

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NANOBEBE US INC.,
Petitioner,

v.

MAYBORN (UK) LIMITED,
Patent Owner.

Case IPR2023-00467
Patent 10,952,930

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

Submitted Electronically

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Nanobebe US Inc. (“Nanobebe” or “Petitioner”) objects to the following exhibits filed by Patent Owner Mayborn (UK) Limited (“Mayborn” or “Patent Owner”) with its Patent Owner Response (“POR,” Paper No. 20) based on the following Federal Rules of Evidence (“FRE”). These objections are timely, as they are being made within five business days of service of the evidence (October 27, 2023). The following chart lists Nanobebe’s objections to the admissibility of certain evidence (identified below) that is included within or accompanies Patent Owner’s Response and the basis for those objections.

Exhibit	Description	Objections
2029	Oxford Dictionary of English, Second Edition, Revised (2005) (excerpt)	FRE 403: Nanobebe objects to this exhibit under FRE 403 as irrelevant and unduly prejudicial. Mayborn cites this exhibit in connection with statements concerning the alleged “common parlance” of “wide.” POR at 36. But this argument is not commensurate with the scope of the claims. This exhibit thus lacks any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without this document. To the extent this document has any probative value to any ground upon which trial was instituted, it is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Exhibit	Description	Objections
		FRE 901/902: Nanobebe objects to this exhibit as not properly authenticated under FRE 901 because Mayborn has not presented evidence sufficient to support a finding that the document in question is what Mayborn claims. There is no evidence that the document is self-authenticating under FRE 902.
2031	Nipple confusion: Toward a formal definition, Marianne Neifert, MD, et al. (1995) (excerpt)	FRE 403: Nanobebe objects to this exhibit under FRE 403 as irrelevant and unduly prejudicial. Mayborn cites this exhibit in connection with statements concerning breast shape. POR at 40. But this argument is not commensurate with the scope of the claims. This exhibit thus lacks any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without this document. To the extent this document has any probative value to any ground upon which trial was instituted, it is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception. FRE 901/902: Nanobebe objects to this exhibit as not properly authenticated under FRE 901 because Mayborn has not presented evidence sufficient to support a finding that the document in question is what Mayborn claims. There is no evidence that the document is self-authenticating under FRE 902.

Exhibit	Description	Objections
2033	Transcript of Brian Silver Deposition Taken October 12, 2023 (filed under protective order)	37 C.F.R. § 42.53(f)(5): Nanobebe further objects as the transcript lacks the errata and witness signature previously provided to the Patent Owner. FRE 106: Nanobebe further objects to this exhibit, because the exhibit is incomplete, as it does not contain the witness’s signed affidavit pursuant to 37 C.F.R. § 42.53(f)(5) or a compliant certificate pursuant to 37 C.F.R. § 42.53(f)(5). FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception. Nanobebe further objects to this exhibit, because the exhibit is inadmissible hearsay—as the deposition transcript that constitutes the exhibit was not submitted in accordance with the rules (e.g., 37 C.F.R. §§ 42.53(f)(5)-(6)). FRE 901/902: Nanobebe also objects to this exhibit, because the exhibit is incomplete and not properly authenticated—as the deposition transcript that constitutes the exhibit lacks the affidavit required by the rules (e.g., 37 C.F.R. §§ 42.53(f)(5)-(6)).
2041	Examination of the Effect of Dr. Brown’s Natural Flow Baby Bottles on Infant Colic, Marsha L. Cirgin Ellett, et. al. (2005)	FRE 403: Nanobebe objects to this exhibit under FRE 403 as irrelevant and unduly prejudicial. Mayborn cites this exhibit in connection with statements concerning alleged air flow techniques employed in commercial products. POR at 24. But this argument is not commensurate with the scope of the claims. This exhibit thus lacks any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without this document. To the extent this

Exhibit	Description	Objections
		document has any probative value to any ground upon which trial was instituted, it is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception. FRE 901/902: Nanobebe objects to this exhibit as not properly authenticated under FRE 901 because Mayborn has not presented evidence sufficient to support a finding that the document in question is what Mayborn claims. There is no evidence that the document is self-authenticating under FRE 902.
2043	Markman Hearing Transcript, <i>Nanobebe US Inc. v. Mayborn (UK) Limited et al.</i> , Case No. 1:21-cv-08444 (S.D.N.Y.)	FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception. FRE 901/902: Nanobebe also objects to this exhibit, because the exhibit is incomplete and not properly authenticated.
2044	Declaration of Tim Fletcher ('930 Patent)	FRE 401-403, 801/802, 901/902, 106: Abbott objects to the contents of this exhibit to the extent that the declarant relies on Exhibits 2029, 2031, 2033, 2041, 2043 for the same reasons provided herein for each respective exhibit. FRE 602: Nanobebe objects to this exhibit, including at least ¶¶ 51, 52, 54-56, 58, 60, 61,

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		64, 67-69, 72, 76, 77, 86-90, 93, 112, 114, and 119, because Mayborn did not introduce sufficient evidence to establish that the declarant has personal knowledge of the matters discussed. FRE 702 and 703: Nanobebe objects to this exhibit, including at least ¶¶ 51, 52, 54-56, 58, 60, 61, 64, 67-69, 72, 76, 77, 86-90, 93, 112, 114, and 119, as improper testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the fact of the case. For example, this declarant relies on a “layman’s” definition “wide,” but then points to a POSITA’s knowledge and understanding. See Ex.2042 at ¶¶ 86-90. Mayborn has not met its burden to show that this declarant’s testimony on this issue is helpful to the Board and therefore admissible. FRE 801/802: To the extent Mayborn relies on the contents of this exhibit for the truth of the matter asserted, Nanobebe objects to this exhibit as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

November 3, 2023

Respectfully Submitted,

/Eliot D. Williams/

Eliot D. Williams (Reg. No. 50,822)
BAKER BOTTS L.L.P.

Lead Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on November 3, 2023, a true and correct copy of the foregoing **PETITIONER’S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER’S RESPONSE** was served via electronic mail upon the following:

John S. Goetz
Matthew A. Colvin
Kenneth W. Darby
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402
IPR40395-0023IP1@fr.com
PTABInbound@fr.com

Date: November 3, 2023

/Eliot D. Williams/
Eliot D. Williams (Reg. No. 50,822)
BAKER BOTTS L.L.P.

Lead Attorney for Petitioner