

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUARDANT HEALTH, INC.
Petitioner,

v.

UNIVERSITY OF WASHINGTON THROUGH ITS CENTER
FOR COMMERCIALIZATION,
Patent Owner.

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

**PETITIONER’S OBJECTIONS TO EVIDENCE SUBMITTED WITH
SURREPLY**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Guardant Health, Inc. (“Petitioner”) submits the following objections to the University of Washington Through Its Center for Commercialization’s, (“Patent Owner”) exhibits 2072, 2073, and Patent Owner’s Surreply.

Petitioner’s objections are made pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and § 42.6(a)(3).

II. OBJECTIONS TO EXHIBITS 2072, 2073 AND PATENT OWNER’S SURREPLY

1. Violation of 37 C.F.R. § 42.6

Petitioner objects to Patent Owner exhibits 2072 and 2073 which are combined documents in violation of 37 C.F.R. § 42.6. Under section 42.6, exhibits representing combined documents are not permitted.

Patent Owner’s exhibits 2072 and 2073 are labeled as deposition transcripts but are a combination of deposition transcripts and additional documents in violation of section 42.6. For example, exhibit 2072 includes: the deposition transcript of Dr. Larrea and “Exhibits” 1-9. Exhibits 1-9 within exhibit 2072 include schematics prepared by Patent Owner, product information sheets, and a published patent application. Regarding exhibit 2073, the deposition transcript of Dr. Quackenbush is combined with “Exhibits” 1-4. Exhibits 1-4 within exhibit

2073 include incomplete portions of declarations and deposition transcripts from proceeding other than the instant IPR.

Petitioner also objects to all references to any portion of either exhibit 2072 or exhibit 2073 in the Surreply (Paper 34) for the same reason.

2. Violation of 37 C.F.R. § 42.23(b)

Petitioner objects to Patent Owner exhibits 2072 and 2073 for introducing new evidence in violation of 37 C.F.R. § 42.23(b). Under section 42.23(b), “[a] sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” Patent Owner’s exhibits 2072 and 2073 are styled as deposition transcripts but include new evidence explicitly excluded under section 42.23(b). *See also* Consolidated Trial Practice Guide (Nov. 2019) at 73-74 (“The sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”).

Exhibits 2072 and 2073 contain new evidence beyond the deposition transcripts. For example, “Exhibits” 1-9 within exhibit 2072 and “Exhibits” 1-4 within exhibit 2073 do not represent the deposition transcript of the cross-examination of any reply witness and represent new evidence submitted in violation of section 42.23.

Petitioner also objects to all references to exhibits 2072 and 2073 contained within the Surreply (Paper 34) for the same reason.

3. Violation of 37 C.F.R. § 42.63

Petitioner objects to Patent Owner exhibits 2072 and 2073 which are not labeled as required under 37 C.F.R. § 42.63. Under section 42.63(c), “[e]ach party’s exhibits must be uniquely numbered sequentially in a range the Board specifies. ... for the patent owner, the range is 2001-2999.” Section 42.63(d) further provides that “the exhibit label must include the party’s name followed by a unique exhibit number, the names of the parties, and the trial number.” Section 42.63(e) also provides that the exhibit list must describe each exhibit.

“Exhibits” 1-9 within exhibit 2072 and “Exhibits” 1-4 within exhibit 2073 are neither properly numbered nor properly labeled as required by section 42.63. Furthermore, the exhibit list does not describe each exhibit.

Petitioner also objects to all references to exhibits 2072 and 2073 contained within the Surreply (Paper 34) for the same reason.

4. F.R.E. 106

“Exhibits” 1-4 within exhibit 2073 reflect only a partial record or document from another proceeding which, if considered at all, should in fairness ought to be considered along with the entirety of the record at the same time.

Petitioner also objects to all references to exhibit 2073 contained within the Surreply (Paper 34) for the same reason.

5. F.R.E. 401/402/403

Exhibits 2072 and 2073 are objected to in their entirety as they contain new evidence presented for the first time in surreply. Because new evidence may not be submitted in surreply, exhibits 2072 and 2073 are not relevant to resolution of this case. Further, to the extent exhibits 2072 or 2073 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time in view of the fact that none of these exhibits can prove facts relevant to resolution of this case.

Petitioner also objects to all references to exhibits 2072 and 2073 contained within the Surreply (Paper 34) for the same reason.

6. F.R.E. 602/702

Exhibits 2072 and 2073 are objected to in their entirety as lacking foundation. “Exhibits” 1-9 within exhibit 2072 and “Exhibits” 1-4 within exhibit 2073 were introduced without sufficient basis to support a finding that the witness has personal knowledge of the matter. The “Exhibits” lack foundation, have no sponsoring witness, and were not affirmatively relied upon by any expert in this case.

Petitioner also objects to all references to exhibits 2072 and 2073 contained within the Surreply (Paper 34) for the same reason.

7. F.R.E. 801/802

“Exhibits” 1-9 within exhibit 2072 and “Exhibits” 1-4 within exhibit 2073 are objected to in their entirety as hearsay. They are out of court statements used to prove the truth of the matter asserted, not made under oath, and they do not fall into any category of recognized exceptions.

Petitioner also objects to all references to exhibits 2072 and 2073 contained within the Surreply (Paper 34) for the same reason.

III. CONCLUSION

The aforementioned exhibits were served on May 24, 2023. These objections are made within five business days of service pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: May 25, 2023

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Objections to Evidence Submitted With Surreply was served on May 25, 2023, at the following electronic service addresses:

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Respectfully submitted,

Dated: May 25, 2023

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
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