UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JEISYS MEDICAL INC.,
Petitioner,

v.

SERENDIA, LLC
Patent Owner.

Case No. IPR2024-00463
U.S. Patent No. 10,869,812

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE

As provided by 37 C.F.R. § 42.64(b)(1), Petitioner Jeisys Medical Inc. hereby submits the following objections to evidence submitted by Patent Owner Serendia, LLC with its Response (Paper 29). To the extent Patent Owner subsequently relies on any of the evidence addressed herein, the objections set forth below shall continue to apply. In addition, Petitioner's Objections to Patent Owner's Evidence filed on September 3, 2024 (Paper 23) are incorporated herein by reference and shall continue to apply. These objections are timely served and filed within five business days of service of the evidence. 37 C.F.R. § 42.64(b)(1). Notwithstanding the objections set forth herein, Petitioner expressly reserves the right to rely on any evidence submitted by Patent Owner, including on the ground that such evidence constitutes a party admission.

A. Exhibits 2038, 2039, 2040, and 2079

Petitioner objects to:

- Exhibit 2038 (ViOL Patent List (Dec. 1, 2023), https://violmedical.com/about/patent);
- Exhibit 2039 (Sylfirm X video);
- Exhibit 2040 (Transcript of Exhibit 2039 – Sylfirm X Video); and
- Exhibit 2079 (Sylfirm X (product information), ViOL (2022), https//viol medical.com/for_providers/product?idx= 10 (last visited Feb. 25, 2023))

as inadmissible hearsay and hearsay within hearsay under Federal Rules of Evidence (FRE) 801, 802, 803, and 805 not falling under any exception.

Petitioner further objects to Exhibits 2038, 2039, 2040, and 2079 under FRE 901 and 902 because each lacks foundation, is not authenticated, and is not self-authenticating.

Petitioner further objects to Exhibits 2038, 2039, 2040, and 2079 as not relevant under FRE 402. To the extent any of the exhibits is relevant, its probative value is outweighed by the danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence, and therefore is inadmissible under FRE 403.

B. Exhibit 2147

Petitioner objects to Exhibit 2147 (Declaration of Peter Crosby in Support of Patent Owner's Response, dated November 12, 2024) ("Crosby Decl.") under FRE 701-703 to the extent it contains improper expert testimony under FRE 702 and 703. Such testimony includes testimony based on conclusory statements and/or mischaracterizations of the patent, the state of/level of skill in the art, the cited prior art references, and/or any motivation to combine the references. Objectionable testimony also includes that which is not based on sufficient facts or data and that ignores relevant facts or data, is irrelevant, is not based on a reliable foundation, constitutes conclusory opinion without sufficient support, and/or does

not reliably apply the appropriate principles and methods to the facts of the case. *See also Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579 (1993). Objectionable testimony further includes improper lay testimony under FRE 701 to the extent testimony is not based on scientific, technical, or other specialized knowledge within the scope of FRE 702 and the witness is not otherwise competent to provide such testimony.

Mr. Crosby's opinions (e.g., paragraphs 57, 100, 105, 121, and 148) characterizing the alleged testimony of other witnesses, namely, Drs. Berube, and Woloszko, are not proper admissible evidence under FRE 703. This is the province of the factfinder.

Petitioner further objects to Exhibit 2147 as inadmissible hearsay under FRE 801, 802, and 803 not falling under any exception, and as inadmissible hearsay-within-hearsay under FRE 805.

Petitioner further to Exhibit 2147 under FRE 401 and 402 to the extent the exhibit contains analysis or opinions that are not relevant and/or not relied upon by Patent Owner.

C. Exhibit 2148

Petitioner objects to Exhibit 2148 (Deposition transcript of Jean Woloszko, M.D., Ph.D., *In re Certain Dermatological Treatment Devices & Components Thereof*, No. 337-TA-1356 (U.S.I.T.C.), taken September 15, 2023) under FRE

106 and 403 insofar as it is an incomplete excerpt and excludes relevant evidence, causing unfair prejudice and/or confusion of the issues. Petitioner reserves the right to require the introduction into evidence of any other part of the original material excerpted, or any other statement, that in fairness ought to be considered at the same time.

Petitioner preserves and restates its objections to specific portions of Dr. Woloszko's cross-examination testimony taken during the deposition. To the extent Patent Owner has relied or will rely on portions of the testimony that were objected to during the deposition, Petitioner maintains those objections and the grounds for such objections.

Petitioner further objects to Exhibit 2148 as inadmissible hearsay under FRE 801, 802, and 803 not falling under any exception.

Petitioner further objects to Exhibit 2148 as not relevant under FRE 402. To the extent it is relevant, its probative value is outweighed by the danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence, and therefore is inadmissible under FRE 403.

D. Exhibits 2149, 2150, 2151, 2152, and 2153

Petitioner objects to:

- Exhibit 2149 (Primāeva Medical, Inc., Miratone Brochure (2009) (Bates nos. Berube-0000004-0000007));
- Exhibit 2150 (Primāeva Medical, Inc., Primāeva Miratone System User Manual (Bates nos. Berube-0001098–0001136));
- Exhibit 2151 (Primāeva Medical, Inc., Miratone System Instructions for Use (Bates nos. Berube-0001071–0001097));
- Exhibit 2152 (VCF Staff, Syneron Medical Buying Primaeva Medical, VENTURE CAP. J. (Oct. 16, 2009), https://www.venturecapitaljournal.com/syneron-medical-buying-primaeva-medical/)); and
- Exhibit 2153 (Primāeva Medical, Inc., K082391 510(k) Summary (Aug. 24, 2009) and letter from Mark N. Melkerson, Department of Health & Human Services, Food & Drug Administration to Brian Grigsby, Primāeva Medical, Inc. (Sept. 1, 2009), https://www.accessdata.fda.gov/cdrh_docs/pdf8/K082391.pdf)

as inadmissible hearsay and hearsay within hearsay under FRE 801, 802, 803, and 805 not falling under any exception.

Petitioner further objects to Exhibits 2149, 2150, 2151, 2152, and 2153 under FRE 901 and 902 because each lacks foundation, is not authenticated, and is not self-authenticating.

Petitioner further objects to Exhibits 2149, 2150, 2151, 2152, and 2153 as not relevant under FRE 402. To the extent any of the exhibits is relevant, its probative value is outweighed by the danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence, and therefore is inadmissible under FRE 403.

E. Exhibit 2154

Petitioner objects to Exhibit 2154 (Deposition transcript of Jean Woloszko, M.D., Ph.D., *Jeisys Medical Inc. v. Serendia, LLC*, IPR2024-00463, taken October 24, 2024) as inadmissible hearsay under FRE 801, 802, and 803 not falling under any exception.

Petitioner preserves and restates its objections to specific portions of Dr. Woloszko's cross-examination testimony taken during the deposition. To the extent Patent Owner has relied or will rely on portions of the testimony that were objected to during the deposition, Petitioner maintains those objections and the grounds for such objections.

Petitioner further objects to Exhibit 2154 as not relevant under FRE 402. To the extent it is relevant, its probative value is outweighed by the danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence, and therefore is inadmissible under FRE 403.

Respectfully submitted,

Date: November 20, 2024

/s/ Wesley O. Mueller
Wesley O. Mueller (Reg. No. 33,976)
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of this Petitioner's Objections to Patent Owner's Evidence was served via electronic email on Patent Owner's counsel of record listed below, pursuant to its January 26, 2024 Mandatory Notices, on November 20, 2024:

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