

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. 10,923,225

Inter Partes Review No. IPR2023-00424

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

lululemon athletica canada inc. and lululemon usa inc. (“lululemon”) object to the following evidence submitted by Nike, Inc. (“Nike”) with its Patent Owner Response (Paper 19) 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 2003 (Excerpt from Oxford Dictionary of Computing (6th ed. 2008))

lululemon objects to Exhibit 2003 as not being relevant to any issue in this proceeding because Exhibit 2003 is after the ’225 patent’s provisional filing date and its earliest non-provisional filing date. For at least these reasons, Exhibit 2003 is irrelevant and/or unduly prejudicial. (*See* Fed. R. Evid. (“FRE”) 401-403.)

Nike has not established that a person of ordinary skill in the art (POSITA) would have looked to Exhibit 2003 to understand the meaning of “data” as of the ’225 patent’s critical date. Further, although the dictionary allegedly excerpted in Exhibit 2003 spans over 500 pages, Exhibit 2003 itself only reproduces a few excerpts from that dictionary in one- or two-page increments. Considering these excerpts in isolation would unfairly prejudice lululemon because the surrounding pages may be important, contextual clues to which a POSITA would have looked when interpreting them. For the same reason, lululemon objects to Exhibit 2003 as not being complete.

lululemon objects to Exhibit 2003 as lacking foundation and lacking authentication under FRE 901. lululemon objects to this exhibit as containing hearsay to the extent that Nike attempts to rely on it to prove the truth of any matter described therein under FRE 801 and FRE 802. For example, Nike fails to offer any evidence that Exhibit 2003 was publicly accessible in its presented form as of its publication date. Nike fails to offer any evidence that Exhibit 2003 is what Nike claims it to be.

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

lululemon objects to Exhibit 2004 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing 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 (FRE 602), and to the extent that Dr. McLean's opinions constitute unreliable expert testimony under FRE 702 and 703.

lululemon objects to the portions of Exhibit 2004 not discussed or cited in the Patent Owner Response, as not being relevant to any issue on which trial has been instituted. Additionally, if the objected to material was not discussed or cited in the Patent Owner Response, lululemon has had no fair opportunity to respond to Patent Owner's unstated contentions (if any) regarding the same. Such information is irrelevant, and its consideration would be unfairly prejudicial to

lululemon. In particular, at least paragraphs 1-34 and 45-57 of Exhibit 2004 were not cited or discussed in the Patent Owner Response. Accordingly, at least those paragraphs of Exhibit 2004 are objected to as not being relevant to any issue in this proceeding.

C. Exhibit 2005 (Deposition Transcript of Henry H. Houh (dated October 5, 2023))

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

Dated: October 17, 2023

Respectfully submitted,

By: /s/ 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:

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Dated: October 17, 2023

By: /s/ Jean Nguyen
Jean Nguyen