UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

MOBILE DATA TECHNOLOGIES LLC,
Patent Owner.

IPR2024-00247
Patent 8,825,801

PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
37 C.F.R. §§42.62, and 42.64

Pursuant to 37 C.F.R. §§42.62, and 42.64, the Board's Rules, and the Federal Rules of Evidence ("Fed. R. Evid."), Patent Owner, Mobile Data Technologies LLC ("Patent Owner"), submits the following objections to evidence submitted by Petitioner, Meta Platforms, Inc. ("Petitioner") in connection with Petitioner's Petition (Paper 2), filed December 6, 2023, in the *Inter Partes* Review of U.S. Patent No. 8,825,801 (the "Patent"). These objections are timely served within ten (10) business days of the institution of the trial. The fact that Patent Owner has not objected below to certain pieces of evidence or certain portions of certain evidence provides no indication that Patent Owner agrees to the positions asserted therein. In addition, Patent Owner reserves the right to present further objections to this or additional evidence submitted by Petitioner, as allowed by the applicable rules or other authority.

I. PATENT OWNER'S OBJECTIONS TO EVIDENCE

Exhibit 1002

Patent Owner objects to Exhibit 1002 as unsupported and conclusory testimony that is irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403 and purported expert opinion that is pure speculation under Fed. R. Evid 702, 703, and 705.

Patent Owner objects to this exhibit as including "[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based" in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702-703, and 705. Specifically, each of paragraphs 15, 17-37, 48, 57, 58, 60, 61, 69-71, 82, 88, 92, 97, 100, 108, 115, 119, 123, 129, 139, 144, 148, 164, 166, 170, 174, 175, 181, 182, 185, 189 and 193-200 contain sentences that do not cite to any evidence or facts to support the assertions made therein, and these uncited sentences are unsupported testimony that are accordingly objected to for failing to provide the underlying facts or data on which such opinion is based.

Patent Owner objections to this exhibit for lack of personal knowledge under Fed. R. Evid. 602.

Patent Owner objects to this exhibit to the extent Petitioner relies on it to prove the truth of the matter asserted as inadmissible hearsay under Fed. R. Evid. 801 and

802 that does not fall under any exceptions, including those of Fed. R. Evid. 803, 804, 805, or 807.

Patent Owner objects to this exhibit as to the extent the testimony provided by the declarant in paragraphs 1-13, 19-47, 52-55, 57, 58, 60, 69, 70, 80-87, 93, 127, 128, 130-138, 144, 145, 151, 152, 156-159, 161, 165, 167-169, 175, 178, 190-192 and 198-200 is not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5). Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Patent Owner objects to this exhibit as improper lay testimony under Fed. R. Evid. 701, to the extent the declarant provides testimony that is not rationally based on the declarant's perception, testimony that is not helpful to understand the declarant's testimony or to determine a fact in issue, or testimony that is beyond the declarant's expertise.

Patent Owner objects to this exhibit as including "documents and things" not filed as an exhibit with the Petition in violation of 37 C.F.R. § 42.63(a), in particular, each of the documents and things of Exhibit A not filed as an exhibit with the Petition. Accordingly, the documents and things are irrelevant, misleading, and confusing under Fed. R. Evid. 401-403, a sufficient foundation for the admission of

the documents and things have not been laid pursuant to Fed. R. Evid. 901-902, and originals have not been provided pursuant to Fed. R. Evid. 1002.

Exhibit 1003

Patent Owner objects to Exhibit 1003 under Fed. R. Evid. 106 because Petitioner failed to include the entire publication, and in fairness it ought to be considered. Any correction of this defect is untimely.

Exhibit 1012

Patent Owner objects to Exhibit 1012 as the exhibit is not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5). Accordingly, this evidence is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403. Further, Patent Owner objects to this exhibit under Fed. R. Evid. 106 because Petitioner failed to include the entire publication, and in fairness it ought to be considered. Any correction of these defects is untimely.

Exhibit 1013

Patent Owner objects to Exhibit 1013 as the exhibit is not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5). Accordingly, this evidence is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403. Further, Patent Owner objects to this exhibit under Fed. R. Evid. 106 because Petitioner failed to include the entire file history, and in fairness it ought to be considered. Any correction of this defect is untimely.

