

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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE
EXHIBIT 2024 AND PORTIONS OF EXHIBIT 1799**

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Medtronic asked this Board to exclude (1) Exhibit 2024 because Teleflex cannot establish that the document is what Teleflex claims—an August 24, 2005 marker for the beginning of the regulatory process for the GuideLiner RX device; and (2) portions of Exhibit 1799 in which Erb expands and contradicts his declaration testimony. Not a single Teleflex witness can address the creation or maintenance of Exhibit 2024. And Erb cannot, now, claim to have observed testing for which he previously disclaimed personal involvement. Medtronic requests that the Board grant its motion.

I. TELEFLEX CONFUSES WITNESS ASSUMPTIONS AND OPINIONS ABOUT EXHIBIT 2024 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, 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 7 (“As shown on the face of the document, . . .”). But Exhibit 2024 is not self-authenticating. *See* Fed. R. Evid. 902. And further, the document supplies only indicia of *unreliability*. 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.

Teleflex contends that “[f]our separate witnesses submitted sworn testimony” related to Ex-2024. PO’s Opposition at 3. But each witness assumes that the document is what it appears to be, without providing information and personal knowledge sufficient to *rely on* the document. No witness has personal knowledge of when the document was created, who created it, or when critical information was added to it. At minimum, Teleflex needs a witness with personal knowledge to testify that references to the GuideLiner RX were added to the document as of August 24, 2005. It does not have one.

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 or maintenance, information critical to establishing that a document is a business record. *See Conoco Inc. v. Dep’t of Energy*, 99 F.3d 387, 391 (Fed. Cir. 1996) (requiring a document custodian or other witness who understands “the system

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