

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and MOTOROLA MOBILITY LLC,
Petitioner

v.

MULTIFOLD INTERNATIONAL INCORPORATED PTE. LTD.,
Patent Owner

Case No. IPR2025-00058
Patent No. 9,158,494

PETITIONERS' MOTION TO EXCLUDE

Pursuant to 37 C.F.R. § 42.64(c) and the Board's Scheduling Order dated May 21, 2025 (Paper 12), Petitioners Google LLC and Motorola Mobility LLC move to exclude the following evidence submitted by Patent Owner: (1) Exhibits 2034-2038 (2) paragraphs 38 and 82 of Exhibit 2001, (3) paragraphs 30-35, 40-48 of Exhibit 2002, and the portions of paragraphs 49, 64, 65, and 69 of Exhibit 2002 that cite Exhibits 2034-2038, because they are hearsay and no applicable hearsay exception applies. *See* Fed. R. Evid. 802 (rule against hearsay). Petitioners timely objected to each of these exhibits as inadmissible hearsay. *See* Paper 15 at 1.

Exhibits 2034-2038 are emails from individuals who did not submit a declaration in this proceeding and were not deposed. They are not statements of a party opponent. Patent Owner and two of its fact witnesses, Mr. Sirpal and Mr. Cassar, whose declarations are Exhibits 2001 and 2002, respectively, rely on the out-of-court statements in those emails for their truth. The witnesses and Patent Owner cite and quote from the emails as though they are reliable sources of historical facts, and rely on them in their declaration testimony and Patent Owner's arguments. As such, the emails are quintessential hearsay: statements not made "while testifying at the current trial or hearing" and being offered "to prove the truth of the matter asserted." Fed. R. Evid. 801(c). Hearsay is not admissible unless an exception applies. *See* Fed. R. Evid. 802. And no exception applies here. *See generally* Fed. R. Evid. 803, 804; *infra*, § VII. Nor can Patent Owner circumvent the Rules of Evidence by

feeding hearsay evidence to its fact witnesses to regurgitate as true facts.

Petitioners timely lodged their hearsay objections and Patent Owner did nothing to remedy its reliance on hearsay. Accordingly, Petitioners respectfully request that the Board exclude the emails and related declaration testimony of Patent Owner's fact witnesses.

I. Exhibit 2034 Is Inadmissible Hearsay

Mr. Cassar represents that Exhibit 2034 is an email he received from Stanley Kurdziel, responding to an email from Paul Reeves. (EX2002 ¶34.) He cites that exhibit for Paul Reeves' out-of-court statement that "I understand that ParentChild may have been added to the framework." (*Id.* (quoting EX2034).) Mr. Cassar is relying on the alleged truth of that statement—that ParentChild may have been added to the framework as of the date on the face of the email—to support that such functionality was implemented as of that date. (*See id.*) He cites Exhibit 2034 for the same purpose in paragraphs 64, 65, and 69. (*See id.* ¶¶64, 65, 69.)

PO cites the same statement quoted above from Exhibit 2034 for the same purpose as Mr. Cassar. (*See* POR, 30 (citing EX2034 for the truth that ParentChild was added to the framework to support an inference that gesture functionality was implemented in EV-1).) Thus, Mr. Cassar and Patent Owner are using this email for the truth of Mr. Reeves' out-of-court statement and it is inadmissible hearsay.

There is also a second layer of hearsay that Patent Owner cannot overcome.

Mr. Reeves’ statement concerns his “understand[ing]” (EX2034), so he must have obtained that understanding from something or someone. But Patent Owner has not identified or put forth any evidence of a non-hearsay source for Mr. Reeves’ understanding. *See* Fed. R. Evid. 805 (“each part of the combined statements [must] conform[] with an exception to the rule [against hearsay]”). As such, even if Patent Owner could show that the email is subject to a hearsay exception, Mr. Reeves’ understanding remains inadmissible because it is repeating hearsay not subject to any exception. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1278 (11th Cir. 2009) (“Hearsay within hearsay subject to an exception is not admissible.”).

