

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,
Petitioner,

v.

BLACKHAWK NETWORK INC.,
Patent Owner.

Case No. IPR2023-01235

U.S. Patent No. 9,865,135

PATENT OWNER'S NOTICE OF OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Blackhawk Network Inc. (“Patent Owner”) submits the following objections to Petitioner Interactive Communications International, Inc.’s (“Petitioner”) exhibits. As required by 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“FRE”).

II. OBJECTIONS

A. Objections to Exhibit 1034 – ’894 Patent

Grounds for Objection: FRE 401-403; 37 C.F.R. § 42.23(b).

Patent Owner objects to the admissibility of Exhibit 1034 under FRE 401-403 and 37 C.F.R. § 42.23(b). Exhibit 1034 is not relevant to this proceeding. Further, to the extent the exhibit is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. Patent Owner is relying on Exhibit 1034 for a new argument which should have been presented at the time the petition was filed and is in violation of 37 C.F.R. § 42.23(b).

B. Objections to Exhibit 1035 – ’451 Patent

Grounds for Objection: FRE 401-403; 37 C.F.R. § 42.23(b).

Patent Owner objects to the admissibility of Exhibit 1035 under FRE 401-403 and 37 C.F.R. § 42.23(b). Exhibit 1035 is not relevant to this proceeding. Further, to the extent the exhibit is deemed relevant, its admission would be unduly prejudicial,

misleading, and a waste of time. Patent Owner is relying on Exhibit 1035 for a new argument which should have been presented at the time the petition was filed and is in violation of 37 C.F.R. § 42.23(b).

C. Objections to Exhibit 1036 – Interrogatory Responses

Grounds for Objection: FRE 401-403; 37 C.F.R. § 42.23(b).

Patent Owner objects to the admissibility of Exhibit 1036 under FRE 401-403 and 37 C.F.R. § 42.23(b). Exhibit 1036 is not relevant to this proceeding. Further, to the extent the exhibit is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. Patent Owner is relying on Exhibit 1036 for a new argument which should have been presented at the time the petition was filed and is in violation of 37 C.F.R. § 42.23(b).

D. Objections to Exhibit 1038 – Supplemental Hutton Declaration

Grounds for Objection: FRE 401-403, 702; 37 C.F.R. § 42.23(b).

Patent Owner objects to the admissibility of Exhibit 1038 under FRE 401-403, 702 and 37 C.F.R. § 42.23(b). Mr. Hutton’s Supplemental Declaration contains new opinions and arguments that were not included in his original expert report or the petition. These new opinions and arguments should have been presented at the time the petition was filed, are not proper reply opinions and are in violation of 37 C.F.R. § 42.23(b). *See also* Consolidated Trial Practice Guide at 73 (Nov. 21, 2019) (“Petitioner may not submit new evidence or argument in reply that it could have

presented earlier, e.g. to make out a prima facie case of unpatentability.”). The Supplemental Declaration is prejudicial under FRE 401-403, as the rules do not provide an opportunity for Patent Owner to submit a responsive supplemental expert declaration. *See* 37 C.F.R. § 42.23(b); *id.* The proposed testimony is also barred by FRE 702.

Respectfully submitted,

Date: August 14, 2024

By: / Robert L. Hails /
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Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Notice of Objections to Evidence was served electronically via email on August 14, 2024, on the following:

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Date: August 14, 2024

By: / Robert L. Hails /
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