

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SONOS, INC.

Petitioner

v.

D&M HOLDINGS INC.

Patent Owner

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IPR2017-01045  
U.S. Patent No. 7,987,294

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**PATENT OWNER D&M HOLDINGS INC.'S RESPONSE  
TO PETITIONER'S OBJECTIONS TO EVIDENCE**

Patent Owner responds to Petitioner's Objections to Evidence served on February 2, 2018 (Paper No. 18). As a preliminary matter, Patent Owner notes that Petitioner has objected to every item of evidence, and has not provided any specificity for most objections and has instead made conclusory and general objections based on a numerous rules of evidence without any explanation as to any specific issues with the evidence. For example, Petitioner uses the same form language for most objections that lacks any particularity, such as "Petitioner objects to Exhibit \_\_\_ to the extent that it presents evidence not in conformance with 37 C.F.R. § 42.62, or not taken, sought, or filed in accordance with 37 C.F.R. Part 42, Subpart A. 37 C.F.R. § 42.61." Accordingly, Petitioner has generally failed to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence" as required by 37 C.F.R. 42.64(b)(1). Further, as discussed below, Petitioner's other objections that arguably go slightly beyond such form language are not sustainable.

#### **I. Patent Owner's Response to Objections to Exhibit 2001**

Patent Owner responds that Exhibit 2001 is admissible at least under FRE 1005, and therefore Petitioner's objection fails to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence," as required by 37 C.F.R. 42.64(b)(1).

## **II. Patent Owner's Response to Objections to Exhibits 2002-2008**

Patent Owner responds that Exhibits 2002-2008 are admissible at least under FRE 1005, and therefore Petitioner's objections fail to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence," as required by 37 C.F.R. 42.64(b)(1).

## **III. Patent Owner's Response to Objections to Exhibit 2009**

Patent Owner responds that Exhibit 2009 is admissible at least under FRE 1005, and therefore Petitioner's objection fails to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence," as required by 37 C.F.R. 42.64(b)(1).

## **IV. Patent Owner's Response to Objections to Exhibits 2010, 2035**

To the extent Petitioner's general objections can be understood, they appear to be based on the allegation that Patent Owner's expert Dr. Kesan is not qualified as a technical expert. Patent Owner disagrees and notes that Petitioner has failed to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence," as required by 37 C.F.R. 42.64(b)(1). In particular, Petitioner has identified no evidence or arguments in support of its contention that Dr. Kesan is unqualified as a witness, and Patent Owner is therefore unable to provide correction in the form of supplemental

evidence. However, out of an abundance of caution, however, Patent Owner serves Exhibits 2043 and Ex. 2044 as supplemental evidence in response to Petitioner's objections. In particular, this evidence is admissible at least under FRE 1003 and establishes that Petitioner's attempt to strike the qualifications of Dr. Kesan in the related litigation were held by Judge Bryson of the Federal Circuit (sitting by designation in the related litigation) to be baseless, and were denied. *See generally* Ex. 2043, pp. 6-9; Ex. 2044, pp. 1-2. Specifically, in regard to the case law that Petitioner cited in support of its much more detailed contentions in the related litigation, Judge Bryson stated that "Dr. Kesan, with nearly a decade of education in electrical engineering and subsequent work on circuitry and communication technology, is far removed from" the experts that were struck in those cases. Ex. 2043, pp. 8-9. As such, Patent Owner believes that Petitioner's objections are baseless and improper in light of Judge Bryson's ruling and Petitioner's subsequent voluntary withdrawal of its improper challenge to Dr. Kesan's qualifications, and should be withdrawn and/or overruled.

#### **V. Patent Owner's Response to Objections to Exhibit 2011**

Petitioner first objects to "Exhibit 2011 as lacking any tendency to make any fact at issue in this proceeding more or less probable. For instance, Patent Owner is alleging a priority date of July 6, 2006, which is after the alleged date of Exhibit

2011. Exhibit 2011 is therefore inadmissible under FRE 401 and 402, and its consideration would be prejudicial, confusing the issues, and a waste of time under FRE 403.” Patent Owner disagrees and notes that Petitioner has failed to “identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence,” as required by 37 C.F.R. 42.64(b)(1). As a preliminary matter, Patent Owner has submitted that the priority date of the ’294 patent is “at least April 2006.” *See* Patent Owner Response (Paper No. 15), page 1. As such, Petitioner misrepresents the contentions of Patent Owner as the entire basis for this objection, and provides no other basis for its objection. Because the Board may find that the date of conception is earlier than April 2006, Exhibit 2011 is admissible at least under FRE 401 and 402.

Petitioner next objects to Exhibit 2011: (i) “to the extent that Patent Owner relies on its contents for the truth of the matters asserted therein. Exhibit 2011 is therefore inadmissible hearsay under FRE 801, 802, 805 and no exception applies”; (ii) “under FRE 901 to the extent that it includes evidence that does not satisfy the requirement of authentication. Notably, Exhibit 2011 fails to indicate who created or drafted the document and when the document was created or drafted”; (iii) “under FRE 106 to the extent that Patent Owner relies on content taken out of context”; and (iv) “under FRE 1006 to the extent that includes

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