II. Exhibit 2035 Is Inadmissible Hearsay

Mr. Cassar represents that Exhibit 2035 is an email he received from Rod Schrock on January 12, 2011. (EX2002 ¶31.) He relies on that email for the truth of multiple out-of-court statements by Mr. Schrock:

Mr. Cassar’s Reliance On Out-Of-Court Statements	How Mr. Cassar Relies On These Statements For Their Truth
Certain people will be “meeting with Vodaphone and CWP in Europe next week.” (EX2002 ¶32 (quoting EX2035).)	Mr. Cassar relies on the truth that the meeting occurred: “Rod Schrock was demoing the Imerj smartphone to telecommunications companies [Vodaphone and CWP] sometime during the week of January 17, 2011.” (EX2002 ¶32.)
At the meeting the “Showcase system software will be Visual Multitasking (wpc) and App Manager” and “[t]he showcase applications will be phone, email,	Mr. Cassar relies on these statements for the truth that the listed showcase applications would be shown at the Vodaphone and CWP meetings to contend that certain features were working by that date. (EX2002 ¶33.)

Mr. Cassar’s Reliance On Out-Of-Court Statements	How Mr. Cassar Relies On These Statements For Their Truth
browser, calendar.” (EX2002 ¶33 (quoting EX2035.))	
According to Mr. Schrock, “[w]e now have landscape WPC working so all apps should be optimized and verified to work well in this mode.” (EX2002 ¶34 (quoting EX2035).)	Mr. Cassar relies on this statement for the truth that landscape WPC was working as of the date of Mr. Schrock’s email: “WPC functionality worked on the Imerj smartphone in landscape mode as of January 12, 2011.” (EX2002 ¶34.)

Patent Owner, in turn, relies on the same statements for the same reasons. (See POR, 30-31 (citing and quoting EX2035 and Mr. Cassar’s above testimony in EX2002 ¶¶32-35).) Specifically, PO relies upon as true and quotes the statements that Mr. Schrock was “‘meeting with Vodaphone and CPW . . . next week’ to ‘showcase the handset’” (*id.* (quoting EX2035)) and relies on Mr. Cassar’s testimony about the remaining statements from the email that in turn rely upon the truth of those statements as shown in the above table (*id.*, 31).

Patent Owner also cites Exhibit 2035 for the proposition that certain “functionality was available for various applications . . . including email, web browser, calendar, and the photo gallery. (POR, 5.) For Exhibit 2035 to support that proposition, Patent Owner must be relying on it for the truth that “[t]he showcase applications will be . . . email, browser, calendar.” (EX2035.)

Because Patent Owner and Mr. Cassar rely on these out-of-court statements for their truth and there is no applicable hearsay exception, they are inadmissible.

III. Exhibit 2036 Is Inadmissible Hearsay

Mr. Cassar states that Exhibit 2036 is an email he received from Rod Schrock on January 17, 2011. (EX2002 ¶40.) He cites Mr. Schrock’s out-of-court statements that “[w]e conducted an ad hoc multi-hour review of our handset” and “the verdict is ... the software user experience is remarkable! It is simply more powerful than any alternative” to support an assertion that “the software was fully functional” as of the date of Mr. Schrock’s email. (EX2002 ¶40 (quoting EX2036).) Petitioners disagree with Mr. Cassar’s assertion, but for him to reach a conclusion that Exhibit 2036 shows software was functional based on Mr. Schrock’s email shows Mr. Cassar was relying on the supposed truth of Mr. Schrock’s statements (e.g., that the “software user experience [was] remarkable” is a true statement). There is also a second layer of hearsay here: “the verdict” from whoever is “[w]e” (EX2036) relies at least in part on the statements of those other people.

Patent Owner similarly cites and relies on Exhibit 2036 and Mr. Cassar’s testimony about it as the basis for stating “testing was performed on an EV-2 handset by January 17, 2011.” (POR, 34 (citing EX2036, EX2002 ¶40).) Like Mr. Cassar, Patent Owner is relying on the truth of Mr. Schrock’s statement that the “multi-hour review” (i.e., testing) occurred by the date of his email.

