

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.

Patent No. 10,188,930

Inter Partes Review No. IPR2023-00348

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

lululemon athletica canada inc. and lululemon usa inc. (“lululemon”) objects to the following evidence submitted by Nike, Inc. (“Nike”) with its Patent Owner Response (Paper 20) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), lululemon is filing and serving these objections within five (5) business days of service of evidence to which these objections are directed.

A. Exhibit 2004 (Declaration of Scott McLean, Ph.D.)

lululemon objects to Exhibit 2004 as lacking foundation, assuming facts in evidence, containing legal conclusions, and mischaracterizing the evidence. lululemon further objects to Exhibit 2004 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Dr. McLean does not have personal knowledge (Fed. R. Evid. (FRE) 602), and to the extent that Dr. McLean’s opinions constitute unreliable and prejudicial expert testimony under FRE 702 and 703. For example, paragraphs 35-42 of Dr. McLean’s declaration include legal conclusions regarding the construction and scope of disputed claim terms, which Dr. McLean is not qualified to offer.

lululemon also objects to the portions of Exhibit 2004 not discussed or cited in the Patent Owner Response (POR) as irrelevant. In particular, Nike did not cite or discuss at least paragraphs 1-36, 43-57, 65, 66, 73, 78, 79, 83, 89, and 92 of Dr. McLean’s declaration in its POR.

B. Exhibit 2005 (Deposition Transcript of Dr. Gregory Fischer)

lululemon objects to Exhibit 2005 as for each of the reasons noted in the objections made during the underlying deposition.

Dated: September 29, 2023

Respectfully submitted,

By: /Jean Nguyen/

Jean Nguyen

Registration No.: 71,051

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PETITIONER’S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER RESPONSE was served as of the below date on the Patent Owner via e-mail (by agreement) to the following counsel of record:

Christopher J. Renk (Reg. No. 33,761)
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Dated: September 29, 2023

By: /Jean Nguyen/
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