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On behalf of **Spectrum Solutions LLC**

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UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

SPECTRUM SOLUTIONS LLC

Petitioner

v.

DNA GENOTEK INC.

Patent Owner

IPR2023-01424

Patent 11,536,632

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

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Petitioner Spectrum Solutions L.L.C. (“Petitioner”) hereby opposes Patent Owner DNA Genotek Inc.’s (“PO”) Motion to Exclude.

PO objects to Exhibit 1013 (“CDC Workbook”) as “lacking foundation and lacking authentication under FRE901.” Motion at 1.¹ The CDC Workbook on its face is a document published by the Center for Disease Control and Prevention on the CDC’s website at https://www.cdc.gov/sharpssafety/pdf/sharpssworkbook_2008.pdf. Indeed, the CDC Workbook is self-authenticating as “[a] book, pamphlet, or other publication purporting to be issued by a public authority.” Fed. R. Evid. 902(5); *see Triplet Therapeutics, Inc. v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College*, PGR2021-00059 (PTAB, June 14, 2022), (Paper 16) at 11 (“[T]he website www.ncbi.nlm.nih.gov is an Internet publication issued by a public authority and therefore self-authenticating under Fed. R. Civ. R. 902(5).”). The CDC Workbook therefore “require[s] no extrinsic evidence of authenticity in order to be admitted.” Fed. R. Evid. 902.

¹ PO originally objected to Exhibit 1020 under two additional grounds: (1) as containing hearsay under FRE 801 and FRE 802; and (2) as incomplete and out of context under FRE 106. PO failed to advance these objections in the Motion to Exclude and has therefore waived them. *See* 37 C.F.R. § 42.64(c).

PO argues that Petitioner “fails to offer sufficient evidence that Exhibit 1013 was publicly accessible in its present form as of the alleged publication date.” Motion at 2. PO fails to acknowledge the ample evidence supporting the conclusion the CDC Workbook was publicly accessible before the challenged patent’s critical date. The URL indicates that the CDC Workbook was published in 2008, which predates the earliest priority date of the challenged ’632 patent by three years. Ex. 1001 (claiming priority to a June 19, 2011 provisional application). The Welcome section of the Workbook explains how the CDC made the Workbook *available to the public* to help prevent injuries from sharps:

Welcome to the CDC website on Sharps Safety. Here you will find the Workbook for Designing, Implementing and Evaluating a Sharps Injury Prevention Program, which has been developed by CDC to help healthcare facilities prevent needlesticks and other sharps-related injuries to healthcare personnel. *The Workbook is one part of a package of materials that is being made available on this website. ...* Thank you for visiting this site. CDC hopes that you will find this information helpful and that you will apply it in your healthcare setting.

Ex. 1013 at 2 (ii in original) (emphasis added). Moreover, Petitioner supplemented the record here in response to PO’s objections by serving Exhibit 1023, a printout of the Occupational Safety and Health Administration (OSHA) website. The OSHA website printout was authenticated by an attorney declaration. Ex. 1024. The OSHA website states, “The following references provide information regarding possible

solutions for blood borne pathogens and needlestick hazards.” The OSHA website then lists Exhibit 1013, among other references, as follows, specifically citing its 2008 publication date: “Workbook for Designing, Implementing, and Evaluating a Sharps Injury Prevention Program. Centers for Disease Control and Prevention (CDC), (2008).” Ex. 1023 at 1.

These facts and circumstances convincingly demonstrate the CDC Workbook was available to the public well prior to the 2011 priority date of the ’632 patent. The Workbook bears a 2008 date. The OSHA website references the workbook and specifically calls out its 2008 date. Both the CDC Workbook and the OSHA website indicate that the CDC Workbook was intended to provide the relevant public with helpful information to prevent injuries from sharps. Moreover, none of the references cited in the CDC workbook post-date 2008. Ex. 1013 at 63-74 (69-80 in original). The only reasonable conclusion based on the full record is that the CDC Workbook was publicly accessible prior to the ’632 priority date of 2011.

PO ignores the contents of the OSHA website and the CDC Workbook, which indicate a clear intent to inform the public in 2008, and argues only that the URL date of the CDC Workbook, like a copyright date, is insufficient to conclude it was publicly accessible as of 2008. But the argument ignores the full record, which plainly supports the conclusion the CDC Workbook was publicly accessible by the relevant date.

Moreover, even if the present scenario were analogous to cases involving the copyright date, multiple Board panels have relied upon copyright dates on prior art references in finding publications qualified as prior art. *See Arista Networks, Inc. v. Cisco Systems, Inc.*, IPR2016-00303, Paper 53 (May 25, 2017) at 17 (holding that a specification was prior art based on the indicia of publication provided by a copyright date on the specification and the totality of the facts supporting that the specification was published before the relevant critical date); *Ford Motor Co. v. Cruise Control Technologies, LLC*, IPR2014-00291, Paper 44 (June 29, 2015) at 10 (holding a document bearing a copyright notice was prior art based, in part, on its copyright notice); *FLIR Systems, Inc. v. Leak Surveys, Inc.*, IPR2014-00411, Paper 9 (September 5, 2014) at 18–19 (concluding copyright notice provided prima facie date for prior art).

PO's motion fails to provide *any* reason to doubt that the CDC Workbook was publicly accessible prior to the priority date of the '632 patent. In contrast, the date of the CDC Workbook, the date referenced in the OSHA website, the contents of both the workbook and the OSHA website showing the workbook was intended for public access to improve safety, and the lack of any references in the workbook post-dating 2008 all support that the workbook was publicly accessible before the priority date of the '632 patent. This conclusion is further supported by the fact the workbook's date pre-dates the '632 patent's priority date by three years, i.e. it is not

a close case.

PO similarly objects to Exhibit 1042. And for similar reasons, the Board should overrule PO's objection to the admissibility of Exhibit 1042. This commercial brochure bearing a 2001 copyright notice is a decade prior to the '632 patent's priority date. Petitioner referred to the document as a 2001 brochure when it was submitted, but the copyright notice was apparently lost when the exhibit was uploaded. After PO's objection, Petitioner corrected the error with Exhibit 1045. This version of the exhibit includes the copyright notice appearing on the bottom line of the last page of the exhibit. As reflected in the Board decisions cited above, such copyright notice supports a finding the document was available before the 2011 claimed priority of the '632 patent. Indeed, as the Board recognized in *Ford Motor*, the inference that a copyright notice provides evidence of a date of publication finds support in the understanding that such markings generally indicate the "first year of publication." *Ford Motor* at 8 citing Joseph S. Dubin, *The Universal Copyright Convention*, 42 Cal. L. Rev. 89, 103 (1954).

For the foregoing reasons, the Board should deny PO's Motion to Exclude Exhibits 1013 and 1042. Nonetheless, if the Board finds any defect in Exhibit 1013 or Exhibit 1042, the Board should accept Exhibits 1023, 1024, and 1045 as evidence that cures these defects, as explained above.

Dated: December 27, 2024

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e) and with the agreement of counsel for Patent Owner, a true and correct copy of **PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE** are being served electronically on December 27, 2024, to the e-mail addresses shown below:

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