Mr. Cassar also relies on Mr. Schrock’s out-of-court statements that “[s]oon everyone will have EV2 units to evaluate our user experience’ and that ‘[f]actory is

entering higher volume EV2 builds tomorrow” as allegedly showing that “EV-2 prototypes were released in January 2011” and “at least some project members already had working EV-2 prototypes and that more were on the way.” (EX2002 ¶41.) Specifically, he is relying on Mr. Schrock’s statements about EV-2 production entering higher volumes as true to conclude that some people already had EV-2 units (e.g., there was previous production) and that more EV-2 were on their way (e.g., that production would increase and everyone would get one). Mr. Schrock’s statements in turn rely on hearsay that Patent Owner must also show is subject to an exception. *See* Fed. R. Evid. 805. He presumably heard from somewhere or someone that a “[f]actory [was] entering higher volume” production and is repeating that out-of-court statement for its truth. (*See* EX2036.)

Because Patent Owner and Mr. Cassar rely on these out-of-court statements for their truth and there is no applicable hearsay exception, they are inadmissible.

IV. Exhibit 2037 Is Inadmissible Hearsay

Patent Owner represents that Exhibit 2037 is an email that Mr. Sirpal and Mr. Cassar received from Mr. Schrock on January 25, 2011. (POR, 34 (citing EX2037; EX2001 ¶38; EX2002 ¶40).) Patent Owner relies on Mr. Schrock’s out-of-court statements in Exhibit 2037 for their truth.

First, Patent Owner relies on Mr. Schrock’s statement that “[t]he EV2 units are now relatively functional smartphones” (*id.* (quoting EX2037)) as support for

the proposition that “as of January 25, 2011” (the date of Mr. Schrock’s email), “the EV-2 prototypes were functional” (*id.*). In other words, Patent Owner relies on the statement that the EV-2 units were “now relatively functional” as a true assertion about the functionality of the EV-2 units on that date. (*See id.*) *Second*, Patent Owner relies on Mr. Schrock’s statement that “[i]t’s kind of cool to be turning to the refined user experience stage of our design” (EX2037), quoting it as a true statement of historical fact that “[a]fter [Mr. Schrock’s] email, the project turned ‘to the refined user experience stage of [the] design’” (POR, 34-35 (quoting EX2037)).

Mr. Sirpal similarly relies on Mr. Schrock’s statements in Exhibit 2037 for the truth of the matter asserted. (*See* EX2001 ¶¶38, 82.) He first quotes Mr. Schrock stating “[t]he EV2 units are now relatively functional smartphones,” (EX2001, ¶38 (quoting EX2037)) then relies on that as a true fact: “[t]he fact that the EV-2 units were relatively functional smartphones” (*id.*). Then Mr. Sirpal quotes two more of Mr. Schrock’s statements and relies on them as true statements of the history of the Imerj project: “[a]fter this email, the project turned ‘to the refined user experience stage of [the] design’ to ensure the experience is ‘smooth and intuitive for the user.’” (EX2001 ¶82 (quoting EX2037).)

And like Mr. Sirpal and Patent Owner, Mr. Cassar quotes the same statements from Mr. Schrock about “relatively functional smartphones and “turning to the refined user experience stage” (EX2002 ¶42 (quoting EX2037)) and relies on them

in the same way for their truth. Specifically, he concludes from Mr. Schrock’s out-of-court statements that the EV-2 prototypes “were functional” and testing “was turning toward refining and improving the user experience.” (*Id.*)

Patent Owner cites and relies on Mr. Sirpal and Mr. Cassar’s hearsay testimony about Exhibit 2037 for the same hearsay purposes. (*See* POR, 34-35 (citing EX2001 ¶¶38, 82; EX2002 ¶42; EX2037).)

Because Patent Owner and its declarants rely on these out-of-court statements for their truth and there is no applicable hearsay exception, they are inadmissible.

