

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC., NEST LABS, INC., AND DROPCAM, INC.
Petitioners

v.

E.DIGITAL CORPORATION
Patent Owner

Case IPR2015-01473
Patent 8,311,523 B1

**PETITIONERS' OBJECTIONS TO
PATENT OWNER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board
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P.O. Box 1450
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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Google Inc., Nest Labs, Inc., and Dropcam, Inc. (collectively the “Petitioners”) hereby object under the Federal Rules of Evidence (“FRE”) and 37 C.F.R. § 42.62 to the admissibility of the following evidence that e.Digital Corporation (“Patent Owner” or “PO”) submitted on March 23, 2016 in support of its Patent Owner Response (“POR”) to Petition.

Petitioners timely file these objections within five business days of Patent Owner Response, and hereby provides notice that Petitioners may move to exclude under 37 C.F.R. § 42.64(c).

II. IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS

Ex. 2015

Petitioners object to Ex. 2015, and any reference to or in reliance on it for the following grounds:

FRE403: The declaration includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. For example, in a failed attempt to argue alleged non-obviousness of Miluzzo/Robarts combination, the declaration confuses the

concept of initialization of a set of themes with the concept of selection of a theme based on sensor data. (*See*, ¶¶ 44 -58) (*See also e.g.*, ¶¶ 28, 29, 32, 33, 41, 61, 66.)

FRE 602: The declaration includes statements and testimony made without any personal knowledge. For example, the declaration alleges that context does not equal presence. (*See e.g.*, ¶¶ 27 -30.) Yet the declarant's only experience with context awareness is that one of the declarant's colleagues works in part in the area of context awareness, and the colleague's students took declarant's "Wireless and Mobile Networking" class and did project in the area. (¶ 12.)

FRE 702/703: The declaration includes statements and testimony not based on scientific, technical, or other specialized knowledge. These statements and testimony are based on insufficient facts or data, and is not the product of reliable principles and methods. Further, the relied upon facts and data are not those on which experts in this field would reasonably rely. (*See e.g.*, ¶¶ 25, 41, 58, 61, and 66.)

Exs. 2017-2019

Petitioners object to Exs. 2017-2019, and any reference to or in reliance on these exhibits for the following grounds:

FRE 403: The exhibits include information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. For example, PO relies on Ex. 2018 to define presence detection as determining a user's activity. (POR, 9.) Then, PO relies on Ex. 2017 to allege that presence is different from determining user activity. (POR, 18.) PO also relies on Ex. 2019 to argue that context awareness is more complex than presence detection (POR, 9.) Yet PO does not provide its own definition of context awareness. Further, Ex. 2019 shows that there are many definitions of context awareness. (Ex. 2019, 6.)

FRE 801/802: The exhibits' authors are not under oath and are not subject to cross-examination in this proceeding. Because each of the exhibits is an out-of-court statement offered for its truth, and does not fall within any exception to the rule against hearsay, they are inadmissible hearsay.

FRE 901: Each of the exhibits is an unauthenticated document and is not self-authenticating under FRE 902. It carries no indication of its source or where Patent Owner obtained it from. Thus, the exhibits lacks authentication.

III. CONCLUSION

For at least the foregoing reasons, Petitioners object to Exs. 2015 and 2017-2019.

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing **PETITIONERS'**
OBJECTIONS TO PATENT OWNER'S EVIDENCE PURSUANT TO 37
C.F.R. § 42.64(b)(1) was served electronically via e-mail on March 30, 2016, in
its entirety on the following counsel:

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