

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioner,

v.

TELEFLEX LIFE SCIENCES LIMITED,

Patent Owner.

Case IPR2020-01341
U.S. Patent No. 8,142,413

Case IPR2020-01343
U.S. Patent No. RE 46,116

**PETITIONER'S MOTION TO EXCLUDE EXHIBIT 2024
AND PORTIONS OF EXHIBIT 1799**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	TELEFLEX HAS NOT AUTHENTICATED EXHIBIT 2024 AND CANNOT RELY ON IT FOR THE TRUTH OF ITS CONTENTS.	3
	A. Exhibit 2024 is unreliable on its face.....	4
	B. Peterson cannot authenticate Exhibit 2024.	6
	1. Peterson lacks personal knowledge of Exhibit 2024.	7
	2. Peterson lacks knowledge of VSI’s record-keeping procedures.	8
	C. No other witness can authenticate Exhibit 2024.....	8
III.	PORTIONS OF ERB’S DEPOSITION TESTIMONY ARE BEYOND THE SCOPE, UNTIMELY, AND PREJUDICIAL.....	10
	A. On redirect, over Medtronic’s objection, Erb provided new testimony regarding the timing of prototype testing.....	11
	B. Erb’s testimony on re-cross should likewise be excluded.	13
IV.	CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Ingenico Inc. v. Iogene, LLC</i> , IPR2019-00929, Paper 53 (PTAB Sept. 21, 2020)	6
<i>Linear Technology Corp. v. Micrel, Inc.</i> , 275 F.3d 1040 (Fed. Cir. 2001)	6, 7, 9
<i>Netflix, Inc. v. DivX, LLC</i> , IPR2020-00511, Paper 20 (PTAB Aug. 13, 2021).....	11
<i>Riverbed Tech., Inc. v. Realtime Data LLC</i> , IPR2016-00978, Paper 67 (PTAB Oct. 30, 2017).....	3
<i>Schroeder v. Smith’s Food & Drug Centers, Inc.</i> , No. 2:12-CV-02024-APG, 2014 WL 548149 (D. Nev. Feb. 11, 2014).....	10
<i>Standard Innovation Corp. v. Lelo, Inc.</i> , IPR2014-00148, Paper 41 (PTAB Apr. 23, 2015)	5, 6

Statutes

37 C.F.R. § 42.64(a).....	10, 12
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Rules

Fed. R. Evid. 403	10
Fed. R. Evid. 901	3

I. INTRODUCTION

Teleflex uses unreliable, untimely evidence to bolster its prior invention arguments. The Board should exclude the improper evidence.

To try to antedate Medtronic’s primary prior art reference, Itou, Teleflex relies on a “Product Requirements: Guideliner Catheter System” document (Ex-2024). Medtronic objected to Exhibit 2024 under Federal Rules of Evidence 802 and 901. *See* IPR2020-01341, Paper 29; IPR2020-01343, Paper 24. Teleflex relies on Exhibit 2024 for the truth of its contents, and it tries to authenticate the document using Dean Peterson, a former-VSI, now-Teleflex Research and Development Engineer. But Exhibit 2024 lacks critical indicia of reliability on its face, and Teleflex’s attempt to authenticate the document using Peterson’s conclusory declaration fails.

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.¹

¹ In related IPR proceedings, the Board determined that Teleflex had satisfied its authenticity obligations, but it discounted the document and recognized that it is not entirely reliable on its face:

Teleflex’s reduction-to-practice case balances on unfounded assumptions about Exhibit 2024 and a presumption of its reliability. Based on those assumptions, Teleflex witnesses offer only *additional* assumptions regarding VSI’s prototype efforts. Thus, Exhibit 2024 is entitled to *no*—rather than little—weight. Because Teleflex cannot prove that Exhibit 2024 is what it claims—a document created on August 24, 2005, and addressing RX prototypes as of that date—its witnesses’ assumptions regarding the document are unreliable and, thus, irrelevant. The Board should exclude Exhibit 2024.

Further, in a late attempt to strengthen its reduction-to-practice case, Teleflex’s star non-inventor witness, Steve Erb, expanded his testimony during his deposition. The Board should exclude those portions of Erb’s deposition, identified

Although this document sets forth several user requirements for the device, it does not identify the product specifications and test methods correlating to those requirements. Ex. 2024, 24. The revision history of the document also indicates it is “pre-release,” thereby suggesting that it may not have been finalized at the time.

IPR2020-00126, Final Written Decision at 45.

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