V. Exhibit 2038 Is Inadmissible Hearsay

Mr. Cassar represents that Exhibit 2038 is an email he received from Mr. Schrock on January 28, 2011. (EX2002 ¶43.) He relies on Exhibit 2038 for the truth of multiple statements by Mr. Schrock.

Mr. Cassar’s Reliance On Out-Of-Court Statements	How Mr. Cassar Relies On These Statements For Their Truth
“At the first bullet point, the email states that ‘We now have 200 EV2 handsets in distribution and will soon have an additional 300.’” (EX2002 ¶43 (quoting EX2038).)	Mr. Cassar relies on the quantities of EV-2 handsets stated in Exhibit 2038 to assert those were true: “[a]s of January 28, there were approximately 200 EV-2 units being tested every day with 300 more on the way.” (EX2002 ¶43.)
“The third bullet point states that ‘Sean and I met with our target U.S. operator on Monday with quite favorable results.’” (EX2002 ¶44 (quoting EX2038).)	Mr. Cassar relies on the truth that there was a meeting with a U.S. operator and that there were favorable results: “the EV-2 prototypes had been shown to a potential customer with favorable results as of January 28, 2011.” (EX2002 ¶44.)

Mr. Cassar’s Reliance On Out-Of-Court Statements	How Mr. Cassar Relies On These Statements For Their Truth
“The fourth bullet point states that ‘Dual displays are now working on kernel 35 for the first time! It is with this kernel that we are going to declare Alpha system software complete.’” (EX2002 ¶45 (quoting EX2038).)	Mr. Cassar relies on the truth that kernel 35 would be used for the Alpha version of the software: “Kernel 35 is the kernel that we moved forward with for the Alpha version of our software.” (EX2002 ¶45.)
“The fourth paragraph lists ‘three straight-forward goals for this quarter.’ These goals relate to improving performance to ‘acceptable EV2 quality standards,’ system reliability testing, and improving user responsiveness.” (EX2002 ¶46 (citing and quoting EX2038) (internal citation omitted).)	Mr. Cassar relies on the truth that the stated goals were the real goals for the EV-2 for the quarter and therefore “are examples of work being performed through first quarter 2011.” (EX2002 ¶46.)
“The sixth paragraph states ‘[r]egarding system reliability, we start extensive testing . . . [at various facilities] during the month of February.’” (EX2002 ¶47 (quoting EX2038).)	Mr. Cassar relies on the truth that there was extensive testing of system reliability during February 2011: “starting in February 2011, numerous employees and contractors at various facilities were ‘extensive[ly] testing’ the system reliability of the EV-2 prototypes” (EX2002 ¶47 (quoting EX2038).)
“Paragraph 7 states that ‘we have initiated a full suite of handset performance tests compared to the Google Nexus S. January was spent putting the test plans and infrastructure in place to test in consistent, repeatable fashion. February and beyond will focus on design improvements to optimize user responsiveness.’” (EX2002 ¶48 (quoting EX2038).)	Mr. Cassar relies on the truth that there had been initiated a full suite of handset performance tests to state that “significant, continuous testing and development was taking place.” (EX2002 ¶48.)

Patent Owner likewise relies on the first statement in the above table for its truth. (*See* POR, 26.) It restates the “200 EV2 handsets” figure that Mr. Schrock gives in Exhibit 2038 (and that Mr. Cassar reiterates) as a true statement of fact: “By the end of January 2011, at least 200 EV-2 prototypes had been distributed to Imerj engineers.” (POR, 26 (citing EX2038; EX2002 ¶43).)

Because Patent Owner and Mr. Cassar rely on these out-of-court statements for their truth and there is no applicable hearsay exception, they are inadmissible.

