IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV TECHNOLOGIES AG AND APTIV TECHNOLOGIES LIMITED,
Patent Owners.

Case No. PGR2024-00011
U.S. Patent No. 11,681,643

PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE

Pursuant to 37 C.F.R. §42.64(b)(1), Petitioner submits the following objections to evidence submitted with Patent Owner's Response (Paper 25, "POR") in this proceeding. Petitioner incorporates by reference herein its objections to evidence (Paper 19) submitted with Patent Owner's Preliminary Response ("POPR") as the POR relies on many of the same exhibits.

- Exhibit 2019 (Supplemental Declaration of Henry Houh): Petitioner objects to this exhibit as impermissible expert testimony by a lay person (F.R.E. 701/702) (*viz.*, expert testimony by a non-expert who does not satisfy the qualifications of a POSITA), lack of personal knowledge / speculation (F.R.E. 602), lacking proper authentication and is cursory, incomplete, misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403), relevance (F.R.E. 401), and hearsay (F.R.E. 801/802), and is unreliable for relying on materials not normally used by a technical expert (*Daubert*). Petitioner further objects to the entirety of Dr. Houh's analysis and opinions as being based on an incorrect POSITA standard/definition. *See* EX2019, ¶¶26-30, especially 26 and 28. Petitioner objects to EX2019 as an attempt to skirt Patent Owner's word count limitation. *See* 37 C.F.R. §42.24(b)(2). For example, Patent Owner's Response improperly relies

exclusively on Exhibit 2019 to establish "how Aptiv's Dual Role Hub meets all limitations of claim 1" (*see* Paper 25 at 70, citing Exhibit 2019, ¶156 which spans 9 pages) in contravention of 37 C.F.R. §42.6(a)(3) and numerous related decisions. Patent Owner's end run around the word count limitation is prejudicial to Petitioner, who is also constrained by word count limits in its Reply. If Patent Owner wishes to pursue secondary considerations of non-obviousness, it must in the first instance offer argument and evidence of such. *Bos. Sci. SciMed, Inc. v. Iancu*, 811 F. App'x 618, 623 (Fed. Cir. 2020). And to the extent Patent Owner alleges—in its effort to satisfy this burden—that its own products "practice" the challenged patent, it was required to provide explanations in the body of its Response. It cannot do so merely in separate exhibits. The Board's rules unambiguously explain that "[a]rguments must not be incorporated by reference from one document into another document." 37 CFR 42.6(a)(3); *see also Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12, at 10 (P.T.A.B. Aug. 29, 2014) (Informative). This "prohibition … eliminate[s] abuses that rise from incorporation and combination." *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed. Cir. 2023). Among other things, an improper "incorporation by reference" both operates as "self-

help increase in the length of the brief" and results in a "pointless imposition" on the Board's time by forcing it to dig through the record to determine what is actually being argued. *Id*. By shifting its argument out of the Response and into an expert declaration, Patent Owner improperly provided itself with "self-help." It was able to jam more arguments into its Response and avoided the need to make choices regarding what arguments to include or exclude. Both the Board and the Federal Circuit have specifically rejected attempts to incorporate claim charts and other lengthy documents that are no different from what Patent Owner has done here. For example, in one case the Board rejected an attempt to show that certain claim limitations were satisfied by the prior art by making only short, declarative statements in the petition itself while citing to exhibits spanning "nearly five pages, four pages of which is a claim chart." *Cisco Sys.*, Case IPR2014- 00454, Paper 12, at 8. Additionally, if the objected to material was not discussed or cited in the Response, Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. In particular, at least ¶¶1-25, 27, 29-51, 57, 103, 107, 139-140, 142, 144-152, and 154-155 were

