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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060353
Party	Plaintiff Bentley Motors Limited
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Date	06/30/2016
Attachments	Bentleys Evidentiary Objections to Evidence Submitted With Auceras Reply Brief.pdf(43097 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BENTLEY MOTORS LIMITED,

Petitioner,

v.

AUCERA SA,

Respondent.

Cancellation No. 92060353

Registration Nos.: 2007286, 2096184,  
2096186

Mark: BENTLEY

Atty. Ref. No.: 58389-9026

**BENTLEY’S EVIDENTIARY OBJECTIONS TO EVIDENCE SUBMITTED WITH**  
**AUCERA’S REPLY BRIEF**

Petitioner Bentley Motors Limited (“Bentley” or “Petitioner”) hereby submits these objections to evidence submitted by respondent Aucera SA (“Aucera” or “Respondent”) concurrently with its June 28, 2016 reply brief.

**I. OBJECTIONS TO THE DECLARATION FO CHIA-HSIANG CHENG**

Paragraph 2: Lacks foundation – Cheng’s testimony relates to the happenings at a trade show in Las Vegas, which Cheng did not attend. Other than his statement that he asked third-party Robert Bonnem to attend the trade show, the entirety of Cheng’s testimony consists of his repetition of information apparently reported to him by Bonnem. Cheng lacks foundation to testify as to what Bonnem did at the trade show, who he talked to, or what he showed the people he talked to. Both Cheng and Bonnem lack the requisite foundation to testify about the thoughts, opinions, and intentions of the people to whom Bonnem spoke (*e.g.* the principal of Saltzman’s Watches, who was allegedly “interested in purchasing a line of Aucera’s BENTLEY-branded watches”).

Hearsay – Cheng’s out of court statements regarding what was told to him by Bonnem are inadmissible to prove the truth of those statements. Similarly, both Bonnem’s out of court statements to Cheng regarding what was told to him by the people he spoke with at the trade

show, and Cheng's repetition of those statements in his declaration, are also hearsay and inadmissible to prove the truth of those statements.

Irrelevant – The undisputed evidence shows multiple periods of more than three years – between 1997 and 2001, between 2001 and 2006, between 2006 and 2008, and between 2008 and 2011 – during which there was neither a single shipment nor sale of any product bearing the BENTLEY mark. The BENTLEY mark was abandoned long before whatever efforts Aucera took to promote BENTLEY products at a trade show in June 2016.

## **II. OBJECTIONS TO CHEN DECLARATION**

General: The declaration of a representative of Aucera's alleged licensee Pyxis Enterprises Co. Ltd. ("Pyxis") is untimely and should have been submitted with Aucera's moving papers, rather than as a last minute addendum to Aucera's reply brief.

Paragraph 4: Hearsay – Chen's out of court statements about the contents of the Bentley Luxury Website are not admissible to prove the substance of the contents of the Bentley Luxury Website, nor are they admissible to prove that the Bentley Luxury Website lists U.S. retailers where products bearing Aucera's BENTLEY Mark are available for purchase.

Bentley notes that BENTLEY products are not available for sale anywhere on the Bentley Luxury Website. Further, only two U.S. retailers are identified on the Bentley Luxury Website: ResultCo and Blount Jewels, Inc. Sparkman Decl., Exh. 26. ResultCo has never been a retailer of BENTLEY products. In his unrefuted declaration, ResultCo's CFO stated that "ResultCo has never purchased or received any BENTLEY branded watches, pens, or jewelry from Aucera S.A., Pyxis Enterprises Co., Ltd., Ted Cheng, Chia-Hsiang Cheng, Lucius Russell Chen, [or other]" and that "ResultCo has never imported, exported, purchased, received, manufactured, sold, shipped, distributed, or advertised any product bearing the trademark

BENTLEY.” Sparkman Decl., Exh. 25, ¶ 5-6. Furthermore, ResultCo’s email from Pyxis’s then Engagement Manager Lucius Russell Chen regarding Pyxis’s proposal to create a paper trail for non-existent U.S. sales is the only document that ResultCo had in its possession relating to the BENTLEY mark. *Id.* at ¶ 2 and Exh. A. Additionally, there is no evidence that any products were ever shipped or sold to, through, or by Blount Jewels, Inc. Exh. 27 & 29.

Paragraph 5: Hearsay – Chen’s out of court statement regarding the contents of Pyxis’s communications with “potential customers” is not admissible to prove the substance of those communications. This testimony is particularly confusing, given that there is no evidence that either of the alleged U.S. retailers has ever sold a single BENTLEY product. In fact, to the contrary, the undisputed evidence is that one of the alleged retailers (ResultCo) has never “imported, exported, purchased, received, manufactured, sold, shipped, distributed, or advertised any product bearing the trademark BENTLEY.” Sparkman Decl., Exh. 25, ¶ 6. In light of the foregoing, this is an instance where it is essential that Chen provide the actual communications at issue, rather than a second-hand report of what said in the communications.

Paragraph 6: Irrelevant – Marketing activities outside of the United States, such as the BaselWorld trade show are irrelevant. Marketing activities in 2010 and thereafter are also irrelevant; the undisputed evidence shows multiple periods of more than three years – between 1997 and 2001 and between 2001 and 2006 – during which there was neither a single shipment nor sale of any product bearing the BENTLEY mark; the mark was presumptively abandoned long before the single U.S. trade show allegedly attended by Pyxis.

Paragraph 7: Irrelevant – Future marketing activities are not relevant; the undisputed evidence shows multiple periods of more than three years – between 1997 and 2001 and between 2001 and 2006, and between 2008 and 2014 – during which there was neither a single shipment

nor sale of any product bearing the BENTLEY mark; the mark was presumptively abandoned long ago.

Dated: June 30, 2016

/s/ Jessica Bromall Sparkman

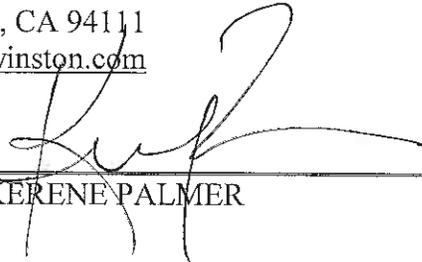
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LIMITED

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing **BENTLEY'S EVIDENTIARY OBJECTIONS TO EVIDENCE SUBMITTED WITH AUCERA'S REPLY BRIEF** is being sent via first class mail to Petitioner Aucera SA's attorney of record as follows:

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Dated: June 30, 2016

  
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KERENE PALMER