1-8, 11-14, 17, 20-25, 27-28, 30, 33-34, 39-40, 42, and 44 of Exhibit 1025 on the grounds that they are not cited to or relied upon by the Reply (Paper 30) in violation of 37 C.F.R. §42.104(b)(5).

The fact that Patent Owner has not objected to certain paragraphs of Exhibit 1025 provides no indication that Patent Owner agrees to the positions asserted therein.

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

Patent Owner objects to Exhibit 1025 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 under Fed. R. Evid 702, 703, and 705.

Specifically, and without limitation, Patent Owner objects to paragraphs 9, 12, 14-17, 19-20, 22-25, 27, 29, 32, and 34-42 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 9, Declarant misleadingly characterizes and purely speculates without providing any supporting evidence that “the POSITA would have understood a game application to mean: a program designed to assist in the performance of a game.”

In paragraphs 14 and 15, Declarant misleadingly characterizes and purely speculates without providing any supporting evidence that “I thus believe Ex. 1020 to be the original document from which the ‘copy of the pertinent portion’ of the TerraZones storyboard was derived.”

In paragraph 16, Declarant purely speculates without providing any supporting evidence that “[t]he POSITA would likewise have been personally familiar with Microsoft Internet Explorer and the Windows operating system for PCs, as those products were ubiquitous among computer users by 2002.”

In paragraph 17, Declarant purely speculates that “[a] POSITA would understand the ‘game application’ in the ’028 patent to encompass web browsers,

at least because the TerraZones storyboard refers to Microsoft Internet Explorer as an example of the invention.”

In paragraph 19, Declarant misleadingly characterizes and purely speculates that “[t]he POSITA would understand these to be examples of games/genres that the visitor can select and play. The link for Mystery (Cronos) is highlighted, indicating that the user may be in the process of selecting that link. An alien figure is visible in the Mystery (Cronos) link.”

In paragraph 20, Declarant purely speculates “[t]he POSITA would understand this to teach the web browser prompting the user to select an input mode for a game (e.g., Cronos).”

In paragraph 22, Declarant purely speculates that “[t]he POSITA would understand page 125 to be a depiction of a game (Cronos) presented via the Microsoft Internet Explorer web browser. Even though page 125 does not expressly include the Microsoft Internet Explorer title bar seen in pages 123 and 124, the POSITA would understand this to be an illustration of the same web browser seen on those pages.”

In paragraph 23, Declarant purely speculates that “the POSITA would understand the remaining slides (126-131) of the TerraZones storyboard to

illustrate a game (i.e., Cronos) being presented via the Microsoft Internet Explorer web browser.”

In paragraph 24, Declarant purely speculates that “[t]hese slides further corroborate the POSITA’s understanding of the TerraZones storyboard described above.”

In paragraph 25, Declarant misleadingly characterizes and purely speculates that “[i]t is my view that the POSITA would have understood the Microsoft Internet Explorer web browser, as depicted in the TerraZones storyboard, to be an example of a locally executed game application.”

In paragraph 27, Declarant purely speculates “[t]hat the web browser is locally executed is evident at least because the web browser is shown executing via Microsoft Windows on the user’s PC.”

In paragraph 29, Declarant misleadingly characterizes and purely speculates that “the POSITA would understand that the applicant was referring to the Microsoft Internet Explorer web browser, locally executing on a user’s computer and accessible at that user’s computer, as shown in the TerraZones storyboard in at least pages 123-24. ... The POSITA would understand the applicant to have meant that the user’s computer (the primary electronic device)

accesses the web browser (the game application) to locally execute the web browser, for at least the reasons described above.”

In paragraph 32, Declarant purely speculates that “the POSITA would understand the applicant to have been referring to the Microsoft Internet Explorer web browser as the locally executing game application, and describing the TerraZones storyboard as automatically integrating business related content (e.g., the “sponsorship option” shown in Ex. 1003 at 127 and Ex. 1020 at BT00014849) into the web browser during execution of the web browser.”

In paragraph 32, Declarant purely speculates that “the POSITA would understand the applicant to have been referring to the Microsoft Internet Explorer web browser as the locally executing game application, and describing the TerraZones storyboard as automatically integrating business related content (e.g., the “sponsorship option” shown in Ex. 1003 at 127 and Ex. 1020 at BT00014849) into the web browser during execution of the web browser.”

