

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 IPR2024-00277
Patent 11,241,271 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. 1004	Declaration of Dr. Gregory Martin
Ex. 1013	WO 2010/077980
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. 1019	U.S. Patent App. No. 2007/0219600
Ex. 1023	Coste et al., Radiofrequency Is a Safe and Effective Treatment of Turbinate Hypertrophy, LARYNGOSCOPE, 111(5)
Ex. 1025	U.S. Patent No. 874,178
Ex. 1026	U.S. Patent No. 3,538,919
Ex. 1027	U.S. Patent No. 3,117,571
Ex. 1029	Arora et al., Cryodestruction of Vidian Nerve Branches, 32:3 Indian J. Otolaryngology 80

Exhibit	Title
Ex. 1031	Hytönen et al., Radiofrequency Thermal Ablation for Patients with Nasal Symptoms: A Systematic Review of Effectiveness and Complications, 266 EUR. ARCH. OTORHINOLARYNGOL
Ex. 1035	M. Philippon, Principles of Electrical Resistance of Living Tissue, BULL. CL. SCI. ACAD. R. BELG. ser. 5, vol. 7 (English translation)
Ex. 1037	Chung, Cough: Causes, Mechanisms and Therapy, Blackwell Publ'g Ltd
Ex. 1039	Banhiran, Quality of life in patients with chronic rhinitis after radiofrequency inferior turbinate reduction, J. Med Assoc Thai, Vol. 93 No.8
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. 1041	Snow, Blessed Days of Anesthesia (Oxford U. Press)
Ex. 1042	Bäck et al., Submucosal Bipolar Radiofrequency Thermal Ablation of Inferior Turbinates: A Long-Term Follow-up With Subjective and Objective Assessment, 112 LARYNGOSCOPE 1806
Ex. 1043	Ilgner et al., Feasibility of coblation versus laser resection in recurrent nasal polyps, 5686 PROC. OF SPIE 322
Ex. 1044	Lee et al., Surgical Management of Turbinate Hypertrophy in the Office: Three Mucosal Sparing Techniques, 12:2 OPERATIVE TECHNIQUES IN OTOLARYNGOLOGY—HEAD AND NECK SURGERY 107
Ex. 1046	U.S. Patent No. 3,941,121
Ex. 1047	U.S. Patent No. 4,271,848
Ex. 1048	Nomura et al., Distribution and Clinical Significance of Autonomic Nervous System in the Human Nasal Mucosa, 73 Acta Otolaryng 493

Exhibit	Title
Ex. 1049	Akiyoshi Konno, Historical, Pathophysiological, and Therapeutic Aspects of Vidian Neurectomy, 10 Curr Allergy Asthma Rep 105
Ex. 1050	Hong, Radiofrequency Ablation: Mechanism of Action and Devices, J. VASC. INTERV. RADIOL. 21
Ex. 1051	Haemmerich, Biophysics of Radiofrequency Ablation, CRITICAL REVIEWS IN BIOMEDICAL ENGINEERING, 38(1)
Ex. 1052	Sackenheim, Radio Frequency Ablation the Key to Cancer Treatment, J. DIAGNOSTIC MEDICAL SONOGRAPHY Vol.19, No. 2
Ex. 1053	Bronzino, Medical Devices and Systems, Chapter 63, The Biomedical Engineering Handbook 3E
Ex. 1054	Koyyalagunta et al., Radiofrequency and Cryoablation for Cancer Pain, TECHNIQUES IN REGIONAL ANESTHESIA & PAIN MANAGEMENT Vol.14
Ex. 1055	Fang et al., Nasal endoscopy combined with multiple radiofrequency for perennial allergic rhinitis, 25:7 J. First Mil Med Univ 876 (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. 1059	Chinese Patent No. 2225227 (English translation)
Ex. 1060	Andrew P. Lane, Nasal anatomy and physiology 12 Facial Plast Surg Clin N Am 387
Ex. 1062	Sedra et al., MICROELECTRONIC CIRCUITS (3d ed.) (Excerpts)
Ex. 1064	G.A.G. Mitchel, The Automatic Nerve Supply of the Throat, Nose, and Ear, 68(8) J. OF LARYNGOLOGY & OTOTOLOGY 495
Ex. 1066	U.S. Patent App. No. 2004/0230188

Exhibit	Title
Ex. 1070	Declaration of June Munford
Ex. 1071	Translator Declaration for Chen
Ex. 1072	Translator Declaration for Liang
Ex. 1073	Translator Declaration for Fang
Ex. 1074	Translator Declaration for Kong
Ex. 1075	Munford Appendices for Chen
Ex. 1076	Munford Appendices for Liang
Ex. 1077	Munford Appendices for Fang
Ex. 1078	Munford Appendices for Kong
Ex. 1079	Additional Appendices to Munford Declaration
Ex. 1080	Translator Declaration for Liang '227

Exhibits 1002 and 1004

Patent Owner objects to Exhibits 1002 and 1004 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 Exhibits 1002 and 1004 purport to provide legal conclusions, Patent Owner objects under FRE 702. And until Petitioner offers the declarants for cross-examination, Exhibits 1002 and 1004 are inadmissible hearsay. FRE 802.

Exhibits 1017, 1023, 1029, 1031, 1035, 1037, 1039, 1040-1044, 1048-1056, 1059, 1060, 1062, 1064, and 1075-1079

Patent Owner objects to Exhibits 1017, 1023, 1029, 1031, 1035, 1037, 1039, 1040-1044, 1048-1056, 1059, 1060, 1062, 1064, and 1075-1079 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, 1023, 1029, 1031, 1035, 1037, 1039, 1040-1044, 1048-1056, 1059, 1060, 1062, 1064, and 1075-1079 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 1071-1074 and 1080

Patent Owner objects to Exhibits 1071-1074 and 1080 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 1071-1074 and 1080 are inadmissible hearsay. FRE 802.

Exhibits 1017, 1035, 1040, 1055, 1056, and 1059

Patent Owner objects to Exhibits 1017, 1035, 1040, 1055, 1056, and 1059 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 1013, 1019, 1025-1027, 1029, 1035, 1039, 1046, 1047, 1050-1053, 1062, 1066, 1071, 1073, 1075, 1077, and 1079-1080

The Petition fails to cite any portion of Exhibits 1013, 1019, 1025-1027, 1029, 1035, 1039, 1046, 1047, 1050-1053, 1062, 1066, 1071, 1073, 1075, 1077, and 1079-1080. They are irrelevant, and their submission with the Petition is prejudicial, confusing, and a waste of time. FRE 401-403.

Exhibit 1070

Patent Owner objects to Exhibit 1070 to the extent it relies on other objectionable exhibits. Patent Owner also objects to Exhibit 1070 because it is unclear whether the declarant is being offered as an expert witness or a lay witness. To the extent she is being offered as a lay witness, her testimony is objectionable to the extent it is not based on her personal knowledge (FRE 602) and to the extent she is offering opinion testimony prohibited by FRE 701. To the extent she is being offered as an expert witness, Patent Owner objects 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 1070 purports to provide legal conclusions, Patent Owner objects under FRE 702. Exhibit 1070 addresses several topics that Petitioner has not established as being relevant to this IPR, so much of the exhibit is irrelevant, and its submission with the Petition is prejudicial, confusing, and a waste of time. FRE 401-403. And until Petitioner offers the declarant for cross-examination, Exhibit 1070 is inadmissible hearsay. FRE 802.

Respectfully submitted,

Dated: August 5, 2024

By: /Sonja W. Sahlsten/
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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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