

Filed: August 5, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEURENT MEDICAL INC. & NEURENT MEDICAL LTD.
Petitioners,

v.

AERIN MEDICAL INC.,
Patent Owner.

Case IPR2024-00275
Patent 9,072,597 B2

PATENT OWNER'S OBJECTIONS TO PETITIONER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner submits the following objections to certain exhibits submitted by Petitioner. Patent Owner's objections apply equally to Petitioner's reliance on these exhibits in any previously-filed or subsequently-filed documents. These objections are timely, having been served within ten business days of the Board's decision to institute a trial in this proceeding. Patent Owner objects to the following exhibits:

Exhibit	Title
Ex. 1002	Declaration of Dr. John DelGaudio
Ex. 1008	Docket Navigator District of Delaware Statistics as of January 18, 2024
Ex. 1011	U.S. Patent No. 5,575,788
Ex. 1017	Chen et al., "Radiofrequency treatment of nasal posterior-under nerve, ethmoidal nerve and infratubinal for perennial allergic rhinitis under nasal endoscope," 11:3 China J. Endoscopy 239 (English translation)
Ex. 1040	Kong et al., "Clinical observation on radiofrequency ablation treatment in perennial allergic rhinitis" J. Clin Otorhinolaryngol (China) Vol. 19, No.5 (English translation)
Ex. 1056	Liang et al., Radiofrequency treatment of ethmoidal nerve with allergic rhinitis under nasal endoscopy, 13:8 J. Clin Otorhinolaryngol (China) 341 (English translation)
Ex. 1060	Andrew P. Lane, Nasal anatomy and physiology 12 Facial Plast Surg Clin N Am 387
Ex. 1071	Translator Declaration for Chen
Ex. 1072	Translator Declaration for Liang

Exhibit	Title
Ex. 1074	Translator Declaration for Kong

Exhibit 1002

Patent Owner objects to Exhibit 1002 under FRE 702 because opinions contained therein are conclusory and lack sufficient explanation. The opinions are not based on sufficient facts or data and are not the product of reliable principles and methods reliably applied to the facts of the case. *See* 37 C.F.R. § 42.65. To the extent that Exhibit 1002 purports to provide legal conclusions, Patent Owner objects under FRE 702. And until Petitioner offers the declarant for cross-examination, Exhibit 1002 is inadmissible hearsay. FRE 802.

Exhibits 1017, 1040, 1056, and 1060

Patent Owner objects to Exhibits 1017, 1040, 1056, and 1060 under FRE 901. Petitioner has not submitted sufficient evidence to authenticate these exhibits or to otherwise establish that they are what Petitioner claims them to be. Additionally, to the extent Petitioner relies on any one of Exhibits 1017, 1040, 1056, and 1060 for the truth of the matters they assert, including, without limitation, alleged publication or purported publication dates, Patent Owner objects to them as inadmissible hearsay. FRE 802.

Exhibits 1071, 1072, and 1074

Patent Owner objects to Exhibits 1071, 1072, and 1074 because they are translator declarations that do not establish that any of the translators are qualified to perform the provided translations. FRE 604, 702. And until Petitioner offers the declarants for cross-examination, Exhibits 1071, 1072, and 1074 are inadmissible hearsay. FRE 802.

Exhibits 1017, 1040, and 1056

Patent Owner objects to Exhibits 1017, 1040, and 1056 because they are English translations provided by translators who Petitioner has not established are qualified to provide these translations. In addition, multiple provided translations differ from other translations of record, as acknowledged by Petitioner's own witness, June Munford. Accordingly, the translations are prejudicial, confusing, and a waste of time. FRE 401-403, 604, 702.

Exhibits 1008, 1011, 1040, 1056, 1071, 1072, and 1074

The Petition fails to cite any portion of Exhibits 1008, 1011, 1040, 1056, 1071, 1072, and 1074. They are irrelevant, and their submission with the Petition is prejudicial, confusing, and a waste of time. FRE 401-403.

Respectfully submitted,

Dated: August 5, 2024

By: /Kathleen A. Daley/
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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

Lead Counsel for Patent Owner
Aerin Medical Inc.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on August 5, 2024, a copy of
PATENT OWNER'S OBJECTIONS TO PETITIONER'S EXHIBITS was
served upon the below-listed counsel by electronic mail:

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Dated: August 5, 2024

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