UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PELOTON INTERACTIVE INC.,
Petitioner,

v.

NEC CORPORATION,

Patent Owner.

Case IPR2023-01241
Patent 9,769,427

PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S PETITION

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner NEC CORPORATION ("NEC") respectfully submits the following objections to exhibits filed by Petitioner PELOTON INTERACTIVE, INC. ("Peloton") in conjunction with its Petition for Inter Partes Review of U.S. Patent No. 9,769,427 ("the Petition"). These objections are timely, as they are being made within ten business days from institution of the trial, February 7, 2024. 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, including without limitation upon conclusion of cross-examination of Petitioner's declarants.

The following chart lists NEC's objections to the admissibility of certain documents (identified below) that is included within or accompanies the Petition, and the basis for those objections.

Exhibit	**Objections**
Exhibit 1002	**FRE 901 and 902**: This exhibit has not been authenticated. Petitioner has not provided evidence regarding the origin of the documents or whether the documents are each a true or accurate copy. **FRE 801 and 802**: This exhibit cites to and incorporate hearsay. Because no hearsay exception applies, the identified exhibit is inadmissible in this proceeding.

Exhibit	Objections
	FRE 401-403: The exhibit is irrelevant at least because it does not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent.
Exhibits 1010, 1011, 1013, 1014	**FRE 901 and 902**: These exhibits have not been authenticated. Petitioner has not provided evidence regarding the origin of the documents or whether the documents are each a true or accurate copy. **FRE 1002 and 1003**: The exhibits that the opinion relies on are not an original document under FRE 1002 and not an authentic duplicate under FRE 1003, nor a document that falls under any exceptions to the original-document requirement, including those of FRE 1004. **FRE 801 and 802**: These exhibits cite to and incorporate hearsay. Because no hearsay exception applies, the identified exhibits are inadmissible in this proceeding **FRE 401-403**: The exhibits are irrelevant at least because they do not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent.
Exhibit 1004, 1005	**FRE 901 and 902**: These exhibits have not been properly authenticated under FRE 901 because Peloton has not presented evidence sufficient to support a finding that the

Exhibit	Objections
	documents in questions are what Peloton claims. There is no evidence that the document is self-authenticating under FRE 902. **FRE 801 and 802**: These Exhibits cite to and incorporate hearsay. Because no hearsay exception applies, the identified paragraphs are inadmissible in this proceeding.
Exhibit 1008, ¶¶ 45-56; 63	**FRE 401-403**: The opinions are irrelevant at least because they do not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent. **FRE 702:** The opinions expressed in these paragraphs regarding the understanding of the terms of the Challenged Claims by a person of skill in the art are inadmissible because the opinion does not help the trier of fact understand the evidence or determine a fact at issue, and Dr. Reader's opinions are not based on sufficient facts or data. The testimony is not the product of reliable principles and methods and the principles and methods have not been reliably applied to the facts of the case. Moreover, Dr. Reader's opinion is not based on sufficient facts or data and is not an admissible expert opinion because it does not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent.

Exhibit	Objections
	FRE 602: This exhibit did not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed.
Exhibit 1008, ¶¶ 81	**FRE 802**: This Exhibit cites to and incorporates hearsay. Because no hearsay exception applies, the identified paragraph is inadmissible in this proceeding. **FRE 401–403**: The Exhibit is irrelevant at least because it does not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent. **FRE 602:** This exhibit did not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed.
Exhibit 1008, ¶¶ 64-65, 67-68, 80-81, 93, 104-107, 111-113, 129, 140, 142, 146, 162, 158, 168, 173, 175, 179, 192, 200, 204, 237, 253, 255, 261, 272, 275, 286-287, 298,	**FRE 702 and 703**: The opinion expressed in these paragraphs are based on insufficient facts or data, are not the product of reliable principles and methods, and do not reliably apply the appropriate principles and methods to the fact of the case. **FRE 401–403**: The opinions expressed in these paragraphs are irrelevant at least because they do not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent.

Exhibit	Objections
302, 307.	Moreover, the opinions expressed in these paragraphs are irrelevant because Dr. Reader does not disclose the underlying facts or data upon which they are based, and therefore the opinions should be given little to no weight under 37 C.F.R. § 42.65(a). **FRE 602:** These exhibits do not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed.
Exhibit 1008, ¶¶ 80-81, 89.	**FRE 1002 and 1003**: The exhibits (EX1004 and EX1002) that the opinion relies on are not original documents under FRE 1002 and not an authentic duplicate under FRE 1003, nor a document that falls under any exceptions to the original-document requirement, including those of FRE 1004. **FRE 602:** These exhibits do not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed.
Exhibit 1008, ¶¶ 104-107, 110-113, 119, 123-127, 129-131, 133-140, 149, 152-153, 156-159, 162, 165-	**FRE 702**: The opinion expressed in these paragraphs regarding the knowledge and/or motivations of a person of skill in the art and the propriety of combining prior art references are inadmissible because the opinion does not help the trier of fact understand the evidence or determine a fact at issue. The testimony is not the product of reliable principles and methods and the principles and methods have

Exhibit	Objections
168, 172-173, , 175, 178-179, 181, 184, 185, 188, 191-194, 197-200, 203-204, 206-207, 210-228, 231-233, 238, 240, 243, 245, 268-270, 274, 306-310, 314, 318.	not been reliably applied to the facts of the case. Dr. Reader provides no supporting references for the opinions expressed in these paragraphs, and the testimony is not based on sufficient facts or data. **FRE 401–403**: The opinions expressed in these paragraphs are irrelevant at least because they do not assist the trier of fact in understanding the evidence or determining a fact at issue as of the filing date of the challenged patent. Moreover, the opinions expressed in these paragraphs are irrelevant because Dr. Reader does not disclose the underlying facts or data upon which they are based, and therefore the opinions should be given little to no weight under 37 C.F.R. § 42.65(a). **FRE 602:** These exhibits do not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed.

Dated: February 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), this is to certify that I caused to be served a true and correct copy of the foregoing "PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S PETITION" via the PTAB's E2E system and sent via email as detailed below.

Date of service: February 21, 2024

Documents served: PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S PETITION

Person Served:

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