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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 DECEMBER 19, 2023**

Petitioner LifeScan, Inc. (“Petitioner”) hereby files objections to the alleged evidence submitted by Facet Technologies, LLC (“Patent Owner”) with its Response to 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 five business days of the service of evidence to which the objection is directed (December 19, 2023). *See* 37 C.F.R. § 42.64(b)(1) (noting that “[o]nce a trial has been instituted, any objection must be filed within five business days of service of evidence to which the objection is directed.”); *see also* <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2023> (noting that December 25, 2023 was a Federal holiday).

Evidence	Brief Description of Grounds for Objection
Exs. 2022, 2054 (U.S. Patent No. 4,259,792 [“Halberstadt”]; Japan Patent Office Patent Publication No. 3621502 [“Morita”])	Federal Rule of Evidence (“FRE”) 401, 402, 403: Each of these exhibits is irrelevant. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. FRE 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.
Exs. 2023, 2035, 2057 (LifeScan’s Response to Interrogatory No. 3; Certification & Notice of Interested Parties; Answer to Complaint)	FRE 401, 402, 403: Patent Owner cited these exhibits as purported evidence supporting alleged copying arguments. Patent Owner has not established how these exhibits are relevant to the patented invention, <i>i.e.</i> , the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value.

Ex. 2024 (Deposition transcript of Gregory A. Lamps)	FRE 401, 402, 403: Patent Owner filed as Exhibit 2024 the entire transcript from the deposition of Gregory A. Lamps from a related District Court case. Most, if not all, of the transcript is irrelevant and is not cited in Patent Owner's Response. Petitioner further objects to any excerpts cited that are taken out of context or that do not support the attorney arguments and propositions set forth in the Patent Owner Response. Petitioner's counsel interposed timely and appropriate objections throughout the deposition, and Petitioners hereby restate and preserve those objections. FRE 901, 902 and 37 CFR 42.53(f)(5): The deposition transcript is unsigned and no agreement was made at the deposition to waive reading and signature by the witness. This transcript has not been properly certified and is not self-authenticating.
Ex. 2025 (Deposition transcript of Joel Delman ["Delman Dist. Ct. Dep."])	FRE 401, 402, 403: Patent Owner filed as Exhibit 2025 the entire transcript from the deposition of Petitioner's expert witness, Joel Delman, from a related District Court case. Most, if not all, of the transcript is irrelevant and is not cited in Patent Owner's Response. Petitioner further objects to any excerpts cited that are taken out of context or that do not support the attorney arguments and propositions set forth in the Patent Owner Response. Petitioner's counsel interposed timely and appropriate objections through the deposition, and Petitioners hereby restate and preserve those objections. FRE 901, 902 and 37 CFR 42.53(f)(5): The deposition transcript is unsigned and no agreement was made at the deposition to waive reading and signature by the witness. This transcript has not been properly certified and is not self-authenticating.
Exs. 2026, 2027, 2029, 2032-34, 2036, 2039, 2041-43, 2053, 2055 (<i>BD Ultra-Fine Lancets – A Difference You Can</i>	FRE 401, 402, 403: Each of these exhibits is irrelevant. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. FRE 801, 802: To the extent Patent Owner relies on

<i>See and Feel</i>; CDC, <i>Diabetes: Monitoring Your Blood Sugar</i>; Bettina Barisch-Fritz et al., <i>Evaluation of the Rule-of-Thumb: Calculation of the Toe Allowance for Developing Feet</i>; <i>Lateral</i>, Merriam-Webster definition; <i>Lateral Orientation</i>, Medline Plus Medical Encyclopedia; MIT Undergraduate Course, Design Handbook: Engineering Drawing and Sketching; <i>Span</i>, Merriam-Webster Definition; <i>Thickness</i>, Merriam-Webster definition; <i>Transverse</i>, Merriam-Webster definition; <i>Anatomy of the Hand</i>, John Hopkins Medicine; <i>Wire-Twist Wire Connectors Models WT1, WT2, WT3, WT4, WT6</i> Product Fact Sheet; Karl Warsi, <i>Simply Maths 101</i> [Michael Clark et al. eds. 2022])	these exhibits for the truth of the matter asserted, Petitioner objects to these exhibits as inadmissible hearsay that does not fall under any exceptions. FRE 901: Patent Owner offers no evidence in the form of authentication or identification that these exhibits are what they purport to be.
Ex. 2028 (Deposition transcript of Joel Delman [“Delman IPR Dep.”])	FRE 401, 402, 403: Patent Owner filed as Exhibit 2028 the entire transcript from the deposition of Petitioner’s expert witness, Joel Delman, from this IPR proceeding. Most, if not all, of the transcript is irrelevant and is not

