

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC AND
FREEDMAN ELECTRONICS PTY LTD, Petitioners

v.

ZAXCOM, INC.,

Patent Owner

Case IPR2025-00232

U.S. Patent 10,276,207

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

Pursuant to 37 C.F.R. § 42.64(b)(2), Zaxcom, Inc. (“Patent Owner”) responds to Paper 24, Petitioners’ Objections to Evidence Filed with Patent Owner Response (“Objections”). Patent Owner reserves the right to present further objections as allowed by the applicable rules or other authority. As explained below, each and every objection should be overruled. To conserve the Board’s time and to avoid repetitive briefing, Patent Owner addresses the objections raised to each exhibit under each objection they received.

I. Federal Rules of Evidence 401-403

Petitioners object to Exhibits 2035, 2046, 2048, 2049, and 2053 under the Federal Rules of Evidence (“FRE”) 401, 402, and 403. However, Petitioners’ objections should be overruled. First, these generalized objections lack reasonable particularity and do not allow Patent Owner to meaningfully respond and correct. Furthermore, FRE 401 states that the evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” FRE 402 recites that relevant evidence is admissible unless an exception applies, and irrelevant evidence is inadmissible. FRE 403 states that the “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

Petitioners’ claim that these exhibits are irrelevant because they are either “undated” or because the date range listed on it is 1998-2020 (e.g., Ex-2049) and “thus there is no evidence that it is contemporaneous with Strub or the 2005 filing date of the patents-in-suit.” Petitioners erroneously conclude that they are not “relevant to the capabilities or characteristics of any

device in the relevant time period.” The reference to “patents-in-suit” is presumably a reference to U.S. Patent No. 10,276,207 (the “‘207 Patent”).

Regarding Ex-2035, Strub teaches a data processing device can be a Recon-11. *See* Ex-1003, 29:44-46. Patent Owner submits supplemental evidence, Ex-2063, to show that this document was published in 1996, prior to the filing date of Strub. Ex-2035 is further tied to the Recon-11 disclosure of Strub through its model number as discussed therein. The teachings of Ex-2035 are relevant to the Recon-11 referenced in Strub, its components, how it operated, and whether Strub was enabled at the time of its filing.

Ex-2046 is relevant to show that the first battery powered streaming camcorder wasn’t introduced until 2002. *See* Paper 23 at 51. This is also supported by Exhibit 2058, ¶¶ 314, 316. Ex-2046 is dated in the footer that states “Printed in Japan KCS-8365B CEDV300UN0203.” A simple search would have revealed that JVC notates the month and year of publication at the end of this footer-“0203.” Thus, Ex-2046 itself is marked as being published in February of 2003.

Ex-2049 is relevant to show that no consumer battery powered MPEG encoder existed in 2000. *See* Paper 23 at 39. Patent Owner’s expert supports this in stating “[i]n 2000, no consumer, battery-powered MPEG encoder existed. The Tiernan Video SE4000 was demonstrated at NAB, but was a rack-mount or fixed housing unit” while citing to Ex-2049. *See* Ex-2058, p. 108.

Ex-2053 is relevant to show that battery powered camcorders with built in audiovisual streaming wasn’t majorly released until 2010. *See* Paper 23 at 51. Despite Petitioners statement that Ex-2053 is undated, Ex-2053 clearly shows multiple examples that indicate that the document was released on or near April of 2014. *See* Ex-2053, p. 14, 21, 49, 56, and 88. Nonetheless, a precise calendar date is not required to overcome the relevancy inquiry.

Finally, Exhibits 2035, 2046, 2048, 2049, and 2053 *all* are supported by Patent Owner's expert, Mr. DeFilippis. Thus, these documents add technical details as to whether Strub teaches a working embodiment of the invention and whether the specification is enabled. Petitioners' objections do not identify what specific prejudice, confusion, or waste would occur from admitting this evidence. Thus, because these exhibits are relevant under FRE 401, admissible under FRE 402, and their probative value is not substantially outweighed by any other factor under FRE 403, the objection should be overruled.