not cited or discussed in the Response. Accordingly, at least those paragraphs are objected to as not being relevant to any issue in this proceeding, and an attempt to circumvent Patent Owner's word count limitation. Even those paragraphs of EX2019 cited in the Response are conclusory and typically do nothing more than regurgitate verbatim what is in the Response and are entitled to little or no weight. *See* 37 C.F.R. §42.65(a); *see also Xerox Corp. v. Bytemark, Inc*., IPR2022-00624, Paper 9, at 15 (PTAB Aug. 24, 2022) (precedential) (rejecting expert testimony that "adds little to the conclusory assertion for which it is offered to support"). For example, at least the following paragraphs are substantially verbatim copies of Patent Owner's Response: ¶¶26, 28, 52-53, 54-55, 56, 58-59, 60-61, 62-66, 67-71, 72, 73-79, 80-91, 92-97, 98-102, 103-104, 105-106, 107-109, 110-111, 112-116, 117, 118-119, 139. Such testimony is irrelevant and a waste of time and should be excluded under F.R.E. 403. In numerous places, Dr. Houh merely sets forth his "understanding" of various things, but does not render admissible testimony. For example, at ¶59, Dr. Houh states: "I understand the proposed combination is additionally improper for relying on conclusory statements and unspecific expert testimony to supply missing claim elements, defying Federal Circuit precedent." Dr.

Houh's purported understanding is not an actual opinion, it is not relevant, it is speculative, lacks foundation, lacks personal knowledge, and is a waste of time and confuses the issues, and is not admissible testimony. Relatedly, Dr. Houh also frequently just recites non-expert conclusions (his "understand[ing]") from a district court trial on different patents that he gleaned from "my review of the trial record." For example, at ¶¶142-143, he states his "understand[ing]" regarding that "automakers demanded three features for any viable CarPlay solution," and simply regurgitates and characterizes testimony regarding automakers desires. Other examples include ¶¶61, 140, 142, 144-145, 147-148, 153. Dr. Houh has no stated expertise in the automotive industry and is not qualified to opine on non-technical matters regarding car makers purported desires. His testimony is not helpful, lacks foundation and personal knowledge, is not based on the type of materials normally considered by experts, and (at most) is cumulative to what the trial record reflects. Dr. Houh's testimony of purported copying (¶¶147-153) is speculative, lacks foundation and personal knowledge, assumes facts not in evidence, is misleading and far more prejudicial than probative, confuses the issues, and is not based on the type of materials an expert typically considers (*e.g.*, he merely

"reviewed the trial testimony" and "evidentiary record" from a district court case asserting different patents, which is something the Board can do just as well as Dr. Houh if it deems any such court record relevant) and should be excluded. In this regard, Dr. Houh is simply serving as a mouthpiece for other witnesses, reciting what they said at trial and/or mischaracterizing what was said/meant. Further, his testimony is also based on things that he admits merely "appear[] to" have happened (*e.g.*, ¶149). Moreover, Dr. Houh has no stated experience, and is not otherwise qualified, to opine on issues that involve, intent, such as copying. Dr. Houh's testimony of purported failure of others and skepticism (¶¶144-146) is speculative, lacks foundation and personal knowledge, assumes facts not in evidence, is misleading and far more prejudicial than probative, confuses the issues, and is not based on the type of materials an expert typically considers for reasons already explained. Other testimony from Dr. Houh is unsupported by the factual record, such as ¶141 regarding purported long-felt need. By Dr. Houh's own admission (*see* ¶41), Apple did not inform "automakers of its plans to release a new technology known as CarPlay" until "around 2013," the same year the challenged patent was filed. That cannot

constitute long-felt need. Testimony to the contrary is a waste of time and should be excluded.

- Exhibit 2020 (Corrected Joint Claim Construction Brief, *Aptiv Techs. AG. v. Microchip Tech. Inc.*, No. 1:23-cv-00307 (D. Del)): This exhibit is not cited anywhere in Patent Owner's Response and Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. Moreover, the district court already issued its *Markman* order on the matters addressed by EX2020.
- Exhibit 2021 (Deposition Transcript of Eric Welch (Oct. 10, 2024)): Petitioner maintains all objections as stated on the record at the deposition.
- Exhibits 2022-2025 and 2027-2029 (Trial Exhibit No. 5 – Oct. 23, 2013 Presentation Entitled "Digital iPod Out OTG Solution Dual Role USB HUB"; Trial Exhibit No. 6 – Boston USB Hub with SD Card Port ASIC, Product Specification; Trial Exhibit No. 7 – Functional Diagram of Boston 2 Chip; Trial Exhibit No. 12 – Nov. 10, 2014 Presentation Entitled "Delphi/Unwired USB Hub Apple CarPlay Overview; Trial Exhibit No. 124 – Jun. 9, 2017 Presentation Entitled "Delphi Data

