

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDIVIS, INC.,
Petitioner,

v.

NOVARAD CORP.,
Patent Owner.

IPR2023-00042 (Patent 11,004,271 B2)

OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence, patent owner Novarad Corp. ("Patent Owner") hereby objects to the evidence of petitioner Medivis, Inc. ("Petitioner") proffered in connection its Petition for *Inter Partes Review* filed on October 12, 2022, for the reasons set forth below.

I. Patent Owner Objects to Exhibits 1005, 1007, 1010, and 1014

Ex. 1005	FRE 106 (Incomplete); FRE 402, 403, 703 (Irrelevant); FRE 802 (Hearsay)
Ex. 1007	FRE 802 (Hearsay); FRE 402, 403, 703 (Irrelevant)
Ex. 1010	FRE 802 (Hearsay); FRE 402, 403, 703 (Irrelevant)
Ex. 1014	FRE 402, 403, 703 (Irrelevant)

Ex. 1005 (“Amira”)

FRE 402, 403, 703. Ex 1005 is purportedly the first two chapters (Chapter 1: Introduction and Chapter 2: First steps in Amira) of a user guide for computer software (Amira 5) used to visualize, analyze, and model three-dimensional data on a two-dimensional computer monitor. Petitioner has not established the authenticity of Ex. 1005 or whether it was disseminated or otherwise made accessible to persons interested and ordinarily skilled in the subject to which Ex. 1005 relates prior to the critical date. Thus, Ex. 1005 has no tendency to make a fact more or less probable that it would be without use of the evidence. Also, it is of no consequence in determining the outcome of the proceeding.

FRE 802. Ex. 1005 is an out-of-court statement offered to prove the truth of the matter asserted in statements by Dr. Kazanzides. Moreover, no hearsay exceptions apply, including Fed. R. Evid. 803(18), because neither Dr. Kazanzides or any other expert has established that Ex. 1005 comes from a reliable authority.

FRE 106. Exhibit 1005 purports to be an “Excerpt of Amira 5 User’s Guide title through Chapter 2.” Under Fed. R. Evid. 106, in fairness, Patent Owner requires Petitioner to produce the complete Amira 5 User Guide.

Ex. 1007 (“3D Visualization”)

FRE 402, 403, 703. Ex 1007 is purportedly a slide deck from a presentation given at “Surgical Planning Laboratory, Brigham and Women’s Hospital in Boston, Massachusetts.” The document does not indicate when this presentation was given. The presentation allegedly provides an introduction to “the 3DSlicer software.” Ex. 1007 at 3. Users allegedly use the 3DSlicer software to visualize, analyze, and model three-dimensional data on a two-dimensional computer monitor. Petitioner has not established the authenticity of Ex. 1007 or whether it was disseminated or otherwise made accessible to persons interested and ordinarily skilled in the subject to which Ex. 1007 relates prior to the critical date. Thus, Ex. 1007 has no tendency to make a fact more or less probable that it would be

without use of the evidence. Also, it is of no consequence in determining the outcome of the proceeding.

FRE 802. Ex. 1007 is an out-of-court statement offered to prove the truth of the matter asserted in statements by Dr. Kazanzides. Moreover, no hearsay exceptions apply, including Fed. R. Evid. 803(18), because neither Dr. Kazanzides or any other expert has established that Ex. 1007 comes from a reliable authority.

Ex. 1010 (“3D Slicer”)

FRE 402, 403, 703. Ex 1010 is purportedly online documentation for the 3DSlicer software. Again, users allegedly use the 3DSlicer software to visualize, analyze, and model three-dimensional data on a two-dimensional computer monitor.

Petitioner has not established the authenticity of Ex. 1010 or whether it was disseminated or otherwise made accessible to persons interested and ordinarily skilled in the subject to which Ex. 1010 relates prior to the critical date. Thus, Ex. 1010 has no tendency to make a fact more or less probable that it would be without use of the evidence. Also, it is of no consequence in determining the outcome of the proceeding.

FRE 802. Ex. 1010 is an out-of-court statement offered to prove the truth of the matter asserted in statements by Dr. Kazanzides. Moreover, no hearsay exceptions

apply, including Fed. R. Evid. 803(18), because neither Dr. Kazanzides or any other expert has established that Ex. 1010 comes from a reliable authority.

Ex. 1014 (“Novarad Litigation Counsel Email”)

FRE 402, 403, 703. Ex. 1014 is an email message dated August 3, 2022, between Novarad’s and Medivis’ litigation counsel concerning “claim construction issue identification” in the Scheduling Order in the related civil lawsuit pending in the U.S. District Court for the District of Delaware (21-1447-GBW) and is wholly irrelevant to this proceeding. Moreover, in its Petition, Petitioner acknowledged, “Claim construction [in the related litigation] has not been briefed or argued. In short, the case remains in its earliest stages.” ’271 Petition at 2-3.

II. Patent Owner’s Objects to Ex. 1012—Dr. Kazanzides’ Declaration

Patent Owner objects to Exhibit 1012, Dr. Kazanzides’ Declaration for the following reasons:

FRE 703 (Relies on inadmissible evidence.)	Ex. 1005	¶¶ 49, 82-88, 90-100.
	Ex. 1007	¶¶ 106, 118, 121, 126, 128, 131
	Ex. 1010	¶¶ 106, 120, 126
	Ex. 1014	¶ 28.

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