

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

EIGHT KHZ, LLC,
Patent Owner.

Case IPR2023-01023
Patent 10,798,509

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, Patent Owner Eight kHz, LLC (“8KHZ”) provides the following objections to evidence submitted by Petitioner Meta Platforms, Inc. These objections are timely served within 5 business days of Meta’s filing of their Reply. The fact that 8KHZ has not objected below to certain pieces of evidence or certain portions of certain evidence provides no indication that 8KHZ agrees to the positions asserted therein. In addition, 8KHZ reserves the right to present further objections to this or additional evidence submitted by Meta Platforms, Inc., as allowed by the applicable rules or other authority.

I. 8KHZ’S OBJECTIONS TO EVIDENCE

Exhibit 1173 – “SUPPLEMENTAL DECLARATION OF DR. GREGORY F. WELCH IN SUPPORT OF PETITIONERS’ REPLY”

8KHZ objects to Exhibit 1173 under Fed. R. Evid. 106, 401–403, 702– 703, 705, and 37 C.F.R. § 42.65(a) and § 42.104(b)(5). 8KHZ specifically objects to:

- (1) Paragraphs 30, 31, 42, 63, 87, 126, and 141 of Exhibit 1173 on the grounds that they are irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403; and/or speculation under Fed. R. Evid. 702, 703, and 705;
- (2) Paragraphs 42, 46-49, 75, and 77 of Exhibit 1173 on the grounds that they present unduly cumulative evidence under Fed. R. Evid. 403;

- (3) Paragraph 30 of Exhibit 1173 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 23, 28, 31, 44, 45, 54, 97, 126 and 141 of Exhibit 1173 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) Paragraph 30 of Exhibit 1173 to the extent that they are offered to prove the truth of the matter asserted on the grounds that they contain inadmissible hearsay under Fed. R. Evid. 801–802.

The fact that 8KHZ has not objected to certain paragraphs of Exhibit 1173 provides no indication that 8KHZ agrees to the positions asserted therein.

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

8KHZ objects to Exhibit 1173 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, 8KHZ objects to paragraphs 30, 31, 42, 63, 126, and 141 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 30, Declarant misleadingly characterizes and purely speculates using impermissible opinion evidence of a non-expert testimony (see below) that “skilled artisans would have known and been motivated to reduce the number of physical components required for tracking.”

In paragraph 31, Declarant purely speculates without providing any supporting evidence that “advances in the basic components, and their widespread use in commercially available self-contained AR and VR systems, would have motivated skilled artisans to incorporate Pedrotti’s tracking processor and other components into Pedrotti’s HMD (rather than a separate base station).”

In paragraph 42, Declarant purely speculates that “[t]his is no different from common principles that have been known in traditional game design, even outside of the VR context.”

In paragraph 63, Declarant purely speculates that “[a]s shown below, target objects (e.g., neck of the guitar) are highlighted in response to the user’s pointing, to facilitate such interaction and manipulation.” It is completely unclear from the video whether the user is only point or has not already clicked or engaged with the object.

In paragraph 126, Declarant purely speculates that “the Patent Owner’s Response contains no substantive arguments” implying that none were made and that Petitioner’s assertions remain unrebutted.

In paragraph 141, Declarant purely speculates that “does not advance any arguments relating to dependent claims 3-8, 12-14, and 18-20 other than those I addressed above in the context of the independent claims” conclusorily stating that the references dependent claims are indistinguishable from the independent claims and can be address as such.

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 Testimony That is or Presents Unduly Cumulative Evidence.

8KHZ objects to paragraphs 42, 46-49, 75, and 77 of Exhibit 1173 to the extent that they are unduly cumulative under Fed. R. Evid. 403.

Specifically, 8KHZ objects to the cumulative evidence in paragraph 42. Declarant uses both exhibits 1148 and 1149 to support the same point.

Further, 8KHZ objects to the cumulative evidence in paragraphs 46-49 as each paragraph cite another exhibit for the same general argument, citing 1115, 1116, 1135, 1063, prefacing as follows, “[f]or example,” “[a]s another example,” “[a]s another example,” and “[a]s another example.”