Connectivity"; Trial Exhibit No. 143 – Oct. 7, 2015 Presentation Entitled "Delphi Data Connectivity"; and Trial Exhibit No. 192 – Jan. 2013 Presentation re: Apple Digital iPod Out Support): Petitioner objects to these exhibits—various highly technical trial exhibits used in a week-long jury trial on different patents in a different forum/proceeding with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), irrelevant (F.R.E. 401), incomplete and misleading, cumulative, confusing the issues and wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (F.R.E. 403), lack of personal knowledge / speculation (F.R.E. 602), and hearsay (F.R.E. 801/802). EX2022-EX2024 are not cited in Patent Owner's Response and Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. Patent Owner cites EX2025, EX2027, and EX2028 a single time for the assertion that Aptiv's dual role hub satisfied three purported technical "automaker requirements," as if this were an infringement case where CarPlay (or a Microchip or Aptiv product) was at issue. *See*, POR, 55, 62 (describing "automaker requirements" as "(1) single

upstream connection, (2) CarPlay on all ports, and (3) persistent downstream connectivity on non-CarPlay ports."). It is not. This is an invalidity challenge where automakers, CarPlay, and related matters are of marginal (if any) relevance. The challenged patent does not claim CarPlay, nor does CarPlay or any automotive requirement appear in the challenged claims. Indeed, none of Patent Owner's alleged "requirements" appear anywhere in the challenged claims. And none of the prior art at issue mentions CarPlay. CarPlay is not cited by either party's definition of a POSITA. And Aptiv's purported expert has no stated experience or expertise with CarPlay or automotive requirements. *See* EX2001, ¶¶2-16 and Appendix A. Making this proceeding a trial-within-a-trial about irrelevant and highly technical collateral matters (spanning hundreds of pages of highly technical documents) that are neither required nor prohibited by the challenged claims is misleading, presents an incomplete picture, confuses the issues, is wasteful of the parties' and the Board's resources/time on collateral matters, and is far more prejudicial than probative (F.R.E. 403). Patent Owner cites EX2029 to explain two purported "generally acknowledged approaches to providing CarPlay support." *See* POR, 51-52. Again, all the same objections regarding CarPlay, including

conflating CarPlay with the challenged patent, apply to EX2029. EX2029 is labelled "Unwired Confidential and Proprietary" and "ATTORNEY'S EYES ONLY," indicating it was confidential at all relevant times and does not reflect what was "generally acknowledged" in 2013. To the extent anything in EX2029 has applicability outside of CarPlay, it is cumulative to the Background discussion in the specification of the challenged patent and should be excluded under F.R.E. 403 on that basis. EX2022 is facially labelled "Unwired Confidential – Subject to terms of NDA" on every page. EX2024 is labelled "ATTORNEY'S EYES ONLY," indicating Patent Owner considered it confidential during the relevant timeframe. EX2024 is an undated, single-page schematic which appears to have been taken from a larger document with no indication of whether it was draft or final, what product it pertained to, or other indicia of what it is, making it lack foundation, authentication, hearsay, unreliable, incomplete, and failing F.R.E. 106. EX2025 is also labelled "ATTORNEY'S EYES ONLY" and "Delphi/Unwired Confidential," indicating it was confidential at all relevant times. EX2027 and EX2028 are likewise labelled "ATTORNEY'S EYES ONLY" and "Delphi Confidential," indicating it was confidential at all relevant times. At most, Patent Owner

documents labelled and kept confidential in circa 2013 and the years that followed establishing nothing beyond what Patent Owner purportedly knew at the time and an irrelevant waste of time in this proceeding. EX2022-EX2025 and EX2027-EX2029 should be excluded.

- Exhibits 2026 and 2030 (Trial Exhibit No. 25 – Product Business Plan for Sandia; Trial Exhibit No. 236 – USB4916 Product Specification): Petitioner objects to these exhibits—two highly technical trial exhibits used in a week-long jury trial on different patents in a different forum/proceeding with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), irrelevant (F.R.E. 401), incomplete and misleading, cumulative, confusing the issues and wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (F.R.E. 403), lack of personal knowledge / speculation (F.R.E. 602), and hearsay (F.R.E. 801/802). Patent Owner cites EX2026 and EX2030 a single time. Patent Owner cherry-picks a single line from EX2026 out of context in an attempt to draw a false inference (based on an incorrect interpretation of how "unique" was used in a Microchip document). POR, 60. As such, it is misleading and far more prejudicial than

