UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MURRAY & POOLE ENTERPRISES LTD.,
Petitioner

v.

INSTITUT DE CARDIOLOGIE DE MONTREAL,
Patent Owner

IPR2023-01064
Patent No. 11,400,063

PETITIONER'S OBJECTIONS TO PATENT OWNER'S RESPONSE EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), the Petitioner Murray & Poole hereby makes the following objections to the Patent Owner's evidence provided with its Response (Paper 21) filed April 9, 2023.

Patent Owner filed its exhibit list as Exhibit 2053 but an exhibit list is not an exhibit and should be filed as a paper. *See* 37 C.F.R. § 42.63(e). The same applies to the exhibit list filed as Exhibit 2017.

Exhibits 2054–2074 do not comply with the label requirements of 37 C.F.R. § 42.63(d)(1)(ii) because the labels do not include the party names and IPR number.

Exhibit 2054 (Raju)

1. Murray & Poole objects to Exhibit 2054 under Rule 902 of the Federal Rules of Evidence because Exhibit 2054 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2054 is inadmissible.

Exhibit 2055 (Akodad)

2. Murray & Poole objects to Exhibit 2055 under Rule 902 of the Federal Rules of Evidence because Exhibit 2055 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2055 is inadmissible.

Exhibit 2056 (Tong)

3. Murray & Poole objects to Exhibit 2056 under Rule 902 of the Federal Rules of Evidence because Exhibit 2056 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2056 is inadmissible.

4. Murray & Poole objects to Exhibit 2056 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2056 was published after the priority date and the filing date of the challenged patent and yet Exhibit 2056 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 3. Thus, Exhibit 2056 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2056 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Exhibit 2057 (Nawabi)

5. Murray & Poole objects to Exhibit 2057 under Rule 902 of the Federal Rules of Evidence because Exhibit 2057 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2057 is inadmissible.

6. Murray & Poole objects to Exhibit 2057 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2057 was published after the priority date and the filing date of the challenged patent and yet Exhibit 2057 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 3. Thus, Exhibit 2057 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2057 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Exhibit 2058 (Thune)

7. Murray & Poole objects to Exhibit 2058 under Rule 902 of the Federal Rules of Evidence because Exhibit 2058 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2058 is inadmissible.

Exhibit 2059 (Merkler)

8. Murray & Poole objects to Exhibit 2059 under Rule 902 of the Federal Rules of Evidence because Exhibit 2059 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2059 is inadmissible.

Exhibit 2060 (Shristrava)

9. Murray & Poole objects to Exhibit 2060 under Rule 902 of the Federal Rules of Evidence because Exhibit 2060 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2060 is inadmissible.

Exhibit 2061 (Yusuf)

10. Murray & Poole objects to Exhibit 2061 under Rule 902 of the Federal Rules of Evidence because Exhibit 2061 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2061 is inadmissible.

Exhibit 2062 (BMJ)

11. Murray & Poole objects to Exhibit 2062 under Rule 902 of the Federal Rules of Evidence because Exhibit 2062 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2062 is inadmissible.

Exhibit 2063 (Judkins)

12. Murray & Poole objects to Exhibit 2063 under Rule 902 of the Federal Rules of Evidence because Exhibit 2063 is not self-authenticating and has not been

authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2063 is inadmissible.

Exhibit 2064 (Deftereos)

13. Murray & Poole objects to Exhibit 2064 under Rule 902 of the Federal Rules of Evidence because Exhibit 2064 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2064 is inadmissible.

Exhibit 2065 (Nidorf)

14. Murray & Poole objects to Exhibit 2065 under Rule 902 of the Federal Rules of Evidence because Exhibit 2065 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2065 is inadmissible.

15. Murray & Poole objects to Exhibit 2065 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2065 was published after the priority date of the challenged patent and yet Exhibit 2065 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 5. Thus, Exhibit 2065 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2065 might be considered relevant at all, its probative value is outweighed by countervailing considerations,

such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Exhibit 2066 (Nidorf)

16. Murray & Poole objects to Exhibit 2066 under Rule 902 of the Federal Rules of Evidence because Exhibit 2066 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2066 is inadmissible.

17. Murray & Poole objects to Exhibit 2066 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2066 was published after the priority date of the challenged patent and yet Exhibit 2066 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 5. Thus, Exhibit 2066 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2066 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Exhibit 2068 (Bouabdallaoui Decl.)

18. Murray & Poole objects to paragraph 4 of Exhibit 2068 under the Federal Rules of Evidence as lacking foundation.

19. Murray & Poole objects to paragraph 4 of Exhibit 2068 under Rules 402 and 403 of the Federal Rules of Evidence because whether or not Dr. Bouabdallaobui considers herself an inventor of the '063 Patent is irrelevant to the inventorship issue and the probative value of paragraph 4 is substantially outweighed by the danger of confusing the issues and wasting time in this compressed IPR proceeding. To the extent paragraph 4 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, undue delay, wasting time, and cumulativeness.

