

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Foresight Diagnostics Inc.,
Petitioner,

v.

Personalis, Inc.,
Patent Owner.

Case No. IPR2023-00317
U.S. Patent No. 11,408,033

**PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)**

Mail Stop: PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Foresight Diagnostics Inc. (“Foresight”) objects to the following exhibits filed by Patent Owner Personalis, Inc. (“Personalis”) with its Patent Owner Response (Paper No. 18). These objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed within five (5) business days of service of Patent Owner Response evidence on October 6, 2023.

To the extent any exhibit or portion of an exhibit is objectionable, Foresight also objects to all other exhibits and papers that rely on the objectionable portion. Foresight reserves the right to present further objections to these or additional Exhibits submitted by Patent Owner, as allowed by the applicable rules or other authority, including without limitation upon conclusion of any depositions taken of Patent Owner’s witnesses.

I. Google Calendar Notifications

Foresight objects to Exhibits 2038, 2039, 2040, 2047, 2048, 2049, 2057, 2058, 2059, 2060, 2066, 2067, 2068, 2069, 2072, 2079, 2080, 2081, 2085, 2088, 2090, 2091, 2092, 2093, 2101, 2103, 2104, 2108, and 2123:

Foresight objects to these exhibits as hearsay under FRE 801 to the extent that Patent Owner is attempting to use them as evidence to prove the truth of the matters asserted therein.

Foresight further objects to these exhibits because Patent Owner has not established the relevance of these exhibits under FRE 401 to any material issues in this proceeding and any probative value would be substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, and wasting time.

II. Documents Authored by Non-Declarant Witnesses

Foresight objects to Exhibits 2042, 2044, 2048, 2050, 2051, 2052, 2053, 2062, 2074, 2075, 2077, 2078, 2083, 2089, 2094, 2095, 2100, 2102, 2105, 2114, 2115, and 2121 for at least the following reasons:

Foresight objects to these exhibits as hearsay under FRE 801 to the extent that Patent Owner is attempting to use these exhibits as evidence to prove the truth of the matters asserted therein.

Foresight further objects to these exhibits because they do not fall within the categories of documents considered self-authenticating under FRE 902 and Patent Owner has not produced evidence sufficient to support a finding that these exhibits are what Patent Owner says they are.

III. Exhibit 2045

Foresight objects to Exhibit 2045 for at least the following reasons:

Foresight objects to Exhibit 2045 as hearsay under FRE 801 to the extent that Patent Owner is attempting to use it as evidence to prove the truth of the matters asserted therein.

Foresight further objects to Exhibit 2045 because Patent Owner has not established the relevance of this Exhibit under FRE 401 to any material issues in this proceeding and any probative value would be substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, and wasting time.

Foresight further objects to Exhibit 2045 because it does not fall within the categories of documents considered self-authenticating under FRE 902 and Patent Owner has not produced evidence sufficient to support a finding that Exhibit 2045 is what Patent Owner says it is.

IV. Furneaux Declaration and Exhibit 2012

Foresight objects to paragraphs 177-183 and 227-233 of the Furneaux Declaration (Ex. 2031) for at least the following reasons:

Foresight objects to paragraphs 177-183 and 227-233 under FRE and 702 and 37 C.F.R. §42.65 because Dr. Furneaux is testifying to matters of opinion, and because such opinion lacks scientific, technical, or other specialized knowledge that will help the trier of fact, because Dr. Furneaux's opinions are not based on sufficient facts or data or those facts or data are not disclosed,

because Dr. Furneaux's opinions are not the product of reliable principles and methods, and because Dr. Furneaux has not reliably applied the principles and methods to the facts of the case.

Foresight objects to paragraphs 177-183 and 227-233 of the Furneaux Declaration and Exhibit 2012 under FRE 801-802 because Dr. Furneaux is relying on the contents of documents to prove the truth of the matters allegedly stated in those documents.

Foresight objects to paragraphs 177-183 and 227-233 of the Furneaux Declaration and Exhibit 2012 under FRE 901 because Patent Owner has not established the authenticity of documents that Dr. Furneaux purports to summarize and rely upon.

Foresight objects to paragraphs 177-183 and 227-233 of the Furneaux Declaration and Exhibit 2012 under 37 CFR §42.51(1)(b)(i) and FRE 1002 because the testimony refers to documents, specifically portions of Exhibit 2012, which was not filed at all in IPR2023-00317, that have not been filed as separate exhibits.

V. West Declaration and Cited Exhibits

Foresight objects to paragraphs 325-409 of the West Declaration (Ex. 2032) and the exhibits cited therein for at least the following reasons:

Foresight objects to paragraphs 325-409 of the West Declaration (Ex.

2032) and the exhibits cited therein under FRE 401 because Patent Owner has not established the relevance of this Exhibit under FRE 401 to any material issues in this proceeding and any probative value would be substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, and wasting time. *See Scott v. Koyama*, 281 F.3d 1243, 1248-49 (Fed. Cir. 2002) (work relied upon to show reasonable diligence must be directly related to the reduction to practice of the invention in issue).

VI. Zeman Declaration and Cited Exhibits

Foresight objects to the Zeman Declaration (Ex. 2034) and the exhibits cited therein in its entirety for at least the following reasons:

Foresight objects to the Zeman Declaration under FRE 602 because Mr. Zeman is testifying to matters outside his personal knowledge.

Foresight objects to the Zeman Declaration under FRE 801 because Mr. Zeman is relying on the content of documents to prove the truth of the matters allegedly stated in the documents.

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Dated: October 16, 2023

Respectfully submitted,

/Andrew E. Krause/

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Attorneys for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on October 16, 2023, a complete copy of the foregoing document **PETITIONER'S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)** was served upon the following, by ELECTRONIC MAIL:

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