

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.
Petitioner,

v.

FACET TECHNOLOGIES, LLC
Patent Owner.

Case No. IPR2023-00712
Patent No. 8,840,635

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S ALLEGED
EVIDENCE SUBMITTED DURING PRELIMINARY PROCEEDINGS**

Petitioner LifeScan, Inc. (“Petitioner”) hereby files objections to the alleged evidence submitted by Facet Technologies, LLC (“Patent Owner”) during preliminary proceedings associated with the Petition for *inter partes* review (IPR) of U.S. Patent No. 8,840,635.

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects to the alleged evidence on the grounds identified in the table below. These objections are timely because they are being filed within ten business days of institution of the trial (September 1, 2023). *See* 37 C.F.R. § 42.64(b)(1) (noting that any “objection to evidence submitted during a preliminary proceeding must be filed within ten business days of the institution of the trial.”); *see also*

<https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2023>

(noting that September 4, 2023 was a Federal holiday).

Evidence	Brief Description of Grounds for Objection
Exs. 2001, 2002 (Declaration of John M. Collins; <i>Curriculum Vitae</i> of John M. Collins)	Federal Rule of Evidence (“FRE”) 401, 402, and 403: The paragraphs in Ex. 2001 that are not cited in Patent Owner’s Preliminary Response are irrelevant to this proceeding. <i>See, e.g.</i> , Ex. 2001 at ¶¶ 72-82, 141-213. Any belated attempt by Patent Owner to rely on any of these irrelevant paragraphs would likely violate at least 37 C.F.R. § 42.6(a)(3). FRE 602, 702, 703: The declarant’s testimony fails to establish that it is based on the kinds of facts or data upon which experts in the field (to the extent Dr. Collins has even been properly qualified as an expert in the relevant field) would reasonably rely, is based on insufficient facts and data, and is unreliable. <i>See, e.g.</i> , Ex. 2001 ¶¶ 67, 91-92, 96-98, 101-103, 109-

	110, 112-114, 115-117, 123-125, and 132. FRE 702: Insufficient showing by Patent Owner that the declarant “is qualified as an expert by knowledge skill, experience, training, or education.” FRE 801, 802: Petitioner objects to the declarant’s testimony to the extent it impermissibly acts as a conduit for hearsay not falling under any exception. In addition, to the extent Patent Owner relies on these exhibits for the truth of the matter asserted, Petitioner objects to these exhibits as inadmissible hearsay that does not fall under any exceptions. 37 C.F.R. § 42.65(a): The declarant’s testimony fails to disclose the underlying facts and data on which the opinion is based. <i>See, e.g.</i>, Ex. 2001 ¶¶ 101-103, 109-110, 112-114, 115-117, 123-125, and 132.
Exs. 2003, 2004, 2005, 2006, 2007, and 2011	FRE 401, 402, and 403: These orders (or other filings) from a related District Court case were relied on by Patent Owner regarding an argument for a discretionary denial of institution and, thus, these have no relevance after institution.
Ex. 2011 (U.S. District Courts, National Judicial Caseload Profile (as of Dec. 31, 2023))	FRE 901: Patent Owner offers no evidence in the form of authentication or identification that this exhibit is what it purports to be.
Ex. 2021 (Order Regarding Lifescan’s Motion for Summary Judgment [ECF No. 190], Facet Technologies, LLC v. Lifescan, Inc., No. 2:22-cv01717-MCS (MARx) (C.D. Cal. July 27, 2023), ECF No. 224)	FRE 401, 402, and 403: Relevance has not been established by Patent Owner and this order has not been cited in Patent Owner’s Preliminary Response.

Dated: September 18, 2023

Respectfully Submitted,

/ Michael J. Lyons /

Michael J. Lyons, Reg. No. 37,386

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), lead counsel for Petitioner hereby certifies that on September 18, 2023 copies of this PETITIONER'S OBJECTIONS TO PATENT OWNER'S ALLEGED EVIDENCE SUBMITTED DURING PRELIMINARY PROCEEDINGS were served via email to the counsel of record:

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Dated: September 18, 2023

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