UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREEWHEEL MEDIA, INC.,
Petitioner,

v.

ALMONDNET, INC.,
Patent Owner.

Case IPR2024-00416
Patent 8,775,249

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE FILED WITH PATENT OWNER'S RESPONSE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby objects to Exhibits 2001 and 2004 submitted with Patent Owner's Response on December 23, 2024.

Petitioner objects to the entirety of Exhibit 2004 ("June 12, 2024 Trial Transcript excerpts from *AlmondNet v. Amazon* (testimony of DoubleClick founder and CEO Kevin O'Connor and Engage founder and CEO Daniel Jaye)") as improper testimony from another proceeding which Petitioner was not a part of and therefore had no opportunity to cross examine the declarants of the statements therein, in violation of Petitioner's due process. Petitioner objects to Exhibit 2004 as hearsay under Federal Rules of Evidence 801 and 802 because Exhibit 2004 includes out of court statements being used to establish the truth of the matter asserted. Petitioner submits that there is no hearsay exception that applies to Exhibit 2004. *See* Fed. R. Evid. 803.

In addition, Exhibit 2004 is inadmissible under Federal Rules of Evidence 401, 402, and 403 because it: (i) is irrelevant for lacking any tendency to make a material fact more or less probable than it would be without it; and (ii) could confuse the issues, mislead the Board, and/or cause unfair prejudice. *See* Fed. R. Evid. 401, 402, 403. Exhibit 2004 is particularly irrelevant because the statements therein do not pertain to the subject patent or references relied on in the Petition and the exhibit provides only out-of-context excerpts of purported testimony.

Petitioner objects to Exhibit 2001 ("DECLARATION OF ROBERT

SHERWOOD IN SUPPORT OF PATENT OWNER'S RESPONSE TO THE PETITION") for lacking relevance under Federal Rules of Evidence 401, 402, and 403, and as being unsupported opinion testimony lacking sufficient probative value under Rules 702 and 703. Specifically, paragraphs 50-53 and 58-59 of Mr. Sherwood's declaration are objected to for improper reliance on Ex. 2004, to which Petitioner separately objects for the above reasons.

Exhibit 2001 includes additional testimony that is not admissible under Federal Rules of Evidence 702 and 703 because it includes improper lay opinions and because the probative value, if any, of the information or statements underlying Mr. Sherwood's opinions does not substantially outweigh the prejudicial effect of such information or statements. *See* Fed. R. Evid. 701, 703. Exhibit 2001 is inadmissible because Mr. Sherwood's testimony (particularly paragraphs 38-72): (i) will not help the Board to understand the evidence or to determine a fact in issue; (ii) is not based on sufficient facts or data; (iii) is not the product of reliable principles or methods; and (iv) does not reflect a reliable application of the principles or methods to the facts of the case. *See* Fed. R. Evid. 702. For example, Mr. Sherwood provides no support for his opinion that "the ***origin*** of attributes is simply not something that, separate from success rate, an advertiser would particularly care about (or something that a designer of a system

such as Merriman or Jaye would be motivated to provide to advertisers)." *See* Ex. 2001, ¶ 66.

Mr. Sherwood's declaration includes unsupported expert opinion for the reasons discussed above. Thus, those portions of Exhibit 2001 are also inadmissible under Federal Rules of Evidence 401, 402, and 403 because they: (i) are irrelevant for lacking any tendency to make a material fact more or less probable than it would be without it; and (ii) could confuse the issues, mislead the Board, and/or cause unfair prejudice. *See* Fed. R. Evid. 401, 402, 403.

For the foregoing reasons, Petitioner reserves the right to file one or more motions to exclude Exhibits 2001 and/or 2004.

Dated: January 2, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies service on the Patent Owner, pursuant to 37 C.F.R. § 42.6(e), by electronic (e-mail) delivery of a true copy of the foregoing PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE FILED WITH PATENT OWNER'S RESPONSE, to lead and back-up counsel of record for Patent Owner as follows:

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Dated: January 2, 2025 By: /Carlos Goldie/

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