Filed: August 6, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEURENT MEDICAL INC. & NEURENT MEDICAL LTD.
Petitioners,

v.

THE FOUNDRY, LLC,
Patent Owner.

Case IPR2024-00279
Patent 10,610,675 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. Nicolas Bu-Saba
Ex. 1006	Fang Chao-xin and Zhen Shao-Shao, Nasal endoscopy combined with multiple radiofrequency for perennial allergic rhinitis, 25(07) J. First Mil. Medic Univ. 876 (Translation)
Ex. 1023	U.S. Patent No. 10,894,011
Ex. 1041	Stedman's Medical Dictionary (27th ed.)
Ex. 1042	PDR Medical Dictionary (2nd ed.)
Ex. 1043	Kong Yonggang, Low-temperature plasma ablation of inferior turbinate for the treatment of perennial allergic rhinitis, 19(5) J Clin. Otorhinolaryngol 214 (Translation)
Ex. 1044	Chen Shi-qiang et al., Preliminary study on radiofrequency thermocoagulation of the posterior inferior nerve, anterior ethmoidal nerve, and inferior turbinate under nasal endoscopy for the treatment of perennial allergic rhinitis, 11(3) China Journal of Endoscopy 239 (Translation)
Ex. 1045	Liang Jianping, Radiofrequency treatment of ethmoidal nerve with allergic rhinitis under nasal endoscopy, 13(8) J Clin. Otorhinolaryngol 341 (Translation)
Ex. 1048	Stedman's Medical Dictionary (26th ed.)

Exhibit	Title
Ex. 1049	Webster's Third New International Dictionary
Ex. 1050	Seth Waxman, Correlative Neuroanatomy (23rd ed.)
Ex. 1051	Robert E. Windsor and Scott Jahnke, Sphenopalatine Ganglion Blockage: A Review and Proposed Modification of the Transnasal Technique, Pain Physician 7:283-286
Ex. 1052	Ralph Fenton, Current Evaluation of Nasopharyngeal Defense Mechanisms
Ex. 1054	M.M. L. Arora, Cryodestruction of Vidian Nerve Branches, 32:3 Indian J. Otolaryngology 80
Ex. 1063	U.S. Patent No. 4,411,266
Ex. 1064	Andrew Lane, Nasal anatomy and physiology, Facial Plast. Surg. Clin. N. Am. 12:387-395
Ex. 1065	Gray's Anatomy
Ex. 1070	Declaration of June Munford
Ex. 1071	Translator Declarations for Chen
Ex. 1072	Translator Declarations for Liang
Ex. 1073	Translator Declarations for Fang
Ex. 1074	Translator Declarations 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	Munford Appendices for Shanghai

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 1006, 1041-1045, 1048-1052, 1054, 1064, 1065, and 1075-1079

Patent Owner objects to Exhibits 1006, 1041-1045, 1048-1052, 1054, 1064, 1065, 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 1006, 1041-1045, 1048-1052, 1054, 1064, 1065, 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

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

Exhibits 1006 and 1043-1045

Patent Owner objects to Exhibits 1006 and 1043-1045 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 1023, 1041-1043, 1045, 1050, 1052, 1063, 1065, 1072, and 1074-1079

The Petition fails to cite any portion of Exhibits 1023, 1041-1043, 1045, 1050, 1052, 1063, 1065, 1072, and 1074-1079. 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 it is 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 6, 2024

By: /Kathleen A. Daley/

Kathleen A. Daley, Reg. No. 36,116
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

Lead Counsel for Patent Owner
The Foundry, LLC

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on August 6, 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 6, 2024

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