

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner

v.

PROXENSE, LLC

Patent Owner

Case: IPR2025-00562

U.S. Patent No. 9,049,188 B1

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. 42.64**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Apple Inc., hereby submits the following objections to Patent owner Proxense, LLC (“Patent Owner”) Exhibits 2002 to 2017, and any reference to/reliance on the foregoing, in Patent Owner’s Sur-Reply in the above-captioned *inter partes* review. Petitioner’s objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five (5) business days of the filing of Patent Owner’s Sur-Reply on April 30, 2026. Petitioner’s objections provide notice to Patent Owner that Petitioner may move to exclude these exhibits under 37 C.F.R. § 42.64(c).

I. EXHIBITS 2002-2017 OBJECTED TO UNDER 37 C.F.R. § 42.23(b)

Petitioner objects to Patent Owner’s Exhibits 2002 to 2017, and any reference to or reliance thereon, for introducing new evidence in violation of 37 C.F.R. § 42.23(b). Exhibits 2002 to 2017 are untimely and beyond the proper scope for a sur-reply. Under 37 C.F.R. § 42.23(b), “[a] sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” Patent Owner’s Exhibit 2002 to 2017 each includes new evidence explicitly excluded under 37 C.F.R. § 42.23(b). *See also* Consolidated Trial Practice Guide (Nov. 2019) at 73-74 (“The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”). *See also* Consolidated Trial Practice Guide (Nov. 2019) at 73-74

(“While replies and sur-replies can help crystalize issues for decision, a reply or sur-reply that raises a new issue or belatedly presents evidence may not be considered.”). None of Exhibits 2002 to 2017 accompanying Patent Owner’s Sur-Reply respond to arguments raised in Petitioner’s Reply filed on March 23, 2026 (Paper 12). Nor are any of Patent Owner’s Exhibits 2002 to 2017 a deposition transcript of any reply witness and belatedly presents evidence.

II. EXHIBITS 2002-2016 OBJECTED TO UNDER 37 C.F.R. §§42.5(c)(3), 42.6(c)

Patent Owner’s Exhibits 2002 to 2016 were cited and referenced in the Patent Owner Response filed December 29, 2025 (Paper 11). 37 C.F.R. § 42.6(c) requires that “[e]ach exhibit must be filed with the first document in which it is cited except as the Board may otherwise order.” Petitioner objects to Patent Owner’s Exhibits 2002 to 2016 for failing to file and serve these exhibits until April 30, 2026.

Under 37 C.F.R. § 42.5(c)(3), “[a] late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.” Here, the Patent Owner has failed to make any such showing of good cause with respect to Patent Owner’s Exhibits 2002 to 2016. Petitioner, therefore, objects to the admissibility of Exhibits 2002 to 2016 as untimely and prejudicial.

III. PATENT OWNER HAS FAILED TO REQUEST AUTHORIZATION TO SUBMIT EXHIBITS 2002-2017 UNDER 37 C.F.R. § 42.123

Patent Owner has not sought authorization pursuant to, and cannot meet the requirements of, 37 C.F.R. § 42.123 for the admission of supplemental information more than one month after the date of institution. Patent Owner's Exhibits 2002 to 2017 are supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

Date: May 4, 2026

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CERTIFICATION OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6, that a true and correct copy of the attached Petitioners' Objections to Evidence Pursuant to 37 C.F.R. § 42.64 was served by filing through the Patent Trial and Appeal Board End to End system as well as delivering a copy via email upon the Patent Owner at the following addresses:

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Date: May 4, 2026

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