probative. Patent Owner cites EX2030 in connection with how a Microchip product supports CarPlay. POR, 68. In both instances, Patent Owner relies on these exhibits as if this were an infringement case where a Microchip (or Aptiv) product or CarPlay was at issue. *See*, POR, 60, 68. It is not. This is an invalidity challenge where Microchip's products and product development are not at issue proceeding. Nor is Microchip's understanding or implementation of CarPlay's requirements vis-à-vis the USB standards at issue. It is simply irrelevant that Microchip had some questions circa 2013-2015 about the interplay between Apple's CarPlay requirements and the USB standards. Microchip product development (and its related decisions and what to develop and when), automakers, CarPlay, and related matters are of marginal (if any) relevance. Again, all the same objections regarding CarPlay made for EX2022-2025 and EX2027-2029 apply to EX2026 and EX2030 and are not repeated here. Moreover, EX2026 and EX2029 reflect that some (but not all) existing Microchip products did not support USB persistence, not that it would be difficult to architect a solution that would. As such, the exhibits are not probative of the obviousness/nonobviousness. Making this proceeding a trial-within-a-trial about irrelevant and highly technical

collateral matters (spanning numerous pages of highly technical product documents) that are neither required nor prohibited by the challenged claims is misleading, presents an incomplete picture, confuses the issues, is wasteful of the parties' and the Board's resources/time on collateral matters, and is far more prejudicial than probative (F.R.E. 403). EX2026 is labelled "CONFIDENTIAL" and "ATTORNEY'S EYES ONLY," indicating it was confidential at all relevant times circa 2013 and the ensuing years. Similarly, EX2030 is labelled "CONFIDENTIAL" and "ATTORNEY'S EYES ONLY," indicating it was confidential during the relevant timeframe. At bottom, EX20263 and EX2030 are irrelevant and have no bearing on the patentability of the challenged claims, are far more prejudicial than probative of the obviousness/nonobviousness of the challenged claims, and are a waste of time. EX2026 and EX2030 should be excluded.

- Exhibits 2031 through 2035 (Trial Exhibit Nos. 248, 268, 273, 275, and 287): Petitioner objects to these exhibits—various emails thread and attachments between Microchip personnel and third-parties used in a week-long jury trial on different patents in a different forum/proceeding with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), irrelevant (F.R.E. 401), incomplete and

misleading, cumulative, confusing the issues and wasteful of the parties' and the Board's resources/time on collateral matters, and far more prejudicial than probative (F.R.E. 403), lack of personal knowledge / speculation (F.R.E. 602), and hearsay (F.R.E. 801/802). EX2035 is not cited anywhere in Patent Owner's Response. Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. Patent Owner cites EX2031-EX2034 for their reference to discussion of Microchip product development and CarPlay, as if this were an infringement case where CarPlay (or a Microchip or Aptiv product) was at issue. *See, e.g.*, POR, 51, 60-65. It is not. This is an invalidity challenge where CarPlay is of marginal (if any) relevance. The challenged patent does not claim CarPlay, nor does CarPlay appear anywhere in the specification. None of the prior art at issue mentions CarPlay. CarPlay is not cited by either party's definition of a POSITA. And Aptiv's purported expert has no stated experience or expertise with CarPlay. *See* EX2001, ¶¶2-16 and Appendix A. Similarly, Microchip's products and product development are not at issue in this proceeding. Nor is Microchip's understanding of CarPlay's requirements vis-à-vis

the USB standards at issue. It is simply irrelevant that Microchip had some questions circa 2014 about the interplay between Apple's CarPlay requirements and the USB standards. Moreover, the exhibits simply say Microchip's existing FlexConnect solution did not support USB persistence, not that it would be difficult to architect a solution that would. As such, the exhibits are not probative of the obviousness/nonobviousness of a ***different*** solution. As such, the exhibits are irrelevant, and certainly far more prejudicial than probative and a waste of time on collateral matters. Further, it is well-established that obviousness is assessed from the perspective of a hypothetical POSITA, not any actual individual(s), such as a Microchip employee. *See, e.g.*, 35 U.S.C. §103; *McCoy v. Heal Sys., LLC*, 850 F. App'x 785, 788 (Fed. Cir. 2021). EX2031-EX2035 are further irrelevant and far more prejudicial than probative for the further purpose Aptiv relies on them for—substituting out-of-context email snippets from various Microchip personnel (primarily in sales/marketing roles) for the knowledge and perspective of a POSITA. *See, e.g.*, POR, 60, 64-66 (citing emails); EX2031-EX2035. Aptiv improperly ignores that the obviousness is evaluated from the perspective of a *hypothetical* POSITA, not a real person. Nor is it proper for Aptiv to substitute