	cited in Patent Owner's Response. Petitioner further objects to any excerpts cited that are taken out of context or that do not support the attorney arguments and propositions set forth in the Patent Owner Response. Petitioner's counsel interposed timely and appropriate objections throughout the deposition, and Petitioners hereby restate and preserve those objections. FRE 901, 902 and 37 CFR 42.53(f)(5): The deposition transcript is unsigned and no agreement was made at the deposition to waive reading and signature by the witness. This transcript has not been properly certified and is not self-authenticating.
Ex. 2030 (Facet P&L)	FRE 401, 402, 403: Patent Owner cites this exhibit as purported evidence of commercial success. Patent Owner has not established how the data in the purported evidence is relevant to the patented invention, <i>i.e.</i>, the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. LifeScan objects to this Exhibit as lacking relevance under F.R.E. 401-402 because there is nothing in the record establishing that the Delica Lancets reported on in this exhibit practice the challenging claims in the patent-at-issue in the present proceeding. Absent evidence that the lancets discussed in this exhibit actually embody the invention of the '635 patent, sales purporting to show advantages of those lancets have no relevance here. Moreover, even assuming that the lancets reported on in this exhibit embody the claimed invention of the '635 patent, there is nothing in the record establishing a nexus between the purported advantages of those lancets and the claimed proportions for the gripping handle of the lancet, as recited in the challenged '635 patent claims. Finally, the document identified in this exhibit, which post-date the filing of the '635 patent by several years, could not possibly bear on the state of the mind of a person of ordinary skill in the art as of the date of the

	claimed invention. FRE 701, 702: Patent Owner is seeking to admit this specialized evidence without supporting expert testimony or analysis. FRE 801, 802: To the extent Patent Owner relies on these exhibits for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions. FRE 901: Patent Owner offers no evidence in the form of authentication or identification that these exhibits are what they purport to be.
Ex. 2038 (<i>Cylinder</i> , Oxford English Dictionary)	FRE 401, 402, and 403: Relevance has not been established by Patent Owner and this definition has not been cited in Patent Owner's Response. FRE 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions. FRE 901: Patent Owner offers no evidence in the form of authentication or identification that this exhibit is what it purports to be.
Ex. 2040 (LifeScan P&L)	FRE 401, 402, 403: Patent Owner cites this exhibit as purported evidence related to alleged revenue information for lancets. However, this exhibit also appears to include data related to lancing devices and Patent Owner has not established how this exhibit is relevant to the patented invention, <i>i.e.</i>, the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. LifeScan objects to this Exhibit as lacking relevance under F.R.E. 401-402 because there is nothing in the record establishing that the Delica Plus Lancets reported on in this exhibit practice the challenging claims in the

	patent-at-issue in the present proceeding. Absent evidence that the lancets discussed in this exhibit actually embody the invention of the '635 patent, sales purporting to show advantages of those lancets have no relevance here. Moreover, even assuming that the lancets reported on in this exhibit embody the claimed invention of the '635 patent, there is nothing in the record establishing a nexus between the purported advantages of those lancets and the claimed proportions for the gripping handle of the lancet, as recited in the challenged '635 patent claims. Finally, the document identified in this exhibit, which post-date the filing of the '635 patent by several years, could not possibly bear on the state of the mind of a person of ordinary skill in the art as of the date of the claimed invention. FRE 701, 702: Patent Owner is seeking to admit this specialized evidence without supporting expert testimony or analysis. FRE 901: Patent Owner offers no evidence in the form of authentication or identification that this exhibit is what it purports to be.
Exs. 2044-45, 2050-51 (Asahi email exchanges; Asahi PowerPoint; Email exchanges between Facet and Asahi)	FRE 401, 402, 403: Patent Owner cites these exhibits as purported evidence related to copying allegations. Patent Owner has not established how these exhibits are relevant to the patented invention, <i>i.e.</i>, the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. FRE 801, 802: 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. FRE 901: Patent Owner offers no evidence in the form of authentication or identification that this exhibit is what it purports to be.
Exs. 2046-49	FRE 401, 402, 403: Patent Owner cites these exhibits as

(LifeScan, <i>OneTouch Delica Plus Lancing Device FAQ</i>; Lifescan, <i>Getting Started Guide: OneTouch Delica Plus Lancing Device</i>; LifeScan, <i>Lancets – 33 Gauge</i>; LifeScan, <i>Lancets – 30 Gauge</i>)	purported evidence of related to use of lancing devices. Patent Owner has not established how these exhibits are relevant to the patented invention, <i>i.e.</i>, the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. FRE 801, 802: 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.
Ex. 2052 (LifeScan Agreement)	FRE 401, 402, 403: Patent Owner cites this exhibit as purported evidence related to cross-compatibility theories. Patent Owner has not established how this exhibit is relevant to the patented invention, <i>i.e.</i>, the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value.
Ex. 2056 (Declaration of John Collins in Support of Patent Owner's Responses)	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. 2056 ¶¶ 60, 63-64, 66-67, 71-78, 82-84, 92-97, 105, 107, 111-112, 115-116, 117, 119-126, 128, 129-130, 135, 137-138, 144, 146-151, 152-154. FRE 702: Insufficient showing by Patent Owner that the declarant "is qualified as an expert by knowledge skill, experience, training, or education." FRE 703, 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. 2056 ¶¶ 60, 82-84, 92-97, 105, 107, 111-112, 115-116, 117, 128, 129-130, 135, 144, 152-154.
Ex. 2058 (Facet Supply Agreement)	FRE 401, 402, and 403: Patent Owner cites this exhibit as purported evidence of alleged copying. Patent Owner has not established how this exhibit is relevant to the patented invention, <i>i.e.</i> , the claimed lancet cap. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value.

Dated: December 27, 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 December 27, 2023 copies of this PETITIONER'S OBJECTIONS TO PATENT OWNER'S ALLEGED EVIDENCE SUBMITTED DECEMBER 19, 2023 were served via email to the counsel of record:

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Dated: December 27, 2023

/ Michael J. Lyons /
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