



The PTAB Holds That Testimony Concerning Customer Statements and Their State of Mind Constitutes Hearsay

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Exhibit 2032 was a declaration from Mr. Matthews, patent owner's vice president of product development. Petitioner argued that, in several portions of Mr. Matthew's declaration, he referred to either statements by customers or the state of mind of customers, and those statements were offered for the truth of the matter asserted. In particular, petitioner argued that Mr. Matthews' testimony referred to customer statements about features of switch mode power supplies that customers desired or to the state of mind of customers in deciding whether to switch to products sold by patent owner's competitors. In addition, petitioner argued that portions of Mr. Matthews' declaration referred to prior testimony of other witnesses in prior litigations.

In response, patent owner averred that Mr. Matthews' testimony with respect to customers was not being offered for the truth of the matter asserted. Rather, the fact that a customer informed Mr. Matthews what features he/she found important was relevant evidence of customer demand regardless of whether the statement was true. Furthermore, patent owner argued that customer statements regarding their mental state fell under a hearsay exception – Rule 803(3) of the Federal Rules of Evidence (i.e., "then-existing mental, emotional or physical condition" exception). Patent owner also argued that Mr. Matthews' reference to prior testimony of witnesses in prior litigations was not hearsay because he did not quote that testimony.

The PTAB disagreed with patent owner. In particular, the PTAB found Mr. Matthews' testimony regarding what customers told him to be the "epitome of hearsay" – they prove

what customers' said or believed to be important about products. This was true even for the portions of Mr. Matthews' declaration where he quoted his own testimony from a previous litigation. Additionally, Mr. Matthews' reliance on statements of others, outside of the *inter partes* review proceeding for the truth of what they assert, was found to be hearsay. Therefore, the PTAB granted petitioner's request to exclude the identified portions of Exhibit 2032.

On Semiconductor Corporation, Semiconductor Components Industries, LLC v. Power Integrations, Inc., IPR2016-00809, Paper No. 67 (PTAB Sept. 22, 2017).

Categories

Patent Trial & Appeal Board

35 U.S.C. § 103

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