

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOIL BOARDING COMPANY, INC.

Petitioner,

v.

MHL CUSTOM, INC.

Patent Owner

U.S. Patent No. 9,359,044

IPR Case No.: IPR2024-00086

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
SUBMITTED WITH PETITION**

Pursuant to 37 C.F.R. § 4.64(b)(1), Patent Owner MHL Custom, Inc. ("Patent Owner" hereby objects to the admissibility of certain evidence cited in support of the Petition for *Inter Partes* Review filed on October 26, 2023. Patent Owner's objections are based on the Federal Rules of Evidence ("FRE"), relevant case law, federal statute, and the Patent Trial and Appeal Board ("PTAB") Rules. Patent Owner's objections are set forth with particularity below.

EXHIBIT 1002

Exhibit 1002 is described as "Declaration of Stefan Brizzolara, Ph.D." Patent Owner objects to Exhibit 1002, under FRE 702, 703, 401, 402, and/or 403. Dr. Brizzolara's opinion testimony contained in this exhibit reaches legal conclusions (FRE 702). For example, paragraphs 35, 76, 88, 96, 109, 117, 130, 148, 154 and 155 contain impermissible legal conclusions outside Dr. Brizzolara's expertise and should, therefore, be excluded under FRE 702.

In addition, Dr. Brizzolara's opinions are impermissible under FRE 702 as conclusory because they are based upon his own *ipse dixit*, without a proper technical analysis regarding the combination of the alleged prior art references. He intends to provide technical conclusions as to ultimate issues in these proceedings and ask the Board to just take his word for it that his opinions are correct, reliable, and otherwise based upon sufficient underlying facts or data. As a non-limiting example, paragraphs 55 and 110 lack the technical analysis necessary for the

obviousness claims being asserted. Accordingly, Dr. Brizzolara's declaration is inadmissible under FRE 702.

Additionally, Dr. Brizzolara's relies on Exhibits 1003, 1005-1010, 1014, and 1018-1022 for his analysis. Therefore, Dr. Brizzolara's declaration is further inadmissible to the extent he relies on each of these exhibits, some of which are not the type of evidence that is otherwise properly relied upon by experts (FRE 703). Objections for each of these exhibits, which are also inadmissible, are outlined herein.

Finally, as to relevance, there is no evidence that Dr. Brizzolara's declaration would be helpful to the Board and has minimal probative value as compared to its potential prejudicial effect, including, *inter alia*, because of his reliance upon inadmissible evidence. Dr. Brizzolara's declaration should, therefore, be excluded under FRE 401 and/or 402; further, his declaration should be excluded as unduly prejudicial under FRE 403.

EXHIBITS 1003 and 1005

Exhibit 1003 is described as "Certified English Translation of Evolo slutrapport ('Evolo Report')" and Exhibit 1005 is described as "Swedish-Language Version of Evolo slutrapport".¹ Exhibits 1003 and 1005 are collectively referred to

¹ In addition to the other objections, Patent Owner further states that the Swedish version of the Evolo Report is likewise not relevant to these proceedings under

herein as the “Evolvo Report”. Patent Owner objects to Exhibits 1003 and 1005 under at least FRE 901, 902, 602, 801, 802, 401, 402, 403, and/or 703. The Evolo Report is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the Evolo Report is what Petitioner claims it is in order for it to be authenticated (FRE 901)², and there is nothing to indicate that the Evolo Report is the type of evidence that is otherwise properly relied upon by experts (FRE 703). If the Kутtenkeuler Declaration (Exhibit 1018) is excluded there is no foundation for this exhibit in that there are no witnesses to confirm that the Evolo Report is the version alleged to be prior art in these proceedings and/or which was otherwise allegedly publicly accessible prior to the critical date (*see* FRE 602). However, even if the Kутtenkeuler Declaration is determined to be admissible and lays an appropriate foundation for this exhibit, there is nothing in the declaration confirming that this version is what it is purported to be. Therefore, under FRE 901, 902, 602 and/or 703, Exhibits 1003 and 1005 are inadmissible.

Furthermore, even if the Evolo Report could be authenticated, it is inadmissible because it is hearsay. The Petition attempts to rely on and utilize the

FRE 401, 402, and/or 403 in that it cannot be understood in the foreign language form, nor was the foreign language version relied upon by any witness in these proceedings.

