

Paper No. _____
Filed: January 12, 2024

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
SUBMITTED WITH PETITIONER'S REPLY**

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 Reply 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 EX1180, EX1183-EX1187

Grounds for objection: FRE 401-403.

These exhibits are irrelevant because they are not cited in the reply or other brief. 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 any brief. FRE 403.

Furthermore, EX1180, EX1183, EX1185, EX1187 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.

B. Objections to EX1181

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

EX1181 is the declaration of Dr. Robert McGorin and is objected to in its entirety. Petitioner relies on the declaration of Dr. McGorin to support a theory of unpatentability presented for the first time in reply. Accordingly, his testimony is not relevant to the proceeding. 2019 Consolidated Trial Practice Guide, 73 (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.”); FRE, 401-402.

In addition, Petitioner relies on the declaration of Dr. McGorin to fill evidentiary holes in the unpatentability case set forth in the petition materials; for example, at least at paragraphs 13-19, 21-26, 29-30, 32-34, 37-52, 64, 69, 73-80, 83-85, 87-89, 92-98, 100-109, 111. Accordingly, his testimony is not relevant to the proceeding. 2019 Consolidated Trial Practice Guide, 74 (explaining it is “improper for a reply to present new evidence (including new expert testimony) that could have been presented in a prior filing”); FRE, 401-402.

Furthermore, Dr. McGorin fails to provide a reasoned basis for his opinions. His opinions are also not the product of reliable principles and methods. FRE 701-703. His opinions also rely on references that are not prior art and thus

irrelevant to a person of ordinary skill's knowledge and understanding at the relevant time; for example, at least at paragraphs 105, 106, and 108. FRE 401-402.

To the extent EX1181 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. FRE 403.

III. CONCLUSION

The aforementioned exhibits were filed together with Petitioner's Reply. These objections are made within 5 business days of the filing of Petitioner's Reply pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: January 12, 2024

/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 January 12, 2024, on Petitioner at the electronic correspondence address of the Petitioner as follows:

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Respectfully submitted,

Dated: January 12, 2024

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