

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPECTRUM SOLUTIONS L.L.C.
Petitioner,

v.

DNA GENOTEK INC.
Patent Owner.

Patent No. 11,536,632

Inter Partes Review No. IPR2023-01424

**PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH
THE PETITION FOR *INTER PARTES* REVIEW**

DNA Genotek Inc. (“DNA Genotek” or “Patent Owner”) hereby objects to the following evidence that was submitted by Spectrum Solutions L.L.C (“Spectrum” or “Petitioner”) with the Petition (“Pet.,” Paper 1) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), these objections are being timely filed and served within ten (10) business days of the institution of the trial by the Patent and Trial Appeal Board (“Board”), which is reflected in the Board’s Institution Decision dated March 26, 2024 (Paper 10).

A. Exhibit 1002 (Declaration of Karl R. Leinsing in Support of IPR of ’632 Patent)

DNA Genotek objects to Exhibit 1002 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. DNA Genotek further objects to Exhibit 1002 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Mr. Leinsing does not have personal knowledge (FRE 602), and to the extent that Mr. Leinsing’s opinions constitute unreliable expert testimony under FRE 702 and 703.

DNA Genotek objects to the portions of Exhibit 1002 not discussed or cited in the Petition as not being relevant to any issue on which trial has been instituted. Additionally, if the objected to material was not discussed or cited in the Petition, DNA Genotek has had no fair opportunity to respond to Petitioner’s unstated contentions (if any) regarding the same. Such information is irrelevant and its

consideration would be unfairly prejudicial to DNA Genotek. For example, at least paragraphs 1-28, 36, 40, 44-50, 54, 56-62, 174-175 of Exhibit 1002 were not cited or discussed in the Petition. Accordingly, at least those paragraphs of Exhibit 1002 are objected to as not being relevant to any issue in this IPR.

B. Exhibit 1005 (Certified Translation of Ueda Publication)

DNA Genotek objects to Exhibit 1005 under 37 C.F.R 42.63(b), which requires (1) a translation of the document into English and (2) an affidavit attesting to the accuracy of the translation to be filed with the document. The “Declaration of Natalia Lehmann” contained within this exhibit (pp. 15-16) does not function to authenticate the purported translation, and DNA Genotek therefore objects to Exhibit 1005 under Federal Rules of Evidence 901-903 and 37 C.F.R 42.63(b). For example, the “Declaration of Natalia Lehmann” references Exhibit A and Exhibit B, neither of which is attached.

DNA Genotek also objects to Exhibit 1005 as irrelevant, prejudicial, and misleading (Fed. R. Evid. 401-403) to the extent it is an inaccurate translation. For example, Exhibit 1005 appears to correct errors present in Exhibit 1006. *Compare* Ex. 1006 at 12 (“Fig. 3A”) *with* Ex. 1005 at 12 (“Fig. 4A”).

DNA Genotek additionally objects to Exhibit 1005 under Federal Rule of Evidence 604, because it neither identifies the interpreter who produced the

purported translation nor establishes that said interpreter was qualified to produce a true translation.

DNA Genotek further objects to Exhibit 1005 as incomplete under Federal Rule of Evidence 106. This exhibit is only part of a writing, which creates a “misleading impression created by taking matters out of context.” Fed. R. Evid. 106 advisory committee’s note.

C. Exhibit 1006 (Ueda Publication)

DNA Genotek objects to Exhibit 1006 as lacking foundation and lacking authentication under Federal Rules of Evidence 602 and 901-903. For example, Petitioner fails to offer evidence that the exhibit is what Petitioner claims it to be.

Genotek objects to this exhibit as containing hearsay to the extent that Spectrum attempts to rely on it to prove the truth of any matter described therein under Federal Rules of Evidence 801 and 802. For example, Spectrum fails to offer sufficient evidence that Exhibit 1006 was publicly accessible in its presented form as of the alleged publication date.

With reference to the objections to Exhibit 1005 set forth above, which are hereby incorporated by reference, DNA Genotek objects to Exhibit 1006 under 37 C.F.R 42.63(b), which requires (1) a translation of the document into English and (2) an affidavit attesting to the accuracy of the translation to be filed with the document. Exhibit 1006 does not itself contain a translation or an affidavit and, to

the extent Exhibit 1005 provides a translation or affidavit, Exhibit 1005 does not provide a true and accurate translation or an adequate affidavit. Exhibit 1005 is also itself objectionable. See Section B, above.

D. Exhibit 1008 (Prosecution History Excerpts of Application No. 17/510,003)

Patent Owner objects to Exhibit 1008 as lacking foundation and lacking authentication under Federal Rules of Evidence 602 and 901-903. For example, Petitioner fails to offer evidence that the exhibit is what Petitioner claims it to be. Patent Owner further objects to this exhibit as containing hearsay to the extent that Petitioner attempts to rely on it to prove the truth of the matter described therein under Federal Rules of Evidence 801-803. Patent Owner objects to this exhibit as being an incomplete copy under Federal Rule of Evidence 106. For example, as an incomplete copy of the entire prosecution history, this exhibit is only part of a writing, which creates a “misleading impression created by taking matters out of context.” Fed. R. Evid. 106 advisory committee’s note. Patent Owner also objects to this exhibit as not being relevant to any issue in this *inter partes* review and/or unduly prejudicial. See Fed. R. Evid. 401-403. Patent Owner further objects that this exhibit is not the original. See Fed. R. Evid. 1001-1008.

E. Exhibit 1013 (“Workbook for Designing, Implementing and Evaluating a Sharps Injury”)

Genotek objects to Exhibit 1013 as lacking foundation and lacking authentication under FRE 901. Genotek objects to this exhibit as containing hearsay to the extent that Spectrum attempts to rely on it to prove the truth of any matter described therein under Federal Rules of Evidence 801 and 802. For example, Spectrum fails to offer sufficient evidence that Exhibit 1013 was publicly accessible in its presented form as of the alleged publication date. Genotek further objects to Exhibit 1013 as incomplete and out of context (Fed. R. Evid. 106).

F. Exhibit 1014 (Injection Molding Handbook, Ch. 8 (3d ed. 2000))

Genotek objects to Exhibit 1014 as lacking foundation and lacking authentication under Federal Rule of Evidence 901. Genotek objects to this exhibit as containing hearsay to the extent that Spectrum attempts to rely on it to prove the truth of any matter described therein under Federal Rules of Evidence 801 and 802. For example, Spectrum fails to offer sufficient evidence that Exhibit 1014 was publicly accessible in its presented form as of the alleged publication date. Genotek further objects to Exhibit 1014 as incomplete and out of context (Fed. R. Evid. 106).

G. Exhibit 1015 (The Complete Part Design Handbook For Injection Molding Of Thermoplastics)

Genotek objects to Exhibit 1015 as lacking foundation and lacking authentication under Federal Rule of Evidence 901. Genotek objects to this exhibit

as containing hearsay to the extent that Spectrum attempts to rely on it to prove the truth of any matter described therein under Federal Rules of Evidence 801 and 802.

For example, Spectrum fails to offer sufficient evidence that Exhibit 1015 was publicly accessible in its presented form as of the alleged publication date.

Genotek further objects to Exhibit 1015 as incomplete and out of context (Fed. R. Evid. 106).

Date: April 9, 2024

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH THE PETITION FOR *INTER PARTES* REVIEW was served as of the below date on the Petitioner via e-mail (by agreement) to the following counsel of record:

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Dated: April 9, 2024

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