IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV TECHNOLOGIES AG AND APTIV TECHNOLOGIES LIMITED,
Patent Owners.

Case No. IPR2024-00230
U.S. Patent No. 11,076,172

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. §42.64(b)(1), Petitioner submits the following objections to evidence associated with Patent Owner's Preliminary Response (Paper 9) in this proceeding.

- Exhibit 2001 (Declaration of Henry Houh): Petitioner objects to this exhibit as impermissible expert testimony by a lay person (F.R.E. 701/702) (*viz.*, expert testimony by a non-expert who does not satisfy the qualifications of a POSITA), lack of personal knowledge / speculation (F.R.E. 602), lacking proper authentication and is cursory, incomplete, misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403), relevance (F.R.E. 401), and hearsay (F.R.E. 801/802).
- Exhibit 2002, 2003, 2017 (Obolsky, Voto, and Dreon Trial Tr. Excerpts, respectively): Petitioner objects to these exhibits—which comprise excerpts from a week-long jury trial in a multi-year district court proceeding on different patents with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), is irrelevant (F.R.E. 401), incomplete and misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403),

constitutes impermissible expert testimony by a lay person (F.R.E. 701/702), lack of personal knowledge / speculation (F.R.E. 602), and contains hearsay (F.R.E. 801/802). The amount of time and effort required to properly understand the context, asserted patents, related issues, and several hundred pages of testimony from a multi-year district court proceeding and jury trial (whose relevance is marginal at best) wastes the parties', counsel, and the Board's limited time/resources on collateral matters, confuses the issues, and is far more prejudicial than probative. Exhibits 2002 and 2003 are only marginally referenced in Patent Owner's Preliminary Response and Exhibit 2017 is not cited at all (and is therefore irrelevant). To the extent Patent Owner relies on anything other the passages discussed in the POPR, it is an improper incorporation by reference that would circumvent the word count limit.

- Exhibit 2004 (Complaint): Petitioner objects to this exhibit—which is a district court complaint—as lacking foundation and critical context (F.R.E. 104), irrelevant (F.R.E. 401), incomplete and misleading, confuses the issues, a waste of time, and far more prejudicial than probative (F.R.E. 403), lack of personal knowledge / speculation (F.R.E. 602), lacks authentication (F.R.E. 901), and is hearsay (F.R.E.

801/802). This exhibit, by its very terms, expressly pleads numerous assertions "upon information and belief" and is not proper evidence of any substantive factual or technical matter in the instant proceeding.

- Exhibits 2005 through 2010 (Trial Exhibit Nos. 58, 62, 66, 246, 252 and 262): Petitioner objects to these exhibits—various emails thread between Microchip personnel and third-parties used in a week-long jury trial on different patents in a different forum/proceeding with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), irrelevant (F.R.E. 401), incomplete and misleading, cumulative, confusing the issues and wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (F.R.E. 403), lack of personal knowledge / speculation (F.R.E. 602), and hearsay (F.R.E. 801/802). Patent Owner cites Exhibits 2005 through 2010 for their reference to Apple CarPlay and discussion of Microchip product development, as if this were an infringement case where CarPlay (or a Microchip or Aptiv product) was at issue. It is not. This is an invalidity challenge where CarPlay is of marginal (if any) relevance. The Challenged Patent does not claim CarPlay, nor does CarPlay appear anywhere in the specification. None of the prior art at issue mentions CarPlay. CarPlay