² Exhibit 1018 (the declaration of Jakob Kутtenkeuler) cannot be used to authenticate Exhibits 1003 and 1005, as Exhibit 1018 is also inadmissible and objected to herein.

contents of the Evolo Report for the truth of the matter asserted, this is hearsay under FRE 801 and/or 802 without an exception. Evidence may be inadmissible when it constitutes hearsay and no witness has been identified to properly authenticate or testify regarding it. Under certain circumstances, testimony and documents can be relied upon if the documents are authentic business records pursuant to Federal Rules of Evidence 803, 901, and/or 902 and/or if the opposing party has the opportunity to question a witness as to the evidence. There is no evidence that the Evolo Report is an authentic business record, nor is there currently a trial witnesses who can speak to this exhibit since Kutenkeuler's declaration was not prepared for the current proceeding and no other witness has personal knowledge as to the Evolo Report. Further, the report itself, while constituting hearsay in its entirety, also contains countless hearsay statements in the over 500 pages of contents. Patent Owner does not have the ability to cross-examine any witnesses as to the validity or contents of this exhibit. Thus, the Evolo Report is inadmissible under FRE 801 and/or 802.

Finally, as to relevance, there is no evidence that the Evolo Report qualifies as prior art and without such evidence the Evolo Report is not relevant to these proceedings under FRE 401 and/or 402, and would be unduly prejudicial under FRE 403.

EXHIBIT 1006

Exhibit 1006 is described as “EvoloprotoRun”. Patent Owner objects to Exhibit 1006, under at least FRE 901, 902, 703, 602, 801, 802, 401, 402, and/or 403. The EvoloProtoRun video is not self-authenticating under FRE 902, and Petitioner fails to produce sufficient evidence to support a finding that the EvoloProtoRun video is what Petitioner claims it is in order for it to be authentic (FRE 901)³, and there is nothing to indicate that the EvoloProtoRun video is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this video (FRE 901) and no witnesses with personal knowledge of the video or its contents (FRE 602). There is no evidence as to whether this video was ever published online and/or as to the who, what, when, or where of the creation of the video. There are no witnesses to confirm whether the video has been altered in any way, and/or to confirm that the video depicts what Petitioner purports it to depict. There is likewise no evidence to establish whether this is the same video that Petitioner claims is linked through Exhibit 1007. Therefore, under FRE 901, 902, 703 and/or 602, Exhibit 1006 is

³ Exhibit 1007, which is allegedly a screenshot of EvoloProtoRun page information, cannot be used to authenticate Exhibit 1006, as Exhibit 1007 is also inadmissible and objected to herein. Similarly, Exhibit 1018 (the declaration of Jakob Kutenkeuler) cannot be used to authenticate Exhibit 1006, as Exhibit 1018 is also inadmissible and objected to herein.

inadmissible. Further, any statements contained in the video are inadmissible hearsay under FRE 801 and/or 802.

Finally, as to relevance, there is no evidence that the EvoloPrototypeRun video qualifies as prior art and without such evidence the EvoloPrototypeRun video is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1007

Exhibit 1007 is described as “Screenshot of EvoloPrototypeRun Page Information”⁴. Patent Owner objects to Exhibit 1007, under at least FRE 901, 902, 602, 703, 801, 802, 401, 402, and/or 403. The screenshot of EvoloPrototypeRun page information is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the screenshot of EvoloPrototypeRun video page is what Petitioner claims it is in order for it to be authenticated (FRE 901), and there is nothing to indicate that the screenshot is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this screenshot (FRE 901) and no witnesses

⁴ Patent Owner does not concede that Exhibit 1008 is a screenshot of the EvoloPrototypeRun video and is merely utilizing Petitioner's description of Exhibit 1008.

with personal knowledge of the screenshot or its contents (FRE 602). Therefore, under FRE 901, 902, 602 and/or 703, Exhibit 1006 is inadmissible.

Furthermore, to the extent that Petitioner attempts to rely on or utilize the contents of the screenshot, including the date that appears on the screenshot of EvoloPrototypeRun page information for establishing a date of public accessibility of Exhibit 1007, the screenshot is hearsay under FRE 801 without an exception. Thus, the screenshot is inadmissible under FRE 801 and/or 802. Additionally, as previously discussed, the date appearing on the screenshot has not been authenticated.

