

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP,
Petitioner,

v.

III HOLDINGS 4, LLC,
Patent Owner.

Case No. IPR2017-00782
Patent 8,654,999

**PATENT OWNER OBJECTIONS TO PETITIONER EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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

Patent Owner, III Holdings 4, LLC, objects to the admissibility of the following evidence submitted by Petitioner K/S HIMPP pursuant to 37 C.F.R. § 42.64(b)(1). These objections are being timely filed within 10 business days after the Decision to Institute. Patent Owner asks the Patent Trial and Appeal Board to deny the admission and consideration of the following documents on the following bases:

Exhibit 1109 – German patent publication DE19542961 (“DE961”)

Patent Owner objects to the admission of Exhibit 1109 as irrelevant to this proceeding because Petitioner has not provide a translation of the foreign language document in accordance with 37 C.F.R. § 42.63(b) and 37 C.F.R. § 42.2, as further specified in 37 C.F.R. § 1.68 (affidavit) and 28 U.S.C. § 1746 (declaration). Because Petitioners did not offer competent evidence of a translation of the document into English and an affidavit attesting to the accuracy of the translation as required by the rules, Exhibit 1109 is not admissible evidence.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the English language portions of the Exhibit are authentic or that the document is self-authenticating under FRE 902.

Petitioner objections to Exhibit 1109 as irrelevant to this IPR proceeding pursuant to FRE 401 and inadmissible under FRE 402.

Exhibit 1111 – Michael Valente, “Guideline for Audiologic Management of the Adult Patient (“Valente”)

Patent Owner objects to the admission of Exhibit 1111 as irrelevant to this proceeding because Petitioner has not established that Exhibit 1111 qualifies as a prior art publication under 35 U.S.C. § 102. Because Petitioners did not offer competent evidence to show that Exhibit 1111 was publicly available before the earliest possible priority date of the ‘999 patent, Petitioner has not established that Exhibit 1111 is a prior art printed publication eligible for this IPR proceeding or consideration by the identified Expert Dr. Les Atlas, rendering the Exhibit 1111 reference irrelevant to this IPR proceeding pursuant to FRE 401 and inadmissible under FRE 402.

To the extent Petitioner relies on the contents of this document for the truth of the matter asserted, Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807. Specifically, to the extent that Petitioners rely on dates contained within Exhibit 1111, those dates are hearsay under FRE 801 and inadmissible under FRE 802.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

Exhibit 1112 – Good Practice Guidance for Adult Hearing Aid Fittings and Services – Background to the Document and Consultation (“Good Practice Guidance”)

Patent Owner objects to the admission of Exhibit 1112 as irrelevant to this proceeding because Petitioner has not established that Exhibit 1112 qualifies as a prior art publication under 35 U.S.C. § 102. Because Petitioners did not offer competent evidence to show that Exhibit 1112 was publicly available before the earliest possible priority date of the ‘999 patent, Petitioner has not established that Exhibit 1112 is a prior art printed publication eligible for this IPR proceeding or consideration by the identified Expert Dr. Les Atlas, rendering the Exhibit 1112 reference irrelevant to this IPR proceeding pursuant to FRE 401 and inadmissible under FRE 402.

To the extent Petitioner relies on the contents of this document for the truth of the matter asserted, Patent Owner objects to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807. Specifically, to the extent that Petitioners rely on dates contained within Exhibit 1112, those dates are hearsay under FRE 801 and inadmissible under FRE 802.

Patent Owner objects to this document as not properly authenticated under FRE 901 because Petitioners have not presented any evidence that the document is authentic or that the document is self-authenticating under FRE 902.

Date: August 10, 2017

Respectfully submitted,

/Henry A. Petri, Jr./

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Attorneys for Patent Owner

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