

Paper No. _____
Filed: June 30, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTIF FOODWORKS, INC.,
Petitioner,

v.

IMPOSSIBLE FOODS INC.,
Patent Owner.

Case No. IPR2023-00206
Patent No. 9,943,096

PATENT OWNER'S OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.64(b)(1), Impossible Foods, Inc. (“Patent Owner”) submits the following objections to Motif Foodworks, Inc.’s (“Petitioner”) Exhibits, and any reference to or reliance on the foregoing Exhibits in the Petitioner’s Petition for *Inter Partes* Review, Petitioner’s pre-institution briefing, or future filings by Petitioner. Patent Owner’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). As required by 37 C.F.R. §42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“FRE”).

II. OBJECTIONS

A. Objections to EX1021, EX1026-EX1036, EX1039, EX1043, EX1046, EX1048-EX1049, EX1051, EX1060, EX1072-EX1073, EX1082, EX1084, EX1087, EX1095-EX1096, EX1099-EX1101, EX1107-EX1112, EX1119, EX1123, EX1129, EX1133, EX1135, EX1137-EX1138, EX1141, and EX1148-EX1159

Grounds for objection: FRE 401-403.

These exhibits are irrelevant because they are not cited in the petition. FRE 401-402. To the extent these exhibits are deemed relevant, admission of the exhibits would be unduly prejudicial, misleading, and a waste of time because they are not cited in the petition. FRE 403.

B. Objections to EX1038

Grounds for objection: FRE 401-403, 901-902.

This exhibit is irrelevant because it is not cited in the petition. FRE 401-402. To the extent this exhibit is deemed relevant, admission of it would be unduly prejudicial, misleading, and a waste of time because it is not cited in the petition. FRE 403.

In addition, Petitioner proffers this exhibit as a publication that was allegedly publicly available by June 25, 1992. Petitioner has not produced evidence sufficient to support a finding that the item is what Petitioner claims it is. FRE 901-902.

C. Objections to EX1047, EX1050, EX1057, EX1059, EX1064, EX1067, EX1070, EX1074, EX1078, EX1085, EX1089, EX1106, EX1113, and EX1118

Grounds for objection: FRE 401-403.

These exhibits are irrelevant because they are not prior art and thus are irrelevant to a person of ordinary skill's knowledge and understanding at the relevant time. FRE 401-402. In addition, EX1047, EX1064, and EX1113 are irrelevant because they were not cited in the petition. *Id.* To the extent any of these exhibits are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time. FRE 403.

D. Objections to EX1056

Grounds for objection: FRE 106, 401-403.

Petitioner proffers this exhibit as an article by K. Klesk and M. Qian entitled “Aroma Extra Dilution Analysis of CV. Marion (*Rubus* spp. *hyb*) and Cv. Evergreen (*R. laciniatus* L.) Blackberries.” The exhibit submitted is only a part of the article and thus is objected to as an incomplete writing. FRE 106.

In addition, this exhibit is irrelevant because it is not cited in the petition. FRE 401-402. To the extent this exhibit is deemed relevant, admission of it would be unduly prejudicial, misleading, and a waste of time because it is not cited in the petition. FRE 403.

E. Objections to EX1098, EX1114-EX1115, EX1120, EX1146-EX1147

Grounds for objection: FRE 106, 401-403, 801-804, 807.

These exhibits are irrelevant because they are not cited in the petition. FRE 401-402. To the extent these exhibits are deemed relevant, admission of them would be unduly prejudicial, misleading, and a waste of time because they are not cited in the petition. FRE 403.

In addition, these exhibits are hearsay and do not fall within any exception to the rule against hearsay. FRE 801-804, 807.

Further, Petitioner proffers EX1115 as a report by M. d’Estries entitled “Science Reveals Which Plant-Based Burger Smells Closest to the Real Thing” from the online publication Treehugger. The exhibit submitted is only a part of the report and thus is objected to as an incomplete writing. FRE 106.

F. Objections to EX1003, EX1005, EX1007, EX1009

Grounds for objection: FRE 401-403, 701-703, 801-805, 807.

These exhibits are hearsay and do not fall within any exception to the rule against hearsay. FRE 801-804, 807.

In addition, ¶¶1-36, 38-41, 48-49, 76-78, and 95-96 of EX1003, ¶¶1-26, 43, 81, 84-93, 109-111, 113-124, 139-156, 162-166, 182-218, 229-230, 233, and 236 of EX1005, ¶¶1-27, 33-34, and 39 of EX1007, and ¶¶1-63 and 74-701 of EX1009 are irrelevant because they are not cited in the petition. FRE 401-402. To the extent these paragraphs are deemed relevant, admission of them would be unduly prejudicial, misleading, and a waste of time because they were not cited in the petition.

Further, ¶¶220-236 of EX1005 are objected to as including testimony not based on sufficient facts or data, that is irrelevant, that is not based on a reliable foundation, and that constitutes conclusory opinions without sufficient support. FRE 701-703. These paragraphs of EX1005 are also objected to as including hearsay within hearsay, and neither form of hearsay falls within any exception to the rule against hearsay. FRE 801-805, 807.

G. Objections to EX1162, EX1164, EX1172, EX1174-EX1176

Grounds for objection: FRE 901-902.

Petitioner proffers these exhibits as alleged redline comparisons of certain patent publications. Petitioner has not produced evidence sufficient to support a finding that the items are what Petitioner claims they are. FRE 901-902.

III. CONCLUSION

The aforementioned exhibits were filed together with Petitioner's Petition for *Inter Partes* Review and Petitioner's pre-institution briefing. Trial was instituted on June 16, 2023. These objections are made within 10 business days of institution pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: June 30, 2023

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

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Objections to Evidence was filed and served on June 30, 2023, on Petitioner at the electronic correspondence address of the Petitioner as follows:

Joseph M. Paunovich
James Glass
Sandra Haberny
Razmig Messerian
Quincy Lu
Sarah Cork
QUINN EMANUEL URQUHART & SULLIVAN, LLP
geimpossibleipr@quinnemanuel.com

Respectfully submitted,

Dated: June 30, 2023

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