Finally, as to relevance, there is no evidence that the screenshot of the alleged EvoloPrototypeRun page qualifies as prior art or what video is alleged to be depicted in the screenshot, and without such evidence the screenshot of EvoloPrototypeRun page is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1008

Exhibit 1008 is described as “Evolomovie”. Patent Owner objects to Exhibit 1008 under FRE 901, 902, 602, 703, 801, 802, 401, 402 and/or 403. The EvoloMovie video is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the EvoloMovie video is what

Petitioner claims it is in order for it to be authenticated (FRE 901)⁵, and there is nothing to indicate that the EvoloMovie video is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no admissible evidence as to the authenticity of this video (FRE 901) and no witnesses in these proceedings with personal knowledge of the video or its contents (FRE 602). There is no admissible evidence as to whether this video was ever published online and/or as to the who, what, when, or where of its creation. There are no witnesses in these proceedings to confirm whether the video has been altered in any way, and/or to confirm that the video depicts what Petitioner purports it to depict. There is likewise no admissible evidence to establish whether this is the same video that Petitioner claims is linked through Exhibit 1009. There is likewise no admissible evidence to confirm whether this is the video referenced in the Kutenkeuler Declaration (Exhibit 1018, ¶ 24). Therefore, under FRE 901, 902, 602, and/or 703, Exhibit 1008 is inadmissible. Further, any statements contained in the video are inadmissible hearsay under FRE 801 and/or 802.

⁵ Exhibit 1009, which is allegedly a screenshot of EvoloMovie page information, cannot be used to authenticate Exhibit 1008, as Exhibit 1009 is also inadmissible and objected to herein. Similarly, Exhibit 1018 (the declaration of Jakob Kutenkeuler) cannot be used to authenticate Exhibit 1008, as Exhibit 1018 is also inadmissible and objected to herein.

Finally, as to relevance, there is no evidence that the EvoloMovie video qualifies as prior art and without such evidence the EvoloMovie video is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1009

Exhibit 1009 is described as “Screenshot of EvoloMovie Page Information”⁶. Patent Owner objects to Exhibit 1009, under at least FRE 901, 902, 602, 703, 801, 802, 401, 402, and/or 403. The screenshot of the alleged EvoloMovie page information is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the screenshot of the EvoloMovie page information is what Petitioner claims it is in order for it to be authenticated (FRE 901), and there is nothing to indicate that the screenshot is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this screenshot (FRE 901) and no witnesses with personal knowledge of the screenshot or its contents (FRE 602). Therefore, under FRE 901, 902, 602 and/or 703, Exhibit 1009 is inadmissible.

⁶ Patent Owner does not concede that Exhibit 1010 is a screenshot of the EvoloMovie video and is merely utilizing Petitioner's description of Exhibit 1010.

Furthermore, to the extent that Petitioner attempts to rely on or utilize the contents of the screenshot, including the date that appears on the screenshot of EvoloMovie page information for establishing a date of public accessibility of Exhibit 1008, the screenshot is hearsay under FRE 801 and/or 802 without an exception. Thus, the screenshot is inadmissible under FRE 801 and/or 802. Additionally, as previously discussed, the date appearing on the screenshot has not been authenticated.

Finally, as to relevance, there is no evidence that the screenshot of the alleged EvoloMovie video page qualifies as prior art or what video is alleged to be depicted in the screenshot, and without such evidence the screenshot of the alleged EvoloMovie video page is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1010

Exhibit 1010 is described as “Evolotorquedo”. Patent Owner objects to Exhibit 1010, under FRE 901, 902, 602, 703, 801, 802, 401, 402 and/or 403. The Evolotorquedo video is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the Evolotorquedo video is what Petitioner claims it is in order for it to be authenticated (FRE 901)⁷, and there

⁷ Exhibit 1022, which is allegedly a screenshot of Evolotorquedo page information, cannot be used to authenticate Exhibit 1010, as Exhibit 1022 is also

is nothing to indicate that the EvoloTorqeedo video is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this video (FRE 901) and no witnesses with personal knowledge of the video or its contents (FRE 602). There is no evidence as to whether this video was ever published online and/or as to who, what, when, or where of its creation. There are no witnesses to confirm whether the video has been altered in any way, and/or to confirm that the video depicts what Petitioner purports it to depict. There is likewise no evidence to establish whether this is the same video that Petitioner claims is linked through Exhibit 1022. Therefore, under FRE 901, 902, 703, and/or 602, Exhibit 1010 is inadmissible. Further, any statements contained in the video are inadmissible hearsay under FRE 801 and/or 802.