In Paragraph 34, Declarant misleadingly characterizes Dr. Medvidovic’s textbook and purely speculates about understanding of a POSITA regarding the same. Paragraph 34 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 35, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "[e]ven though I understand the textbook was not published until 2009, the POSITA in 2002 would have been familiar with the code-on-demand style, and would have understood pages 116-119 of the textbook to describe that style." Paragraph 35 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 36, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "[t]he POSITA would understand Fig. 4-19 of the textbook to illustrate three web browsers, running on client computers, that exemplify the code-on-demand style." Paragraph 36 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 37, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "[t]hese web browser configurations depicted in the Medvidovic textbook existed in 2002 and would have been familiar to the POSITA in 2002." Paragraph 37 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 38, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "the POSITA in 2002 would have understood both the web browser and the Lunar Lander game to be accessible at the client machines that locally execute the web browser. A POSITA in 2002 consulting the Medvidovic textbook would thus have understood a web browser to teach a game application." Paragraph 38 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 39, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "[t]he POSITA would understand Dr. Medvidovic's description of demonstration software to be inconsistent with the Patent Owner's position that demonstration software is 'not a working copy of the software' and cannot meet the limitation 'initiating' in claim 1 of the '028 patent." Paragraph 39 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 40, Declarant misleadingly characterizes Dr. Medvidovic's textbook. Paragraph 40 is further irrelevant to this proceeding and contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 41, Declarant misleadingly characterizes Dr. Medvidovic's textbook and purely speculates that "[e]ven if the demonstration software is only a partial version of a game, the POSITA would understand demonstration software to teach a working version of a game application, including the ability to 'initiate' the game application." Paragraph 41 is further irrelevant to this proceeding to the extent that it contains content that exceeds the proper scope of a Reply in violation of 37 C.F.R. § 42.23(b).

In Paragraph 42, Declarant purely speculates that "the POSITA would understand all executable applications, including demonstration versions of applications, to teach 'initiating.' This is because an application must at some point be initiated in order to begin execution."

In paragraph 50, Declarant purely speculates that "the POSITA in 2002 would have known how to implement avatars into game applications without undue experimentation. ... This professional experience would have included features, such as avatars, that were well-known and prevalent in the gaming field by 2002."

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 under Fed. R. Evid. 702, 703 and 705.

2. 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 1025 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, each of paragraphs 10, 12, 14-20, 22, 24, 29-32, 34-42, and 45-50 contain sentences that do not cite to any evidence or facts to support the assertions made therein, and these uncited sentences are unsupported testimony that are accordingly objected to for failing to provide the underlying facts or data on which such opinion is based.

3. Objections to Testimony Inadmissible for Hearsay

Patent Owner objects to Exhibit 1025 to the extent Petitioner relies on it to prove the truth of the matter asserted as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Further, Patent Owner objects to paragraphs 9-10, and 26 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because they contain out-of-

proceeding statements that are being offered to prove the meaning of “application” and “game application.”

Further, Patent Owner objects to paragraphs 47 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because it contains out-of-proceeding statements that are being offered to prove the meanings of “player” and “character.”

Further, Patent Owner objects to paragraphs 48 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because it contains out-of-proceeding statements that are being offered to prove the meaning of “disseminate.”

Further, Patent Owner objects to paragraphs 34-38 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because they contain out-of-proceeding statements that are being offered to prove that “[t]he web browsers shown as configured in Fig. 4-19 are game applications.”

Further, Patent Owner objects to paragraphs 39-42 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because they contain out-of-proceeding statements that are being offered to prove the truth of the assertion that “such demonstration software would frequently include a time-limiting feature, preventing the user from making use of those features outside of a limited time window, thus encouraging the user to purchase the paid version.”

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

Patent Owner further objects to Exhibit 1025 as to the extent the testimony provided by Declarant in paragraphs 1-8, 11-14, 17, 20-25, 27-28, 30, 33-34, 39-40, 42, and 44 is not cited to or relied upon by the Reply (Paper 30) 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.

*Exhibits 1018-1019 – Software Architecture: Foundations, Theory, and Practice
and Software Architecture: Foundations, Theory, and Practice (Excerpts)(First
Set)*

Patent Owner objects to Exhibits 1018-1019 under Federal Rule of Evidence 401 as these Exhibits have no bearing on any issue in this proceeding. Furthermore, Patent Owner objects to these Exhibits under Fed. R. Evid. 402, because they lack relevance and fail to support a patentability challenge. Petitioner does not explain how these Exhibits are relevant to the proceeding (i.e., Petitioner fails to provide the relevance of the evidence to the challenge raised), and the Board may exclude evidence where a party has failed to state its relevance. Further, Patent Owner objects to these Exhibits because they have no bearing on the patentability of any of the claims of the Patent. Accordingly, their

probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed. R. Evid. 403.

Patent Owner objects to these Exhibits under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of each exhibit. Petitioner has not submitted required witness testimony or evidence to demonstrate that these documents are authentic.

Further, Patent Owner objects to these Exhibits (published in or after 2009) to the extent that they are offered to prove the state of mind and understanding of a POSITA prior to October 16, 2002.

Further, Patent Owner objects to these Exhibits to the extent that they contain content that exceeds the proper scope of a Reply and are used to advance new arguments.

