IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIMFROST AS
Petitioner

v.

AKER BIOMARINE ANTARCTIC AS
Patent Owner

CASE IPR: IPR2020-01532

U.S. Patent No. 9,644,169 B2

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

Petitioner's Motion to Exclude ("Motion;" Paper 25) Exhibits 2003, 2010, and 2013 should be denied both because Petitioner failed to object with sufficient particularity to provide Patent Owner ("PO") with the opportunity to submit supplemental evidence, and because the Motion fails on the merits.

First, Petitioner's evidentiary objections (Paper 11) violate 37 C.F.R. § 42.64(b)(1)'s mandate to "identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence." Petitioner presented boilerplate objections to the Exhibits, thus failing to identify the basis of Petitioner's purported objection with sufficient particularity to enable PO the opportunity to correct or address the objection by submitting supplemental evidence. As such, Petitioner's complaints regarding the Exhibits are procedurally deficient and were not preserved by Petitioner's objections. Petitioner's Motion should be denied for this reason alone. Further, the Motion itself compounds this error by failing to identify any specific portions of the Exhibits that are allegedly hearsay. In fact, Petitioner has failed to identify where in the record the evidence sought to be excluded was relied on by PO. See Consolidated Trial Practice Guide, Nov. 2019, at 79.

Second, without deposing any of the witnesses, Petitioner asks the Board to exclude the Exhibits in their entirety. Contrary to Petitioner's assertions, the

Exhibits have been authenticated under mutiple provisions of the Federal Rules of Evidence ("FED. R. EVID") including FED. R. EVID 901(b)(1), 901(b)(4), 902(7) and 902(11). Further, the Exhibits are not hearsay as they are not being offered to prove the truth of the matter assserted, but rather what they describe as corroboration of Dr. Tilseth's testimony of conception and reduction to practice. The Exhibits are also not hearsay because they are business records under FED. R. EVID 803(6) and also fall within the provisions of FED. R. EVID 803(7).

II. THE EXHIBITS ARE ADMISSIBLE

A. Petitioner Failed to Object to the Exhibits with Sufficient Particularity

Before a party may file a motion to exclude evidence, it must first object to the evidence and "must identify the grounds of the objection with sufficient particularity to allow correction in the form of supplemental evidence." 37 C.F.R. § 42.64(b)(1). Petitioner failed to object with the requisite particularity and therefore failed to preserve its objection.

Rather, Petitioner's objections merely list and paraphrase multiple Federal Rules without any specificity to the underlying Exhibits. *See, e.g.*, Paper 11 at 3-4. Despite the lengthy list of non-specific objections, Petitioner's objections are notably silent with respect to the arguments now presented by Petitioner that the testimony of Dr. Tilseth or the metadata is somehow insufficient to authenticate the

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.