

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUARDANT HEALTH, INC.
Petitioner,

v.

UNIVERSITY OF WASHINGTON,
Patent Owner.

Case IPR2022-00817
U.S. Patent No. 10,760,127

PATENT OWNER’S OBJECTIONS TO EVIDENCE

Mail Stop “PATENT BOARD”
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner, University of Washington, objects under the Federal Rules of Evidence (FRE) and 37 C.F.R. § 42.64(b)(1) to the admissibility of Exhibits 1002, 1012, 1014, and 1015 (the “Challenged Evidence”), filed by Petitioner Guardant Health, Inc. on April 8, 2022, with its Petition for *Inter Partes* Review. Patent Owner timely files its Objections within ten business days of the date of the Board’s Decision on Institution. 37 C.F.R. § 42.64(b)(1). Patent Owner files these Objections to provide notice to Petitioner that Patent Owner may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c), unless cured by Petitioner.

I. IDENTIFICATION OF GROUNDS FOR OBJECTIONS

A. Exhibit 1002

Exhibit 1002 is the Declaration of Dr. John Quackenbush. Patent Owner objects to paragraphs 1-20 and 205-206 of Exhibit 1002 under FRE 402 and 403. Petitioner does not rely on or even cite these declaration paragraphs in its Petition, rendering Dr. Quackenbush’s testimony in these paragraphs irrelevant under FRE 401. Patent Owner therefore objects to these paragraphs under FRE 402. Patent Owner also objects to this testimony under FRE 403 because it has no probative value, creates unfair prejudice to Patent Owner, and will only confuse the issues and waste the Board’s time.

Patent Owner also objects to paragraphs 33, 45, 49, 188, and 189 of Exhibit 1002 because these paragraphs rely on evidence that is inadmissible under at least

FRE 401, 402, 403, 901, 902, 1002, 1003, 1004. *See infra*.

B. Exhibit 1012

Exhibit 1012 purports to be a data sheet titled “TruSeq™ RNA and DNA sample Preparation Kits.” Patent Owner objects to Exhibit 1012 under FRE 901 because Petitioner fails to provide sufficient evidence indicating the origin or publication of the document, and accordingly fails to provide sufficient information regarding its authenticity. Exhibit 1012 is not a self-authenticating document under FRE 902.

Patent Owner also objects to Exhibit 1012 under FRE 401 and 403. Exhibit 1012 purports to be a data sheet with a “01 November 2010” date on the document. But there is no evidence that Exhibit 1012 is a prior-art publication that was available to the public. Therefore, Exhibit 1012 is inadmissible as not relevant.

Patent Owner also objects to Exhibit 1012 as containing inadmissible hearsay under FRE 801 and 802. Petitioner relies on Exhibit 1012 for the truth of the matter asserted. *See e.g.*, Petition, at 4, 14. Exhibit 1012 does not fall under any of the exceptions, *e.g.*, FRE 803, 804, 805, and 807.

To the extent that the Petitioner relies on the contents of this document to prove the content of the original document, Patent Owner objects to this document as not being an original document under FRE 1002, an authentic duplicate under FRE 1003, or a document that falls under any exception to the original-document

requirement, including those of FRE 1004.

C. Exhibit 1014

Exhibit 1014 purports to be a publication from New England Biolabs titled “NEB Expressions.” Patent Owner objects to Exhibit 1014 under FRE 901 because Petitioner fails to provide sufficient evidence indicating the origin or publication of the document, and accordingly fails to provide sufficient information regarding its authenticity. Exhibit 1014 is not a self-authenticating document under FRE 902.

Patent Owner also objects to Exhibit 1014 under FRE 401 and 403. Exhibit 1014 purports to be a publication with a “Spring 2007” date on the document. But there is no evidence that Exhibit 1014 is a prior-art publication that was available to the public. Therefore, Exhibit 1014 is inadmissible as not relevant.

Patent Owner also objects to Exhibit 1014 as containing inadmissible hearsay under FRE 801 and 802. Petitioner relies on Exhibit 1014 for the truth of the matter asserted. *See e.g.*, Petition, at 8, 59-60. Exhibit 1014 does not fall under any of the exceptions, *e.g.*, FRE 803, 804, 805, and 807.

To the extent that the Petitioner relies on the contents of this document to prove the content of the original document, Patent Owner objects to this document as not being an original document under FRE 1002, an authentic duplicate under FRE 1003, or a document that falls under any exception to the original-document requirement, including those of FRE 1004.

D. Exhibit 1015

Exhibit 1015 purports to be a printout or partial printout of a webpage from New England BioLabs from March 21, 2008. Patent Owner objects to Exhibit 1015 under FRE 901 because Petitioner fails to provide sufficient evidence indicating the origin or publication of the document, and accordingly fails to provide sufficient information regarding its authenticity. Exhibit 1015 is not a self-authenticating document under FRE 902.

Patent Owner also objects to Exhibit 1015 under FRE 401 and 403. Exhibit 1015 purports to be a web page with a “March 21, 2008” date. But there is no evidence that Exhibit 1015 is a prior-art publication that was available to the public. Therefore, Exhibit 1015 is inadmissible as not relevant.

Patent Owner also objects to Exhibit 1015 as containing inadmissible hearsay under FRE 801 and 802. Petitioner relies on Exhibit 1015 for the truth of the matter asserted. *See e.g.*, Petition, at 8. Exhibit 1015 does not fall under any of the exceptions, e.g., FRE 803, 804, 805, and 807.

II. CONCLUSION

To the extent Petitioner fails to correct the defects associated with the Challenged Evidence in view of Patent Owner’s objections herein, Patent Owner may file a motion to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/R. Wilson Powers III/

Date: October 27, 2022
1100 New York Avenue, NW
Washington, DC 20005
(202) 371-2600

Ralph Wilson Powers III, Ph.D.
Registration No. 63,504
Lead Attorney for Patent Owner

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above-captioned “PATENT OWNER’S OBJECTIONS TO EVIDENCE” was served in its entirety on October 27, 2022, upon the following parties via email:

Michael T. Rosato
Jad A. Mills
Sonja R. Gerrard
Patrick M. Medley
WILSON SONSINI GOODRICH & ROSATI
701 Fifth Avenue, Suite 5100
Seattle, WA 98104
mrosato@wsgr.com
jmills@wsgr.com
sgerrard@wsgr.com
pmedley@wsgr.com

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/R. Wilson Powers III/

Dated: October 27, 2022
1100 New York Avenue, NW
Washington, DC 20005
(202) 371-2600

Ralph Wilson Powers III, Ph.D.
Registration No. 63,504
Lead Attorney for Patent Owner