Further, 8KHZ objects to the cumulative evidence in paragraph 75 where Declarant uses both exhibits 1147 and 1158 to support the same argument.

Further, 8KHZ objects to the cumulative evidence in paragraph 77 where Declarant uses exhibits 1160, 1161, 1162, and 1168 all to show an example of playing a sound in conjunction with an object.

3. Objections to Purported Expert Testimony by a Declarant Who Is Not Qualified as an Expert

8KHZ objects to each and every paragraph of Exhibit 1173 where Declarant made a statement regarding the knowledge of a POSITA and the state of the art under Federal Rules of Evidence 702–703 as the exhibit contains purported expert testimony by a Declarant who is not qualified as an expert by knowledge, skill, experience, training, or education to provide an expert opinion on these issues.

Specifically, and without limitation, 8KHZ objects to testimony of paragraph 30 containing improper opinion testimony by Declarants quoted from Ex. 1150 offering a prediction on the technical direction of the state of the art, subject matter on which Declarants, as financial analysts, are not experts.

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

8KHZ further objects to Exhibit 1173 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 23, 28, 31, 44, 45, 54, 97, 126 and 141 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.

5. Objections to Testimony Inadmissible for Hearsay

8KHZ objects to Exhibit 1173 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, 8KHZ objects to paragraph 30 under Fed. R. Evid. 801–802 as containing inadmissible hearsay because it contains out-of-proceeding statements that are being offered to prove that artisans will “switch to all-in-one wireless headsets with a built in display” and that “next generation sensors will be available along with, custom displays and customs optics which make VR headsets portable and fashionable.”

Exhibit 1150 – “Gene Munster et al., Next Mega Tech Theme Is Virtual Reality”

8KHZ objects to this Exhibit under Federal Rules of Evidence 702–703 as the exhibit contains purported expert testimony by a Declarant who is not qualified as an expert by knowledge, skill, experience, training, or education to provide an expert opinion as a POSITA. Petitioner offers a financial investment report authored by

individuals that do not fit Petitioner's definition of a POSITA as evidence of what a POSITA would know and be motivated to do.

Exhibits Listed in Table A Below

8KHZ objects to each of the Exhibits listed in Table A under Fed. R. Evid. 901. This evidentiary failure cannot be cured because Petitioner is time-barred from filing another Reply under 35 U.S.C. §315(b).

Table A

Ex.	Description
1152	Second Life: The Official Guide, Basic Building Demonstration (video)
1153	Transcript, Second Life: The Official Guide, Basic Building Demonstration
1154	Second Life: The Official Guide, Suzanne's Guitar (video)
1155	Transcript, Second Life: The Official Guide, Suzanne's Guitar
1157	Axel Stockburger, <i>The Game Environment From an Auditive Perspective (2003)</i>
1159	<i>Client sounds</i> , WIKI.SECONDLIFE.COM
1160	<i>List of DooM2 Sounds</i> , DOOMWORLD.COM
1161	<i>Music and Sounds</i> , OLDDOOM.COM
1162	<i>Resident Evil 4</i> , WIKIPEDIA.ORG,
1163	<i>How to Use Oculus Rift with Second Life</i> , YOUTUBE.COM
1164	Transcript, <i>How to Use Oculus Rift with Second Life</i> , YOUTUBE.COM
1165	<i>Turn off annoying UI sounds - Second Life Video Tutorial</i> , YOUTUBE.COM
1166	Transcript, <i>Turn off annoying UI sounds - Second Life Video Tutorial</i> , YOUTUBE.COM
1167	Excerpt of Chapter 1-1 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 1</i> , YOUTUBE.COM
1168	Transcript, Excerpt of Chapter 1-1 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 1</i> , YOUTUBE.COM
1169	Excerpt of Chapter 1-2 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 2</i> , YOUTUBE.COM

1170	Transcript, Excerpt of Chapter 1-2 <i>Resident Evil 4 (2005)</i> PC No Commentary Walkthrough & Gameplay 2, YOUTUBE.COM
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8KHZ objects to each of the Exhibits listed in Table A under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of each exhibit. The Petitioner has not submitted required witness testimony or evidence to demonstrate that this document is authentic.

