

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. 9,259,615

Inter Partes Review No. IPR2023-00349

**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 17) 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 2002 (Declaration of Dr. Robert Stone)

lululemon objects to Exhibit 2002 as lacking foundation, assuming facts not in evidence, containing legal conclusions, and mischaracterizing the evidence. lululemon further objects to Exhibit 2002 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Dr. Stone does not have personal knowledge (Fed. R. Evid. (FRE) 602), and to the extent that Dr. Stone’s opinions constitute unreliable and prejudicial expert testimony under FRE 702 and 703. For example, paragraphs 32-35 of Dr. Stone’s report include legal conclusions regarding the proper construction and scope of a disputed claim term, which Dr. Stone is not qualified to offer.

lululemon also objects to the portions of Exhibit 2002 not discussed or cited in the Patent Owner Response (POPR) as irrelevant. In particular, Nike did not cite or discuss at least paragraphs 1-31, 36-41, 47-48, 50-51, 54-56, 58, 60 of Dr. Stone’s declaration in its POR.

B. Exhibit 2003 (Deposition Transcript of Dr. Gregory Fischer)

lululemon objects to Exhibit 2003 for each of the reasons noted in the objections made during the underlying deposition.

Dated: September 29, 2023

Respectfully submitted,

By: /Forrest McClellen/

Forrest McClellen

Registration No.: 76,553

MORRISON & FOERSTER LLP

425 Market Street

San Francisco, CA 94105-2482

Email: fmcclellen@mofo.com

Tel.: (415) 268-7000

Fax: (415) 268-7522

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)
Michael J. Harris (Reg. No. 62,957)
Aaron P. Bowling (Reg. No. 67,311)
Jessica C. Kaiser (Reg. No. 58,937)
Lindsey C. Staubach (Reg. No. 76,738)
Arnold & Porter Kaye Scholer LLP
70 West Madison Street, Suite 4200
Chicago, IL 60602-4231
Email: chris.renk@arnoldporter.com
Email: michael.harris@arnoldporter.com
Email: xNIKE-lululemonIPRs@arnoldporter.com

Dated: September 29, 2023

By: /Forrest McClellen/
Forrest McClellen