UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC., AND MEDTRONIC VASCULAR, INC.,

Petitioners,

v.

TELEFLEX INNOVATIONS S.À.R.L.,

Patent Owner.

IPR2020-00126
IPR2020-00128
IPR2020-00129
IPR2020-00132
IPR2020-00134
IPR2020-00135
IPR2020-00137

PETITIONERS' REPLY IN SUPPORT OF MOTION TO EXCLUDE EXHIBIT 2024

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Teleflex's reduction-to-practice case balances on assumptions about Exhibit 2024 and a presumption of its reliability. Teleflex witnesses assume that Exhibit 2024 is what Teleflex claims, and then offer *additional* assumptions regarding VSI's prototype efforts. This is not a "goes to weight" case. If Teleflex cannot prove that Exhibit 2024 is what it claims—a document created on August 24, 2005, and addressing RX as of that date—its witnesses' assumptions regarding the document are irrelevant.

Teleflex argues against excluding Exhibit 2024 because, according to Teleflex, Exhibit 2024 is "highly relevant" and "potentially case-dispositive." PO's Opposition at 1. But a document's purported relevance does not obviate its proponent's authentication obligations. Teleflex does not dispute that some critical information is missing from the document on its face and from the document's metadata. Instead of providing that missing information, however, Teleflex offers only its witnesses' opinions on the relevance and purpose of the document and other records *like* it.

I. TELEFLEX CONFUSES WITNESS ASSUMPTIONS AND OPINIONS ABOUT THE DOCUMENT FOR FACTS AUTHENTICATING THE DOCUMENT.

None of Teleflex's purported authenticating witnesses offer evidence sufficient to prove that Exhibit 2024 is what Teleflex claims: a document created on August 24, 2005, addressing GuideLiner RX as of that date. Teleflex in fact *reverses*

the authenticity analysis. It looks through the wrong end of the telescope. A witness does not authenticate a document if she understands what the document might represent *assuming the document is what she believes*. A witness authenticates a document by having personal knowledge of its creation and maintenance (see Section III, *infra*), by providing information showing what the document is, and by confirming that the document is reliable. Fed. R. Evid. 901.

Teleflex assumes Exhibit 2024's "authenticity" using information it pulls from the face of the document. *See, e.g.*, PO's Opposition at 2 ("As shown on the face of the document, Exhibit 2024 is . . . ."). Indeed, Teleflex argues that because the "August 24, 2005 date of this document is consistent throughout," it must be accurate. PO's Opposition at 2. But Exhibit 2024 is not self-authenticating. *See* Fed. R. Evid. 902. And further, the document supplies only indicia of *unreliability*. Motion to Exclude at 2-5. Teleflex does not dispute that Exhibit 2024 is missing critical information, including: (1) a reliable, non-hearsay date; (2) an author; (3) an "RX" file name; and (4) content. Nothing and no one supplies this missing information.

II. NO WITNESS SPEAKS TO EXHIBIT 2024'S CREATION OR MAINTENANCE—NO ONE ESTABLISHES THAT IT IS A RELIABLE "BUSINESS RECORD."

Teleflex suggests that the Board should consider Exhibit 2024 because it is a business record. Yet Teleflex offers no witness to speak to the document's creation

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