

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

Case IPR2023-00180
Patent 10,232,220

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Nike, Inc. (hereafter, “Nike”), respectfully submits the following objections to evidence submitted by Petitioners lululemon athletica canada inc. and lululemon usa inc. (hereafter, “lululemon”) with the Petitioner’s Reply in this inter partes review. Nike is filing and serving these objections within the designated five business days of service of evidence to which these objections are directed.

Nike objects to each of Exhibits 1017–1020 in their entireties, and at least to their portions related to the aspects mentioned below.

I. EXHIBIT 1017 - REPLY DECLARATION OF DR. HENRY HOUH

Nike objects to the admissibility of Exhibit 1017 (Declaration of Dr. Henry Houh) and any reference to and/or reliance thereon under 37 C.F.R. § 42.65 and Federal Rules of Evidence 401, 402, 403, 702, 703, 801, 802, and 901. Exhibit 1017 does not comply with the rules for expert testimony pursuant to F.R.E. 702, F.R.E. 703, and 37 C.F.R. § 42.65, because Dr. Houh’s testimony—e.g., regarding the validity of the ’220 patent is not based on sufficient facts, data, or scientific evidence, rendering his testimony improper and inadmissible. Dr. Houh’s testimony is also not “the product of reliable principles and methods,” nor has he “reliably applied the principles and methods to the facts of the case.” F.R.E. 702.

II. EXHIBIT 1018 - GEODESY, DO YOU KNOW WHERE YOU ARE? – THE GLOBAL POSITIONING SYSTEM, NOAA OCEAN SERVICE EDUCATION (DEC. 11, 2009)

Nike objects to Exhibit 1018 under Fed. R. Evid. 901/902 (Inadmissible as not authenticated or self-authenticated). Exhibit 1018 lacks authentication. The exhibit is not self-authenticating, for example, as a periodical under Fed. R. Evid. 902(6) and 803(18). Nike further objects to Exhibit 1018 under Fed. R. Evid. 802 (Inadmissible as improper hearsay): To the extent that lululemon relies on Exhibit 1018, the evidence contains inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein, including statements related to a purported date of publication. Nike also objects to Exhibit 1018 under Fed. R. Evid. 401, 402, and 403 (Inadmissible as not relevant and prejudicial) because lululemon fails to show that Ex. 1018 is a “printed publication.”

III. EXHIBIT 1019 - NAVIGATION SERVICES, GPS – HOW IT WORKS, FEDERAL AVIATION ADMINISTRATION (OCT. 9, 2007),

Nike objects to Exhibit 1019 under Fed. R. Evid. 901/902 (Inadmissible as not authenticated or self-authenticated). Exhibit 1019 lacks authentication. The exhibit is not self-authenticating, for example, as a periodical under Fed. R. Evid. 902(6) and 803(18). Nike further objects to Exhibit 1019 under Fed. R. Evid. 802 (Inadmissible as improper hearsay): To the extent that lululemon relies on Exhibit 1019, the evidence contains inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein, including statements related to a purported

date of publication. Nike also objects to Exhibit 1019 under Fed. R. Evid. 401, 402, and 403 (Inadmissible as not relevant and prejudicial) because lululemon fails to show that Ex. 1019 is a “printed publication.”

**IV. EXHIBIT 1020 - WHAT CAUSES GPS SIGNALS TO GET LOST?,
RETINA POST (MAR. 24, 2019)**

Nike objects to Exhibit 1020 under Fed. R. Evid. 901/902 (Inadmissible as not authenticated or self-authenticated). Exhibit 1020 lacks authentication. The exhibit is not self-authenticating, for example, as a periodical under Fed. R. Evid. 902(6) and 803(18). Nike further objects to Exhibit 1020 under Fed. R. Evid. 802 (Inadmissible as improper hearsay): To the extent that lululemon relies on Exhibit 1020, the evidence contains inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein, including statements related to a purported date of publication. Nike also objects to Exhibit 1020 under Fed. R. Evid. 401, 402, and 403 (Inadmissible as not relevant and prejudicial) because lululemon fails to show that Ex. 1020 is a “printed publication.”

Dated: November 10, 2023

Respectfully Submitted,

/s/ Christopher J. Renk

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*Counsel for Patent Owner,
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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned
Certifies that on November 10, 2023, a true and entire copy of **Patent Owner's
Objections to Evidence Submitted with Petitioner's Reply** was served via e-
mail upon Petitioners' correspondence address of record, indicated below.

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