

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALARM.COM INC.
Petitioner

v.

VIVINT, INC.
Patent Owner

Case IPR2016-00116
Patent 6,147,601

**VIVINT, INC.’S OBJECTIONS TO PETITIONERS’ EVIDENCE
PURSUANT TO 37 C.F.R. §42.64(b)(1)**

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U.S. Patent and Trademark Office
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Alexandria, VA 22313-1450

Under the Federal Rules of Evidence and 37 C.F.R. § 42.64, Vivint Inc. (“Patent Owner”) timely objects to evidence submitted with the Alarm.com Inc.’s (“Petitioner”) November 14, 2016 Reply to Patent Owner’s Response (Paper 26). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner may move to exclude the challenged exhibits under 37 C.F.R. § 42.64(c) unless Petitioner cures the defects associated with the challenged exhibits identified below.

Exhibit 1130—Reply Declaration of Zatarain

Patent Owner objects to the Reply Declaration of Zatarain under FRE 703 as relying on improper evidence under FRE 401–403, 801, and 901—as the prejudicial effect of this evidence outweighs any probative value that it may have. *E.g.*, Reply-Declaration-of-Zatarain ¶¶72, 99 (citing Ex. 1120, Verbatim Owner’s Manual); ¶128 (citing Ex. 1122, SQL*Plus User’s Guide and Reference); ¶138 (citing Ex. 1124, RFC 822); and ¶158 (citing Ex. 1125, RFC 1541). Specific objections to at least one of the documents that the declarant references in his declaration are discussed in greater detail below. To the extent the declaration relies on these inadmissible documents, Patent Owner objects to the declarant’s testimony for the same reasons.

Nowhere in the record does Petitioner rely on paragraphs 35-36 and 60 in the Reply Declaration or identify with any particularity how these paragraphs are relevant to the issues in this proceeding. Paragraphs 35-36 deal with an allegation

that Patent Owner's expert has misconstrued terms found in claims 19 and 20. Paragraph 60 appears to characterize Exhibit 2015. Petitioner's Reply never addresses these points, so there is no conceivable way that paragraphs 35-36 and 60 could be relevant to the proceeding. Accordingly, these paragraphs are inadmissible under FRE 401-402. Patent Owner objects to the declarant's testimony for at least the foregoing reasons.

Exhibit 1120—Verbatim Owner's Manual

To the extent Petitioners rely on the contents of this document for the truth of the matter asserted (for example, to establish public accessibility as a printed publication), Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Patent Owner also objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

Patent Owner objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403 because this document is inadmissible under FRE 801, 802, and 901 as explained above.

Exhibit 1122—SQL*Plus User's Guide and Reference

To the extent Petitioners rely on the contents of this document for the truth

of the matter asserted (for example, to establish public accessibility as a printed publication), Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Patent Owner also objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902. Patent Owner objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403 because this document is inadmissible under FRE 801, 802, and 901 as explained above.

Exhibit 1124—RFC 822

To the extent Petitioners rely on the contents of this document for the truth of the matter asserted (for example, to establish public accessibility as a printed publication), Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Patent Owner also objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

Patent Owner objects to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403 because this document is inadmissible under FRE 801, 802, and 901 as explained above.

Exhibit 1125—RFC 1541

To the extent Petitioners rely on the contents of this document for the truth of the matter asserted (for example, to establish public accessibility as a printed publication), Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Patent Owner also objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

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