

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EARLY WARNING SERVICES, LLC,

Petitioner,

v.

INTELLECTUAL VENTURES II, LLC,

Patent Owner.

Case No. IPR2024-01221

U.S. Patent No. 7,314,167

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner files the following objections to evidence that Petitioners submitted with the Petition for *Inter Partes* Review of U.S. Patent No. 7,314,167 (Paper No. 1) and Petitioner's Reply To Patent Owner Preliminary Response. A chart listing Patent Owner's objections and its basis for the objections is provided below.

EXHIBIT	OBJECTIONS
EX. 1005: Take an Order	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1006: Palm Treo Manual	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.

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	Relevance: The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1007 Oxford Dictionary	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1010: Internet Archive Declaration	No Personal Knowledge/Lack of Foundation: At least paragraphs 3-5 and Exhibits A-B are inadmissible under FRE 602 because the Declarant lacks personal knowledge of the matters about which he testifies, and the Declarant's testimony lacks a proper foundation. Hearsay: At least paragraphs 3-5 and Exhibits A-B constitute inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. Authenticity: At least Exhibits A and B to Ex. 1010 are not authenticated as required by FRE 901 and are not self-authenticating. Relevance: At least paragraphs 3-5 and Exhibits A-B are not relevant under FRE 402 because neither Petitioner nor the

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	Declarant have provided any admissible evidence establishing personal knowledge of the subject matter to which the Declarant has testified or the dates of publication for any of the exhibits to Ex. 1010.
Ex. 1011: Palm Sales Article	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1012 Comparison of Wang Ex. 1004 to U.S. Pat. No. 5,917,913	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Ex. 1013 Stevens Creek Software Awards Website	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly

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	accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1014: Visa 3-D Secure System Overview	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1015 Predko, Programming and Customizing the 8051 Microcontroller	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible.

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	<i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1017 Schneier - Applied Cryptography	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1018 Wikipedia entry - Digital Signature	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence

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	establishing its date of publication or the date that it became publicly accessible.
Ex. 1019 Patterson - Computer Organization and Design	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1020 ISO 8583-1:2003	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.

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Ex. 1021 Oracle Mobile Application Foundation	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1023 Hennessy, Computer Architecture: A Quantitative Approach	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1024 Wikipedia entry - credit card	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly

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	accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1025 Pogue, The Awkward Smart Phone Grows Up	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1028 Seiko Instruments	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible.

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	<i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1029 SiPix's Pocket Printer	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1030 Wikipedia Entry - Short Message Service -SMS	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence

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Ex. 1031 Nist Security Requirements for Cryptographic Modules	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1032 Postel, Simple Mail Transfer Protocol	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.

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Ex. 1033 Nisan, Elements of Computing Systems	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1034 Internet Archive Declaration	<i>No Personal Knowledge/Lack of Foundation:</i> At least paragraphs 3-5 and Exhibit A are inadmissible under FRE 602 because the Declarant lacks personal knowledge of the matters about which he testifies, and the Declarant's testimony lacks a proper foundation. <i>Hearsay:</i> At least paragraphs 3-5 and Exhibit A constitute inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. <i>Authenticity:</i> At least Exhibit A to Ex. 1034 is not authenticated as required by FRE 901 and are not self-authenticating. <i>Relevance:</i> At least paragraphs 3-5 and Exhibit A are not relevant under FRE 402 because neither Petitioner nor the Declarant have provided any admissible evidence establishing personal knowledge of the subject matter to which the Declarant has testified or the dates of publication of the exhibit to Ex. 1034.

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Ex. 1035 Marriot, Keeping Track of Business Cards	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1036 First Supplemental Declaration of Thomas Purvis	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision. <i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition.
Ex. 1037 Zachibaharay, “Graphical Indicia ...”	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision.

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	<i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition. <i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence establishing its date of publication or the date that it became publicly accessible.
Ex. 1038 Neuenschwander, Practical Guide to bar coding	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision. <i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules.

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Ex. 1039 Johnson, Bridging the Paper and Electronic Worlds	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision. <i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition. <i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For

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Ex. 1040 US Pat. No. 7287284	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision. <i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition.
Ex. 1041 U.S. Pat. Publ. 2005/0092839	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision.

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	<i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition.
Ex. 1042 DataMax Programmers Manual	<i>Outside the scope of the statute and the rules:</i> This exhibit was submitted after the Petition and before the Institution Decision. Neither the statute nor the rules provided for or permitted petitioner to supplement the evidentiary record with the information included in this exhibit prior to the institution decision. <i>Lack of Due Process:</i> This exhibit is objected to because the Board authorized submission of the exhibit without affording Patent Owner an opportunity to be heard, and in a manner that was outside the bounds of the rules. <i>No good cause:</i> This exhibit is objected to because the Petitioner failed to demonstrate “good cause” for submitting the exhibit subsequent to the filing of the Petition. <i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. <i>See</i> FRE 801-807. For example, at least the date printed on the exhibit is inadmissible hearsay to prove the publication date of the document or the date when the document was publicly accessible. Additionally, Petitioners have provided no admissible evidence establishing the date of publication or the date when the document was publicly accessible. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> The Exhibit is not relevant under FRE 402 because Petitioner has not provided any admissible evidence

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	establishing its date of publication or the date that it became publicly accessible.

Respectfully submitted,

Dated: February 28, 2025

By: /Daniel H. Golub/
Daniel H. Golub
Registration No. 33,701
Counsel for Patent Owner
Intellectual Ventures II, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **PATENT OWNER'S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)** was served via email on February 28, 2025 to lead and backup counsel of record for Petitioner as follows:

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Respectfully submitted,

Dated: February 28, 2025

By: /Daniel H. Golub/
Daniel H. Golub
Registration No. 33,701
Counsel for Patent Owner
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