

Filed: August 2, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFIC BIOSCIENCES OF CALIFORNIA, INC.,
Petitioner,

v.

THE CHINESE UNIVERSITY OF HONG KONG,
Patent Owner.

Case No. IPR2024-00028
Patent No. 11,091,794

PETITIONER'S SECOND OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.64(b)(1), Pacific Biosciences of California, Inc. (“Petitioner”) submits the following objections to the Chinese University of Hong Kong’s (“Patent Owner”) Exhibits 2033-2036 and 2038-2054.

Petitioner’s objections are made pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§42.61-42.65 and §42.6(a)(3). As required by 37 C.F.R. §42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Supplemental Declaration of Peter K. Koo (Exhibit 2041)

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 701, 702, 703 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 804, 805 (Hearsay Inadmissible).

Exhibit 2041 is the supplemental declaration of Dr. Peter K. Koo and is objected to in its entirety. Dr. Koo fails to provide a reasoned basis for his opinions. Moreover, Dr. Koo’s opinions are not the product of reliable principles and methods, and they rely on data from tests without an affidavit providing the explanations required by 37 C.F.R. §42.65(b). Moreover, Exhibit 2041 is not

relevant at least insofar as it contains numerous paragraphs not cited in Patent Owner's response, including at least paragraphs 1-22, 24-58, 61-76, 89-106, 108-126, 133, 152, 156, 163, and 166. To the extent exhibit 2041 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. Exhibit 2041 is further objected to under F.R.E. 801-805 as resting on statements constituting hearsay without satisfying any of the hearsay exceptions. Exhibit 2041 is further objected to as inadmissible hearsay not subject to any exception to the extent that Dr. Koo has not been made available for cross-examination in a manner complying with all rules governing this proceeding.

2. Exhibits 2033-2034

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons).

Exhibits 2033-2034 are copies of Notices of Deposition for Christophe Dessimoz and Mozhgan Novbakhtian. These Notices of Deposition are already in the record as Papers 12 and 13. Moreover, they are not cited in Patent Owner's response. Exhibits 2033-2034 are not relevant to the current proceedings, their probative value is minimal, and at a minimum they are needlessly cumulative.

3. Exhibits 2035-2036, 2045, 2047-2049, and 2056

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons).

Exhibits 2035-2036, 2045, 2047-2049, and 2056 are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Exhibits 2035-2036, 2045, 2047-2049, and 2056 have not been cited in Patent Owner's response and cannot be used to prove any fact relevant to resolution of this case. Further, to the extent any of exhibits 2035-2036, 2045, 2047-2049, and 2056 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time.

4. Exhibits 2038-2040, 2043-2044, 2046, 2050-2053

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons).

Exhibits 2038-2040, 2043-2044, 2046, 2050-2053 are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent any of exhibits 2038-

2040, 2043-2044, 2046, 2050-2053 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time.

5. Exhibit 2042

F.R.E. 106 (Remainder of or Related Writings or Recorded Statements);
Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402
(General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant
Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 901
(Authenticating or Identifying Evidence).

Petitioner objects to exhibit 2042 as lacking authentication under F.R.E. 901 because sufficient evidence has not been provided to establish the authenticity of the exhibit. Exhibit 2042 are not self-authenticating, and Patent Owner has failed to provide a sponsoring witness.

Exhibit 2042 appears to be a chapter from a book. Exhibit 2042 omits the remainder of this book, including material which, under F.R.E. 106, fairly ought to be considered at the same time as the provided chapter.

Exhibit 2042 is not relevant to the current proceedings, and its probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent exhibit 2042 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time.

6. Exhibit 2054

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 802 (Hearsay Inadmissible); F.R.E. 901 (Authenticating or Identifying Evidence).

Petitioner objects to exhibit 2054 as lacking authentication under F.R.E. 901 because sufficient evidence has not been provided to establish the authenticity of the exhibit. Exhibit 2054 is not self-authenticating, and Patent Owner has failed to provide a sponsoring witness.

Exhibit 2054 is not relevant to the current proceedings, and its probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Moreover, to the extent exhibit 2054 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. Exhibit 2054 is further objected to under F.R.E. 802 as containing statements constituting hearsay without satisfying any of the hearsay exceptions.

III. CONCLUSION

The aforementioned exhibits were submitted with Patent Owner's response. These objections are made within 5 business days of submission pursuant to 37 C.F.R. §42.64.

Respectfully submitted,

Dated: August 2, 2024

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Objections to Evidence was served on August 2, 2024, at the following electronic service addresses:

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Respectfully submitted,

Dated: August 2, 2024

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