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

Proceeding	92060353
Party	Defendant Aucera SA
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark Registration No.: 2007286, 2096184, 2096186  
For the mark: BENTLEY

BENTLEY MOTORS LIMITED,

Petitioner,

v.

AUCERA SA,

Registrant.

Cancellation No.: 92060353

**REGISTRANT’S RESPONSE TO PETITIONER’S OBJECTIONS TO CERTAIN  
EVIDENCE SUBMITTED WITH REGISTRANT’S REPLY BRIEF IN SUPPORT OF  
ITS CROSS-MOTION FOR SUMMARY JUDGMENT**

Registrant Aucera SA (“Aucera” or “Registrant”) submits this response to the objections filed by Petitioner Bentley Motors Limited (“Petitioner”) to certain evidence Aucera submitted in connection with its Reply in support of its Cross-Motion for Summary Judgment.

**I. Aucera’s Response to Petitioner’s Objections to the Declaration of Chia-Hsiang Cheng**

Petitioner’s objections that the statements of Aucera’s President regarding the marketing and promotional efforts engaged in by a consultant at Aucera’s direction lack merit. Petitioner’s foundational objections should be overruled because Mr. Cheng, as the President of Aucera who oversees marketing, promotional, and distribution efforts related to products bearing Aucera’s BENTLEY Mark, is qualified to testify regarding the activities undertaken by a sales a marketing consultant at his direction. *See* Cheng Decl. ¶¶ 1, 28-30; Supp. Cheng Decl. ¶¶ 1-2.<sup>1</sup> Petitioner’s

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<sup>1</sup> “Cheng Decl.” refers to the Declaration of Chia-Hsiang Cheng submitted in connection with Aucera’s Opposition to Petitioner’s Motion for Summary Judgment and Cross-Motion for Summary Judgment on May 24, 2016. “Supp. Cheng Decl.” refers to the Supplemental

argument that Mr. Cheng’s testimony is “irrelevant” is merely a repetition of its arguments on the merits, namely, that the BENTLEY Mark was abandoned. *See* Petitioner’s Objections at 2 (“The BENTLEY mark was abandoned long before whatever efforts Aucera took to promote BENTLEY products at a trade show in June 2016.”). Mr. Cheng’s testimony regarding the establishment of customers, marketing, and sales channels for products bearing Aucera’s BENTLEY Mark in the U.S. is highly relevant to the key issue in this case—Aucera’s use of the BENTLEY Mark from 1995 to the present. *See* Aucera’s Opp’n and Cross-Motion at 19-21; Aucera’s Reply at 3-6.

## **II. Aucera’s Response to Petitioner’s Objections to the Declaration of Chao-Chung (Kris) Chen**

Petitioner’s evidentiary objections to certain paragraphs of the declaration of the President of Pyxis Enterprise Co., Ltd. (“Pyxis”), Aucera’s licensee for purposes of selling Aucera’s BENTLEY-branded products in countries in which Aucera has registrations for the BENTLEY mark, including the U.S., and the provider of marketing and promotional services for Aucera in the U.S., lack merit. As a preliminary matter, Petitioner’s objection that the declaration is “untimely” is not based on any rule, and in fact, such summary judgment rebuttal evidence is permitted. *See, e.g., Kershner v. Norton*, No. 02-1887(RMU), 2003 WL 21960605, at \*2 (D.D.C. Aug. 14, 2003) (“courts have held that filing an affidavit with a reply is appropriate when the affidavit addresses matters raised in the opposition”). Mr. Chen’s declaration was submitted to rebut specific arguments made by Petitioner in its Opposition, specifically, that Aucera’s promotional activities were insufficient to establish that Aucera has not abandoned its rights in the BENTLEY Mark. *See, e.g.,* Petitioner’s Mot. at 8 & n.15

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Declaration of Chia-Hsiang Cheng submitted in connection with Aucera’s Reply in Support of Cross-Motion for Summary Judgment on June 28, 2016. “Chen Decl.” refers to the Declaration of Chao-Chung Chen submitted in connection with Aucera’s Reply in Support of Cross-Motion for Summary Judgment on June 28, 2016.

(claiming that Aucera’s promotional activities were “limited” and that the documentary evidence submitted by Aucera did not show that Aucera’s website and Facebook page promoted Aucera’s BENTLEY-branded products in the U.S.).

Petitioner’s objections to Mr. Chen’s testimony regarding the content of the Bentley Luxury Website are meritless. Mr. Chen testified that Pyxis is the registrant of the domain [www.bentleyluxury.com](http://www.bentleyluxury.com) and the operator of the website, and therefore may testify regarding the content of the site. *See* Chen Decl. ¶ 4. Furthermore, Aucera has also submitted screenshots of this website as documentary evidence, *see* Declaration of Jennifer A. Golinveaux in Support of Aucera’s Cross-Motion for Summary Judgment (“Golinveaux Decl.”) at ¶ 6 & Ex. 5, and therefore Petitioner’s claim that Mr. Chen’s testimony is “not admissible to prove the substance of the contents of the Bentley Luxury Website” is moot. Similarly, Petitioner’s hearsay objections to Mr. Chen’s testimony regarding Pyxis’ communications with customers on Aucera’s Bentley Facebook Page should be disregarded. Mr. Chen testified that Pyxis operates this page and has personal knowledge of Pyxis’ responses to price inquiries through the page. Chen Decl. ¶ 5. Aucera has also submitted screenshots of Aucera’s Bentley Facebook Page showing these communications. Golinveaux Decl. ¶ 8 & Ex. 7.

Finally, Petitioner’s “relevance” objections and argument that Mr. Chen’s statements are rebutted by other evidence are not evidentiary objections but substantive argument regarding the key issues in this case. *See* Petitioner’s Objections at 2-4. These objections have nothing to do with the *admissibility* of the evidence presented by Aucera, but rather constitute Petitioner’s conclusions on what the evidence presented demonstrates. *See id.* at 3 (arguing that Pyxis’ marketing activities are “irrelevant” in light of Petitioner’s position as to what “the undisputed

evidence shows”). This improper sur-reply argument, disguised as “evidentiary objections,” should be disregarded.

Dated: July 8, 2016

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*Attorneys for Registrant Aucera SA*

**CERTIFICATE OF SERVICE**

In re: Bentley Motors Limited v. Aucera SA  
Cancellation No.: 92060353

I hereby certify that true and complete copies of:

**REGISTRANT'S RESPONSE TO PETITIONER'S OBJECTIONS TO CERTAIN  
EVIDENCE SUBMITTED WITH REGISTRANT'S REPLY BRIEF IN SUPPORT  
OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT**

have been served on:

- (1) Petitioner's counsel of record, Jessica Bromall Sparkman, by mailing said copy on July 8, 2016, via First Class Mail to:

JEFFER MANGELS BUTLER & MITCHELL LLP  
1900 AVENUE OF THE STARS, SEVENTH FLOOR  
LOS ANGELES, CA 90067

Executed: July 8, 2016

By: /s/ Diana Hughes Leiden  
Diana Hughes Leiden