

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TELEFLEX LIFE SCIENCES LIMITED,
Patent Owner.

Case IPR2020-01343
Patent RE46,116

**PATENT OWNER'S RESPONSE TO
PETITIONERS' MOTION TO EXCLUDE EXHIBIT 2024 AND
PORTIONS OF EXHIBIT 1799**

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37 C.F.R. § 42.2011
37 C.F.R. § 42.6411

Petitioner’s Motion to Exclude (“MTE”) first asks the Board to exclude Exhibit 2024 (the Product Requirements Document), but the Board already denied a nearly identical motion from Petitioner in the related IPRs. For those same reasons, and the reasons explained here, Exhibit 2024 should not be excluded.

Petitioner next asks the Board to exclude small portions of Mr. Steven Erb’s recent deposition testimony as prejudicial to Petitioner because it could not have prepared for such testimony. But the testimony at issue is consistent with Mr. Erb’s declaration, his prior deposition testimony elicited by Petitioner, the testimony of inventor Mr. Howard Root, and the wealth of evidence showing that Teleflex reduced to practice prior to Itou in this case, and Petitioner cross-examined him on it. There is no credible argument for prejudice. Petitioner’s motion should be denied.

I. The Board Already Denied Petitioners’ Nearly Identical Motion to Exclude Exhibit 2024 in the Related IPRs and Should Do So Again

In the related IPRs, the Board denied a nearly identical motion filed by Petitioners to exclude Exhibit 2024. *E.g.*, IPR2020-00126, Paper 129, Final Written Decision (“FWD”) at 72. The Board noted that “[a]uthenticity is . . . not an especially high hurdle.” *Id.* In view of the declarations of Mr. Peterson, Ms. Schmalz, Mr. Root, and Mr. Sutton, the Board found that Exhibit 2024 had been authenticated under FRE 901 and Petitioners’ arguments went to the weight of the evidence rather than its admissibility. *Id.* The same is true here.

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