

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner,

v.

GRAPHITE CHARGING COMPANY, LLC,
Patent Owner

Case No. IPR2024-00387
U.S. Patent No. 8,103,391

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S
PRE-INSTITUTION EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
Submitted Electronically via P-TACTS

Under the Federal Rules of Evidence and 37 C.F.R. § 42.64, Patent Owner Graphite Charging Company, LLC (“Patent Owner”) timely objects to evidence submitted by Tesla, Inc. (“Petitioner”) prior to institution of Inter Partes Review IPR2024-00387. Patent Owner serves Petitioner with these objections to provide notice that Patent Owner may move to exclude the challenged exhibits under 37 C.F.R. § 42.64(c) unless Petitioner cures the defects associated with the challenged exhibits identified below.

Ex-1009 – Declaration of C. Arthur MacCarley, PhD, PE

Patent Owner objects to this exhibit under Fed. R. Evid. 702 and/or 802 as Dr. MacCarley has not yet been made available for cross-examination during a deposition.

Patent Owner objects to this exhibit because it contains arguments that are incorporated by reference in the Petition in violation of at least 37 C.F.R. § 42.6(a)(3), e.g., Pet. at 36, and are therefore irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403.

Patent Owner objects to this exhibit as being irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because it is inadmissible as explained above.

Ex-1011 – SAE Standard J1772 (Revised Nov. 2001)

Patent Owner objects to Ex-1011 under Fed. R. Evid. 901(a) as Petitioner has not “produced sufficient evidence to support a finding that the item is what the proponent claims it is.” For example, Petitioner alleges a publication date but has not provided sufficient evidence pursuant to Fed. R. Evid. 901(b) or otherwise satisfying the requirement of Fed. R. Evid. 901(a).

Patent Owner objects to Ex-1011 as hearsay under Fed. R. Evid. 801(c) and thus inadmissible under Fed. R. Evid. 802. For example, Petitioner relies on Ex-1011 for the truth of the matter asserted therein. See, e.g., Ex-1009 at 26-27, 33, 76, and 123. Yet Petitioners have not offered sufficient evidence that Ex-1011 falls within any exception of the rule against hearsay under Fed. R. Evid. 802.

Patent Owner objects to Ex-1011 as being irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because Ex-1011 is inadmissible as explained above.

Respectfully submitted,
DEVLIN LAW FIRM LLC

Dated: August 21, 2024

/Jason Shapiro/

Jason Shapiro
Registration No. 35,354
1526 Gilpin Ave.
Wilmington, DE 19806
Telephone: (302) 449-9010

*Counsel for Patent Owner Graphite
Charging Company, LLC*

CERTIFICATE OF SERVICE
UNDER 37 C.F.R. § 42.6(e)(4)

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S' OBJECTIONS TO PETITIONER'S PRE-INSTITUTION EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1) was served on August 21, 2024, by filing this document through the Patent Trial and Appeal Board End to End System as well as delivering a copy via electronic mail upon the following email addresses for the attorneys of record for the Petitioner: Tesla-Graphite391-IPR@morganlewis.com and pmargulies@tesla.com.

Dated: August 21, 2024

/Jason Shapiro/

Jason Shapiro
Registration No. 35,354
Devlin Law Firm LLC
1526 Gilpin Ave.
Wilmington, DE 19806

*Counsel for Patent Owner Graphite
Charging Company, LLC*