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On behalf of **lululemon usa inc.**
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,

Petitioner,

v.

NIKE INC.,

Patent Owner.

Case No. IPR2024-00159
U.S. Patent No. 9,375,046

PETITIONER'S OBJECTIONS TO EVIDENCE
SERVED FEBRUARY 29, 2024

Pursuant to 37 C.F.R. § 42.64(b), Petitioner lululemon usa inc. objects to the admissibility of evidence submitted by Patent Owner Nike, Inc. with its Patent Owner Preliminary Response served on February 29, 2024. Petitioner reserves its rights to: (1) timely file a motion to exclude these objectionable exhibits or portions thereof; (2) challenge the credibility and/or weight that should be afforded to these exhibits, whether or not Petitioner files a motion to exclude the exhibits; and (3) cross-examine any Patent Owner's declarant within the scope of his or her direct testimony that is or relates to these exhibits, without regard to whether Petitioner has objected to the testimony or related exhibits or whether the testimony or related exhibits are ultimately found to be inadmissible.

Exhibit	Objections
2002	**FRE 602:** The declarant admits that he relied on his "knowledge and professional judgment." Ex. 2002 ¶ 10. However, insufficient evidence has been introduced to establish that the declarant has sufficient personal knowledge to support his opinions. This deficiency infects the declarant's entire testimony because he stated that all of his opinions are based on his knowledge. *Id.* **FRE 701-702:** The exhibit includes opinion testimony that does not comply with the requirements of FRE 701 and

Exhibit	Objections
	702. The testimony is not lay opinion testimony under FRE 701. With respect to FRE 702, the evidence does not establish that the declarant's opinions are (1) "based on sufficient facts or data," (2) "the product of reliable principles and methods," and that (3) "the expert has reliably applied the principles and methods to the facts of the case." Deficiencies in the declarant's analysis include, without limitation: (1) conclusory assertions unsupported by sufficient underlying facts, data, or reasoning, (2) reliance on allegedly known facts or alleged motivations not to combine without citation to contemporaneous evidence of what knowledge and motivation a POSA would have possessed at the relevant time; (3) reliance on his "knowledge and professional judgment," without any specific indication what portions of his analysis are based on his own knowledge, explanation how he obtained such knowledge, or evidence that a POSA would have possessed the knowledge at the relevant time; and (4) failure to

Exhibit	Objections
	consider evidence or factors necessary to an obviousness analysis. By way of example and not limitation, this objection applies to at least paragraphs 24 and 37-54 of the exhibit, and any other paragraph incorporating or referencing the foregoing paragraphs. **Reservation of Right to Move to Exclude Additional Testimony:** While Petitioner has attempted in good faith to identify example paragraphs to which the foregoing objections apply, the paragraph listings are not limiting. Dr. Pastore has not yet been deposed with respect to his declaration. It may become apparent, based on Dr. Pastore's deposition testimony, that the foregoing objections apply to additional paragraphs of the declaration. Petitioner reserves the right to move to exclude additional paragraphs based on the foregoing objections.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 7, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies service on the Patent Owner, pursuant to 37 C.F.R. § 42.6(e) and by agreement of counsel, by electronic (e-mail) delivery of a true copy of the foregoing **PETITIONER'S OBJECTIONS TO EVIDENCE SERVED FEBRUARY 29, 2024** is being served electronically on June 7, 2024, to the following Counsel for Patent Owner via the e-mail addresses shown below:

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