Paper No. 22
Filed: October 28, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

HESAI TECHNOLOGY CO. LTD.,
Petitioner

v.

OUSTER, INC.
Patent Owner

---

Case No. IPR2023-01456
Patent No. 11,178,381

---

**PATENT OWNER'S OBJECTIONS TO EVIDENCE FILED WITH PETITIONER'S REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Ouster, Inc. ("Patent Owner") hereby objects to Petitioner's Hesai Technology Co. Ltd. ("Petitioner") exhibits submitted with its Reply to Patent Owner's Response (Paper 21) as indicated below, as well as any reference thereto or reliance thereon, without limitation.

| Exhibit Number and Description | Objections |
|---|---|
| **Ex. 1040** – Second Declaration of Dr. Shanley | **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 citation to evidence or explanation. *See also* Consolidated Trial Practice Guide, November 2019, at 36 ("Expert testimony, however, cannot take the |

| Exhibit Number and Description | Objections |
|---|---|
| | place of a disclosure in a prior art reference, when that disclosure is required as part of the unpatentability analysis.”).<br><br>The exhibit fails to reliably apply the correct legal standard to the facts of the case. For example, the witness fails to explain the differences between the claims and the prior art. *Graham v. John Deere Co*., 383 U.S. 1, 17-18 (1966) (requiring that the obviousness analysis consider “differences between the claimed subject matter and the prior art.”).<br><br>The exhibit may contain statements that are not Dr. Shanley’s opinion, as large portions of the declaration are nearly identical to the Reply to Patent Owner’s Response itself.<br><br>**FRE 802**: The exhibit and statements included therein are inadmissible hearsay.<br><br>**37 CFR § 42.6(a)(3)**: Numerous portions of the declaration are improperly incorporated by reference into the reply, e.g., Reply at 3, 7, 10, 11, 14, 18, 23, 26, 28 *passim* (improperly incorporating ranges of paragraphs from Ex. 1040).<br><br>**37 CFR § 42.23(b)**: The exhibit contains improper reply arguments and evidence. |
| **Ex. 1042** – U.S. Patent No. 11,422,236 to Pacala et al | **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 |

| Exhibit Number and Description | Objections |
|---|---|
| | 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. |
| **Ex. 1043** – U.S. Patent No. 9,841,495 to Campbell et al | **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. |
| **Ex. 1044** – U.S. Patent No. 9,804,264 to Villeneuve et al | **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. |
| **Ex. 1045** – Bronzi, D., et al, *Figures of Merit for CMOS SPADs and Arrays*, May 2013 | **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 |

| Exhibit Number and Description | Objections |
|---|---|
| | 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.<br><br>**FRE 901**: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is. |
| **Ex. 1046** - Matsubara, H., et al, *Development of Next Generation LIDAR*, Feb. 2012 | **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 802**: The exhibit and statements included therein are inadmissible hearsay.<br><br>**FRE 901**: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is. |
| **Ex. 1047** - Villa, F., et al, *CMOS Imager With 1024 SPADs and TDCs for Single-Photon Timing and 3-D Time-of-Flight*, July 2014 | **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 |

| Exhibit Number and Description | Objections |
|---|---|
| | 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.<br><br>**FRE 901**: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is. |

Dated: October 28, 2024

Respectfully submitted,

COOLEY LLP
ATTN: Patent Group
1299 Pennsylvania Avenue NW
Suite 700
Washington, DC 20004
Tel: (202) 728-7055
Fax: (202) 842-7899

/ Phillip Morton /
Phillip Morton
Reg. No. 57,835
Counsel for Patent Owner

## CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Section 42.6, that a complete copy of the attached **PATENT OWNER'S OBJECTIONS TO EVIDENCE FILED WITH PETITIONER'S REPLY** are being served via electronic mail the 28th day of October 2024, on Petitioner by serving the Petitioner's counsel of record in this proceeding as follows:

Michael T. Hawkins
Craig A. Deutsch
Yao Wang
FISH & RICHARDSON PC
IPR56432-0093IP2@fr.com
PTABInbound@fr.com

DATED: October 28, 2024

/ Phillip Morton /
Phillip Morton
Reg. No. 57,835