

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM Enterprises, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owners

Case IPR2023-00726
Patent 9,066,958

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby submits its notice of objections to certain evidence that Patent Owners filed on June 29, 2023, in connection with the Patent Owners' Preliminary Response in IPR2023-00726.

Ex. No.	Description	Objections
EX 2004	Declaration of Chris Temovsky (June 28, 2023) (EX 2004) Declaration of Chris Temovsky (Dec. 14, 2016) (EX 2004, Ex. A, pp. 5–14) and accompanying exhibits. Third Declaration of Chris Temovsky (May 26, 2016) (EX 2004, Ex. B, pp. 65–75) and accompanying exhibits. Temovsky Exhibit C Temovsky Exhibit D	Plaintiffs object to this exhibit as an improperly combined document. 37 CFR § 42.63(d); 37 C.F.R § 42.6(3). FRE 602, 701, 802: Petitioner objects to the following because this testimony fails to provide sufficient evidence that the declarant has personal knowledge of the assertions therein. Petitioner objects in that the testimony is not based on firsthand knowledge or observation, is not helpful in resolving issues related to the grounds in the Petition, or is improper expert testimony within the scope of FRE 702. Petitioner also objects to the following because the testimony is hearsay or based upon hearsay: EX 2004, ¶¶ 5, 6, 8 EX 2004, Ex. A, ¶¶ 5, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, Ex. H.

Ex. No.	Description	Objections
		EX 2004, Ex. B, ¶¶ 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 33, 34, 35, 36, Ex. A (“The reason for the popularity of D-Drops may...”). EX 2004, Ex. C. EX 2004, Ex. D pp. 115–122 (“The reason for the popularity of D-Drops may...”), 137 (“Healthcare professionals have requested...”).
EX 2008	Declaration of Reinhold Vieth	FRE 602, 701, 802: Petitioner objects to the following because this testimony fails to provide sufficient evidence that the declarant has personal knowledge of the assertions therein. Petitioner objects in that the testimony is not based on firsthand knowledge or observation, is not helpful in resolving issues related to the grounds in the Petition, or is improper expert testimony within the scope of FRE 702. Petitioner also objects to the following because the testimony is based upon hearsay: EX 2008 ¶¶ 5, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33.

Ex. No.	Description	Objections
		FRE 702: Petitioner objects to EX 2008 to the extent the declarant purports to be an expert, as not demonstrating qualifications as an expert and as not being (1) based on sufficient facts or data, (2) the product of reliable principles and methods, (3) reliable application of the principles and methods to the facts and/or (4) lacking a disclosed basis of sufficient facts or data.
EX 2009	Declaration of Warren D. Woessner (June 29, 2023) (EX 2009) Declaration of Warren D. Woessner (December 22, 2016) (EX 2009, Ex. WW-A pp. 17–59) Preliminary Expert Report of Warren Woessner (Dec. 22, 2016, 2023) (EX 2009, Ex. WW-A, Ex. A, pp. 19–49) Second Declaration of Warren D. Woessner (May 23, 2017) (EX 2009, Ex. WW-B, pp. 60–118) Rebuttal Expert Report of Warren Woessner (Dec. 22, 2016, 2023) (EX 2009, Ex. WW-B, Ex. A, pp. 63–49)	Plaintiffs object to this exhibit as an improperly combined document. 37 CFR § 42.63(d); 37 C.F.R § 42.6(3) FRE 602, 701, 802: Petitioner objects to the following because this testimony fails to provide sufficient evidence that the declarant has personal knowledge of the assertions therein. Petitioner objects in that the testimony is not based on firsthand knowledge or observation, is not helpful in resolving issues related to the grounds in the Petition, or is improper expert testimony within the scope of FRE 702. Petitioner also objects to the following because the testimony is based upon hearsay: EX 2009 ¶¶ 13, 42, WW-A. EX 2009, Ex. WW-A, Ex. A. pp. 48–49.

Ex. No.	Description	Objections
	Declaration of Michael R. Mischnik (EX 2009, Ex. WW-B, Ex. A, Ex. C, pp. 97–106)	Declaration of Michael R. Mischnik (EX 2009, Ex. WW-B, Ex. A, Ex. C, pp. 97–106) Petitioner objects to testimony on U.S. patent law or patent examination procedure. 37 C.F.R. § 42.65. EX 2009, Ex. WW-A, Ex. B. pp. 24–30, 32–42. EX 2009, Ex. WW-B, Ex. A. pp. 70–82. FRE 702: Petitioner objects to the Declaration of Michael R. Mischnik (EX 2009, Ex. WW-B, Ex. A, Ex. C, pp. 97–106). The declarant purports to be an expert but does not demonstrate qualifications as an expert and the methods are not (1) based on sufficient facts or data, (2) the product of reliable principles and methods, (3) reliable application of the principles and methods to the facts and/or (4) lacking a disclosed basis of sufficient facts or data.

Date: September 29, 2023

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on September 29, 2023, a complete and entire copy of this Petitioner's Objections to Evidence was provided via email to the Patent Owner by serving the correspondence email address of record as follows:

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