Further, 8KHZ objects to each of the Exhibits listed in Table A 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 Listed in Table B Below

8KHZ objects to each of the Exhibits listed in Table B under Fed. R. Evid. 401–403, 901, and 37 C.F.R. § 42.104(b)(5). This evidentiary failure cannot be cured because Petitioner is time-barred from filing another Petition under 35 U.S.C. 28 §315(b).

Table B

Ex.	Description
1146	Durand R. Begault & Elizabeth M. Wenzel, <i>Headphone Localization of Speech</i>
1147	Grigore Burdea et al., <i>Multimodal Virtual Reality: Input-Output Devices, System Integration, and Human Factors</i>
1148	Kellie Rae Carter, <i>Gaming the Design: Using Game Design Techniques in the Realm of Investing</i>

Ex.	Description
1149	Der-Thang Chen & Ching Sing Chai, <i>An Evaluation of the Learnability of the Justice Bao Button-Less Interface</i>
1150	Gene Munster et al., <i>Next Mega Tech Theme Is Virtual Reality</i>
1152	Second Life: The Official Guide, Basic Building Demonstration (video)
1153	Transcript, Second Life: The Official Guide, Basic Building Demonstration
1154	Second Life: The Official Guide, Suzanne's Guitar (video)
1155	Transcript, Second Life: The Official Guide, Suzanne's Guitar
1156	Ben Shneiderman, <i>Designing Menu Selection Systems</i>
1157	Axel Stockburger, <i>The Game Environment From an Auditive Perspective (2003)</i>
1158	Elizabeth M. Wenzel, <i>Localization in Virtual Acoustic Displays</i>
1159	<i>Client sounds</i> , WIKI.SECONDLIFE.COM
1160	<i>List of Doom2 Sounds</i> , DOOMWORLD.COM
1161	<i>Music and Sounds</i> , OLDDOOM.COM
1162	<i>Resident Evil 4</i> , WIKIPEDIA.ORG,
1164	Transcript, <i>How to Use Oculus Rift with Second Life</i> , YOUTUBE.COM
1165	<i>Turn off annoying UI sounds - Second Life Video Tutorial</i> , YOUTUBE.COM
1166	Transcript, <i>Turn off annoying UI sounds - Second Life Video Tutorial</i> , YOUTUBE.COM
1167	Excerpt of Chapter 1-1 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 1</i> , YOUTUBE.COM
1168	Transcript, Excerpt of Chapter 1-1 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 1</i> , YOUTUBE.COM
1169	Excerpt of Chapter 1-2 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 2</i> , YOUTUBE.COM
1170	Transcript, Excerpt of Chapter 1-2 <i>Resident Evil 4 (2005) PC No Commentary Walkthrough & Gameplay 2</i> , YOUTUBE.COM
1171	Errata Sheet to Transcript of Welch Deposition (May 3, 2024)
1172	B. Danette Allen et al., <i>Tracking: Beyond 15 Minutes of Thought</i>

8KHZ objects to each of the Exhibits listed in Table B under Fed. R. Evid. 401 and 37 C.F.R. § 42.104(b)(5) because Petitioner does not demonstrate how each exhibit is relevant to the proceeding. (i.e., the Petitioner fails to identify the relevance

of the evidence to the challenge raised.) Further, Petitioner did not cite to or otherwise utilize any of the Exhibits listed in Table B in the Petition. Accordingly, its probative value is substantially outweighed by a danger of prejudice and confusion pursuant to Fed. R. Evid. 403.

Further, 8KHZ objects to each of the Exhibits listed in Table B 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.

8KHZ further objects to each of the Exhibits listed in Table B under Fed. R. Evid. 401 and 402 as the documents are irrelevant and immaterial as there is no information whether these documents are authoritative sources regarding the subject matter of the '509 Patent.

Date: August 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2024, I caused a true and correct copy of the foregoing Patent Owner's Objections to Petitioner's Evidence to be served via electronic mail upon the following attorneys of record for the Petitioner:

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