

Filed on behalf of:

Filed: April 24, 2024

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLUME DISTRIBUTORS, INC.,
Petitioner,

v.

SIMPLEHUMAN LLC
Patent Owner.

IPR2024-00050
U.S. Patent No. 10,683,165

**PATENT OWNER'S OBJECTIONS TO THE ADMISSIBILITY
OF EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner simplehuman LLC (“simplehuman”) hereby timely objects to the admissibility of evidence filed by Petitioner Volume Distributors, Inc. (“Volume Distributors”) after trial institution.

Exhibit Number	Objections
1003 – Declaration of Prof. Steve Visser	Relevance, Misleading (FRE 106, 401, 402, 403): ¶4 is misleading, incomplete, and irrelevant because its use in this context is misleading, and it improperly mischaracterizes the documents relied upon in informing Mr. Visser’s opinions, particularly in light of documents produced during concurrent litigation pending in the Central District of California, Case No. 2:23-cv-02219-JAK-AS (“district court case”). ¶9 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes the role of industrial designers in the design process. ¶¶10-30 are misleading and irrelevant because they improperly characterize the relevance of Mr. Visser’s experience related to the present matter. ¶21 is misleading, incomplete, and irrelevant because the use of “we” without designating who aided with the design of the product is incomplete, it mischaracterizes the portion around the keypad as trim, and it is not relevant to any issue raised in the Petition and is not cited to or relied upon in the Petition. ¶22 and 23 are misleading, incomplete, and irrelevant because the use of “we” without designating who aided with the design of the product is incomplete, and they are not relevant to any issue raised in the Petition and are not cited to or relied upon in the Petition.

