

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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RIMFROST AS

Petitioner

v.

AKER BIOMARINE ANTARCTIC AS

Patent Owner

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Case No.: IPR2020-01533

**U.S. Patent 9,816,046**

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**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 2010 .....2

III. EXHIBITS 2003 AND 2013 ARE INADMISSIBLE HEARSAY .....3

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 &amp; 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) (objection “(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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