VI. Exhibits 2001 and 2002 Contain Inadmissible Hearsay

Exhibits 2001 and 2002 are the declarations of Mr. Sirpal and Mr. Cassar. Those are Patent Owner’s fact witnesses, not experts. Unlike experts who have some leeway to consider inadmissible evidence including hearsay in their analysis (*see* Fed. R. Evid. 703), there is no such exception to for fact witness testimony. *See, e.g., Thomas v. Kuo*, No. 1:16-cv-00524-DAD-EPG (PC), 2019 WL 2369898, at *10 (E.D. Cal. June 5, 2019) (declining to consider fact witness declaration based on hearsay statements of others); *Henao v. Hilton Grand Vacations Co., LLC*, No. CV 16-00646 DKW-RLP, 2017 WL 4479253, at *10 (D. Haw. Oct. 6, 2017) (same). As detailed above, Mr. Sirpal and Mr. Cassar base certain paragraphs of their testimony on inadmissible hearsay. *See supra*, §§ I-V; EX2001 ¶¶ 38, 85; EX2002 ¶¶ 30-35, 40-48, 49, 64, 65, 69. This testimony is not admissible because the hearsay does not fall within a recognized exception. *See* Fed. R. Evid. 802, 805; *infra*, § VII.

VII. No Hearsay Exception Applies

The email exhibits are hearsay with no applicable exception. And the fact witness's declaration testimony on those exhibits is hearsay because it relies on the truth of the matters asserted by the emails' authors. To the extent Patent Owner contends the emails are admissible as business records or under the residual hearsay exception, they are not. And Exhibit 2036 is not a present sense impression.

A. Patent Owner Failed to Provide Foundational Evidence Required to Satisfy the Business Records Exception

To fall within the business records exception, a statement “must have been: (a) made at or near the time by, or from information transmitted by, a person with knowledge; (b) kept in the course of a regularly conducted business activity; and (c) made as part of a regular practice of the business.” *United States v. Daneshvar*, 925 F.3d 766, 777 (6th Cir. 2019) (citing Fed. R. Evid. 803(6).) “[A]ll of these conditions must be shown by the testimony of a qualified witness.” *Id.* Here, no witness testified that any of Exhibits 2034-2038 were kept in the course of a regularly conducted business or made as part of a regular practice of the business. Mr. Cassar only said they were “true and correct cop[ies]” of emails he received. (EX2002 ¶¶ 30, 31, 40, 42, 43.) And Mr. Sirpal similarly said that Exhibit 2037 was an “email from Rod Schrock” that he “ha[d] reviewed.” (EX2001 ¶38.) This testimony falls far short of Federal Rule of Evidence 803(6)'s requirements.

That Exhibits 2034-2038 are possibly intracompany or intercompany Flextronics emails is also insufficient:

An email is not a business record for purposes of the relevant hearsay exception simply because it was sent between two employees in a company or because employees regularly conduct business through emails; such evidence alone is insufficient to show that the email is a record, made as “a regular practice” of the company, Fed. R. Evid. 803(6)(C), and that “the record was kept in the course of a regularly conducted activity of a business,” *id.* at 803(6)(B). “[I]t would be insufficient to survive a hearsay challenge simply to say that since a business keeps and receives e-mails, then *ergo* all those e-mails are business records falling within the ambit of Rule 803(6)(B).” *United States v. Cone*, 714 F.3d 197, 220 (4th Cir. 2013). If that were the case, then every single email sent within any company would fall within the exception. This result would obviate the entire purpose of the business records exception, which is designed for a limited category of records—namely those that are regularly produced as a part of a company’s business activities.

Daneshvar, 925 F.3d at 777.

Exhibit 2034 cannot meet this hearsay exception for the additional reason that it was not “made at or near the time by—or from information transmitted by—*someone with knowledge.*” Fed. R. Evid. 803(6)(A) (emphasis added). The statement from Paul Reeves that Mr. Cassar and Patent Owner rely on states, “I

understand that ParentChild *may* have been added to the framework.” (EX2034; *see supra*, § I.) In other words, Mr. Reeves lacks knowledge of whether ParentChild *was* added to the framework. And no witness testified that his understanding came from someone with knowledge. Accordingly, none of Exhibits 2034-2038 satisfy the business records hearsay exception.

