**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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WHATFIX INC.,
Petitioner,

v.

WALKME LTD.,
Patent Owner.

Patent No. 10,819,664

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*Inter Partes* Review No. IPR2023-01368

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# PETITIONER'S OBJECTION TO EVIDENCE SUBMITTED WITH NOTICE OF SERVICE OF SUPPLEMENTAL EVIDENCE

Petitioner Whatfix Inc. ("Petitioner" or "Whatfix") hereby objects to the following evidence that was submitted by Patent Owner WalkMe Ltd. ("Patent Owner" or "WalkMe") with the Notice of Service of Supplemental Evidence (Paper 21) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), these objections are being timely filed and served within five (5) business days of service of the Notice of Service of Supplemental Evidence, which was served on July 29, 2024.

### A. Exhibit 2014 (Supplemental Expert Declaration of Ivan Zatkovich)

Petitioner objects to Exhibit 2014 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. Petitioner further objects to Exhibit 2014 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Mr. Zatkovich does not have personal knowledge (Fed. R. Evid. (FRE) 602), and to the extent that Mr. Zatkovich's opinions constitute unreliable expert testimony under FRE 702 and 703.

Petitioner objects to the portions of Exhibit 2014 not discussed or cited in the Patent Owner Response (POR), as not being relevant to the POR. If the objected to material was not discussed or cited in the POR, Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant, and its consideration would be

unfairly prejudicial to Petitioner. In particular, at least paragraphs 381-410 of Exhibit 2014 were not cited or discussed in the POR. Accordingly, at least those paragraphs of Exhibit 2014 are objected to as not being relevant to any issue in this proceeding.

### B. Exhibit 2015, Exhibit 2016, Exhibit 2017 (Screenshots of Comments to S. Symons, "When Chatbots meet RPA bots")

Petitioner objects to Exhibit 2015, Exhibit 2016, and Exhibit 2017 as lacking foundation and lacking authentication under FRE 901. Petitioner objects to these exhibits as containing hearsay to the extent that Patent Owner attempts to rely on them to prove the truth of any matter described therein under FRE 801 and 802. For example, the exhibits' alleged publication dates (September 10, 2018; June 9, 2018; April 24, 2018) are after the '664 patent's priority date (November 5, 2017). Further, Patent Owner fails to offer any evidence that Exhibit 2015, Exhibit 2016, and Exhibit 2017 were publicly accessible in their presented form as of the alleged publication dates. Patent Owner fails to offer any evidence that Exhibit 2015, Exhibit 2016, and Exhibit 2017 are what Patent Owner claims them to be. Additionally, Patent Owner offers no evidence that a person of skill in the art would have relied upon these alleged comments at the time of the '664 patent's priority date.

### C. Exhibit 2018 (Khoros Staff Article, "Different types of chatbots: Rule-based vs. NLP")

Petitioner objects to Exhibit 2018 as being irrelevant and/or unduly prejudicial. (*See* FRE 401-403.) The exhibit's alleged publication date (August 29, 2019) is after the '664 patent's priority date (November 5, 2017).

Petitioner objects to Exhibit 2018 as lacking foundation and lacking authentication under FRE 901. For example, Patent Owner offers no evidence that a person of skill in the art would have relied upon this article at the time of the '664 patent's priority date (November 5, 2017).

Petitioner objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801 and FRE 802. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2018 was publicly accessible in its presented form as of the alleged publication date. Patent Owner fails to offer any evidence that Exhibit 2018 is what Patent Owner claims it to be.

Petitioner objects to the portions of Exhibit 2018 not discussed in the POR, as not being relevant to any issue in this proceeding. If the objected to material was not discussed in the POR, Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant, and its consideration would be unfairly prejudicial to Petitioner. In particular, at least pages 1-7 were not discussed in the POR.

Accordingly, at least those pages of Exhibit 2018 are objected to as not being relevant to any issue in this proceeding.

Dated: August 5, 2024

Respectfully submitted,

By *<u>/s/ Jean Nguyen</u>*

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**Certificate of Service (37 C.F.R. § 42.6(e)(4) and 42.205(a))**

I hereby certify that the attached PETITIONER'S OBJECTION TO EVIDENCE SUBMITTED WITH NOTICE OF SERVICE OF SUPPLEMENTAL EVIDENCE was served as of the below date via e-mail to the following counsel of record for the Patent Owner:

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Dated: August 5, 2024

*/s/ Jean Nguyen*
Jean Nguyen