

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**

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United States Patent and Trademark Office
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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 multiple 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 asserted, 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

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