

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 IPR2023-00996
Patent 10,991,165

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 Petition for *Inter Partes* Review of U.S. Patent No. 10,991,165, Paper 2, filed on June 6, 2023. These objections are timely served within ten (10) business days of the institution of the trial. 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. These evidentiary failures cannot be cured because Petitioner is time-barred from filing another Petition under 35 U.S.C. §315(b).

I. PATENT OWNER’S OBJECTIONS TO EVIDENCE

Exhibit 1004 – Declaration of David Crane

Patent Owner objects to Exhibit 1004, the Declaration of David Crane under Fed. R. Evid. 702 and 703. Mr. Crane, the declarant, fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of Fed. R. Evid. 702. Mr. Crane has also

not “reliably applied the principles and methods to the facts of the case,” and his opinions in his Declaration are not “the product of reliable principles and methods,” in violation of Fed. R. Evid. 702.

Patent Owner also objects to Exhibit 1004 under Fed. R. Evid. 801, 802, and 805 to the extent the Declaration relies on out-of-court statements offered for the truth of the matters asserted, which constitute impermissible hearsay and for which Petitioner has not demonstrated any exception or exclusion to the rule against hearsay. *See* Fed. R. Evid. 801, 802, 805.

Patent Owner further objects to Exhibit 1004 under Fed. R. Evid. 901 on the basis that it cites or relies on exhibits that have not been properly authenticated or lack foundation. By way of example, without limitation, Patent Owner objects to the following paragraphs in the Declaration of David Crane:

Paragraph Nos.	Fed. R. Evid.	Basis for Objection
¶¶ 65–70	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 72–84	401–403, 702, 703, 801, 802, 805, 901	Lack of relevance to the extent ¶¶ 72–84 fail to address obviousness; conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay (<i>See</i> FNs 1–7); relies on material that has not been properly authenticated or lacks foundation.
¶¶ 91	901	Relies on material that has not been properly authenticated or lacks foundation (<i>See</i> FN 9).
¶¶ 97–116	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.

¶¶ 117–121	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 122–123	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶ 124	702, 703, 602, 901	Conclusory statements; lacks explanation for bases of opinions; lack of personal knowledge- declaration does not evidence that declarant personally played the video game to testify as to what a player would see; relies on material that has not been properly authenticated or lacks foundation (<i>See Annotated Fig. 3</i>).
¶¶ 126–132	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 133–134	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶ 136	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶ 138	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 140–141	702, 703, 901	Conclusory statements; lacks explanation for bases of opinions; relies on material that has not been properly authenticated or lacks foundation (<i>See Annotated Fig. 1</i>).
¶¶ 143, 145, 147,	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶ 149	702, 703, 901	Conclusory statements; lacks explanation for bases of opinions; relies on material that has not been properly authenticated or lacks foundation (<i>See Reference to Annotated Fig. 3</i>).
¶¶ 151–152, 154–155, 157, 159–160	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 162–163	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 165–171	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; lack of personal knowledge- declaration does not evidence that declarant personally played the video game to testify as to what a player would see; relies on material that has not been properly authenticated or

		lacks foundation (<i>See</i> FN 11 and 12).
¶¶ 173–174, 176–180	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 182–184	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 185–187, 189–190, 192–193	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 196–197	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 199–202	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 204–206	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 207–208	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 209–215	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 216–217	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 218–223	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶ 224	702, 703	Conclusory statements; lacks explanation for bases of opinions.
¶¶ 226–230	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 231–232	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶ 234	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 236–238	702, 703, 801, 802,	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on

	805, 901	material that has not been properly authenticated or lacks foundation.
¶¶ 240, 242, 244,	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 246–247	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 249, 251, 253	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 255–257	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 260, 262–263, 265, 267	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶ 269	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 270–271	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 273–274	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶ 275	702, 703, 602, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; lack of personal knowledge- declaration does not evidence that declarant personally played the video game to testify as to what a player could expect; hearsay and hearsay within hearsay; relies on material

		that has not been properly authenticated or lacks foundation.
¶¶ 276–277	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 279–282	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 284–285	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 287–288, 290–291, 293–294	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 296–297	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 300–301, 303–305, 307–314	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 315–316	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.
¶¶ 318–324	702, 703, 801, 802, 805, 901	Conclusory statements; lacks explanation for bases of opinions; hearsay and hearsay within hearsay; relies on material that has not been properly authenticated or lacks foundation.

Patent Owner also objects to ¶¶ 1-4, 21-40, 45-86, 88-96, 98-101, 103-116, 209-215, 218-223, 242-243, 269, 308-314, 318-323, and 326-327 of Exhibit 1004

under 37 C.F.R. §42.104(b)(5) because it is not cited to or relied upon by the Petition in this proceeding, and, accordingly, it lacks relevance and fails to support a patentability challenge.

Exhibit 1008 – Phantasy Star Online Manual

Patent Owner objects to Exhibit 1008, the Phantasy Star Online Manual (“PSO Manual”) under Fed. R. Evid. 901 for lack of authenticity. Petitioner fails to provide the authentication required for this document, and the PSO Manual is not self-authenticating under Fed. R. Evid. 902.