Finally, as to relevance, there is no evidence that the EvoloTorqeedo video qualifies as prior art and without such evidence the EvoloTorqeedo video is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

inadmissible and objected to herein. Similarly, Exhibit 1018 (the declaration of Jakob Kутtenkeuler) cannot be used to authenticate Exhibit 1010, as Exhibit 1018 is also inadmissible and objected to herein.

EXHIBIT 1014

Exhibit 1014 is described as “Torqeedo Motor Operating Manual for Torqeedo Cruise 2.0 S/L” (“Torqeedo Manual”). Patent Owner objects to Exhibit 1014, under FRE 901, 902, 602, 703, 801, 802, 401, 402, and/or 403. The Torqeedo Manual is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the Torqeedo Manual is what Petitioner claims it is in order or it to be authenticated (FRE 901), and there is nothing to indicate that the Torqeedo Manual is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this exhibit (FRE 901) and no witnesses with personal knowledge of the exhibit or its contents (FRE 602). Therefore, under FRE 901, 902, 602, and/or 703, Exhibit 1014 is inadmissible.

Furthermore, to the extent that Petition attempts to rely on or utilize the contents of the Torqeedo Manual, including the date that appears in the Torqeedo Manual for establishing a date of public accessibility of Exhibit 1014, the Torqeedo Manual is hearsay under FRE 801 and/or 802 without an exception. Thus, the screenshot is inadmissible under FRE 801 and/or 802. Additionally, as previously discussed, the date (and entire Torqeedo Manual) has not been authenticated.

Finally, as to relevance, there is no evidence that the Torqeedo Manual qualifies as prior art and without such evidence the Torqeedo Manual is not relevant

to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1018

Exhibit 1018 is described as “Declaration of Jakob Kутtenkeuler”. Patent Owner objects to Exhibit 1018, under FRE 401, 402, 403, 801, 802, 602, 703, 901, and/or 902, and/or 37 C.F.R. §1.68. Exhibit 1018 was prepared for and concerns another case with a different accused infringer, and therefore is irrelevant under FRE 401 and/or 402,⁸ and/or unduly prejudicial under FRE 403. Even if Exhibit 1018 were to be considered relevant, the Petitioner relies on this exhibit to prove the truth of the matter asserted therein. However, Exhibit 1018 fails to satisfy the requirements of the hearsay exceptions and Patent Owner objects to the entirety of the Declaration as hearsay under FRE 802 and/or 803. The Declaration and its exhibits include statements made “out of court” that Petitioner intends to use to prove the truth of the matter asserted – for example, that the Evolo Report was publicly accessible as of the critical date. The Declaration further attempts to describe the “success” of the Evolo project in a manner that serves Petitioner’s interests. The Declaration does not fall within an exception under Rule 803 and

⁸ Additionally, paragraphs 1-17, 19-23, 25-26, 28, and 32-37, as well as Exhibits A and C are not cited by Petitioner in the Petition. Due to the failure of Petitioner to cite these portions of Exhibit 1018 the listed paragraphs and exhibits are not sufficiently relevant and inadmissible under FRE 402.

should, therefore, be excluded. Evidence may be inadmissible when it constitutes hearsay and no witness has been identified to properly authenticate or testify regarding it (*see* FRE 602). Pursuant to the rules, uncompelled testimony must be submitted in the form of an affidavit. 37 C.F.R. § 42.53(a). The affidavit testimony, if made in the current trial or hearing, would be subject to cross examination. However, the Kutenkeuler Declaration is not a declaration or affidavit made in the context of *these proceedings* and Kutenkeuler is not otherwise subject to cross examination. In the absence of Kutenkeuler's presence to testify on these matters, the Declaration and all its exhibits should be excluded as inadmissible hearsay.

Further, without the testimony of Kutenkeuler, there is no basis under FRE 901 and/or 902 for the authentication of the exhibits to his declaration, including the Evolo Report, the Evolo website metadata, or the Batyntt news article, and Kutenkeuler has not been provided for deposition and is not subject to cross examination.

Patent Owner objects under FRE 703 because there is nothing to indicate that the Kutenkeuler Declaration is evidence that is otherwise properly relied upon by experts.

