

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

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
UNDER 37 C.F.R. § 42.64**

Pursuant to 37 C.F.R. 42.64 and the Board's Scheduling Order (Paper No. 12), Patent Owner Visual Real Estate, Inc. ("VRE") moves to exclude certain evidence submitted and relied upon by Petitioner Google Inc. Patent Owner identifies the specific evidence to be excluded below by Exhibit number, and, where appropriate, by paragraph number. Patent Owner also identifies the basis for exclusion. Patent Owner has timely objected to the relevant portions of these exhibits based on the rules identified above. *See* Visual Real Estate, Inc.'s Objections to Petitioner's Evidence Pursuant to 37 C.F.R. 42.64(b)(1), served March 13, 2015 (submitted herewith as Exhibit 2010); *see also* Patent Owner's Objections to Petitioner's Evidence Pursuant to 37 CFR 42.64(b)(1), filed September 10, 2015 (Paper No. 25).

Exhibit 1001: Declaration of Dr. Fuchs

1. Exhibit 1001, paragraphs 12, 16, 39, 40, 47, 50, 52-70.
2. Objections: Relevance: Fed. R. Evid. 402, 403; 37 CFR 42.62.
Expert testimony: Fed. R. Evid. 702, 703; 37 CFR 42.65(a).
Hearsay: Fed. R. Evid. 802; 37 CFR 42.62.
Authentication: Fed. R. Evid. 901, 903; 37 CFR 42.62.
3. An objection was made in Ex. 2010. *See* Ex. 2010, 2-4.

4. Petitioner relies on the objected declaration and data throughout its Corrected Petition, particularly at pages 9-28, and in its claim charts from pages 28-54. *See* Paper No. 4.

5. Petition objects to the relied upon data, including paragraphs 12, 16, 39, 40, 47, 50, 62, 63, and 66, in that the Declaration should be limited to the declarant's purported area of expertise as opposed to drawing legal conclusions.

Patent Owner also objects to portions of Ex. 1001, including paragraphs 52-70 whereby Declarant references Akbarzadeh Article (Ex. 1006) since the Board did not institute review based on Akbarzadeh. Paper No. 11, §§ E, F.

Exhibit 1006: Akbarzadeh Article

1. Exhibit 1006.
2. Objection: Relevance: Fed. R. Evid. 402, 403; 37 CFR 42.62.
3. An objection was made in Ex. 2010, 5.
4. Petitioner relies on the objected patent in its Corrected Petition, particularly at pages 23-26, 43-47, 49, 52-53. *See* Paper No. 4.
5. The relied upon data was not relied upon by the Board in the Decision instituting *Inter Partes* Review in IPR2014-01341. *See* Paper No. 11, §§ E, F; Fed.

R. Evid. 402; 37 CFR 42.104(b)(5).

Exhibit 1012: Responsive Declaration of Dr. Grindon

1. Exhibit 1012, paragraphs 9, 10, 12, 13, 17, 18, 20, 22.
2. Objections: Relevance: Fed. R. Evid. 402, 403; 37 CFR 42.62.

Expert testimony: Fed. R. Evid. 702, 703; 37 CFR 42.65(a).
3. An objection was made in Paper No. 25. *See* Paper No. 25, 2-5.
4. Petitioner relies on the objected declaration throughout its Reply to Patent Owner's Response. Paper No. 22, 2, 11, 18-20, 23.
5. The relied upon data seeks to offer testimony on elements of Petitioner's *prima facie* case, which are not included in Petitioner's original petition and should have been included as part of Petitioner's original petition and should have been included as part of Petitioner's *prima facie* case of invalidity. *See* Ex. 1012, paras. 13, 17, 18, 20. Further, Patent Owner also objects to Ex. 1012's definition of "a person of ordinary skill in the art" since it is different than the one proposed by Petitioner's original expert. *Compare, e.g.,* Ex. 1001, para. 16, *with* Ex. 1012, paras. 9, 10, 12.

Patent Owner also objects to the relied upon data as incomplete and

inconclusive since Declarant states that he has not completed his analysis or acquired all the necessary information to form his opinion. Ex. 1012 at para. 22.

Finally, Patent Owner objects to Paragraph 18 for containing speculative and conclusory statements regarding the state of art and the operation of various allegedly available computers, chips, and components which are unsupported by facts or data and thus irrelevant and entitled to little or no weight.

Respectfully submitted,

Dated: September 25, 2015

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that on this 25th day of September, 2015, a copy of the foregoing PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64 was served via e-mail on the counsel of record for the Petitioner at the following e-mail addresses:

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Dated: September 25, 2015

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