

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

U.S. Patent No. 7,314,167
Inter Partes Review No. 2024-01221

**NOTICE OF PETITIONER OBJECTIONS TO
PATENT OWNER EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects as follows to the admissibility of evidence served by Patent Owner with its Patent Owner's

Response (Paper 16) in each case:

Exhibit	Objections
Ex. 2020 —T. Pavlidis <i>et al.</i> , “Fundamentals of Bar Code Information Theory,” <i>Computer</i> 23.4: 74-86 (1990)	FRE 403: The exhibit's 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. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay.
Ex. 2021 —U.S. Patent No. 5,140,146	
Ex. 2022 —U.S. Patent 5,418,862	
Ex. 2023 —Ohbuchi <i>et al.</i> “Barcode readers using the camera device in mobile phones”, International Conference on Cyberworlds, IEEE (2004)	
Ex. 2024 —U.S. Patent No. 7,137,555	
Ex. 2025 —U.S. Patent No. 7,490,774	
Ex. 2026 —U.S. Patent No. 7,637,430	

Exhibit	Objections
Ex. 2027–“Embedded” definition and meaning from Dictionary.com, https://www.dictionary.com/browse/embedded	FRE 106: The exhibit is incomplete. FRE 403: The exhibit’s 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.
Ex. 2028–“Embedded” definition and meaning from Merriam-Webster, https://www.merriam-webster.com/dictionary/embedded	FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. For example, there is no evidence that the document portrays the definition at the time of the ’167 Patent.
Ex. 2029–Declaration of Dr. Kevin Berisso	Right to cross-examine: Petitioner reserves the right to cross-examine the declarant or else seek to exclude the exhibit as hearsay. FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay,

Exhibit	Objections
	wasting time, or needlessly presenting cumulative evidence. FRE 702/703: The exhibit contains statements and opinions that are not admissible under FRE 702 or 703. For example, the exhibit contains opinions for which the factual bases have not been disclosed, including numerous broad and/or conclusory statements made without analysis or sufficient citations to evidence or explanation. The exhibit contains generalizations based on methodology that is not widely accepted and/or has a high potential for error. For example, paragraphs 37 and 40 contain wholly unsupported conclusory opinions about the ubiquity of barcodes and barcode scanners as of the priority date of the '167 Patent. As another example, paragraph 62 states without support that reading 2D codes using laser-based barcode scanners is “impossible” without offering sufficient evidence. Finally, paragraph 81 constructs the term “embedded” without any supporting evidence or explanation. Patent Owner has not established that the expert is relying upon the type of facts or data reasonably relied upon in the field such that the opinion is admissible under FRE 703.

Exhibit	Objections
	FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay.
Ex. 2030 —CV of Dr. Kevin Berisso	Right to Cross-Examine: Petitioner reserves the right to cross-examine the declarant or else seek to exclude the exhibit as hearsay. FRE 702: Expert lacks the necessary knowledge, skills, experience, training, or education to offer an opinion relevant to the case. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is.

Respectfully submitted,

Filed: May 16, 2025

By: /Justin Krieger/
Justin L. Krieger
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2025, I caused a true and correct copy of the foregoing NOTICE OF PETITIONER OBJECTIONS TO PATENT OWNER EVIDENCE to be served electronically on Patent Owner at the following email address:

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