is not cited by either party's definition of a POSITA. And Aptiv's purported expert has no stated experience or expertise with CarPlay. See EX2001, ¶¶2-16 and Appendix A. Similarly, Microchip's products and product development are not at issue in this proceeding. Nor is Microchip's understanding of CarPlay's requirements vis-à-vis the USB standards at issue. It is simply irrelevant that Microchip had some questions in 2014 about the interplay between Apple's CarPlay requirements and the USB standards. Moreover, the exhibits simply say Microchip's existing FlexConnect solution did not support USB persistence, not that it would be difficult or "impossible" (POPR, 10) to architect a solution that would. As such, the exhibits are not probative of the obviousness/nonobviousness of a ***different*** solution. As such, the exhibits are irrelevant, and certainly far more prejudicial than probative and a waste of time on collateral matters. Further, it is well-established that obviousness is assessed from the perspective of a hypothetical POSITA, not any actual individual(s), such as a Microchip employee. *See, e.g.*, 35 U.S.C. §103; *McCoy v. Heal Sys., LLC*, 850 F. App'x 785, 788 (Fed. Cir. 2021). Exhibits 2005 through 2010 are further irrelevant and more far prejudicial than probative for the further purpose Aptiv relies on them for—substituting out-of-context email

snippets from various Microchip personnel (primarily in sales/marketing roles) for the knowledge and perspective of a POSITA. *See, e.g.*, POPR, 8-10 (quoting emails); EX2005-2010. Aptiv improperly ignores that that obviousness is evaluated from the perspective of a *hypothetical* POSITA, not a real person. Nor is it proper for Aptiv to substitute Microchip (*i.e.*, the company as a whole)—whose primary business is ***not*** USB devices or hubs—for a POSITA, which is a *hypothetical* individual presumed to be familiar with all relevant prior art. *See, e.g.*, *In re Carlson*, 983 F.2d 1032, 1037 (Fed. Cir. 1992) ("hypothetical [POSITA] is charged with knowledge of all the contents of the relevant prior art."). At bottom, exhibits 2005 through 2010 have no bearing on the patentability of the challenged claims, and are far more prejudicial than probative of the obviousness/nonobviousness of the challenged claims.

- <u>Exhibit 2016 (Robert Dezmelyk Declaration in Support of Microchip's Responsive Claim Construction Brief)</u>: Petitioner objects to this exhibit as irrelevant (F.R.E. 401), misleading, confuses the issues, cumulative, and wasteful of the parties' and the Board's resources/time on collateral matters (F.R.E. 403) because (1) Mr. Dezmelyk's statements that Aptiv cites (¶¶32-33) are substantially consistent with Microchip's proposed

definition of a POSITA in the instant proceeding; (2) Mr. Dezmelyk addresses various claim terms and matters not at issue in the instant proceeding; and (3) the district court already issued its *Markman* order on the matters addressed by Mr. Dezmelyk in his district court declaration.

- Exhibit 2018 (Jury Verdict): Petitioner objects that this exhibit—which is a jury verdict from a week-long trial on different patents in a different forum/proceeding with different facts and circumstances—lacks foundation and critical context (F.R.E. 104), is irrelevant (F.R.E. 401), is incomplete and misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, and is far more prejudicial than probative (F.R.E. 403). For example, whether Patent Owner was found to infringe (or not infringe) any of Petitioner's patents (and whether such patents were found to invalid or not) in a separate district court proceeding is irrelevant to whether the claims Challenged Patent in the instant proceeding are unpatentable. And focusing on such collateral issues is far more prejudicial than probative, confuses the issues, and wastes the parties' and the Board's time/resources.

Dated: July 29, 2024

Respectfully submitted,

/Travis Jensen/

Travis Jensen
Reg. No. 60,087
ORRICK, HERRINGTON &
SUTCLIFFE, LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401
Email: T61PTABDocket@orrick.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on July 29, 2024, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

Alex S. Yap Mehran Arjomand MORRISON & FOERSTER LLP 707 Wilshire Boulevard, Suite 6000 Los Angeles, CA 90017	ayap@mofo.com marjormand@mofo.com Microchip-Aptiv-PTAB@mofo.com
Timothy Chen Saulsbury Eric C. Wiener Andrew L. Perito MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105	tsaulsbury@mofo.com ewiener@mofo.com aperito@mofo.com
Andrew T. Jones MORRISON & FOERSTER LLP 2100 L Street, NW, Suite 900 Washington, D.C. 20037	andrewjones@mofo.com

/Matthew Bonini/

Matthew Bonini