Microchip (*i.e.*, the company as a whole)—whose primary business is ***not*** USB devices or hubs—for a POSITA, which is a *hypothetical* individual presumed to be familiar with all relevant prior art. *See, e.g.*, *In re Carlson*, 983 F.2d 1032, 1037 (Fed. Cir. 1992) ("hypothetical [POSITA] is charged with knowledge of all the contents of the relevant prior art."). Sometimes, the cited exhibits have nothing to do with the alleged proposition they are cited for and are nonsensical. *See, e.g.*, POR, 51. At bottom, EX2031-EX2035 have no bearing on the patentability of the challenged claims, and are far more prejudicial than probative of the obviousness/nonobviousness of the challenged claims.

- Exhibits 2036-2039 (Declaration of Michael Dreon, and Exhibits A-C thereto: Ex. A – Trial Exhibit No. 18 – Jan. 27, 2016 Presentation Entitled "PACE Award Finalist Dual Role Hub"; Ex. B – PACE Award Judge's Citation; and Ex. C – PACE Award Video Transcript): Petitioner objects to these exhibits as lacking foundation and critical context (F.R.E. 104), is irrelevant (F.R.E. 401), incomplete and misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403), constitutes impermissible expert testimony by a lay person (F.R.E. 701/702), lack of personal knowledge / speculation

(F.R.E. 602), and contains hearsay (F.R.E. 801/802). For example, in ¶9 Mr. Dreon states that "[b]ased on my conversations with the judges, as well as from the judges' citation and award video, it is my understanding that the feature driving their selection of the dual-role hub was its ability to allow persistent downstream USB connectivity to non-CarPlay devices while CarPlay was active without altering the head unit hardware to add a second upstream connection." This is classic hearsay (*see* FRE 801/802), and Patent Owner has not established that any hearsay exception applies, including F.R.E. 803 or 804(a), (b)(1), and (b)(3), not does Mr. Dreon even identify the individuals he spoke with. By Mr. Dreon's own admission, the purported PACE award "is granted annually by Automotive News and Ernst & Young to automotive suppliers …" EX2036, ¶2. This is not the field of the alleged invention (which relates to USB technology) and is not awarded by anyone having anything to do with the USB industry, making EX2036-EX2039 irrelevant. Any marginal relevance is outweighed but the risk of undue prejudice, confusing the issues, and wasting the parties' and Board's time/resources and should be excluded under F.R.E. 403. Moreover, Mr. Dreon admits Aptiv had to apply for the award and that he personally lobbied for Aptiv to win (making his

testimony and the award itself far from objective evidence), and excludable under F.R.E. 403. EX2036, ¶6. Paragraphs 8-9 also seek to authenticate Exhibits B-C of Mr. Dreon's declaration, but fail to do so as Mr. Dreon does not cite any personal knowledge of the exhibits, or their content (which is hearsay). For Exhibit C, he just cites an internet link, and Exhibit B is just a webpage as well (whose content is also hearsay). The amount of time and effort required to properly understand the context and reasons for the purported award (*e.g.*, Aptiv's head start and help from the Jaguar car company to obtain early Apple CarPlay certification), role of Apple, CarPlay, and the iPhone in receiving the award, the relevance (or lack thereof of CarPlay to the challenged claims), and related issues, wastes the parties', counsel, and the Board's limited time/resources on collateral matters, confuses the issues, and is far more prejudicial than probative. EX2036-EX2039 are only marginally referenced in Patent Owner's Response. To the extent Patent Owner relies on anything other the passages discussed in the POR, it is an improper incorporation by reference that would circumvent the word count limit. The entire substance of EX2039 states "Using the Delphi dual role hub, a driver can connect their Apple iPhone to the radio head unit to host navigation, music and messaging,