B. The Residual Hearsay Exception Does Not Apply

The residual exception is a narrow carveout to the rule against hearsay, where a hearsay statement may be admitted when, among other conditions “(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” Fed. R. Evid. 807(a). “In general, ‘Congress intended the residual hearsay exception to be used very rarely, and only in exceptional circumstances.’” *United States v. Awer*, 770 F.3d 83, 94 (1st Cir. 2014)). Accordingly, the “proponent of a statement, citing the residual exception, bears a heavy burden.” *NGM Ins. Co. v. Santos*, 483 F. Supp. 3d 1, 7 (D. Mass. 2020) (quoting *ADT LLC v. Alarm Prot. LLC*, No. 15-cv-80073, 2017 WL 1881957, at *2 (S.D. Fla. May 9, 2017)).

Patent Owner cannot satisfy either of Rule 807(a)’s requirements. There are no guarantees of trustworthiness because the statements in “the email[s] w[ere] not

made under oath or subject to cross-examination. Nor has [Patent Owner] offered any evidence as to [the authors] character for truthfulness or as to whether [their] statement[s] w[ere] based on personal knowledge.” *Burton v. Kohn L. Firm, S.C.*, 934 F.3d 572, 583 (7th Cir. 2019) (explaining that “none of the usual ‘circumstantial guarantees of trustworthiness’ are present” and holding email inadmissible under residual hearsay exception). And Petitioners are not aware of Patent Owner taking any steps to obtain testimony from the emails’ authors or otherwise procure probative evidence on the same points. As such, the residual hearsay exception does not apply. *See, e.g., Conning v. Halpern*, No. 18-CV-12336-ADB, 2021 WL 2646672, at *3 (D. Mass. June 28, 2021) (holding an email was not admissible under Rule 807 where the plaintiff had not explained if it sought voluntary testimony from email’s author or shown guarantees of trustworthiness); *Associated Terminals of St. Bernard, LLC v. Potential Shipping HK Co.*, No. CV 17-5109, 2018 WL 947660, at *3 (E.D. La. Feb. 16, 2018) (holding email not admissible under Rule 807).

C. Exhibit 2036 Is Not a Present Sense Impression

If Patent Owner contends Mr. Schrock’s statements in Exhibit 2036 about an alleged “multi-hour review” are admissible under the present sense impression hearsay exception (Fed. R. Evid. 803(1)) based on his statement that the review was conducted “today,” that is insufficient to meet the exception. A present sense impression must be “[a] statement describing or explaining an event or condition,

made *while or immediately after* the declarant perceived it.” Fed. R. Evid. 803(1) (emphasis added). Courts read “while or immediately after” narrowly and such that “immediately after” requires evidence showing a near-instant recording of the statement after the event. *See, e.g., Allscripts Healthcare, LLC v. DR/Decision Res., LLC*, 521 F. Supp. 3d 112, 122 (D. Mass. 2021) (explaining “statements made more than 20 minutes after the relevant event almost certainly do not meet that standard” and holding Fed. R. Evid. 803(1) inapplicable to an email sent hours after a meeting with no evidence demonstrating when the email was drafted); *Alexander v. Cit Tech. Fin. Servs., Inc.*, 217 F. Supp. 2d 867, 883 (N.D. Ill. 2002) (holding Fed. R. Evid. 803(1) inapplicable to notes without evidence they were written “immediately after” event, even if written on the same day). Patent Owner has provided no evidence that the email was written during or immediately after the alleged handset review, even if written “today.”¹ *See Allscripts*, 521 F. Supp. at 122.

VIII. Conclusion

For the foregoing reasons, Petitioners request the Board exclude the exhibits and testimony discussed above as inadmissible hearsay.

¹ This statement from Mr. Shrock is also hearsay and cannot support finding a hearsay exception exists. It would be an end-run around the rule against hearsay if a hearsay statement could be used for its truth to find a hearsay exception applies.

Respectfully submitted,

Dated: January 30, 2026

By: /Naveen Modi/
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Counsel for Petitioner Google LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2026, I caused a true and correct copy of the foregoing Petitioners' Motion to Exclude to be served electronically on counsel for Patent Owner at the following addresses:

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