UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner

v.

VISUAL REAL ESTATE, INC.,
Patent Owner

Case IPR2014-01341
Patent 8,078,396

VISUAL REAL ESTATE, INC.'S OBJECTIONS TO PETITIONER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64, Patent Owner Visual Real Estate, Inc. ("PATENT OWNER"), submits the following objections to certain evidence that Petitioner, Google, Inc., submitted in connection with IPR2014-01341 and which was relied on by the PTAB in its decision to institute *inter partes* review of certain claims in U.S. Patent No. 8,078,396. This evidence includes the "Declaration of Dr. Henry Fuchs" (Ex. 1001) ("Fuchs Declaration"), Towards Urban 3D Reconstruction From Video" by Akbarzadeh et al. (June 14, 2006) (Ex. 1006) ("Akbarzadeh"), U.S. Patent No. 7,929,800 to Meadows et al. (Application No. 11/702,708) (Ex. 1007) (" the '800 patent"), U.S. Publication No. 2008/0189031 to Meadows et al. (Application No. 11/702,707) (Ex. 1008) ("the '707 application"), Exhibit C to VRE's Disclosure of Asserted Claims and Infringement Contentions for U.S. Patent No. 8,078,396 (Ex. 1009) ("Infringement Contentions"), and U.S. Patent 7,389,181 to Meadows et al. (Application No. 11/216,465) (Ex. 1010) ("the '181 patent"). The Corrected Petition was filed on September 5, 2014. As exhibits, the Fuchs Declaration, Akbarzadeh, the '800 patent, the '700 application, Infringement Contentions, and the '181 patent were filed on August 20, 2014. A Decision instituting *Inter Partes Review* was entered on February 27, 2015 ("the Decision").

Exhibit 1001

Patent Owner objects to Exhibit 1001 on the following grounds:

- FRE 402, 403 (relevance)
- FRE 702, 703 (expert testimony)
- FRE 802 (inadmissible hearsay)

1. PATENT OWNER objects to the admissibility of the Fuchs Declaration (Ex. 1001) under Federal Rules of Evidence 702 and 703. The Fuchs Declaration fails to establish that he is one skilled in the art and fails to indicate that he possesses knowledge that would help the Patent Trial and Appeal Board ("Board") evaluate the relevant issues. Ex. 1001, Paragraphs 1-11 and Pages 44-71. The Fuchs Declaration also fails to provide support or underlying detail or analysis for many of his opinions. As a result, the Fuchs Declaration is inadmissible because it lacks "sufficient facts or data," is not "the product of reliable principles and methods," and does not result from the reliable application of principles or methods. *See* Fed. R. Evid. 702.

2. PATENT OWNER objects to the Fuchs Declaration under Federal Rules of Evidence 402 and 403. The Fuchs Declaration consists of mere speculation, conclusory statements, and testimony beyond the scope of the grounds for which the Board has instituted an *inter partes* review that are irrelevant to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1001. The

Fuchs Declaration also contains information that, while of arguable relevance, should be excluded because its probative value is substantially outweighed by the unfair prejudice, confusion of the issues, and misleading nature of the information. *See* Fed. R. Evid. 403.

3. PATENT OWNER objects to Paragraphs 12, 16, 39, 40, 47, 50, 62, 63, and 66—and all related testimony—whereby the Fuchs Declaration opines on the ultimate issue regarding the obviousness and anticipation of Claims 1, 2, 5, 8-13, and 16. Ex. 1001, para. 12. The Fuchs Declaration also specifies that the opinion is based on Dr. Fuchs' knowledge and experience in the fields of science, not of patent law. Ex. 1001, para. 9. The Fuchs Declaration further specifies that Dr. Fuchs was instructed on legal definitions for purposes of this declaration. Ex. 1001, para. 67-70. The Fuchs Declaration should be limited to his purported area of expertise as opposed to drawing legal conclusions. Ex. 1001, para. 12, 16, 39, 40, 47, 50, 62, 63, and 66.

4. PATENT OWNER objects to Paragraphs 52-70 of the Fuchs Declaration—and all related testimony—pursuant to Federal Rule of Evidence 402, whereby the Fuchs Declaration references and incorporations into his opinions Akbarzadeh. The Board did not institute review based on Akbarzadeh and any use or reference to this patent is irrelevant. The Decision, §§E, F.

Exhibit 1006

Patent Owner objects to Exhibit 1006 on the following grounds:

- FRE 402, 403 (relevance)

1. PATENT OWNER objects to the relevance of Exhibit 1006 under Federal Rules of Evidence 402 and 403. Akbarzadeh is irrelevant to the instant action and is beyond the scope of the grounds for which the Board has instituted an *inter partes* review to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1007, the Decision, §§E, F.

Exhibit 1007

Patent Owner objects to Exhibit 1007 on the following grounds:

- FRE 402, 403 (relevance)

1. PATENT OWNER objects to the relevance of Exhibit 1007 under Federal Rules of Evidence 402 and 403. The '800 patent is irrelevant to the instant action and is beyond the scope of the grounds for which the Board has instituted an *inter partes* review to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1007, the Decision, §§E, F.

Exhibit 1008

Patent Owner objects to Exhibit 1008 on the following grounds:

- FRE 402, 403 (relevance)

2. PATENT OWNER objects to the relevance of Exhibit 1008 under Federal Rules of Evidence 402 and 403. The '707 application is irrelevant to the instant action and is beyond the scope of the grounds for which the Board has instituted an *inter partes* review to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1007, the Decision, §§E, F.

Exhibit 1009

Patent Owner objects to Exhibit 1009 on the following grounds:

- FRE 402, 403 (relevance)

1. PATENT OWNER objects to the relevance of Exhibit 1009 under Federal Rules of Evidence 402 and 403. The issues raised or statements relating to the ongoing infringement claim presented by the Infringement Contentions are irrelevant to the instant action and are beyond the scope of the grounds for which the Board has instituted an *inter partes* review to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1009. Even if the Infringement Contentions contain information of arguable relevance, they should be excluded because the probative value is substantially outweighed by the unfair prejudice,

confusion of the issues, and misleading nature of the information contained therein.

Exhibit 1010

Patent Owner objects to Exhibit 1010 on the following grounds:

- FRE 402, 403 (relevance)

PATENT OWNER objects to the relevance of Exhibit 1010 under Federal Rules of Evidence 402 and 403. The '181 patent is irrelevant to the instant action and is beyond the scope of the grounds for which the Board has instituted an *inter partes* review to the present action. *See* Fed. R. Evid. 402; 37 C.F.R. § 42.104(b)(5); Ex. 1007, the Decision, §§E, F.

For at least these reasons, Patent Owner objects to Exhibits 1001 and 1006-1010. Patent Owner reserves the right to move to exclude these Exhibits. Further, Patent Owner reserves the right to makes objections to any evidence that forms the basis of any additional ground of rejection or that is later introduced or relied upon by the Board or Petitioner, including those references initially relied upon by the Petitioner but were part of ground the PTAB denied as redundant.

Respectfully submitted,

Dated: March 13, 2015

By: */Charles R. Macedo/*

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that on this 13th day of March, 2015, a copy of the foregoing VISUAL REAL ESTATE, INC.'S OBJECTIONS TO PETITIONER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1) was served via e-mail on the counsel of record for Petitioner at the following e-mail addresses:

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Dated: March 13, 2015

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