

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 2008, 2012, and 2016 (the “Challenged Evidence”), filed by Patent Owner, Bruker Spatial Biology, Inc. (“Bruker”), on November 20, 2024, with Bruker’s Patent Owner’s Response to Petition for *Inter Partes* Review (“Patent Owner’s Response”). 10x’s Objections are timely filed under 37 C.F.R. § 42.64(b)(1), within five business days of Bruker’s Patent Owner’s Response to Petition for *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 2008

EX2008 purports to be the “Declaration of Dr. David H. Sherman, Ph.D., in Support of Patent Owner's Response.” 10x objects to the following paragraphs in EX2008 under FRE 702 and 703 because Dr. Sherman relies on inadmissible evidence that experts in the field would not reasonably rely on in forming an opinion: *see* EX2008, paragraphs 22, 47, and 77–78. These paragraphs in EX2008 rely on inadmissible evidence (discussed above and below), such as EX2007 (which is not prior art), EX2012, and EX2016.

10x also objects to the following paragraphs in EX2008 under FRE 702 because Dr. Sherman’s testimony is not based on sufficient facts or data, nor is it the

product of reliable principles and methods: *see* EX2008, paragraphs 16–23, 27–29, 31–36, 39–45, 47–60, 62–68, 70–98, 101–107, 109–126—which, *e.g.*, provide unsupported assertions. 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.

B. Exhibit 2012

EX2012 purports to be “Zhao, S., et al., “Comparison of Stranded and Non-Stranded RNA-Seq Transcriptome Profiling and Investigation of Gene Overlap,” BMC Genomics, Vol. 16, No. 675 (2015).” 10x objects to EX2012 under FRE 403 and 1001–1003 because it is an incomplete document; *e.g.*, EX2012 does not include its supporting data and script, including—Additional file 1: Script 1, Tables S1–S3, and Figures S1–S3; and the raw sequencing reads submitted to the NCBI Sequence Read Archive under accession no. SRP056985. *See, e.g.*, EX2012.013. EX2012 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 EX2012 under FRE 1002 for failure to comply with the best evidence rule. 10x further objects to EX2012 as lacking authentication under FRE 901 because Bruker has not provided sufficient information regarding its authenticity.

10x also objects to EX2012 under FRE 801–802 for containing inadmissible hearsay because (1) Dr. Sherman relies on EX2012 for the truth of the matter

asserted, and its probative value in helping the factfinder does not outweigh its prejudicial effect. *See, e.g.*, EX2008, paragraphs 22, 47, and 78; and (2) Bruker relies on EX2012 for the truth of the matter asserted, and its probative value in helping the factfinder does not outweigh its prejudicial effect. *See, e.g.*, Patent Owner's Response at 43. EX2012 does not fall under any of the hearsay exceptions, *e.g.*, FRE 803–805 and 807.

C. Exhibit 2016

EX2016 purports to be “MEGAscript Kit User Guide, Ambion by Life Technologies, Publication No. 1330M, Revision G (Sept. 14, 2012).” 10x objects to EX2016 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. EX2016 is not a self-authenticating document under FRE 902.

10x also objects to EX2016 under FRE 801–802 for containing inadmissible hearsay because Dr. Sherman relies on EX2016 for the truth of the matter asserted, and its probative value in helping the factfinder does not outweigh its prejudicial effect. *See, e.g.*, EX2008, paragraph 77. EX2016 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,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/David H. Holman/

David H. Holman, Ph.D.
Registration No. 61,205
Lead Attorney for Petitioner

Date: November 27, 2024

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

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 November 27, 2024 upon the following parties via electronic mail:

Derek C. Walter (Lead Counsel)
Christopher M. Pepe (Back-up Counsel)
Edward R. Reines (Back-up Counsel)
Concord Cheung (Back-up Counsel)
WEIL, GOTSCHAL & MANGES LLP
derek.walter@weil.com
christopher.pepe@weil.com
edward.reines@weil.com
concord.cheung@weil.com
Nanostring.10X@weil.com

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/David H. Holman/

David H. Holman, Ph.D.
Registration No. 61,205
Lead Attorney for Petitioner

Date: November 27, 2024

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