

Filed on behalf of: Facet Technologies, LLC

Entered: March 29, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.,
Petitioner,

v.

FACET TECHNOLOGIES, LLC,
Patent Owner.

IPR2023-00712
Patent 8,840,635

PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Facet Technologies, LLC submits the following objections to evidence submitted by Petitioner LifeScan, Inc. Patent Owner's objections apply equally to Petitioner's reliance on this evidence in any subsequently filed documents or further proceedings in this matter. These objections are timely, having been filed and served within five business days of service of evidence. Notwithstanding these objections, Patent Owner expressly reserves the right to rely on any evidence submitted by Petitioner, including on the ground that such evidence constitutes a party admission.

Objections

Exhibits 1034 (sealed version), 1039, 1046, 1056

Patent Owner objects to these exhibits as they were filed in violation of 37 C.F.R. § 42.51 relating to discovery procedures at the PTAB and in violation of the governing protective order in a district court proceeding. These exhibits contain information marked as Patent Owner's Highly Confidential – Attorney's Eyes Only produced in the district court case and subject to the protective order in that case. Petitioner never sought Patent Owner's agreement to use this information in this IPR proceeding and did not seek an order from the Board to produce this information in this IPR proceeding. Patent Owner reserves all rights in this IPR and in the district court to all remedies of these violations, including without limitation expunging these exhibits and all references thereto, as well as monetary sanctions.

Exhibits 1035, 1040-1043, and 1057-1059

Patent Owner objects to these exhibits as incomplete under FRE 106. For example, in Exhibit 1035 Petitioner cherry-picked 41 pages (1-9, 18-21, 46-53, 98-105, 126-129, and 138-145) and one exhibit (filed as Exhibit 1059) of a 178 page deposition transcript with several related but unfiled exhibits. Further, Petitioner filed Exhibit 1058 without associated exhibits discussed in the deposition and not already of record, including what are referred to as Exhibits 1041, 1042, and 1043 that do not correspond to the exhibits of record. Petitioner also filed Exhibits 1040-1043 as excerpts without allowing PO an opportunity to enter the entirety of these documents into the record. As PO has no further ability to file the full documents as of right, PO is prejudiced by the partial presentation of documents that in fairness ought to be considered in their entireties.

Exhibits 1034, 1044-1046

Patent Owner objects to these exhibits as inadmissible hearsay under FRE 801 and 802 not falling under any exception, and as improper expert testimony under FRE 702 and 703, to the extent they impermissibly act as a conduit for hearsay, including the hearsay objected to herein, and do not rely on the kinds of facts or data that experts in the relevant fields would reasonably rely on in forming an opinion on the subject without providing the underlying facts, data, and other required disclosures.

Patent Owner further objects to these exhibits for lack of foundation and lack of personal knowledge under FRE 602, and as improper lay testimony under FRE 701, to the extent they offer testimony in areas outside of Mr. Delman's, Mr. Hatch's and Mr. Rosenfarb's areas of expertise or fail to properly provide the underlying facts, data, and other required disclosures. Patent Owner further objects to these exhibits to the extent they rely on other inadmissible or excluded exhibits.

Exhibits 1039-1043, 1045, 1057

Patent Owner objects to these exhibits as not properly authenticated under FRE 901 because Petitioner has not presented sufficient evidence to show that they are authentic or self-authenticating under FRE 902. To the extent Petitioner relies on these documents for the truth of the matter asserted, Patent Owner objects to these exhibits as inadmissible hearsay under FRE 801 and 802 that do not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Exhibits 1038, 1047-1052

To the extent Petitioner relies on these exhibits for the truth of the matter asserted, Patent Owner objects to these exhibits as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805, or 807.

Respectfully submitted,

Dated: March 29, 2024

By: / S. Giri Pathmanaban /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 29th day of March, 2024, a true and correct copy of the foregoing **Patent Owner's Objections to Petitioner's Evidence** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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