**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. 11,258,732

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*Inter Partes* Review No. IPR2023-01379

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# PETITIONER'S OBJECTION TO EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE

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 Patent Owner Response (Paper 17) 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 Patent Owner Response (POR), which was served on July 8, 2024.

**A. Exhibit 2001 (Expert Declaration of Ivan Zatkovich)**

Petitioner objects to Exhibit 2001 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. Petitioner further objects to Exhibit 2001 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 2001 not discussed or cited in the 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 1, 3-37, 44, 48-56, 101-117, 119,

122-125, 239, 241, 244-251, 254-256, 259-260, 264-267, 269-271, 287-290, and 506 of Exhibit 2001 were not cited or discussed in the POR. Accordingly, at least those paragraphs of Exhibit 2001 are objected to as not being relevant to any issue in this proceeding.

### B. Exhibits 2003 and 2004 (June 26, 2024 and June 27, 2024 Deposition Transcripts of Dr. Homayoon Beigi)

Petitioner objects to Exhibits 2003 and 2004 for each of the reasons noted in the objections made during the underlying deposition.

### C. Exhibit 2005 (Public Comments to S. Symons, "When Chatbots meet RPA bots")

Petitioner objects to Exhibit 2005 as lacking foundation and lacking authentication under FRE 901. 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, the exhibit's alleged publication date (2018) is after the '732 patent's priority date (November 5, 2017). Further, Patent Owner fails to offer any evidence that Exhibit 2005 was publicly accessible in its presented form as of the alleged publication date. Patent Owner fails to offer any evidence that Exhibit 2005 is what Patent Owner claims it to be. Additionally, Patent Owner offers no evidence that a person of skill in the art would have relied upon this article at the time of the

’732 patent’s priority date (November 5, 2017). Moreover, Patent Owner fails to explain the source of the purported screen capture of Exhibit 2005.

### D. Exhibit 2006 (Mr. Ian Zatkovich’s Overview of Exhibit 2009), Exhibit 2009 (“Simple chatbot” .html Code), and Exhibit 2010 (Video Demonstration of the “Simple chatbot” .html Code)

Petitioner objects to Exhibits 2006, 2009, and 2010 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. Petitioner objects to these exhibits 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. Exhibit 2006 contains out-of-court statements that are not taken under oath and that Patent Owner apparently seeks to use to prove the truth of the matter asserted, but Patent Owner has not established that any hearsay exception applies.

Petitioner further objects to Exhibits 2006, 2009, and 2010 to the extent that they include expert opinions for which the underlying facts or data on which the opinions are based on have not been disclosed (37 C.F.R. § 42.65), and for which Mr. Zatkovich does not have personal knowledge under FRE 602. Petitioner objects to Exhibits 2006, 2009, and 2010 to the extent that Mr. Zatkovich’s opinions constitute unreliable expert testimony under FRE 702 for not being based on sufficient facts and data, and under FRE 703 for not being based on facts or data to which he has been made aware of or personally observed. The probative value

in helping the decisionmaker evaluate the opinions substantially outweighs their prejudicial effect.

Petitioner objects to Exhibits 2006, 2009, and 2010 as being incomplete, which results in a "misleading impression created by taking matters of context." (FRE 106.) Petitioner also objects to Exhibits 2006, 2009, and 2010 for not being discussed and/or cited in the POR. If the objected to material was not discussed and/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.

For at least these reasons, Exhibits 2006, 2009, and 2010 are irrelevant and/or unduly prejudicial. (*See* FRE 401-403.) The probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the decisionmaker, undue delay, wasting time, or needlessly presenting cumulative evidence. (FRE 403.)

### E. Exhibit 2007 (Khoros Staff Article, "Different types of chatbots: Rule-based vs. NLP")

Petitioner objects to Exhibit 2007 as being irrelevant and/or unduly prejudicial. (*See* FRE 401–403.) The exhibit's alleged publication date (2019) is after the '732 patent's priority date (November 5, 2017).

Petitioner objects to Exhibit 2007 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 ’732 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 2007 was publicly accessible in its presented form as of the alleged publication date. Patent Owner fails to offer any evidence that Exhibit 2007 is what Patent Owner claims it to be.

Petitioner objects to the portions of Exhibit 2007 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 2-5 were not discussed in the POR. Accordingly, at least those pages of Exhibit 2007 are objected to as not being relevant to any issue in this proceeding.

**F. Exhibit 2008 (IBM Chatbot Article)**

Petitioner objects to Exhibit 2008 as being irrelevant and/or unduly prejudicial. (*See* FRE 401–403.) The exhibit’s alleged publication date (2022) is after the ’732 patent’s priority date (November 5, 2017).

Petitioner objects to Exhibit 2008 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 '732 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 2008 was publicly accessible in its presented form as of the alleged publication date. Patent Owner fails to offer any evidence that Exhibit 2008 is what Patent Owner claims it to be.

Petitioner objects to the portions of Exhibit 2008 not discussed or cited in the POR, as not being relevant to any issue in this proceeding. 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 pages 1, 2, 4-9 were not discussed or cited in the POR. Accordingly, at least those pages of Exhibit 2008 are objected to as not being relevant to any issue in this proceeding.

Dated: July 15, 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 PATENT OWNER'S RESPONSE 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: July 15, 2024

Respectfully submitted,

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