

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
U.S. Patent No. 9,769,427

PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence (“FRE”), Petitioner (“Peloton”) submits the following objections to evidence associated with the Patent Owner Response (“POR”) of NEC Corporation (“NEC”).

A. Exhibit 2008

Peloton objects to Exhibit 2008 as not authenticated under FRE 901. Exhibit 2008 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2008 is what NEC claims it is.

B. Exhibit 2009

Peloton objects to Exhibit 2009 as not authenticated under FRE 901. Exhibit 2009 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2009 is what NEC claims it is.

C. Exhibit 2010

Peloton objects to Exhibit 2010 to the extent Dr. Cooperstock relies upon Exhibits 2008, 2009, 2011–19, 2022–28, 2030, and 2031 in forming his opinions, which are in and of themselves objectionable for the reasons set forth in this paper, including under FRE 401–403.

Peloton further objects to Exhibit 2010 as inadmissible under FRE 702 and 703 for failing to provide expert testimony based on sufficient facts or data, the use of reliable principles and methods, and a reliable application of such principles and methods.

D. Exhibit 2011

Peloton objects to Exhibit 2011 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

E. Exhibit 2012

Peloton objects to Exhibit 2012 as not authenticated under FRE 901. Exhibit 2012 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2012 is what NEC claims it is.

Peloton further objects to Exhibit 2012 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

F. Exhibit 2013

Peloton objects to Exhibit 2013 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

G. Exhibit 2014

Peloton objects to Exhibit 2014 as not authenticated under FRE 901. Exhibit 2014 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2014 is what NEC claims it is.

Peloton further objects to Exhibit 2014 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

H. Exhibit 2015

Peloton objects to Exhibit 2015 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

I. Exhibit 2016

Peloton objects to Exhibit 2016 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

J. Exhibit 2017

Peloton objects to Exhibit 2017 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

K. Exhibit 2018

Peloton objects to Exhibit 2018 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

L. Exhibit 2019

Peloton objects to Exhibit 2019 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

M. Exhibit 2022

Peloton objects to Exhibit 2022 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

N. Exhibit 2023

Peloton objects to Exhibit 2023 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

O. Exhibit 2024

Peloton objects to Exhibit 2024 as not authenticated under FRE 901. Exhibit 2024 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2024 is what NEC claims it is.

Peloton further objects to Exhibit 2024 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

P. Exhibit 2025

Peloton objects to Exhibit 2025 as not authenticated under FRE 901. Exhibit 2025 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2025 is what NEC claims it is.

Peloton further objects to Exhibit 2025 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

Q. Exhibit 2026

Peloton objects to Exhibit 2026 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

R. Exhibit 2027

Peloton objects to Exhibit 2027 as not authenticated under FRE 901. Exhibit 2027 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2027 is what NEC claims it is.

Peloton further objects to Exhibit 2027 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

S. Exhibit 2028

Peloton objects to Exhibit 2028 as irrelevant and inadmissible under FRE 401 and 402, and for confusing the issues and creating undue prejudice under FRE 403.

Peloton further objects to Exhibit 2028 to the extent it attempts to subvert the Board's word limit set forth in 37 C.F.R. § 42.24(b). Though Peloton is not aware of how many words NEC claims its POR includes as the POR does not comply with 37 C.F.R. § 42.24(d), a word-processing system indicates that the POR contains at least 14,162 words. Exhibit 2028, which attempts to incorporate a lengthy, 83-page analysis into the POR, adds an additional 37,000 words. The Board considers such attempts to "amount[] to an incorporation by reference" into a paper, "circumventing the page limits." IPR2014-00491, Paper 9 at 9 (August 13, 2014).

T. Exhibit 2030

Peloton objects to Exhibit 2030 as not authenticated under FRE 901. Exhibit 2030 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2030 is what NEC claims it is.

Peloton further objects to Exhibit 2030 as inadmissible under FRE 401 and 402 because it lacks relevance to this proceeding, as the POR does not refer to or cite to this exhibit in any way or rely on it as evidence.

U. Exhibit 2031

Peloton objects to Exhibit 2031 as not authenticated under FRE 901. Exhibit 2031 has not been shown to be self-authenticating, and NEC has not produced any evidence sufficient to support a finding that Exhibit 2031 is what NEC claims it is.

Date: May 8, 2024

Respectfully submitted,

By /Scott C. Weidenfeller/

Scott C. Weidenfeller

Registration No.: 54,531

Anupam Sharma

Registration No.: 55,609

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Petitioner's Objection to Evidence under 37 C.F.R. § 42.64 was served by electronic mail today on the following counsel of record for Patent Owner:

Eliot Williams (eliot.williams@bakerbotts.com; dlbbnec@bakerbotts.com)
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And with courtesy copy to:

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Date: May 8, 2024

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