Paper 32

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 IPR2023-00995
Patent 10,846,941

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 31), filed June 10, 2024 in the *Inter Partes* Review of U.S. Patent No. 10,846,941. 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 1017 – Microsoft Computer Dictionary Excerpts

Patent Owner objects to Exhibit 1017 under Federal Rule of Evidence 401 as this Exhibit 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 this document is authentic.

Further, Patent Owner objects to this Exhibit to the extent it contains content that exceeds the proper scope of a Reply and are 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 do not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Further, Patent Owner objects to any portion of this Exhibit that was 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 this Exhibit under Fed. R. Evid. 106, because Petitioner cherrypicked portions of the document and failed to include

all related parts "that in fairness ought to be considered at the same time."

Exhibit 1024 – "DECLARATION OF MONIKA HUDGINS"

Patent Owner objects to Exhibit 1024 under Fed. R. Evid. 602, 702, 703, 901, and 37 C.F.R. § 42.23(b). Patent Owner specifically objects to:

(1) Paragraph 3 of Exhibit 1024 on the grounds that it contains conclusory statements; lacks an explanation for bases of dates when Exhibit 1008 (i.e., the Phantasy Star Online manual) was presumed to be written and distributed; relies on material that has not been properly authenticated or lacks foundation; lack of personal knowledge - declaration does not evidence that declarant personally knew of, placed with, or distributed Exhibit 1008 with the U.S. version of the Phantasy Star Online game. Paragraph 3 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).

(2) Paragraph 4 of Exhibit 1024 on the grounds that it contains conclusory statements; lacks an explanation for the basis that the attached version of Exhibit 1008 (i.e., the Phantasy Star Online manual) was a "true and correct" copy of what the declarant submitted; relies on material that has not been properly authenticated or lacks foundation; lack of personal knowledge - the declaration does not evidence that declarant personally knew that the attached Exhibit 1008 was a "true and correct" copy of the user manual declarant submitted for

packaging. Paragraph 4 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).

Further, Patent Owner objects to Exhibit 1024 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 Exhibit 1024 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 Exhibit 1024 because Patent Owner has not "opened the door" via an explicit discussion of the subject matter. As the Board stated in the hearing held on March 13, 2024, this is not proper. *See* 37 C.F.R. § 42.61(a) ("Evidence that is not taken, sought, or filed in accordance with this subpart is not admissible.").

Further, Patent Owner objects to Exhibit 1024 because it is highly prejudicial and has no bearing on the patentability of any of the claims of the Patent. Moreover, Petitioner has had access to this evidence since at least October 2023, and has only introduced it now. Accordingly, its probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed.

R. Evid. 403.

II. CONCLUSION

For at least the foregoing reasons, the evidence proffered by Petitioner above fails to comply with Federal Rules of Evidence and the Code of Federal Regulations. Therefore, the Board should exclude Petitioner's Exhibits 1017 and 1024.

Date: June 11, 2024

Respectfully Submitted,
SPENCER FANE LLP

By *_/s/ Kevin S. Tuttle_*

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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,
SPENCER FANE LLP

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