Further, Patent Owner objects to the PSO Manual as impermissible hearsay under Fed. R. Evid. 801, 802, and 805 to the extent to which the out-of-court statements therein are offered for the truth of the matters asserted and constitute impermissible hearsay for which Petitioner has not demonstrated any exception or exclusion to the rule against hearsay. *See* Fed. R. Evid. 801, 802, 805. For example, any purported date included in the document is inadmissible hearsay to the extent Petitioner relies on such a statement to attempt to prove the existence of the document on that date. *Id.* Similarly, any depictions and/or descriptions included in the document are inadmissible hearsay to the extent Petitioner relies on such statements to prove the existence and/or content of the prior art. *Id.* Furthermore, Exhibit 1008 is prohibited hearsay within hearsay insofar as the document is declaring, in effect, that it is accurately depicting the characteristics

of *Phantasy Star Online* video game. *See* Fed. R. Evid. 805. Accordingly, permitting reliance on this document in the Petition or other submissions of Petitioner would be misleading and unfairly prejudicial to Patent Owner. *See* Fed. R. Evid. 403.

Additionally, Patent Owner objects to the PSO Manual under Fed. R. Evid. 401, 402, and 403 because Petitioner has not shown that the PSO Manual represents the state of the art in the time period relevant to the challenged patent. Here, the Petitioner is attempting to utilize the PSO Manual as a surrogate for the *Phantasy Star Online* video game itself, which would be otherwise deemed inadmissible due to its failure to qualify as a printed publication. Nonetheless, Petitioner is attempting to bootstrap the admissibility of the *Phantasy Star Online* video game through the introduction of the PSO Manual, which is conspicuously bereft of any substantive technical information regarding the specification of the game itself or its execution by the console. The absence of such critical information significantly undermines the PSO Manual's utility as prior art, rendering it inadequate for the purpose of assessing the patentability of the subject matter under review. The PSO Manual's failure to provide relevant technical details significantly diminishes its probative value. These shortcomings, coupled with the failure to meet federal evidentiary standards, warrant a rejection of any attempt to rely on the PSO Manual in these

proceedings.

Patent Owner also objects to the PSO Manual under Fed. R. Evid. 401, 402, and 403 for failure to show that the PSO Manual makes any fact of consequence in determining this action more or less probable than it would be without the PSO Manual and is thus irrelevant and inadmissible (Fed. R. Evid. 401, 402); permitting reliance on the PSO Manual would also be misleading, irrelevant, and unfairly prejudicial to Patent Owner. *See* Fed. R. Evid. 403.

Finally, Patent Owner objects to the PSO Manual on the basis that Petitioner has failed to show that this exhibit is a printed publication within the meaning of 35 U.S.C. §§102 and 311.

Exhibit 1011 – Declaration of Alexander Harry

Patent Owner objects to Exhibit 1011, the Declaration of Alexander Harry under Fed. R. Evid. 701, 702 and 703. First, to the extent that Mr. Harry, the declarant, does not claim to be an expert, Mr. Harry has provided improper expert opinion, which constitutes grounds for exclusion. *See* Fed. R. Evid. 701. Mr. Harry is a patent agent and lacks appropriate technical qualifications to testify as an expert witness concerning authentication or public availability of video game materials. *See* Exhibit 1011, Attachment A. In the event Mr. Harry is attempting to provide expert testimony, Mr. Harry fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based,

in violation of Fed. R. Evid. 702. Mr. Harry has also not “reliably applied the principles and methods to the facts of the case,” and his opinions in his Declaration are not “the product of reliable principles and methods,” in violation of Fed. R. Evid. 702.

Patent Owner also objects to the Declaration of Alexander Harry under Fed. R. Evid. 602 to the extent Mr. Harry, the declarant, proffers statements pertaining to matters outside the scope of his personal knowledge. For instance, in ¶8 of the Declaration of Alexander Harry, Mr. Harry attempts to provide an opinion concerning the condition of the *Phantasy Star Online* DVD he procured, asserting that it arrived encased in factory-original cellophane wrap. Similarly, in ¶12 of the Declaration of Alexander Harry, Mr. Harry attempts to articulate an opinion regarding the fact that Sega would have included the PSO Manual with every unit of the *Phantasy Star Online* video game. Nothing in the Declaration of Alexander Harry suggests that Mr. Harry was ever a records custodian for Sega, or responsible for archiving or retrieving Sega’s video game manuals or versions thereof. Moreover, Mr. Harry does not testify that he has any knowledge of Sega’s video game packaging and distribution practices at the time *Phantasy Star Online* was purportedly sold or distributed, or that he contacted or consulted people that did.

Patent Owner further objects to the Declaration of Alexander Harry under

Fed. R. Evid. 401, 402, and 403, and 37 C.F.R. §42.104(b)(5) to the extent its contents (e.g., ¶¶1–8, 9(a), and 10–12) are not cited in the Petition and are not identified by the Petitioner as relevant to the issues in this proceeding. *See Symantec Corp. v. Rpost Communications Ltd.*, IPR2014-00353, Paper 15 at 16 (PTAB July 15, 2014). Petitioner fails to show that this Declaration makes any fact or consequence in determining this action more or less probable than it would be without the Declaration and is thus irrelevant and not admissible. To the extent they are relevant, their probative value is outweighed by the danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, or needlessly presenting cumulative evidence, and therefore inadmissible under Fed. R. Evid. 403.

II. CONCLUSION

For at least the foregoing reasons, the evidence proffered by Petitioner in the forms of Exhibits 1004, 1008, and 1011 fails to comply with Federal Rules of Evidence. Therefore, the Board should exclude Petitioner's Exhibits.

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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