Patent Owner further separately objects to paragraphs 4, 7-9, 13, 15, 18-25, and 27-37 of the Kutenkeuler Declaration as inadmissible hearsay under FRE 801 and/or 802, and/or as being irrelevant under FRE 401 and/or 402. Kutenkeuler lacks

a foundation for, or personal knowledge of, many of these statements. Moreover, the Declaration does not technically comply with 37 C.F.R. § 1.68 in that it fails to state that any statements made under information and belief are believed to be true.

EXHIBIT 1019

Exhibit 1019 is described as “Affidavit of Ingmarie Rohdin Regarding English Language Translation of Batnytt Magazine Article; Swedish Language Version of Batnytt; English Translation of Båtnytt Magazine Article (“Batnytt”)” (referred to herein as “Batnytt Article”). Patent Owner objects to Exhibit 1019 under FRE 901, 902, 801, 802, 602, 703, 401, 402, and/or 403. The Batnytt Article is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that the Batnytt Article is what Petitioner claims it is in order for it to be authenticated (FRE 901)⁹, and there is nothing to indicate that the Batnytt Article is the type of evidence that is otherwise properly relied upon by experts (FRE 703). Further, Petitioner seeks to use the article to show that the Evolo Report could have been found online through a link contained in the article. However, there is no evidence that either website link referenced in the article links directly to any version of the Evolo Report (FRE 401, 402, and 403). There is no evidence of record to

⁹ Exhibit 1018 (the declaration of Jakob Kутtenkeuler) cannot be used to authenticate Exhibit 1019, as Exhibit 1018 is also inadmissible and objected to herein.

confirm or otherwise indicate what was contained on the websites linked in the article or how one might find the Evolo Report by clicking on any of the links referenced in the article (FRE 401, 402, 403, 602 and 901). There is likewise no evidence to confirm that the Evolo Report was even available online in August of 2009 – the date Petitioner claims the article was published (FRE 401, 402 and 403). Additionally, should the Kutteneuler Declaration be excluded then Exhibit 1019 must be excluded as well since there are otherwise no witnesses who can testify with personal knowledge as to the article and its contents or lay a proper foundation for the exhibit (FRE 602 and 901). Even if the Kutteneuler Declaration is deemed admissible, however, while he indicates that the article was published and available at newsstands, there is no evidence of record other than his testimony which would confirm this to be the case. Therefore, under FRE 602, 801, 802, 901, 902, and/or 703, Exhibit 1019 is inadmissible.

Furthermore, to the extent that Petitioner attempts to rely on or utilize the date, web address for the Evolo Project, or any contents of the article, as a “research aid”, the contents of the Batnytt Article are hearsay under FRE 801 and are without an exception. Thus, the Batnytt Article is inadmissible under FRE 801 and/or 802.

Finally, as to relevance, there is no evidence that the Batnytt Article links to the prior art and/or is a “research aid” and without such evidence the Batnytt Article

is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1020

Exhibit 1020 is described as “Affidavit of Ingmarie Rohdin Regarding Translation of Batnytt Magazine Viewership Information for 2009; Swedish Language Version of Batnytt Viewership Information; English Language Translation of Batnytt Viewership Information (“BatnyttViewership”)”. Patent Owner objects to Exhibit 1020 under FRE 901, 902, 801, 802, 602, 703, 401, 402 and/or 403. The alleged BatnyttViewership information page is not self-authenticating under FRE 902, Petitioner fails to produce sufficient evidence to support a finding that BatnyttViewership is what Petitioner claims it is in order for it to be authenticated (FRE 901), and there is nothing to indicate that the BatnyttViewership information page is the type of evidence that is otherwise properly relied upon by experts (FRE 703). The website screenshot taken from the Internet Archive is being offered to show, *inter alia*, that the Batnytt publication had a readership of 125,000 people per issue in November of 2009. However, there are no witnesses being offered to lay a proper foundation for this website publication and/or its contents (FRE 602) or otherwise authenticate the exhibit and its contents (FRE 901). Therefore, under FRE 901, 902, 602, and/or 703, Exhibit 1020 is inadmissible.

Furthermore, to the extent that Petitioner attempts to rely on readership information or any other contents of the alleged BatnyttViewership information page, the contents of the BatnyttViewership information page are hearsay under FRE 801 and/or 802 and are without an exception. The statement as to readership numbers is an out of court statement being offered to prove the truth of the matter asserted and no hearsay exceptions apply. Patent Owner does not have the opportunity to cross-examine any witness as to the authenticity or accuracy of the information contained in this website screenshot. Thus, the alleged BatnyttViewership information page is inadmissible under FRE 801 and/or 802.

