UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MEDIVIS, INC.
Petitioner

v.

NOVARAD CORP.
Patent Owner

US Patent No. 11,004,271

Inter Partes Review No. IPR2023-00042

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**PETITIONER'S OBJECTIONS
TO
EXHIBITS FILED WITH PATENT OWNER RESPONSE**

I.   INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Medivis, Inc., objects to any reference to, or reliance on, Exhibits 2002-2005, which Novarad Corp. served on July 18, 2023, with its Patent Owner Response (hereinafter, the Response).[1] Pursuant to 37 C.F.R. § 42.62, Petitioner's objections apply the Federal Rules of Evidence ("F.R.E."), among other applicable rules.

II.   OBJECTIONS

A.   Exhibit 2002 (Mulumudi Declaration)

Exhibit 2002 is the Declaration of Mahesh S. Mulumudi, M.D., that was signed on July 18, 2023 ("Mulumudi Dec.").

1.   Dr. Mulumudi is Not an Expert in the Relevant Field

Petitioner objects to Exhibit 2002 in its entirety under F.R.E. 702(a) (expert witness-specialized knowledge) because Dr. Mulumudi does not have the type of "scientific, technical, or other specialized knowledge [that] will help the trier of fact to understand the evidence or determine a fact in issue" in the relevant field to qualify as a technical expert in this matter. Fed. R. Evid. 702(a).

The Petition identified "systems and methods for using augmented reality during medical procedures" as the relevant field. Pet. at 10 (quoting Kazanzides Decl., Ex. 1012, ¶ 23). Dr. Mulumudi merely acknowledges Dr. Kazanzides'

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[1] Patent Owner Novarad did not file a patent owner preliminary response.

conclusion that "the relevant art is 'systems and methods for using augmented reality during medical procedures.'" Ex. 2002, ¶ 31 (quoting Kazanzides Decl., Ex. 1012, ¶ 23).

According to Exhibit 2003, Dr. Mulumudi is an interventional cardiologist with expertise in treating peripheral vascular diseases and coronary artery disease. None of Dr. Mulumudi's itemized experience, training, research, publications, or patents relate to the pertinent field, "systems and methods for using augmented reality during medical procedures." While Exhibit 2003 includes sections titled "Imaging Experience" and "Virtual Reality/Augmented Reality With Biofeedback," both of which contain vague descriptions of certain purported proficiencies, neither section includes any corroborating information or explanation regarding the nature and extent of his experience with these technologies, nor does Dr. Mulumudi explain how these experiences qualify him to opine, *as an expert*, on the technology of the challenged patents and the pertinent field. Indeed, Dr. Mulumudi himself only claims to be qualified to provide expert opinions on "*some* aspects of the technology described in the '271 Patent and on the references cited by Petitioner and Dr. Kazanzides." Ex. 2002, ¶ 29 (emphasis added). Therefore, Petitioner objects to Exhibit 2002, the Mulumudi Dec., as inadmissible under F.R.E. 702(a) (expert-specialized knowledge) because the

Patent Owner has not established that Dr. Mulumudi is qualified to testify as an expert in the relevant field.

        2.   <u>The Mulumudi Dec. Does Not Meet the Requirements of Fed. R. Civ. P. 26</u>

Petitioner objects to the Mulumudi Dec. as insufficient under Fed. R. Civ. P. 26, as this expert disclosure does not meet the requirements for expert disclosures under the Federal Rules. Rule 26 requires that all written disclosures include a disclosure of "a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition." Fed. R. Civ. P. 26(a)(2)(B)(v). Paragraph 28 of the Mulumudi Dec., Exhibit 2002, generally refers to the "attached CV," presumably meaning Exhibit 2003, which merely lists three occasions on which he was retained as an expert witness, but does not identify the cases with sufficient particularity for Petitioner to locate or review the matters at issue.

Furthermore, Rule 26 also requires a disclosure of "all publications authored in the previous 10 years." Fed. R. Civ. P. 26(a)(2)(B)(iv). Exhibit 2003 includes what purports to be a list of "Papers and Abstracts," but it is unclear whether that list meets the requirements of the rule because that list appears to end in 2003.

Therefore, Petitioner objects to Exhibit 2002, the Mulumudi Dec., as insufficient under Fed. R. Civ. P. 26, because (a) it neither provides nor references

a sufficient identification of the previous instances that Dr. Mulumudi has provided

expert testimony and (b) it is unclear whether it provides or references a complete

list of Dr. Mulumudi's publications from the previous 10 years.

3. The Mulumudi Dec. Is Not Supported By Sufficient Facts or Data

a. Dr. Mulumudi Does Not Disclose Who He Considers a Person of Ordinary Skill in the Art Nor When He Considers the Time of the Invention

The Petition asserts "the hypothetical person of ordinary skill in the art at the

time … (POSA)[aka POSITA] would be 'a person with a bachelor's degree in

computer science, electrical engineering, or a related field with several years of

experience in the design, development, and study of augmented reality devices

either (a) familiar with conventional medical imaging data and visualization of data

for medical procedures or (b) working with a team including someone with such

familiarity.'"   Pet. at 10 (quoting Kazanzides Decl., Ex. 1012, ¶ 25).   The

Mulumudi Dec. merely acknowledges Petitioner's definition of the POSITA. Ex.

2002, ¶ 32 (quoting Kazanzides Decl., Ex. 1012, ¶ 25). The Mulumudi Dec. also

acknowledges Petitioner's assumption that the relevant time for the '271 patent is

"on or before March 30, 2017." Ex. 2002, ¶ 8 (citing Petition at 10).

Petitioner objects to Exhibit 2002, the Mulumudi Dec., under F.R.E. 702(b)

(expert witness-sufficient facts or data) and F.R.E. 401-402 (relevance), because it

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