UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Hisense USA Corporation
Petitioner

v.

Brightplus Ventures LLC
Patent Owner

IPR2023-01411
Patent No. 7,872,705

**PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE**

Pursuant to 37 C.F.R. § 42.64(B), Petitioner Hisense USA Corporation ("Petitioner") objects as follows to the admissibility of the evidence served with Patent Owner's Preliminary Response on January 26, 2024.

| Ex. No. | Description | Objections |
|---|---|---|
| 2001 | Declaration of William K. Bohannon | **37 C.F.R. § 42.65**: The exhibit contains expert testimony that does not disclose the underlying facts or data on which the opinion is based.<br><br>**FRE 402**: The exhibit includes information that is not relevant to any ground upon which trial was instituted.<br><br>**FRE 403**: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.<br><br>**FRE 702/703 (Unreliable expert testimony)**: The exhibit contains statements and opinions that are not admissible under FRE 702 or 703. For example, the exhibit fails to identify facts or data supporting the witness's conclusory testimony, and that testimony thus is not based on sufficient facts or data. Further, the testimony is not the product of reliable principles and methods, and the witness fails to reliably apply the principles and methods of the facts of the case.<br><br>The exhibit contains opinions for which the factual bases have not been disclosed, including numerous broad and/or conclusory statements made without analysis or sufficient |

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|---|---|---|
| | | citation to evidence or explanation. *See also* Consolidated Trial Practice Guide, November 2019, at 36 ("Expert testimony, however, cannot take the place of a disclosure in a prior art reference, when that disclosure is required as part of the unpatentability analysis."). <br><br> The exhibit may contain statements that are not Mr. Bohannon's opinion, as large portions of the declaration are nearly identical to the Preliminary Response. <br><br> **FRE 802**: The exhibit and statements included therein are inadmissible hearsay, and the witness has not been made available for cross-examination. <br><br> The witness has not been made available for deposition and should be stricken if Patent Owner attempts to rely on the exhibit without making the witness available for deposition. *See* Consolidated Trial Practice Guide, November 2019, at 51 ("If a trial is instituted, a patent owner may choose not to rely on testimony submitted with the preliminary response. In that case, the patent owner should advise the Board of its decision, which can be done by affirmatively withdrawing the testimony in the patent owner response. If a patent owner withdraws a declaration submitted with its preliminary response, that declarant will usually not be subject to deposition on the withdrawn declaration. If, on the other hand, the patent owner does not withdraw a declaration submitted with its preliminary response, that declaration may be relied upon during the trial, and the declarant would usually be subject to discovery and deposition in the ordinary course of the trial.") |

| Ex. No. | Description | Objections |
|---|---|---|
| 2002 | Curriculum vitae of William K. Bohannon | Petitioner objects to Mr. Bohannon's CV for the same reasons set forth above for his Declaration (Exhibit 2001).<br><br>**FRE 402**: The exhibit includes information that is not relevant to any ground upon which trial was instituted. Patent Owner never relies on this exhibit. *See also* 37 CFR § 42.104 ("The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.").<br><br>**FRE 403**: The exhibit includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.<br><br>**FRE 802**: The exhibit and statements included therein are inadmissible hearsay. |

Dated: May 9, 2024

Respectfully submitted,

By: */s/ Matias Ferrario*
Matias Ferrario
Registration No. 51,082
Lead Counsel for Petitioner

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **PETITIONERS' OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE** was served on Patent Owner by filing through the P-TACTS System, as well as by delivering a copy via electronic mail to the following:

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nmassand@nilawfirm.com
twang@nilawfirm.com
uspto@nilawfirm.com

Dated: May 9, 2024 By: */s/ Matias Ferrario*
Matias Ferrario
Registration No. 51,082