II. Federal Rules of Evidence 701

Petitioners object to Exhibits 2036 and 2037 as improper opinion testimony by a lay witness under FRE 701. Petitioners object without distinctly pointing out which section(s) of the declaration are objected to. These generalized objections lack reasonable particularity and do not allow Patent Owner to meaningfully respond and correct. Nonetheless, FRE 701 states “[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”

These exhibits are declarations of witnesses, who have both had **personal** experience with Zaxcom's products and have personally observed the matters to which they attest, and, accordingly, this is fact testimony, not opinion testimony. To the extent any statements are “opinions,” they are (a) rationally based on the witness's own perceptions; (b) helpful to understanding their testimony or determining facts (e.g., objective indicia of non-obviousness); and (c) not based on scientific/technical expertise of the kind governed by Rule 702. Further, where Exhibits 2036 and 2037 recount what was experienced or said by and to others, it is

offered for notice/effect on the listener or context, not for technical truth. *See*, i.e., Ex-2037, ¶¶ 5-7 and Ex-2036, ¶¶ 5-8. In fact, both Exhibit 2036 and 2037 make this clear by stating “I...provide this declaration **to describe my experience** with the Zaxcom products that embody U.S. Patent No. 10,276,207.” Ex-2036, ¶1 (emphasis added); *see also* Ex-2037, ¶1.

Accordingly, since every paragraph of Exhibits 2036 and 2037 would satisfy the three-part test established by FRE 701, these objections should be overruled.

III. Federal Rules of Evidence 702-703

Petitioners object to Exhibits 2036 and 2037 as “inadmissible expert testimony” under FRE 702 and 703, while citing to *Daubert v. Merrel Dow Pharms., Inc.*, 509 U.S. 579 (1993). Petitioners do this concurrently with the objection under FRE 701 of improper opinion testimony by a lay witness. Since Petitioners have failed to specify which portions of Exhibits 2036 and 2037 they deem to be lay testimony and which portions they deem to be expert testimony, Patent Owner is unable to specifically respond to these objections. Thus, these objections should be overruled.

IV. Federal Rules of Evidence 801-802

Petitioners object to Exhibits 2031-2035, 2038-2040, 2044-2053, 2056, and 2060. The objection under FRE 801 and 802 should be overruled. First, these generalized objections lack reasonable particularity and do not allow Patent Owner to meaningfully respond and correct. Next, the relevant section of FRE 801 states that hearsay is an out of court statement to prove the truth of the matter asserted. FRE 802 states that hearsay is not admissible unless a federal statute, the Federal Rules of Evidence, or other Supreme Court rule applies.

A. Exhibits 2031-2035, 2046-2053, 2056, and 2060

Exhibits 2034-2035, 2046-2053, 2056, and 2060 show the specifications of various products/items identified by name or model number in Strub and/or items used in support of Mr. DeFilippis' declaration and analysis. These exhibits fall under at least the following hearsay exceptions: FRE 803(17) and 807.

FRE 803(17) allows for market quotations, lists, directories, or other compilations that are generally relied on by the public, customers, and professionals in particular occupations (e.g., engineering) to specify and purchase products. FRE 807 allows for a hearsay statement to be admissible if the "statement is supported by sufficient guarantees of trustworthiness" and "is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts." These exhibits meet both of these exceptions. There would be no better evidence than these exhibits. Further, Exhibits 2031-2035, 2046-2053, 2056, and 2060 originate from the manufacturer or inventors/creators of their respective devices therein, and as downloaded from their respective websites (with the exception of Exhibit 2035) as discussed in greater detail herein.

Courts have recognized that similar industry publications fall within these exceptions. *See Susemihl v. United S.S. Co. (Bah.)*, 1988 U.S. App. LEXIS 21219, at *4-5 (4th Cir. 1988) (finding that a manufacturer's brochure was a published commercial compilation generally relied on by potential purchasers of the manufacturer's product and therefore admitted under 803(17)). *See also United States v. Grossman*, 614 F.2d 295, 297 (1st Cir. 1980) (admitting a manufacturer's catalogue under Rule 803(17) to allow a jury to identify stolen merchandise by comparison to merchandise pictured in catalogue); *Barber v. Fairbanks Capital Corp.*, 2003 Bankr. LEXIS 2359 (Bankr. E.D. Pa. 2003) (taking judicial notice of an Insurance Manual "since it is well-used and readily available, and also not excludable hearsay under FRE 803(17), because it is a

commercial publication that is generally used and relied upon by persons in the Pennsylvania title insurance industry”); *Conoco Inc. v. U.S. Dep’t of Energy*, 99 F.3d 387, 393 (Fed. Cir. 1996).

Furthermore, Exhibits 2031 and 2032 are not hearsay and are admissible under FRE 803(6) as a regularly kept business record of Patent Owner, Zaxcom. FRE 803(6) provides that the following is not hearsay: “[a] record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.”

