

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 IPR2023-01300
U.S. Patent No. 11,473,142

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 2001 and 2002 (the “Challenged Evidence”), filed by Patent Owner, Bruker Spatial Biology, Inc. (“Bruker”), on January 4, 2024, with Bruker’s (at the time, NanoString’s) Patent Owner’s Preliminary Response to Petition for *Inter Partes* Review. 10x’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within ten business days of the Board’s September 5, 2024 Decision Granting Institution of *Inter Partes* Review. 10x files these Objections to provide notice to Bruker that 10x may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

I. IDENTIFICATION OF GROUNDS FOR OBJECTIONS

A. Exhibit 2001

Exhibit 2001 (“EX2001”) purports to be “USER Enzyme, <https://www.neb.com/en-us/products/m5505-user-enzyme>.” 10x objects to EX2001 under FRE 403 and 1001–1003 because it is an incomplete document; e.g., a portion of Figure 1 is missing; and the text under the headers—“Protocols, Manuals & Usage,” “Tools & Resources,” “FAQs & Troubleshooting,” “Citations & Technical Literature,” and “Quality, Safety & Legal”—is not displayed. *See, e.g.*, EX2001.001, 005. EX2001 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 accordingly objects to EX2001 under FRE 1002 for failure to

comply with the best evidence rule.

10x further objects to EX2001 under FRE 401–403 because Petitioner has not established that EX2001 is a prior-art publication to U.S. Patent No.

11,473,142 B2—rendering EX2001 irrelevant under FRE 401. 10x Genomics therefore objects to EX2001 under FRE 402. 10x also objects to EX2001 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.

Additionally, 10x objects to EX2001 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. EX2001 is not a self-authenticating document under FRE 902. 10x also objects to EX2001 under FRE 801–802 for containing inadmissible hearsay because Bruker improperly relies on EX2001 for the truth of the matter asserted. *See, e.g.*, Patent Owner’s Preliminary Response at 17. EX2001 does not fall under any of the hearsay exceptions, e.g., FRE 803–805 and 807.

B. Exhibit 2002

EX2002 purports to be “MEGAscript T7 Transcription Kit, <https://www.thermofisher.com/order/catalog/product/AM1333>.” 10x objects to EX2002 under FRE 403 and 1001–1003 because it is an incomplete document; e.g., the figures under the “Figures” header are not fully displayed; the text under

the “Frequently asked questions (FAQs)” header is not fully displayed; the “Specifications” table is not fully displayed; and the following embedded documents are not displayed: “Certificates,” “Safety Data Sheets,” “MEGAscript™ Kit Instruction Manual,” and “Protocol for Synthesizing Biotinylated aRNA.” *See, e.g.*, EX2001.001–006. EX2002 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 accordingly objects to EX2002 under FRE 1002 for failure to comply with the best evidence rule.

10x further objects to EX2002 under FRE 401–403 because Petitioner has not established that EX2002 is a prior-art publication to U.S. Patent No. 11,473,142 B2—rendering EX2002 irrelevant under FRE 401. 10x Genomics therefore objects to EX2002 under FRE 402. 10x also objects to EX2002 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.

Additionally, 10x objects to EX2002 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. EX2002 is not a self-authenticating document under FRE 902. 10x also objects to EX2002 under FRE 801–802 for containing inadmissible hearsay because Bruker improperly relies on EX2002 for the truth of the matter asserted.

See, e.g., Patent Owner's Preliminary Response at 17. EX2002 does not fall under any of the hearsay exceptions, e.g., FRE 803–805 and 807.

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,

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/David H. Holman/

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Date: September 19, 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 19, 2024, upon the following parties via electronic mail:

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