UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NESPRESSO USA, INC.
Petitioner

v.

K-FEE SYSTEM GMBH
Patent Owner

Case: IPR2024-00254

U.S. Patent No. 11,465,829

PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(B)(1)

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence ("F.R.E."), the undersigned counsel, on behalf of Petitioner, hereby serves and submits the following objections to evidence submitted by Patent Owner accompanying Patent Owner's Preliminary Response. These objections are timely because they are filed within ten business days from institution of trial on June 14, 2024.

II. OBJECTIONS

A. Exhibits 2003, 2005 (File history excerpts)

Petitioner objects to Exhibits 2003 and 2005, and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are incomplete and not relevant to any ground upon which this trial was instituted. These exhibits are excerpts from the prosecution histories of patents that contain claims that differ from the challenged claims. Moreover, these exhibits reference issues and prior art that are not the same as the grounds for institution of this trial.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time,

or for other reasons): These exhibits include information whose probative value to any ground upon which this proceeding was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits are short and incomplete excerpts from lengthy prosecution histories of patents that are not at issue in this trial. As such, they are unfairly prejudicial and likely to cause confusion and a waste of time.

F.R.E. 801/802/805 (Hearsay): These exhibits, which were not merely offered to show what was presented during prosecution, but rather were offered for their truth, are inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

B. Exhibits 2007, 2008 (Nespresso product literature)

Petitioner objects to Exhibits 2007 and 2008, and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are not relevant to any ground upon which this trial was instituted. These exhibits relate to Nespresso's product. These exhibits have no bearing on the basis for institution of this trial.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): These exhibits include information whose probative value to any ground upon which this trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits relate to Nespresso's product and are unfairly prejudicial and likely to cause confusion and a waste of time.

C. Exhibits 2009, 2010 (Cooperative Patent Classification Documents)

Petitioner objects to Exhibits 2009 and 2010, and any reference to or reliance on these exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): These exhibits are not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): These exhibits are not relevant to any ground upon which this trial was instituted. These exhibits are Cooperative Patent Classification documents. These exhibits have no bearing on the basis for institution of this trial.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): These exhibits include information whose probative value to

any ground upon which this trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits are Cooperative Patent Classification documents and are unfairly prejudicial and likely to cause confusion and a waste of time.

D. Exhibit 2011 (November 28, 2023 Deposition Transcript of Michael J. Jobin, IPR2023-0485)

Petitioner objects to Exhibit 2011, and any reference to or reliance on this exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon which this trial was instituted. This exhibit is the November 28, 2023 deposition transcript of Michael J. Jobin relating to U.S. Patent No. 11,230, 430 (the "'430 Patent"), which is in IPR2023-00485. This exhibit contains lengthy deposition testimony relating to the '430 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time,

or for other reasons): This 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. This exhibit contains lengthy deposition testimony regarding the ’430 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is unfairly prejudicial, confusing to the issues in this proceeding and a waste of time.

F.R.E. 801/802/805 (Hearsay): This exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

E. Exhibit 2016 (June 22, 2023 Deposition Transcript of Michael J. Jobin, IPR2022-01574)

Petitioner objects to Exhibit 2016, and any reference to or reliance on this exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon which this trial was instituted. This exhibit is the June 22, 2023 deposition transcript of Michael J. Jobin relating to U.S. Patent No. 11,254,491 (the “’491 Patent”), which is in IPR2022-01574. This exhibit contains lengthy deposition testimony relating to

the ’491 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): This 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. This exhibit contains lengthy deposition testimony regarding the ’491 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is unfairly prejudicial, confusing to the issues in this proceeding and a waste of time.

F.R.E. 801/802/805 (Hearsay): This exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

F. Exhibit 2018 (January 12, 2024 Oral Hearing Transcript, IPR2022-01574)

Petitioner objects to Exhibit 2018, and any reference to or reliance on this exhibits, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon

which this trial was instituted. This exhibit is the January 12, 2024 oral hearing transcript relating to U.S. Patent No. 11,254,491 (the "'491 Patent"), which is in IPR2022-01574. This exhibit contains lengthy argument relating to the '491 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is irrelevant.

F.R.E. 403 (Excluding evidence for prejudice, confusion, waste of time, or for other reasons): This 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. This exhibit contains lengthy argument regarding the '491 Patent that, though related to the patent-at-issue in this trial, has claims that differ from the challenged claims. Therefore, this exhibit is unfairly prejudicial, confusing to the issues in this proceeding and a waste of time.

F.R.E. 801/802/805 (Hearsay): This exhibit includes inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

III. CONCLUSION

For at least the foregoing reasons, Petitioner objects to Exhibits 2003, 2005, 2007, 2008, 2009, 2010, 2011, 2016, and 2018.

Dated: July 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2024, a copy of the attached **PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(B)(1)** was served by electronic mail to the attorneys of record, at the following addresses:

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