Exhibit 1022

Patent Owner objects to Exhibit 1022 under Fed. R. Evid. 106 because Petitioner failed to include the entire file history, and in fairness it ought to be considered. Any correction of this defect is untimely.

Exhibit 1024

Patent Owner objects to Exhibit 1024 under Fed. R. Evid. 106 because Petitioner failed to include the entire file history, and in fairness it ought to be considered. Any correction of this defect is untimely.

Exhibit 1025

Patent Owner objects to Exhibit 1025 under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of the exhibit. Petitioner has not submitted required witness testimony or evidence to demonstrate that the document is authentic, or that it is self-authenticating under Fed. R. Evid. 902. Any correction of this defect is untimely.

Exhibit 1026

Patent Owner objects to Exhibit 1026 under Fed. R. Evid. 106, 401-403, 702-703, 705, and 37 C.F.R. § 42.65(a). Patent Owner objects to the exhibit on the grounds that the probative value of the testimony contained therein is outweighed by a danger of prejudice and confusion under Fed. R. Evid. 403 and to the extent that at least some of these paragraphs fail to include all related parts "that in fairness

ought to be considered at the same time" under Fed. R. Evid. 106, on the grounds that there has not been a sufficient foundation laid for the admission of the exhibit under Fed. R. Evid. 901, and on the grounds that it contains "[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based" in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702–703, and 705.

Patent Owner objects to this exhibit as to the extent the testimony provided by the declarant in paragraphs 1-39, and 47-52 are not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5). Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Patent Owner objects to this exhibit as including "documents and things" not filed as an exhibit with the Petition in violation of 37 C.F.R. § 42.63(a), in particular, each of the documents and things of Exhibit A, Attachments 1A-2D not filed as an exhibit with the Petition. Accordingly, the documents and things are irrelevant, misleading, and confusing under Fed. R. Evid. 401-403, a sufficient foundation for the admission of the documents and things have not been laid pursuant to Fed. R. Evid. 901-902, and originals have not been provided pursuant to Fed. R. Evid. 1002.

Exhibit 1027

Patent Owner objects to Exhibit 1027 under Fed. R. Evid. 901 as there has not been a sufficient foundation laid for the admission of the exhibit. Petitioner has not

submitted required witness testimony or evidence to demonstrate that the document is authentic, or that it is self-authenticating under Fed. R. Evid. 902.

Further, Patent Owner objects to this exhibit under Fed. R. Evid. 401-402.

Any correction of these defects is untimely.

Exhibits 1004, 1007-1009, 1015-1017 and 1023

Patent Owner objects to Exhibits 1004, 1007-1009, 1015-1017 and 1023 (hereafter the "RESERVED Exhibits") to the extent the exhibits are not cited to or relied upon by the Petition in violation of 37 C.F.R. §42.104(b)(5) (A petition challenging the claims of a patent must identify "[t]he exhibit number of the supporting evidence relied upon to support the challenge and the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge. 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."). For example, the RESERVED Exhibits were not filed with the Petition and there is no discussion of the relevance of the evidence represented by the RESERVED Exhibits in the Petition. Further, Petitioner has not indicated such exhibits are not used. 37 C.F.R. §42.63(e) ("Each party must maintain an exhibit list with the exhibit number and a brief description of each exhibit. If the exhibit is not filed, the exhibit list should note that fact.").

There is no brief description of the evidence represented by the RESERVED Exhibits, nor are they described as "not filed". Any use during the trial of these unused RESERVED Exhibits and the associated evidence causes confusion in the proceedings because Petitioner's evidence would be untimely and would not be presented sequentially numbered. 37 C.F.R. §§42.63(a) ("All evidence must be in the form of an exhibit."), and 42.63(c) ("Each party's exhibits must be uniquely numbered sequentially in a range the Board specifies."). These unused RESERVED Exhibits and the associated evidence were not timely filed and served with the Petition and have no bearing on any issue in this proceeding; the evidence is therefore irrelevant, misleading, and confusing under Fed. R. Evid. 401-403. Any correction of this defect is untimely.

Date: June 25, 2024

Respectfully Submitted,
SPENCER FANE LLP

By: *_/s/Kevin S. Tuttle_____*

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6, the undersigned hereby certifies that the above-captioned Patent Owner's Objections to Petitioner's Evidence was served via electronic mail on June 25, 2024 upon the following parties:

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