Patent Owner introduces Exhibit 2064, Glenn Sanders’ testimony and certification, that shows that the manuals embodied in Exhibits 2031 and 2032 were created at Mr. Sanders’ direction to describe the features and operation of the TRX900AA and TRX900LA/LAS products. Ex-2064, ¶¶ 1-2. Mr. Sanders further states that “[s]ince its creation, the manual has been maintained in the regular course of Zaxcom’s business and Zaxcom’s website. A copy of the manual is also kept on Zaxcom’s servers.” *Id.*

For Exhibit 2033, this exhibit is additionally not hearsay because it is the opposing party’s own publication regarding its product — a statement by a party-opponent under FRE

801(d)(2). It was created and disseminated by the party (or its authorized agents) to describe its product. As thoroughly discussed throughout the parallel IPR proceeding, this Board has determined that Lectrosonics is a wholly owned subsidiary and in privity with Petitioners. *See RODE Microphones, LLC, and Freedman Electronics, Pty, Ltd. v. Zaxcom, Inc.*, IPR2025-00231, Paper 33 at 6 (Dec. 4, 2024). Thus, Lectrosonics' statement is considered a statement by a party-opponent under FRE 801(d)(2), and Exhibit 2033 is admissible as an opposing party admission.

B. Exhibits 2038-2040, 2044-2045

Exhibits 2038 and 2039 are documents issued by The Television Academy to Zaxcom and given to Mr. Sanders at or near the time of the 68th Engineering Emmy Awards on October 26, 2016. Notably, they both were "maintained in the regular course of Zaxcom's business, consistent with Zaxcom's regular practice of retaining such records." *See* Ex-2064, ¶¶ 2-3. Exhibit 2040 is an entry form provided by The Television Academy that was completed by Zaxcom before on or around August 2015 before submitting it shortly thereafter. Since that time, "entry form has been stored on Zaxcom's servers at my direction...[and] has been maintained in the regular course of Zaxcom's business, consistent with Zaxcom's regular practice of retaining such records." Ex-2064, ¶ 5. Exhibits 2044-2045 are photographs of the Academy Award given to Mr. Sanders and Mr. Howard Stark on February 11, 2017. As declared by Mr. Sanders, he "took these photographs at or near the time of IPR2018-00972, IPR2018-01129, and IPR2018-01130...[and] [s]ince that time, the photographs have been stored on Zaxcom's servers, while the physical Academy Award has been kept in my office." Ex-2064, ¶ 6. Furthermore, Mr. Sanders even states that he "retain[s] the original Academy Award in [his] possession and can provide it for inspection if needed." *Id.*

These exhibits are exempted from hearsay, at least, pursuant to FRE 803(6) as these were kept by Zaxcom in the course of its regularly conducted activity. *See* Exhibit 2064, a certification by Glenn Sanders for the aforementioned exhibits, stating that the exhibits were taken by Glenn or by another person with knowledge, was kept in the regular course of Zaxcom's business, and it is the regular practice of Zaxcom to make and keep such records. Thus, these exhibits are a true and correct copy of such records and are trustworthy. Furthermore, FRE 807 allows for a hearsay statement to be admissible if the "statement is supported by sufficient guarantees of trustworthiness-after considering the totality of the circumstances under which it was made and evidence, if any, corroborating the statement; and it is more probative on the point for which it is offered than any other evidence that the proponent can obtained through reasonable efforts" which is present in the listed exhibits.

Accordingly, these exhibits should not be considered hearsay under FRE 801.

V. Federal Rules of Evidence 901-902

Petitioners object to Exhibits 2031-2035, 2038-2053, 2056, and 2060 under FRE 901 and 902 stating only that the exhibits are "unauthenticated." These objections should be overruled. These generalized objections lack reasonable particularity and do not allow Patent Owner to meaningfully respond and correct. FRE 901(a) states that the "proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." FRE 901(b) provides examples of evidence that satisfies the authentication requirement, such as "[t]estimony that an item is what it is claimed to be," as provided for by FRE 901(b)(1).

A. Exhibits 2031-2035, 2046-2053, 2056 and 2060

Here, these exhibits satisfy FRE 901 because Exhibits 2031-2032, 2034-2035, 2046-2051, 2053, and 2060 are identifiable as technical documents issued by the manufacturer or the

inventors/creators of the respective products referenced in the exhibits. Further, Exhibits 2052 and 2056 are identifiable as release articles, and dated as such. Exhibit 2033 is a webpage and dated as such.

