

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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META PLATFORMS, INC.,  
Petitioner,

v.

EIGHT KHZ, LLC,  
8KHZ.

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Case IPR2023-01021  
Patent 10,917,737

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**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE**

*37 C.F.R. §§42.62, and 42.64*

Pursuant to 37 C.F.R. §§42.62, and 42.64, and the Federal Rules of Evidence, Patent Owner Eight kHz, LLC (“8KHZ”) provides the following objections to evidence submitted by Petitioner Meta Platforms, Inc. These objections are timely served within ten (10) business days of the institution of the trial. The fact that 8KHZ has not objected below to certain pieces of evidence or certain portions of certain evidence provides no indication that 8KHZ agrees to the positions asserted therein. In addition, 8KHZ reserves the right to present further objections to this or additional evidence submitted by Meta Platforms, Inc., as allowed by the applicable rules or other authority.

## **I. 8KHZ’S OBJECTIONS TO EVIDENCE**

### *Exhibit 1003 – Declaration of Dr. Gregory Welch*

8KHZ objects to the declaration of Dr. Gregory Welch (the “Declarant”), Exhibit 1003, under Fed. R. Evid. 106, 401-403, 702-703, 705, and 37 C.F.R. § 42.65(a) and § 42.104(b)(5). These evidentiary failures cannot be cured because Petitioner is time-barred from filing another petition under 35 U.S.C. § 315(b). 8KHZ specifically objects to:

- (1) Paragraphs 90, 447, 450, 452, 453, 474, 484, 526, and 539 of Exhibit 1003 on the ground that they are irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403 and speculation under Fed. R. Evid. 702, 703, and 705;

- (2) Paragraphs 152, 158, 199, 232-234, 281, 327, 446, 534, 537, and 614 of Exhibit 1003 on the grounds that the probative value of the testimony contained therein is outweighed by a danger of prejudice and confusion under Fed. R. Evid. 403 and to the extent that at least some of these paragraphs fail to include all related parts “that in fairness ought to be considered at the same time” under Fed. R. Evid. 106;
- (3) Paragraphs 18-26 and 36 of Exhibit 1003 on the grounds that they contain purported expert testimony by a Declarant who is not qualified as an expert on these issues in violation of Fed. R. Evid. 702-703;
- (4) Paragraphs 90, 232-234, 281, 327, 446, 447, 450, 451, 452, 453, 474, 484, 526, 537, and 539 of Exhibit 1003 on the grounds that they contain “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based” in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702-703;
- (5) Paragraphs 1-26, 41-71, 145-47, 209, 315-17, 369, 382-84, 398, 407-09, 441-42, 506-08, 551, 561, 565-67, 581, and 591-92 of Exhibit 1003

on the grounds that they are not cited to, or relied upon, by the Petition (Paper 2) in violation of 37 C.F.R. § 42.104(b)(5).<sup>1</sup>

The fact that 8KHZ has not objected to certain paragraphs of Exhibit 1003 provides no indication that 8KHZ agrees to the positions asserted therein.

*A. Objections to Irrelevant, Misleading, Unduly Prejudicial and Confusing Testimony*

8KHZ objects to Exhibit 1003 as unsupported and conclusory testimony that is irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403 and purported expert opinion that is pure speculation under Fed. R. Evid. 702, 703, and 705.

Specifically, and without limitation, 8KHZ objects to any such paragraph in which the Declarant speculates as to a POSITA's understanding and state of mind, including without limitation, paragraphs 90, 447, 450, 452, 453, 474, 484, 526, and 539 for relying on conclusory statements that are unsupported by factual evidence and which is pure speculation and/or unsupported by facts or data of a type

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<sup>1</sup> For completeness, 8KHZ includes objections under categories (1)-(4) to paragraphs that are not cited in the Petition and also objected to on that basis under category (5).

reasonably relied upon by experts in the field in order to form the opinion or inferences made therein.

In paragraph 90, Declarant purely speculates, without providing any supporting evidence, that “Persons of ordinary skill would be very familiar with these principles [of tracking a user's head] and understand the same principles apply to tracking other parts of a user's body (e.g., hands and feet) and other objects.”

In paragraph 447, Declarant purely speculates, without providing any supporting evidence, that “[e]ven as an Augmented Reality (AR) system, McCulloch’s system is susceptible to safety issues stemming from the user’s impeded ability to sense the real, physical environment, which necessitates Pedrotti’s “safe area” or boundaries. Persons of ordinary skill in the art would have known and understood that virtual objects and effects in an AR paradigm can occlude the user’s view of the real world—indeed such occlusions are intentional.”

In paragraph 450, Declarant purely speculates, without providing any supporting evidence, that “[p]ersons of ordinary skill in the art would therefore understand that both optical see-through and video see-through (“video-see”) AR displays are susceptible to the same safety issues that VR displays are, stemming from the user’s inability to see real world objects that are partially or fully occluded by virtual objects in the see-through AR display.”

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