

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 IPR2023-00348
Patent No. 10,188,930

PATENT OWNER'S OBJECTIONS TO EVIDENCE
37 C.F.R. § 42.64(b)(1)

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”) in the preliminary proceedings of this *inter partes* review. These objections to evidence submitted during a preliminary proceeding have been timely filed and served within ten business days of the institution of the trial.

Nike objects to Exhibits 1005, 1011, and 1014 in their entireties, and at least to their portions related to the aspects mentioned below.

I. EXHIBIT 1006 – DECLARATION OF DR. GREGORY S. FISCHER

Patent Owner objects to the admissibility of Exhibit 1005 (Declaration of Dr. Gregory S. Fischer) 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 1005 does not comply with the rules for expert testimony pursuant to F.R.E. 702, F.R.E. 703, 37 C.F.R. § 42.65 because Dr. Fischer’s testimony—e.g., regarding the validity of the ’930 patent and a person of ordinary skill in the art’s motivation to combine prior art references to disclose the inventions claimed in the ’930 patent—is not based on sufficient facts, data, or scientific evidence, rendering his testimony improper and inadmissible. Dr. Fischer’s testimony also is 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 1011 – MOTOROLA DROID PRO XT610 DESCRIPTION

Nike objects to Exhibit 1011 under Fed. R. Evid. 901/902 (Inadmissible as not authenticated or self-authenticated). Exhibit 1011 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 1011 under Fed. R. Evid. 802 (Inadmissible as improper hearsay): To the extent that lululemon relies on Exhibit 1011, 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 1011 under Fed. R. Evid. 401, 402, and 403 (Inadmissible as not relevant and prejudicial) because lululemon fails to show that Ex. 1011 is a “printed publication.”

III. EXHIBIT 1014 – NIKE + IPOD WEB PAGE

Nike objects to Exhibit 1014 under Fed. R. Evid. 901/902 (Inadmissible as not authenticated or self-authenticated). Exhibit 1014 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 1014 under Fed. R. Evid. 802 (Inadmissible as improper hearsay): To the extent that lululemon relies on Exhibit 1014, 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.

Dated: July 17, 2023

Respectfully Submitted,
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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 July 17, 2023, a true and entire copy of **Patent Owner's**
Objections to Evidence was served via e-mail upon Petitioners' correspondence
address of record, indicated below.

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