	¶29 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes the relevance of Mr. Visser’s purported qualifications. ¶31 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading, and it improperly mischaracterizes the premise for which it is cited in the Petition. ¶36 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes the underlying documents. ¶¶66–68 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, they improperly mischaracterize the underlying document and Mr. Visser’s application of such terms, and they are contrary to opinions expressed in the district court case. ¶¶70–71 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize the requirements of a person of ordinary skill in the art of the ’165 Patent. ¶¶73–74 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize the competency of a government official and Mr. Visser’s competency to testify as to prior art searching.
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	¶¶75–79 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize the challenged patent. ¶¶80–81 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1007. ¶82 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1008. ¶¶83–84 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1006. ¶85 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1005. ¶86 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1006 and 1007. ¶¶88–102 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1007. ¶¶103–104 are misleading, incomplete, and irrelevant because they lack support for the contentions for which
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	they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006 and 1007. ¶¶105–108 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1006. ¶¶109–110 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006 and 1007. ¶¶111–116 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and their use in this context is misleading. Due to the failure to provide the underlying computer model, simplehuman cannot determine whether Mr. Visser properly characterizes the underlying evidence. ¶¶117–118 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and their use in this context is misleading. ¶119 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1006 and 1007. ¶120 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶¶121–126 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006 and 1007.
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	¶127 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶128 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1006 and 1007. ¶129 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶¶130–131 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006 and 1007. ¶¶133–137 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006, 1007, and 1008. ¶¶138–139 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and their use in this context is misleading. Due to the failure to provide the underlying computer model, simplehuman cannot determine whether Mr. Visser properly characterizes the underlying evidence. ¶¶140–143 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1006, 1007, and 1008.
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	¶144 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading, and it improperly mischaracterizes the Graves and Day references. ¶145 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶146 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1006. ¶¶148–153 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶154 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1006. ¶¶155–156 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶¶157–162 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. Due to the failure to provide the bases for Mr. Visser’s opinion as to how the components of Ex. 1005 are trim members, simplehuman cannot determine whether Mr. Visser properly characterizes such references.
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	¶¶163–164 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶165 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1006. ¶¶166–169 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶170 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1006. ¶¶171–174 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶175 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1006. ¶¶176–185 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005.
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	¶¶186–196 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1005 and 1006. ¶¶197–202 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005. ¶203 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶204 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1005. ¶¶205–206 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1005 and 1006. ¶207 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1005. ¶¶208–209 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and their use in this context is misleading. ¶¶210–212 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1005.
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	¶¶213–214 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 1005 and 1006. ¶215 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1005. ¶216 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶218 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶219 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Ex. 1005. ¶220 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005, 1006, and 1008. ¶221 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶¶222–223 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Ex. 1008.
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	¶224 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited, its use in this context is misleading, and it improperly mischaracterizes Exs. 1005 and 1008. ¶225 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and its use in this context is misleading. ¶¶226–227 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited, their use in this context is misleading, and they improperly mischaracterize Exs. 105 and 1008. Relevance, Misleading (FRE 401, 403): ¶¶1–30 and 32–85 are not relevant to any issue raised in the Petition and are not cited to or relied upon in the Petition. FRE 401, 403: ¶¶117, 127, 129–133, 140, 144–146, 157–162, 185, 203, 209, 216, 218, 220–222, and 225 are not cited to or relied upon in the Petition. Failure to Comply with Disclosure Requirements (Fed. R. Civ. P. 26(a)(2)(B)) ¶3 fails to include “a statement of the compensation to be paid for the study and testimony in the case,” as Mr. Visser does not state the amount he has been compensated as an expert for Volume Distributors. Improper Testimony by Expert Witness (FRE 702): Mr. Visser’s testimony is unreliable because it is not based on sufficient facts and data, and does not reliably apply facts and data using scientific principles. Mr. Visser’s proffered testimony is also unreliable because it relies on claim constructions with which Mr. Visser does
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	not agree, and he fails to disclose the claim constructions he advocated for in the district court case. Mr. Visser’s testimony is also unreliable for failing to have the requisite level of skill in the art to opine upon the facts in his Declaration. Mr. Visser’s testimony is also unreliable as Mr. Visser is not qualified as an expert by knowledge, skill, experience, training, or education to opine upon the facts in his Declaration. Failure to Disclose Underlying Scientific Bases (Fed. R. Civ. P. 26(a)(2)(B) and 37 CFR 42.65(a)) ¶¶111–116 and 138–139 are not reliable, and thus are entitled to little to no weight, because they are expert testimony that does not disclose the underlying facts or data on which the opinions are based. simplehuman has no basis for determining if Mr. Visser reliably applied facts and data using scientific principles.
1004 – 290 Patent File History	FRE 106, 401, 402, 403: The exhibit is incomplete and the probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues due to the misleading manner in which Volume Distributors has relied on the exhibit, particularly because Volume Distributors has submitted and presumably relied on only select portions of the prosecution history.
1009 – Infringement Contentions	FRE 106, 401, 402, 403: The exhibit is either not relevant or, to the extent it is relevant, the probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues, due to the misleading manner in which Volume Distributors has relied on the exhibit.
1010 – Pretrial Deadlines	FRE 106, 401, 402, 403: The exhibit is either not relevant or, to the extent it is relevant, the probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues, due to the misleading manner in which Volume Distributors has relied on the exhibit.

1011 – Claim Construction Proposals	FRE 106, 401, 402, 403: The exhibit is either not relevant or, to the extent it is relevant, the probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues, due to the misleading manner in which Volume Distributors has relied on the exhibit.
1012 – U.S. Patent No. 2,888,307	FRE 401, 403: This exhibit is not relevant to any issue raised in the Petition and is not cited to or relied upon in the Petition.
1013 – U.S. Patent No. 4,996,467	FRE 401, 403: This exhibit is not relevant to any issue raised in the Petition and is not cited to or relied upon in the Petition.
1014 – U.S. Patent No. D672,520	FRE 106, 401, 402, 403: The exhibit is either not relevant or, to the extent it is relevant, the probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues, due to the misleading manner in which Volume Distributors has relied on the exhibit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PATENT OWNER'S OBJECTIONS TO THE ADMISSIBILITY OF EVIDENCE** is being served electronically on April 24, 2024, to the e-mail addresses shown below:

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