

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

10X GENOMICS, INC.,
Petitioner

v.

BRUKER SPATIAL BIOLOGY, INC.,
Patent Owner

Case IPR2023-01298
U.S. Patent No. 11,377,689

PETITIONER’S OBJECTIONS TO EVIDENCE

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioner, 10x Genomics, Inc. (“10x”), objects under the Federal Rules of Evidence (FRE) and 37 C.F.R. § 42.64(b)(1) to the admissibility of Exhibits 2006, 2008, 2015, 2051, and 2052 (the “Challenged Evidence”), filed by Patent Owner, Bruker Spatial Biology, Inc. (“Bruker”), on August 26, 2024, with Bruker’s Patent Owner’s Response. 10x’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within five business days of the August 26, 2024, Patent Owner’s Response. 10x files these Objections to provide notice to Bruker that 10x Genomics may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

I. IDENTIFICATION OF GROUNDS FOR OBJECTIONS

A. Exhibit 2006

Exhibit 2006 purports to be the “Declaration of Dr. David H. Sherman, Ph.D., in Support of Patent Owner’s Response.” 10x objects to paragraphs 1–20 and 29–34 of EX2006 under FRE 401–403. Bruker does not cite any of these paragraphs in its Patent Owner Response, rendering the testimony in these paragraphs irrelevant under FRE 401. 10x Genomics therefore objects to these paragraphs under FRE 402. 10x also objects to these paragraphs under FRE 403 because they have no probative value, create unfair prejudice to 10x, and will only confuse issues and waste the Board’s time.

10x also objects to paragraphs 35–82 and 91–122 of Exhibit 2006 under

FRE 702 because Dr. Sherman's testimony is not based on sufficient facts or data.

Thus, Dr. Sherman's testimony will not help the trier of fact understand the evidence or determine a fact in issue. *See* FRE 702; *see also*, 37 C.F.R. § 42.65.

Nor does the testimony in these paragraphs provide any probative value that would substantially outweigh its prejudicial effect.

B. Exhibit 2008

Exhibit 2008 purports to be a copy of U.S. Patent Application Publication No. 2016/0194701 A1. 10x objects to Exhibit 2008 under FRE 403 because it is duplicative with Exhibit 2052, which also purports to be a copy of U.S. Patent Application Publication No. US 2016/0194701 A1. Therefore, Exhibit 2008 has no probative value, will create unfair prejudice to 10x, and will only confuse issues and waste the Board's time. Additionally, Exhibit 2008 is 79 pages long, while Exhibit 2052 is 80 pages long. Therefore, 10x further objects to Exhibit 2008 under FRE 1001–1003.

C. Exhibit 2015

Exhibit 2015 purports to be "Brown, T.A., Ed., "Chapter 4: Studying DNA," Genomes, pp. 96–124, Second Edition, John Wiley & Sons, Inc., United States (2002)." 10x objects to Exhibit 2015 under FRE 1001–1003. For example, Exhibit 2015 contains faded text, cutoff text, a white text box on the lower-right of at least several pages, and other indicia that it is not original, or even a clean copy of the

original document. Exhibit 2015 is therefore not a “duplicate” as defined by FRE 1001(e) insofar as the exhibit is not “a copy . . . which accurately reproduces the original.” 10x further objects to Exhibit 2015 under FRE 1002 for failure to comply with the best evidence rule. Additionally, 10x objects to Exhibit 2015 as lacking authentication under FRE 901 because Bruker has failed to provide sufficient evidence indicating the origin of the document and has not provided sufficient information regarding its authenticity. 10x also objects to Exhibit 2015 under FRE 403 because it has no probative value, creates unfair prejudice to 10x, and will only confuse issues and waste the Board’s time.

D. Exhibit 2051

Exhibit 2051 purports to be a copy of U.S. Patent No. 11,008,607. 10x timely objected to Exhibit 2051 as lacking relevance (FRE 401–403) during the deposition of Dr. Paul Spellman. *See* EX2007, 104:12–15.

E. Exhibit 2052

Exhibit 2052 purports to be a copy of U.S. Patent Application Publication No. US 2016/0194701 A1. 10x timely objected to Exhibit 2052 as not being an original or acceptable duplicate (FRE 1001–1003) during the deposition of Dr. Spellman. *See* EX2007, 112:2–21.

II. CONCLUSION

10x's objections to the Challenged Evidence are timely. 10x therefore reserves the right to move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/David H Holman/

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Date: September 3, 2024

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PETITIONER'S OBJECTIONS TO EVIDENCE** was served in its entirety on September 3, 2024 upon the following parties via electronic mail:

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