

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' MOTION TO EXCLUDE EXHIBIT 2024

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<i>Ingenico Inc. v. Iogene, LLC</i> , IPR2019-00929, Paper 53 (PTAB Sept. 21, 2020).....	5
<i>Linear Technology Corp. v. Micrel, Inc.</i> , 275 F.3d 1040 (Fed. Cir. 2001)	5, 6, 8
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Other Authorities

Fed. R. Evid. 802	1
Fed. R. Evid. 901	1

I. INTRODUCTION

In an attempt to antedate Medtronic’s primary prior art reference, Itou (Ex-1007), Teleflex filed and relies on a “Product Requirements: Guideline Catheter System” document (Ex-2024). Teleflex attempts to authenticate Exhibit 2024 using Dean Peterson, a Principle Research and Design Engineer formerly at VSI, now at Teleflex. Teleflex served a declaration from Peterson as supplemental evidence in response to Medtronic’s objections to Exhibit 2024 under Federal Rules of Evidence 802 and 901. *See* Ex-1923. Exhibit 2024, though, lacks critical indicia of reliability on its face, and Teleflex’s attempt to authenticate the document using Peterson’s conclusory declaration fails. Peterson does not know the circumstances of the creation of the document and cannot speak to VSI’s record-keeping practices.

Indeed, none of Teleflex’s witnesses appear to have personal knowledge of Exhibit 2024. Gregg Sutton, Deborah Schmalz, and Howard Root all mention Exhibit 2024 in their declarations and depositions. *See* Ex-1762, 116:11 *et seq.*; Ex-1757, 79:20 *et seq.*; Ex-1766, 56:9 *et seq.* But none provides information necessary to verify that the document is what Teleflex says it is. The Board should exclude Exhibit 2024.

II. TELEFLEX HAS NOT AUTHENTICATED EXHIBIT 2024.

Under Federal Rule of Evidence 901, Teleflex “must produce evidence sufficient to support a finding that [Exhibit 2024] is what the proponent [Teleflex]

claims it is.” Fed. R. Evid. 901; *Riverbed Tech., Inc. v. Realtime Data LLC*, IPR2016-00978, Paper 67 at 41 (PTAB Oct. 30, 2017) (“The burden is on Patent Owner to produce evidence sufficient to support a finding that [the exhibit] is what the Patent Owner claims it is.”). Teleflex cannot prove that Exhibit 2024 is what it claims: a VSI document created as of a particular date—August 24, 2005—that “signaled VSI’s transition to the formal Quality process for bringing [the GuideLiner RX] to market.” Paper 39 at 17.¹ Teleflex contends that VSI created Exhibit 2024 on August 24, 2005, and that the document “discuss[ed] both the rapid exchange and OTW version of GuideLiner” as of that date. *Id.* If Teleflex (i) cannot date the document, or (ii) cannot show that the document addressed RX Product Requirements as of August 24, 2005, the document is not what Teleflex claims. For either reason, the Board should exclude Exhibit 2024.

A. Exhibit 2024 is unreliable on its face.

Exhibit 2024 lacks critical indicia of reliability. First, the document does not provide a reliable date. The “8/24/05” on the face of the document is an unexplained “effective” date:

¹ This quotation is found in Paper 39 for the following cases: IPR2020-00126, IPR2020-00128, IPR2020-00129, IPR2020-00132, IPR2020-00135, IPR2020-00137. For IPR2020-00134, see Paper 36 at 17.

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