

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 IPR2023-00438
Patent No. 8,620,413 B2

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”) objects to the following evidence submitted by Petitioners lululemon athletica canada inc. and lululemon usa inc. (hereafter, “lululemon”) with the Petitioner’s Reply in this *inter partes* review. Nike is filing and serving these objections within the designated five business days of service of evidence to which these objections are directed.

I. EXHIBIT 1016 – Paper Depicting Formula (During Deposition Of Dr. Bryan Bergeron)

Nike objects to Exhibit 1016 for the reasons stated on record during the December 21, 2023 deposition of Dr. Bergeron.

II. EXHIBIT 1017 – Transcript of December 21, 2023 Deposition of Dr. Bryan Bergeron

Nike objects to Exhibit 1017 for the reasons stated on record during the December 21, 2023 deposition of Dr. Bergeron.

III. EXHIBIT 1018 – Reply Declaration Of Dr. Kevin Lynch

Patent Owner objects to the admissibility of Exhibit 1018 (Reply Declaration of Dr. Kevin Lynch) 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. Patent Owner objects to Exhibit 1018 pursuant to F.R.E. 702, F.R.E. 703, and 37 C.F.R. § 42.65, including to the extent that Dr. Lynch’s opinions—*e.g.*, regarding the validity of the ’413 Patent, the application of references to the claims of the ’413

Patent for alleged anticipation, the application of references to the claims of the '413 Patent for alleged obviousness, and a person of ordinary skill in the art's motivation to combine prior art references—are not based on sufficient facts, data, or scientific evidence, or are not the product of reliable principles and methods applied to the facts. Dr. Lynch's opinions also include legal conclusions regarding the proper construction and scope of a disputed claim term, which Dr. Lynch is not qualified to offer.

Dated: January 19, 2024

Respectfully Submitted,

/s/ Christopher J. Renk

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Counsel for Patent Owner Nike, Inc.

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned
Certifies that on January 19, 2024, a true and entire copy of **Patent Owner's
Objections to Evidence Submitted with Petitioner's Reply** was served via e-
mail upon Petitioners' correspondence address of record, indicated below.

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