Finally, the BatnyttViewership is also not relevant because there is no evidence that readership in November 2009 is reflective of the readership of August of 2009, or evidence that a POSA would be included as part of the readership of the publication. Thus, the BatnyttViewership exhibit is inadmissible under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

EXHIBIT 1021

Exhibit 1021 is described as “Internet Archive Declaration of Nathaniel E Frank-White” (“Internet Archive Declaration”). Patent Owner objects to Exhibit 1021 under FRE 402, 403, 801, and/or 802. Petitioner did not cite Exhibit 1021 in the Petition; accordingly, Exhibit 1021 is inadmissible as irrelevant.

Patent Owner further objects to Exhibit 1021 under FRE 801 and/or 802. The Internet Archive Declaration is hearsay under FRE 801 and is without an exception. Thus, the Internet Archive Declaration is inadmissible under FRE 801 and/or 802.

EXHIBIT 1022

Exhibit 1022 is described as “Screenshot of EvoloTorqeedo Page Information”¹⁰. Patent Owner objects to Exhibit 1022, under FRE 901, 902, 602, 703, 801, 802, 401, 402, and/or 403. The screenshot of EvoloTorqeedo page information is not self-authenticating under FRE 902. Furthermore, Petitioner also fails to produce sufficient evidence to support a finding that the screenshot of the alleged EvoloTorqeedo page information is what Petitioner claims it is in order for it to be authenticated (FRE 901), and there is nothing to indicate that the screenshot of EvoloTorqeedo page is the type of evidence that is otherwise properly relied upon by experts (FRE 703). There is no evidence as to the authenticity of this screenshot (FRE 901) and no witnesses with personal knowledge of the screenshot or its contents (FRE 602) – including whether the alleged video linked in this screenshot is any other exhibit submitted as evidence in these proceedings. Therefore, under FRE 901, 902, 703, and/or 602 Exhibit 1022 is inadmissible.

¹⁰ Patent Owner does not concede that Exhibit 1022 is a screenshot of the EvoloTorqeedo video and is merely utilizing Petitioner's description of Exhibit 1022.

Furthermore, to the extent that Petitioner attempts to rely on or utilize the contents of the screenshot of the alleged EvoloTorqeedo page information, including the date that appears on the screenshot of the EvoloTorqeedo page information for establishing a date of public accessibility of Exhibit 1022, the screenshot is hearsay under FRE 801 and/or 802 without an exception. There are no witnesses presenting testimony as to the contents of this screenshot – or who are otherwise available for cross-examination to explain the contents of the screenshot (including when the screenshot was first published online, assuming it was ever published at all) (FRE 602). Thus, the screenshot is inadmissible under FRE 801, 802 and/or 602. Additionally, as previously discussed, the date appearing on the screenshot has not been authenticated.

Finally, as to relevance, there is no evidence that the screenshot of the EvoloTorqeedo page qualifies as prior art or what video is alleged to be depicted in the screenshot, and without such evidence the screenshot of the EvoloTorqeedo page is not relevant to these proceedings under FRE 401 and/or 402, and/or unduly prejudicial under FRE 403.

Patent Owner's Objections to Evidence
IPR2024-00086 (U.S. Patent No. 9,359,044)

Dated: June 11, 2024

Respectfully submitted,

/Megan E. Gibson/

Robert J. Theuerkauf (Reg. No. 55,843)
Lead Counsel

Megan E. Gibson (Reg. No. 76,236)
Eric S. Barr (Reg. No. 60,150)
Backup Counsel

GRAY ICE HIGDON
3939 Shelbyville Road, Suite 201
Louisville, Kentucky 40207
Telephone: (502) 677-4729
Facsimile: (502) 561-0442
rjt@grayice.com
mgibson@grayice.com
ebarr@grayice.com
ATTORNEYS FOR PATENT OWNER
MHL CUSTOM, INC.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on June 11, 2024, a copy of the Patent Owner's Objections to Petitioner's Evidence Submitted with Petition is being served by electronic mail on the following counsel of record:

Hunter Adams
Douglas Bridges
453 Dauphin St., 2nd Floor
Mobile, AL 36602
hunter@adamsiplaw.com
bridges@capitallegalgroup.com

Dated: June 11, 2024

/Megan E. Gibson/
Megan E. Gibson
Reg. No. 76,236