Further, Patent Owner objects to these Exhibits to the extent that they are offered to prove the truth of the matter asserted as inadmissible hearsay under FRE 801 and 802 that do not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Exhibits 1026 –Software Architecture: Foundations, Theory, and Practice
(Excerpts)(Second Set)

Patent Owner objects to Exhibit 1026 under Federal Rule of Evidence 401 as it has no bearing on any issue in this proceeding. Furthermore, Patent Owner objects to this Exhibit under Fed. R. Evid. 402, because it lacks relevance and fails to support a patentability challenge. Petitioner does not explain how this Exhibit is relevant to the proceeding (i.e., Petitioner fails to provide the relevance of the evidence to the challenge raised), and the Board may exclude evidence where a party has failed to state its relevance. Further, Patent Owner objects to this Exhibit because it has no bearing on the patentability of any of the claims of the Patent. Accordingly, its probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed. R. Evid. 403.

Patent Owner objects to this Exhibit under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of each exhibit. Petitioner has not submitted required witness testimony or evidence to demonstrate that these documents are authentic. Although Petitioner attempts to authenticate the exhibit through its Catherine Vassilkova's testimony, she has no personal knowledge under Fed. R. Evid. 602 of the document's creation, the document's authorship, or any other required foundational aspect of the Exhibit.

Patent Owner objects to this Exhibit under Fed. R. Evid. 106, because Petitioner cherry-picked portions of the document and failed to include all related parts “that in fairness ought to be considered at the same time.”

Further, Patent Owner objects to this Exhibit (published in or after 2009) to the extent that it is offered to prove the state of mind and understanding of a POSITA prior to October 16, 2002.

Further, Patent Owner objects to this Exhibit to the extent that it contains content that exceeds the proper scope of a Reply and is used to advance new arguments.

Further, Patent Owner objects to this Exhibit to the extent that it is offered to prove the truth of the matter asserted as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Exhibits 1017 and 1027

Patent Owner objects to Exhibits 1017 and 1027 under Federal Rule of Evidence 401 as these Exhibits have no bearing on any issue in this proceeding. Furthermore, Patent Owner objects to these Exhibits under Fed. R. Evid. 402, because they lack relevance and fail to support a patentability challenge. Petitioner does not explain how these Exhibits are relevant to the proceeding (i.e.,

Petitioner fails to provide the relevance of the evidence to the challenge raised), and the Board may exclude evidence where a party has failed to state its relevance. Further, Patent Owner objects to these Exhibits because they have no bearing on the patentability of any of the claims of the Patent. Accordingly, their probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed. R. Evid. 403.

Patent Owner objects to these Exhibits under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of each exhibit. Petitioner has not submitted required witness testimony or evidence to demonstrate that these documents are authentic.

Further, Patent Owner objects to these Exhibits to the extent that they contain content that exceeds the proper scope of a Reply and are used to advance new arguments.

Further, Patent Owner objects to these Exhibits to the extent that they are offered to prove the truth of the matter asserted as inadmissible hearsay under FRE 801 and 802 that do not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Further, Patent Owner objects to any portion of these Exhibits that were not explicitly and clearly relied upon by Petitioner or its expert per 37 C.F.R. §42.104(b)(5).

Further, Patent Owner objects to these Exhibits under Fed. R. Evid. 106, because Petitioner cherry-picked portions of the documents and failed to include all related parts “that in fairness ought to be considered at the same time.”

Exhibits 1020

Patent Owner objects to Exhibit 1020 under Federal Rule of Evidence 401 as it has no bearing on any issue in this proceeding. Furthermore, Patent Owner objects to this Exhibit under Fed. R. Evid. 402, because it lacks relevance, fails to support a patentability challenge, and is confusing. Petitioner does not explain how this Exhibit is relevant to the proceeding (i.e., Petitioner fails to provide the relevance of the evidence to the challenge raised), and the Board may exclude evidence where a party has failed to state its relevance. Further, Patent Owner objects to this Exhibit because it is misleading with no bearing on patentability of any claims. Accordingly, its probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed. R. Evid. 403.

Patent Owner objects to this Exhibit under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of each exhibit. Petitioner

has not submitted required witness testimony or evidence to demonstrate that these documents are authentic.

Patent Owner objects to this Exhibit under Fed. R. Evid. 106, because Petitioner cherry-picked portions of the document and failed to include all related parts “that in fairness ought to be considered at the same time.”

Further, Patent Owner objects to this Exhibit to the extent that it contains content that exceeds the proper scope of a Reply and is used to advance new arguments.

Further, Patent Owner objects to this Exhibit to the extent that it is offered to prove the truth of the matter asserted as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Date: June 11, 2024

Respectfully Submitted,
SPENCER FANE LLP

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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 June 11, 2024 upon the following parties:

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Respectfully Submitted,
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