

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOLOGIC, INC.
Petitioner

v.

ENZO LIFE SCIENCES, INC.
Patent Owner

Case No. IPR2016-00820
U.S. Patent No. 7,064,197

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner submits the following objections to certain exhibits filed by Patent Owner on January 11, 2017.

Petitioner's objections apply equally to Patent Owner's reliance on these exhibits in any subsequently-filed documents. These objections are timely, having been filed within five business days of Patent Owner serving the evidence (January 16, 2017, being a federal holiday).

Petitioner objects to the follow exhibits:

Exhibit 2017 — Deposition Transcript of Dr. Norman Nelson.

Exhibits 2031-2034 — Enzo Biochem's Infringement Contentions from
Related Litigations

Exhibits 2035, 2037-2041— Enzo Laboratory Notebooks and Documents

Exhibit 2042 — Expert Declaration of Dr. Gregory Buck.

Exhibit 2043 — Expert Declaration of Barry Weiner.

Exhibit 2017

Petitioner preserves its objections to specific portions of Dr. Nelson's cross-examination testimony taken during the deposition on December 21, 2016. To the extent Patent Owner has relied or will rely on portions of the testimony that were objected to during the deposition, Petitioner maintains those objections and the grounds for such objections.

Exhibits 2031-2034

Petitioner objects to Exhibits 2031-2034 under Fed. R. Evid. 401, 402, and 403 as lacking relevance and being more prejudicial than probative, and under 37 C.F.R. § 42.120(a) (Outside Scope). These exhibits appear to be infringement contentions from litigations, but the underlying evidence (i.e., accused products and information about them) and exhibits have not been made available for consideration or evaluation by the Board or Petitioner. Furthermore, these exhibits relate to infringement only and, therefore, are irrelevant and outside the scope of this proceeding.

Exhibits 2035, 2037-2041

Petitioner objects to Exhibits 2035, 2037-2041 under Fed. R. Evid. 901 for lack of authentication. These exhibits are purported to include pages from laboratory notebooks and other documents, many of which are undated, unsigned, and unwitnessed, and appear to not have been bound together and consecutively numbered. Some of the pages are also not dated consecutively. Therefore, these exhibits lack proper authentication. Further, these exhibits do not qualify as self-authenticating documents under Fed. R. Evid. 902 and, thus, are inadmissible. The testimony of Barry Weiner cannot be used to authenticate these exhibits for the reasons stated below with respect to Exhibit 2043.

Petitioner further objects to Exhibits 2035, 2037-2041 under Fed. R. Evid.

802. To the extent Patent Owner relies on the contents of these exhibits for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay (*see* Fed. R. Evid 801), that does not fall under any exceptions, including those of Rules 803, 804, and 807. In particular, these exhibits are not admissible under Fed. R. Evid. 803(16) as statements contained in ancient documents because the authenticity of these exhibits have not been established. These exhibits also do not fall under the business records exception (Fed. R. Evid. 803(6)) or the catchall exception under Fed. R. Evid. 807. *See Chen v. Bouchard*, 347 F.3d 1299, 1308 (Fed. Cir. 2003).

Exhibit 2042

Petitioner objects to ¶¶ 146, 165-181 and 238-244 of Exhibit 2042 under Fed. R. Evid. 802 and 805 as containing hearsay and/or hearsay within hearsay. To the extent Patent Owner relies on the contents of these paragraphs for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay and/or hearsay within hearsay (*see* Fed. R. Evid. 801 and 805), that does not fall under any exceptions, including those of Rules 803, 804, 805, and 807.

Petitioner objects to ¶¶ 146, 165-181 and 238-244 of Exhibit 2042 under Fed. R. Evid. 602 for lack of personal knowledge because Dr. Buck (the declarant) lacks personal knowledge of the matters asserted.

Petitioner objects to ¶¶ 146, 165-181 and 238-244 of Exhibit 2042 under Fed. R. Evid. 702 and 703 as improper expert testimony, because these paragraphs include conclusory statements and lack explanation for bases of opinions, particularly to the extent exhibits relied upon also fail to identify the factual bases for the declarant's opinions.

Petitioner further objects to ¶¶ 238-244 of Exhibit 2042 under Fed. R. Evid. 401, 402, and 403 as lacking relevance to the extent they fail to establish a basis or requirement (e.g., nexus) for secondary considerations of non-obviousness.

Exhibit 2043

Petitioner objects to ¶¶ 3-10, 12, 14, 16, and 17 of Exhibit 2043 under Fed. R. Evid. 802 and 805 as containing hearsay and/or hearsay within hearsay. To the extent Patent Owner relies on the contents of these paragraphs for the truth of the matter asserted, Petitioner objects to such contents as inadmissible hearsay and/or hearsay within hearsay (*see* Fed. R. Evid. 801 and 805), that does not fall under any exceptions, including those of Rules 803, 804, 805, and 807.

Petitioner objects to ¶¶ 3-10, 12, 14, 16, and 17 of Exhibit 2043 under Fed. R. Evid. 602 for lack of personal knowledge because Mr. Weiner (the declarant) lacks personal knowledge of the matters asserted.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.