

Served on behalf of: Facet Technologies, LLC

Served on: January 10, 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

**DECLARATION OF SUSAN Y. TULL IN RESPONSE TO PETITIONER'S
OBJECTIONS TO PATENT OWNER'S EXHIBITS**

I, Susan Y. Tull, do hereby declare as follows:

1. I am an attorney licensed by the District of Columbia and counsel in this proceeding. I am counsel at the law firm of Latham & Watkins LLP, and represent Facet Technologies, LLC. Unless otherwise stated expressly below, the facts set forth herein are known to me personally, and, if called as a witness, I could and would testify competently thereto.

2. Exhibit 2024 is a true and correct copy of the Deposition transcript of Gregory A. Lamps, *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal. May 25, 2023) (“Lamps Dep.”), marked by LifeScan’s counsel as CONFIDENTIAL.

3. Exhibit 2025 is a true and correct copy of the Deposition transcript of Joel Delman, *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal. July 7, 2023).

4. Exhibit 2026 is a true and correct copy of the BD Medical, *BD Ultra-Fine Lancets — A Difference You Can See and Feel* (June 2007), <https://www.bd.com/resource.aspx?IDX=4437> (English & French versions).

5. Exhibit 2027 is a true and correct copy of the Centers for Disease Control & Prevention (CDC), *Diabetes: Monitoring Your Blood Sugar* (CDC last review Dec. 30, 2022), <https://www.cdc.gov/diabetes/managing/managing-blood-sugar/bloodglucosemonitoring.html> (last visited Dec. 13.2023, 5:27 AM).

6. Exhibit 2028 is a true and correct copy of the Deposition transcript of Joel Delman, *LifeScan, Inc. v. Facet Techs., LLC*, IPR2023-00712 (P.T.A.B. Dec. 5, 2023).

7. Exhibit 2029 is a true and correct copy of the Bettina Barisch-Fritz et al., *Evaluation of the Rule-of-Thumb: Calculation of the Toe Allowance for Developing Feet*, FOOTWEAR SCI. 1 (2016), <https://www.tandfonline.com/doi/full/10.1080/19424280.2016.1144654>.

8. Exhibit 2030 is a true and correct copy of an excerpt of a Facet profit and loss statement, produced in *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal.) by Facet as FACET_532894.xlsx, and marked by Facet as HIGHLY CONFIDENTIAL – AEO.

9. Exhibit 2032 is a true and correct copy of the *Lateral*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/lateral> (last visited Dec. 10, 2023, 2:16 PM).

10. Exhibit 2033 is a true and correct copy of the *Lateral Orientation*, MEDLINEPLUS MED. ENCYC., <https://medlineplus.gov/ency/imagepages/9505.htm> (last visited Dec. 10, 2023, 2:49 PM).

11. Exhibit 2034 is a true and correct copy of the U.S. Food & Drug Administration (FDA) letter to James Bonds of Facet Technologies, LLC, dated July 15, 2022, Re: Trade/Device Name: Facet 28G Universal Lancet, Regulation

Number: 21 CFR 878.4850, Regulation Name: Blood Lancets, Regulatory Class: Class II, Product Code: QRK, QRL, Dated: May 16, 2022, Received: May 17, 2022.

12. Exhibit 2036 is a true and correct copy of the Mass. Inst. Tech. (MIT), Design And Manufacturing I, Undergraduate Course (Spring 2009), DESIGN HANDBOOK: ENGINEERING DRAWING AND SKETCHING, MIT (2001-2023).

13. Exhibit 2038 is a true and correct copy of the *Cylinder*, OXFORD ENGLISH DICTIONARY, OED.COM, https://www.oed.com/dictionary/cylinder_n?tab=meaning_and_use&tl=true#76211 09 (last visited Dec. 1, 2023, 7:38 PM)

14. Exhibit 2039 is a true and correct copy of the *Span*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/span> (last visited Dec. 10, 2023, 3:49 PM).

15. Exhibit 2040 is a true and correct copy of an excerpt of a LifeScan profit and loss statement (“P&L”), produced in *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal.) by LifeScan as LSI0000245820.xlsx, and marked by LifeScan as HIGHLY CONFIDENTIAL – AEO.

16. Exhibit 2041 is a true and correct copy of the *Thickness*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/thickness> (last visited Dec. 10, 2023, 2:23 PM).

17. Exhibit 2042 is a true and correct copy of the *Transverse*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/transverse> (last visited Dec. 10, 2023, 2:19 PM).

18. Exhibit 2043 is a true and correct copy of the *Anatomy of the Hand*, Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/anatomy-of-the-hand> (last visited Dec. 14, 2023, 10:01 AM).

19. Exhibit 2044 is a true and correct copy of the Asahi email exchanges produced by Asahi in *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal.) as ASA08257–8260 and marked by Asahi as CONFIDENTIAL.

20. Exhibit 2045 is a true and correct copy of the Asahi PowerPoint, produced by Asahi in *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal.), as ASA258968–258969 and marked HIGHLY CONFIDENTIAL – AEO by Asahi.

21. Exhibit 2050 is a true and correct copy of the Email exchanges between Facet and Asahi, produced in *Facet Techs., LLC v. LifeScan, Inc.*, No. 2:22-cv-01717 (C.D. Cal.) by LifeScan as LSI0000003603–3604, and marked CONFIDENTIAL by LifeScan.

22. Exhibit 2051 is a true and correct copy of the Email exchanges between Facet and Asahi, produced by LifeScan in *Facet Techs., LLC v. LifeScan*,

Inc., No. 2:22-cv-01717 (C.D. Cal.) as LSI0000003605–3607, and marked as CONFIDENTIAL by LifeScan.

23. Exhibit 2053 is a true and correct copy of the *Wire-Twist™Wire Connectors: Models WT1, WT2, WT3, WT4, WT6* (Product Fact Sheet), Ideal Industries, Inc.

24. Exhibit 2055 is a true and correct copy of an excerpt of Karl Warsi, SIMPLY MATHS 101 (Michael Clark et al. eds. 2022).

I declare under penalty of perjury under the laws of the United States of America, including fines and/or imprisonment under 18 USC 1001, that the foregoing is true and correct.

Executed this 8th day of January, 2024, in Washington, DC.

By: / Susan Y. Tull /
Susan Y. Tull

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 10th day of January, 2024, a true and correct copy of the foregoing **Declaration of Susan Y. Tull** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

Michael J. Lyons (Reg. No. 37,386)
Alexander B. Stein (Reg. No. 71,397)
Gerald W. Griffin (*pro hac vice* pending)
MORGAN, LEWIS & BOCKIUS LLP
1400 Page Mill Road
Palo Alto, CA, 94304
Tel.: 650.843.4000
Fax: 650.843.4001
Email: LifeScanFacetIPRs@morganlewis.com

By: / Jonathan M. Strang /

Jonathan M. Strang (Reg. No. 61,724)
jonathan.strang@lw.com
Latham & Watkins LLP
555 Eleventh Street, NW, Ste. 1000
Washington, DC 20004-1304
Telephone: 202.637.2200
Fax: 202.637.2201

*Counsel for Patent Owner
Facet Technologies, LLC*