Exhibits 2031 and 2032 were downloaded directly from the PTACTS server as they were exhibits in the prior IPRs. These exhibits were provided by Zaxcom to its counsel in those cases. Exhibit 2034 was downloaded directly from (<https://www.sweetwater.com/store/detail/A10-TX-BU--sound-devices-a10-tx-bu-digital-bodypack-transmitter-b-band>). Exhibit 2035 was downloaded directly from (<https://inis.iaea.org/records/8nbcv-v8h24>). Exhibit 2046 was downloaded directly from (<http://pro.jvc.com/pro/attributes/prodv/brochure/dv300bro.pdf>). Exhibit 2047 was downloaded directly from (https://cvp.com/pdf/sony_dsr300ap.pdf?srsltid=AfmBOoqs4wlk_UIwIe3BokCwATqhviUJJBPb_UBhXtv9-7CRfdzQKPUZ). Exhibit 2048 was downloaded directly from (<https://www.nxp.com.cn/docs/en/data-sheet/MC68HC11G5.pdf>). Exhibit 2049 was downloaded directly from (<https://www.digisat.org/tiernan-video-se4000>). Exhibit 2050 was downloaded directly from (<https://web.archive.org/web/20001109184800/http://supercircuits.com:80/>). Exhibit 2051 was downloaded directly from (<https://www.seagate.com/support/disc/manuals/scsi/67517c.pdf>). Exhibit 2052 was downloaded directly from (<https://techcrunch.com/2010/09/14/look-youtube-no-hands-looxcie-introduces-wearable-camcorder/>). Exhibit 2053 was downloaded directly from (https://help.na.panasonic.com/wp-content/uploads/2023/02/HXA500_SQW0001_ENG.pdf). Exhibit 2056 was downloaded directly from (<https://www.slashgear.com/ion-twin-video-records-the-scenery-and-you-enjoying-the-scenery-at-the-same-time-2271015/>). Exhibit 2060 was downloaded directly from

(<https://manuals.plus/m/15154fb0ff58c7f3526bcb53e7c35ec51e4c485be8768934f351221387592d09>).

A declaration from counsel for Patent Owner attesting to the date and download manner, and identifying the source URL, is submitted as Exhibit 2062. Each technical document and webpage was published by their respective authors, or manufacturers, as applicable. The manufacturer drafted and distributed the technical documents in the ordinary course of business to provide engineers and customers with accurate specifications. Thus, as relevant through FRE 901(b)(1) and Exhibit 2062, each aforementioned exhibit is authenticated as “[t]estimony that an item is what it is claimed to be.”

Each document has features that show the document originating directly from the company responsible for designing and manufacturing each device. More specifically, FRE 901(b)(4), allows for documents that contain prevalent “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances” to be authenticated.

Further, FRE 902 states a list of examples that are “self-authenticating.” For example, FRE 902(5) states a “book, pamphlet, or other publication purporting to be issued by a public authority,” while FRE 902(11) allows for “certified domestic records of a regularly conducted activity” that meet the requirements of Rule 803(6). “Because of the general trustworthiness of regularly kept records and the need for such evidence in many cases, the business records exception [to the hearsay rule] has been construed generously in favor of admissibility.” *Conoco Inc. v. Dept. of Energy*, 99 F.3d 387, 391 (Fed. Cir. 1996). Further, “the ‘custodian or other qualified witness’ who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, so long as the

witness understands the system used to prepare the records.” *Id.* Thus, these manufacturer documents, which were created and maintained in the ordinary course of business and distributed broadly to engineers, meet this requirement as a record regularly relied upon in the industry.

B. Exhibits 2038-2040

Here, the exhibits satisfy FRE 901 because they are identifiable as the Engineering Emmy’s document, press release, and entry form, respectively. As evidenced by Ex-2058, Mr. DeFilippis’ declaration states that these documents are all “true and correct” copies (Ex-2058, ¶ 286). Furthermore, as evidenced by Ex-2064, Mr. Sanders’ supplemental declaration states that these documents are also all “true and correct” copies (Ex-2064, ¶¶ 2-4).