and also connect a second or third device, say an Android phone or a tablet. Previously, the iPhone took complete control of the system and did not allow device sharing. Delphi developed custom chips for the hub that allowed both an iPhone and a car radio to be simultaneously recognized as hosts and enabled seamless sharing of the car radio's head unit between devices." This is hearsay, and is irrelevant because it simply refers to functionality of a hub, like that described in Chang which also allowed two-hosts to be simultaneously connected with persistence. It is also improper expert testimony by lay persons. To the extent there are Apple specific protocols whereby "the iPhone took complete control of [a] system," such protocols are outside the purview of the challenged claims and irrelevant (or, at a minimum, any marginal relevance is outweighed by prejudice to Petitioner). There is no indication of who made the statements in EX2039 or what qualifications (if any) they had. EX2038 is subject to the same objections. EX2037 is all about CarPlay, which is not mentioned in the challenged patent or claims, and whose requirements and specifications Patent Owner has not put into the record. By interjecting irrelevant CarPlay information such as EX2037 into the record, Patent Owner

confuses the issues, wastes the parties' and Board's time, and unfairly prejudices Petitioner in doing so.

- Exhibits 2040-2042 (Trial Transcript Vols. 2-4, respectively): Petitioner objects to these exhibits—which comprise well over 1,000 pages of testimony of numerous lay and expert witnesses from a week-long jury trial in a multi-year district court proceeding on different patents with different facts and circumstances—as lacking foundation and critical context (F.R.E. 104), is irrelevant (F.R.E. 401), incomplete and misleading, confuses the issues and waste the parties' and the Board's resources/time on collateral matters, is far more prejudicial than probative (F.R.E. 403), constitutes impermissible expert testimony by a lay person (F.R.E. 701/702), lack of personal knowledge / speculation (F.R.E. 602), and contains hearsay (F.R.E. 801/802). Patent Owner has not established that any hearsay exception applies, including F.R.E. 803 or 804(a), (b)(1), and (b)(3), or than any hearsay exclusion applies, including F.R.E. 801(d)(1) or (d)(2). For example, under F.R.E. 804(b)(1)(B) certain former testimony may qualify as a hearsay exception where it is "offered against a party who had … an opportunity and similar motive to develop it by direct, cross-, or redirect examination." Patent Owner has not shown that is the case here where

the prior trial involved different patents and different issues. Similarly, Patent Owner has not shown that F.R.E. 804(b)(3) applies given the different issues, circumstances, and stakes at issue in the prior trial, and the identity of the witnesses. Additionally, the prior trial involved numerous witnesses (including experts) that are not the same party (or a predecessor in interest) as Petitioner. *See* F.R.E. 804(b)(1)(B) and F.R.E. 801(d)(2). With the possible exception of Mr. Dreon, none of the witnesses in the prior trial are declarants in the current proceeding. *See* F.R.E. 801(d). The amount of time and effort required to properly understand the context, asserted patents, related issues, and 1,000+ pages of testimony from a multi-year district court proceeding and jury trial (whose relevance is marginal at best) wastes the parties', counsel, and the Board's limited time/resources on collateral matters, confuses the issues, and is far more prejudicial than probative. EX2040-EX2042 are only marginally referenced in Patent Owner's Response. To the extent Patent Owner relies on anything other the passages discussed in the POR, it is an improper incorporation by reference that would circumvent the word count limit.

- Exhibits 2043-2045 (Declarations of Eric Welch in IPR2024-00228 (U.S. Patent No. 9,619,420), IPR2024-00229 (U.S. Patent No.

9,645,962), and IPR2024-00230 (U.S. Patent No. 11,176,072), respectively): These exhibits are not cited anywhere in Patent Owner's Response (nor are they cited among the materials considered by Patent Owner's expert or otherwise referenced in Patent Owner's expert declaration). Petitioner has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant and its consideration would be unfairly prejudicial to Petitioner. Further, EX2043-2045 are largely cumulative to EX1013. *See* EX2013, ¶1 ("Because of the similarities in my opinions regarding the Challenged Patents, my declarations from §§I-XII are identical …."). Moreover, Patent Owner lodged numerous objections to these very exhibits in the related proceedings in which they were originally filed. *See, e.g.*, IPR2024-00229, Paper 17, 1-2. Patent Owner's piecemeal and inconsistent approach to exhibit objections makes no sense and is a waste of time/resources, confuses the issues, and is prejudicial to Petitioner.

Dated: October 30, 2024

Respectfully submitted,

/Travis Jensen/

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 30, 2024, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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