20. Murray & Poole objects to paragraph 8 of Exhibit 2068 under Rule 802 of the Federal Rules of Evidence as being and/or containing hearsay not subject to any exemptions or exceptions to the extent that paragraph 8 recounts out-of-court statements made between Dr. Bouabdallaoui and Dr. Tardif.

21. Murray & Poole objects to paragraph 10 of Exhibit 2068 under Rule 802 of the Federal Rules of Evidence as being and/or containing hearsay not subject to any exemptions or exceptions to the extent that paragraph 8 recounts out-of-court statements made between Dr. Bouabdallaoui and Dr. Tardif.

Exhibit 2069 (Record History)

22. Murray & Poole objects to Exhibit 2069 under Rule 902 of the Federal Rules of Evidence because Exhibit 2069 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2069 is inadmissible.

Exhibit 2070 (COPS Online)

23. Murray & Poole objects to Exhibit 2070 under Rule 902 of the Federal Rules of Evidence because Exhibit 2070 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2070 is inadmissible.

24. Murray & Poole objects to Exhibit 2070 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2070 was published after the priority date of the challenged patent and yet Exhibit 2070 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 25. Thus, Exhibit 2070 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2070 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Exhibit 2071 (Transcript of Dr. Ridker Deposition)

25. Murray & Poole objects to Exhibit 2071 under the Federal Rules of Evidence including Rule 902 because Exhibit 2071 is not a final transcript that has been reviewed and signed by the Dr. Ridker. Neither Dr. Ridker nor Murray & Poole was afforded an opportunity to review Exhibit 2071 and correct its errors. Therefore, Exhibit 2071 is inadmissible.

Exhibit 2072 (Ardehali Suppl. Decl.)

26. Because Exhibit 2072 incorporates all content of Exhibit 2001 filed on October 18, 2023, *see* Ex. 2072 ¶ 2, Murray & Poole repeats and incorporates herein by reference all its objections to Exhibit 2001 made in Paper 13 on January 30, 2024. Those objections now apply to Exhibit 2072.

27. Murray & Poole objects to paragraphs 26-28 of Exhibit 2072 under Rule 602 of the Federal Rules of Evidence because the witness lacks sufficient personal knowledge of the subject matter of that testimony. Specifically, Dr. Ardehali lacks personal knowledge regarding Dr. Bouabdallaobui's (or anyone else's) role in the COLCOT study or in conceiving the subject matter claimed in the '063 Patent.

28. Murray & Poole objects to paragraphs 26-28 of Exhibit 2072 under Rules 402 and 403 of the Federal Rules of Evidence because the statements and

opinions therein are irrelevant to the issues of who contributed what to the content of the Bouabdallaobui reference (Ex. 1005) and the probative value of those statements and opinions is substantially outweighed by the danger of confusing the issues and wasting time in this compressed IPR proceeding. To the extent those statements and opinions might be considered relevant at all, their probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, undue delay, wasting time, and cumulativeness.

Exhibit 2073 (Wilson)

29. Murray & Poole objects to Exhibit 2073 under Rule 902 of the Federal Rules of Evidence because Exhibit 2073 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2073 is inadmissible.

Exhibit 2074 (Lee)

30. Murray & Poole objects to Exhibit 2074 under Rule 902 of the Federal Rules of Evidence because Exhibit 2074 is not self-authenticating and has not been authenticated. Therefore, under Rule 901 of the Federal Rules of Evidence, Exhibit 2074 is inadmissible.

31. Murray & Poole objects to Exhibit 2074 under Rules 401–403 of the Federal Rules of Evidence as irrelevant. Exhibit 2074 was published after the

priority date and the filing date of the challenged patent and yet Exhibit 2074 is relied upon to establish information about the state of the art, while being legally irrelevant on the issue. Paper 21 at 4. Thus, Exhibit 2074 fails to make any fact of consequence more or less probable in this proceeding. To the extent Exhibit 2074 might be considered relevant at all, its probative value is outweighed by countervailing considerations, such as unfair prejudice, confusing the issues, misleading the Board, and wasting time.

Respectfully submitted,

Date: 2024 Apr. 16 By: /Kevin B. Laurence/

Kevin B. Laurence
Reg. No. 38,219
Backup Counsel for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2024, copies of the foregoing PETITIONER'S OBJECTIONS TO PATENT OWNER'S REPLY EVIDENCE and all documents filed with it were served via electronic mail, as agreed to by counsel, upon the following counsel for the Petitioner:

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