Ex-2038 is “a brochure from the Television Academy relating to the Engineering Emmy Awards. [Mr. Sanders] received this brochure in 2016, and since that time it has been stored on Zaxcom’s servers at [his] direction. It has been maintained in the regular course of Zaxcom’s business, consistent with Zaxcom’s regular practice of retaining such records. To the best of [his] knowledge, this exhibit is a true and correct copy of a record maintained by Zaxcom in the ordinary course of business, and it is trustworthy.” *Id.* at ¶ 2. Next, Ex-2039 is “a press release announcing the honorees for the 68th Engineering Emmy Awards. [Mr. Sanders] received this document from the Television Academy in 2016, and since that time it has been stored on Zaxcom’s servers at [his] direction. It has been maintained in the regular course of Zaxcom’s business, consistent with Zaxcom’s regular practice of retaining such records. To the best of [his] knowledge, this exhibit is a true and correct copy of a record maintained by Zaxcom in the ordinary course of business, and it is trustworthy.” *Id.* at ¶ 3. Finally, Ex-2040 is “an Emmy Award entry form for outstanding achievement in engineering development for the 2015-2016 year. [Mr. Sanders] downloaded this entry form from the Television Academy website and

completed it on or around August 2015 before submitting it shortly thereafter. Since that time, the entry form has been stored on Zaxcom's servers at [his] direction. It has been maintained in the regular course of Zaxcom's business, consistent with Zaxcom's regular practice of retaining such records. To the best of [his] knowledge, this exhibit is a true and correct copy of a record maintained by Zaxcom in the ordinary course of business, and it is trustworthy." *Id.* at ¶ 4. Thus, Exs-2038-2040 all meet the FRE 901 requirement.

Next, FRE 902 states a list of examples that are "self-authenticating." For example, FRE 902(11) allows for "certified domestic records of a regularly conducted activity" that meet the requirements of Rule 803(6). As testified by Mr. Sanders, each of these documents were created and maintained in the ordinary course of business. Together, these exhibits and the declaration establish authenticity. Thus, Petitioners' objections should be overruled.

C. Exhibits 2041-2045

Here, these exhibits satisfy FRE 901 because they are identifiable as an Emmy award and an Academy Award. As evidenced by Mr. Sanders' declaration (Ex-2064), Exhibits 2041-2043 are "photographs of an Emmy award [Mr. Sanders] received in 2016... These photos fairly and accurately depict the award...[Mr. Sanders] received this award from the Television Academy at the Emmy Awards ceremony in Hollywood, California in 2016. [Mr. Sanders] took these photographs of the award at or near the time of IPR2018-00972, IPR2018-01129, and IPR2018-01130. Since that time, the photographs have been stored on Zaxcom's servers, while the physical Emmy Award has been kept in [Mr. Sanders'] office." Ex-2064, ¶ 5. Mr. Sanders also states that he "retain[s] the original Emmy Award in [his] possession and can provide it for inspection if needed." *Id.*

Exhibits 2044 and 2045 are “photographs of the Academy Award presented to [Mr. Sanders] and [his] co-inventor... These photographs fairly and accurately depict the award...[Mr. Sanders] took these photographs at or near the time of IPR2018-00972, IPR2018-01129, and IPR2018-01130. Since that time, the photographs have been stored on Zaxcom’s servers, while the physical Academy Award has been kept in [Mr. Sanders’] office.” Ex-2064, ¶ 6. Mr. Sanders also states that he “retain[s] the original Academy Award in [his] possession and can provide it for inspection if needed.” *Id.* Thus, this satisfies the FRE 901(b)(1) requirement.

Further, FRE 902 states a list of examples that are “self-authenticating.” For example, FRE 902(7) allows for “[a]n inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.” The inscription present in the award photographed in Exhibits 2041-2043 purport to have been affixed in the course of business of manufacturing Emmy awards. Further, FRE 902(13) allows for “[a] record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) .” As explained in Exhibit 2064, Mr. Sanders states that that these exhibits were created and maintained in the ordinary course of business. *See* Ex-2064, ¶¶ 5-6. Together, the exhibits and the certification establish authenticity.

Accordingly, the aforementioned exhibits are authenticated via at least FRE 901. Else, the exhibits fall under an exception, as illustrated in FRE 902.

For all of the above reasons, all of Petitioners’ objections to evidence should be overruled.

Dated: September 29, 2025

/Rita C. Chipperson/

Rita C. Chipperson (Reg. No. 54,031

CHIPPERSON LAW GROUP, P.C.

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that on September 29, 2025, a complete and entire copy of the foregoing “PATENT OWNER’S RESPONSE TO PETITIONER’S OBJECTIONS TO EVIDENCE FILED WITH PATENT OWNERS’ RESPONSE” is being served on the petitioners at the electronic addresses shown below per consent:

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