

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

Case No.: IPR2020-01532

U.S. Patent 9,644,169

**PETITIONER'S REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64 (c)**

TABLE OF CONTENTS

I. PETITIONER’S OBJECTIONS COMPLIED § 42.64(b)(1)1

II. PATENT OWNER HAS NOT AUTHENTICATED EXHIBIT 20102

III. EXHIBITS 2003 AND 2013 ARE INADMISSIBLE HEARSAY3

IV. CONCLUSION.....5

TABLE OF AUTHORITIES

CASES

<i>Apple v. Achates Reference Publishing, Inc.</i> , IPR2013-00080 (June 2, 2014).....	1
<i>ATI Techs. v. Iancu</i> , 920 F.3d 1361 (Fed. Cir. 2019)	3
<i>Chen v. Bouchard</i> , 347 F.3d 1299 (Fed. Cir 2003)	2
<i>Deckers Outdoor v. Romeo & Juliette, Inc.</i> , 2:15-cv-02812, 2017 U.S. Dist. LEXIS 91711 (C.D. Cal. June 13, 2017)	3
<i>Flir Sys., Inc., v. Leak Surveys, Inc.</i> , IPR 2014-00411 (Decision - Motions to Exclude), Paper 113 (Sept. 3, 2015)	1
<i>Horton v. Stevens</i> , 7 USPQ2d 1245 (BPAI 1988)	2
<i>Incyte Corp. v. Concert Pharms.Inc.</i> , IPR 2017-01256 (Final Written Decision), Paper 119 (Apr. 8, 2019)	1
<i>Kolcraft Enter. v. Graco Children Prods.</i> , 927 F.3d 1320 (Fed. Cir. 2019)	2
<i>Motorola Mobility LLC v. Intellectual Ventures II LLC</i> , IPR2014-00504 (Final Written Decision), Paper 84 (Mar. 3, 2020).....	2
<i>Pozen Inc. v. Par Pharm., Inc.</i> , 696 F.3d 1151 (Fed. Cir. 2012)	5
<i>Sonos, Inc. v. Implicit</i> , IPR2018-00766 (Final Written Decision), Paper 46 (Sept. 16, 2019)	2

STATUTES

37 C.F.R. § 42.64(b)(1)..... 1

RULES

Fed. R. Evid. 803 4
Fed. R. Evid. 807 3, 5
Fed. R. Evid. 901 2

I. PETITIONER’S OBJECTIONS COMPLIED § 42.64(b)(1)

Contrary to Patent Owner’s argument, Mot. Excl. Opp. (Paper 26), 1-3, Petitioner complied with Section 42.64(b)(1), and provided adequate notice of its evidentiary objections to the entirety of Exhibits 2003, 2010 and 2013 by asserting:

FRE 802 (hearsay without exception)

The exhibit is offered to prove the truth of the matter asserted without meeting any hearsay exception.

FRE 901 (authentication)

Patent Owner failed to provide evidence sufficient to establish the exhibit is what it is purported to be.

Exhibit 1171, pp. 3, 7-9. *See, e.g., Incyte Corp. v. Concert Pharms. Inc.*, IPR 2017-01256 (Final Written Decision), Paper 119, pp. 38-39 (Apr. 8, 2019) (objections “(a) lacks authentication under FRE 901 . . . [and] (b) represents hearsay under FRE 802” provide “sufficient particularity”); *see Flir Sys., Inc., v. Leak Surveys, Inc.*, IPR 2014-00411 (Decision - Motions to Exclude), Paper 113, p. 7 (Sept. 3, 2015) (“Objection: Hearsay: Fed. R. Evid. 802; 37 C.F.R. § 42.61 (c) Nothing more is needed.”). Patent Owner’s citation to *Apple v. Achates Reference Publishing, Inc.*, IPR2013-00080 (June 2, 2014) is unavailing. Mot. Excl. Opp. 3. *Apple* involved whether objections were “timely” filed, a fact not disputed by Patent Owner. *See Apple*, p. 49. Petitioner’s objections properly put Patent Owner on notice of Petitioner’s authenticity and hearsay objections.

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