Paper No. _____
Filed: October 31, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VISA, INC.,
Petitioner,

v.

CORTEX MCP, INC.,
Patent Owner.

Case No. IPR2024-00489
Patent No. 10,749,859

PETITIONER'S SECOND OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.64(b)(1), Visa, Inc. ("Petitioner") submits the following objections to Cortex MCP, Inc.'s ("Patent Owner") Exhibits 2009-2015 and 2017-2024.

Petitioner's objections are made pursuant to the Code of Federal Regulations ("C.F.R.") governing this proceeding, including without limitation 37 C.F.R. §§42.61-42.65 and §42.6(a)(3). As required by 37 C.F.R. §42.62, Petitioner's objections below apply the Federal Rules of Evidence ("F.R.E.").

II. OBJECTIONS

1. Exhibit 2009

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 701, 702, 703 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 804, 805 (Hearsay Inadmissible).

Exhibit 2009 is the declaration of Dr. Sam Malek and is objected to in its entirety. Dr. Malek fails to provide a reasoned basis for his opinions. Moreover, Dr. Malek's opinions are not the product of reliable principles and methods. Moreover, exhibit 2009 is not relevant at least insofar as it contains numerous paragraphs not cited in Patent Owner's response, including at least paragraphs 1-

19, 22-36, 125-130, and 180-182. To the extent exhibit 2009 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. Exhibit 2009 is further objected to under F.R.E. 801-805 as resting on statements constituting hearsay without satisfying any of the hearsay exceptions. Additionally, exhibit 2009 is also objected to as inadmissible hearsay not subject to any exception to the extent that Dr. Malek has not been made available for cross-examination in a manner complying with all rules governing this proceeding.

2. Exhibits 2010, 2017, and 2018

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons).

Exhibits 2010, 2017, and 2018 are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent any of exhibits 2010, 2017, and 2018 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time.

3. Exhibits 2011-2015

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant

Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); 37 C.F.R. §42.6(a)(3) (Arguments must not be incorporated by reference).

Exhibits 2011-2015 are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent any of exhibits 2011-2015 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time. Exhibits 2011-2015 are further objected to under 37 C.F.R. § 42.6(a)(3) for including arguments incorporated by reference into the Patent Owner's response.

4. Exhibits 2019-2024

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons)); F.R.E. 801, 802, 803, 804, 805 (Hearsay Inadmissible); F.R.E. 901 (Authenticating or Identifying Evidence).

Petitioner objects to exhibits 2019-2024 as lacking authentication under F.R.E. 901 because sufficient evidence has not been provided to establish the authenticity of the exhibits.

Exhibits 2019-2024 are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing

the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent any of exhibits 2019-2024 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time. Exhibits 2019-2024 are further objected to under F.R.E. 801-805 as resting on statements constituting hearsay without satisfying any of the hearsay exceptions.

III. CONCLUSION

The aforementioned exhibits were submitted with Patent Owner's response. These objections are made within 5 business days of institution pursuant to 37 C.F.R. §42.64.

Respectfully submitted,

Dated: October 31, 2024

/Matthew A. Argenti/
Matthew A. Argenti, Lead Counsel
Reg. No. 61,836

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Second Objections to Evidence was served on October 31, 2024, at the following electronic service addresses:

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