

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 IPR 2023-00726
Patent 9,066,958

PATENT OWNERS' OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owners hereby submit their Notice of Objections to evidence that Petitioner filed on April 12, 2024, in connection with the Petitioner's Reply in IPR2023-00726.

TABLE OF OBJECTIONS

Exhibit Number/Paper	Objection(s)
Paper 74 Confidential Petitioners Reply to Patent Owners Response	Patent Owners object under 37 C.F.R § 42.23(b) as including information and citation not in response to arguments raised in Patent Owners' Response. Patent Owners object under 37 C.F.R § 42.23(b) as including information and citation presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) because it includes information and citation that is late submission of supplemental information filed without authorization.
Paper 75 Redacted Petitioners Reply to Patent Owners Response	See objections to Paper 74.

Exhibit Number/Paper	Objection(s)
Exhibit 1026 “Confidential_MOM_0006559”	FRE 801, 801 - hearsay (handwriting); FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition.
Exhibit 1027 “Confidential_MOM_0000011”	FRE 801, 802 - hearsay; FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition.

Exhibit Number/Paper	Objection(s)
Exhibit 1028 “Excerpts Caring for Your Baby”	FRE 801, 802 - hearsay; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1029 “MeSH Browser Postnatal Care”	FRE 801, 802 - hearsay; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - improperly combined document. Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1030 “Amazon Ddrops Organic Baby 400 IU 90 Drops”	FRE 801, 802 - hearsay; FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1031 “Archived Baby Ddrops”	FRE 801, 802 - hearsay; FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1032 “Amazon Ddrops Baby Tummy Relief”	FRE 401, 402, 403 - relevance and lack of probative value; FRE 901, 901 - no authentication; FRE 602 - no foundation. This exhibit relates to a different product than any relevant to the issues in his proceeding. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1034 “Target Mommy’s Bliss Baby Organic Vitamin D Drops”	FRE 801, 802 - hearsay. FRE 602 - no foundation; FRE 106 - incomplete document (many items blank or missing). Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1035 “Target Mommy’s Bliss Carton Label”	FRE 401, 402, 403 - relevance and lack of probative value; FRE 602 - no foundation. This exhibit has no relevance to the validity issues in this proceeding. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1040 Declaration of Dr. J. Usha Raj	Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1041 “Amazon Munchkin Soft Tip Infant Spoons”	FRE 801, 802 - hearsay; FRE 401, 402, 403 - relevance and lack of probative value; FRE 602 - no foundation; FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1042 “Excerpt from Random House Websters”	FRE 801, 802 - hearsay; FRE 401, 402, 403 - relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1043 “Excerpt from Collins German Dictionary”	FRE 801, 802 - hearsay; FRE 401, 402, 403 - relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1044 “Excerpt from Langenscheidt”	FRE 801, 802 - hearsay; FRE 401, 402, 403 - relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1045 “Google Translate webpage printout”	FRE 801, 802 - hearsay; FRE 401, 402, 403 - relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 – no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Exhibit Number/Paper	Objection(s)
Exhibit 1046 “Microsoft Bing Translate webpage printout”	FRE 801, 802 - hearsay; FRE 401, 402 – relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 - no foundation; FRE 106 - incomplete document. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.
Exhibit 1047 “Email from A. Anderson to Fish Re Ddrops”	FRE 401, 402, 403 – relevance and lack of probative value – counsel’s purported reasons for not taking a deposition are of no probative or relevant value in this proceeding.
Exhibit 1048 “A History of Infant Feeding”	FRE 801, 802 - hearsay; FRE 401, 402, 403, relevance and lack of probative value; FRE 901, 902 - no authentication; FRE 602 - no foundation. Patent Owners object under 37 C.F.R § 42.23(b) as not in response to arguments raised in Patent Owners’ Response. Patent Owners object under 37 C.F.R § 42.23(b) as presented in support of or advocating a new theory of unpatentability not in the Petition. Patent Owners object under 37 C.F.R § 42.123(b) to this evidence on the grounds that the evidence is late submission of supplemental information filed without authorization.

Dated: April 19, 2024.

Respectfully submitted,

/Mark E. Ungerman/

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Counsel for Patent Owners

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing Patent Owner's Objections is being served on April 19, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by electronic mail as directed by Petition upon the following counsel of record for Petitioners:

David B. Conrad
Lance E. Wyatt
Sarika Patel
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