

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.
and LULULEMON USA INC.
Petitioner,

v.

NIKE, INC.
Patent Owner.

Patent No. 10,232,220

Inter Partes Review No. IPR2023-00180

**PETITIONER'S OBJECTIONS TO EVIDENCE
SUBMITTED WITH PATENT OWNER RESPONSE**

lululemon athletica canada inc. and lululemon usa inc. (“lululemon”) object to the following evidence submitted by Nike, Inc. (“Nike”) with its Patent Owner Response (Paper 17) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), lululemon is filing and serving these objections within five (5) business days of service of evidence to which these objections are directed.

A. Exhibit 2001 (Declaration of Dr. Robert Stone)

lululemon objects to Exhibit 2001 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. lululemon further objects to Exhibit 2001 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Dr. Stone does not have personal knowledge (Fed. R. Evid. (“FRE”) 602), and to the extent that Dr. Stone’s opinions constitute unreliable expert testimony under FRE 702 and 703.

lululemon objects to the portions of Exhibit 2001 not discussed or cited in the Patent Owner Response, as not being relevant to any issue on which trial has been instituted. Additionally, if the objected to material was not discussed or cited in the Patent Owner Response, lululemon has had no fair opportunity to respond to Patent Owner’s unstated contentions (if any) regarding the same. Such information is irrelevant, and its consideration would be unfairly prejudicial to lululemon. In particular, at least paragraphs 1-47, 66, 67, 71, 75, 76, 82-84, 86, 88,

89, 92, 98, 100-104, 107, 109-113, 116, and 118-121 of Exhibit 2001 were not cited or discussed in the Patent Owner Response. Accordingly, at least those paragraphs of Exhibit 2001 are objected to as not being relevant to any issue in this proceeding.

B. Exhibit 2002 (Deposition Transcript of Dr. Henry Houh)

lululemon objects to Exhibit 2002 for each of the reasons noted in the objections made during the underlying deposition.

C. Exhibit 2003 (Excerpt from Merriam Webster Online)

lululemon objects to Exhibit 2003 as not being relevant to any issue in this proceeding. Nike fails to provide or prove the publication date of Exhibit 2003, which may be after the '220 patent's provisional filing date. For at least these reasons, Exhibit 2003 is irrelevant and/or unduly prejudicial. (*See* FRE 401-403.)

lululemon objects to Exhibit 2003 as lacking foundation and lacking authentication under FRE 901. lululemon objects to this exhibit as containing hearsay to the extent that Nike attempts to rely on it to prove the truth of any matter described therein under FRE 801 and FRE 802. For example, Nike fails to offer any evidence that Exhibit 2003 was publicly accessible in its presented form as of its publication date. Nike fails to offer any evidence that Exhibit 2003 is what Nike claims it to be.

IPR2023-00180

Dated: August 14, 2023

Respectfully submitted,

By: /Jean Nguyen/

Jean Nguyen

Registration No.: 71,051

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PETITIONER’S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER RESPONSE was served as of the below date on the Patent Owner via e-mail (by agreement) to the following counsel of record:

Christopher J. Renk (Reg. No. 33,761)
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Dated: August 14, 2023

By: /Jean Nguyen/
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