

Petitioner's Objections to Patent Owner's Evidence
U.S. Patent No. 10,869,812 | IPR2024-00463

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENDYMED MEDICAL LTD. AND ENDYMED 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 EndyMed Medical Ltd. and EndyMed Medical, Inc. ("EndyMed") submits the following objections to evidence submitted by Patent Owner Serendia, LLC with its Sur-Reply (Paper 47). In addition, Petitioner's Objections to Patent Owner's Evidence filed on September 3, 2024 (Paper 23) and November 20, 2024 (Paper 32) 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).

I. Exhibit 2157

Though Exhibit 2157 (Deposition transcript of Jean Woloszko, Ph.D., EndyMed Medical Ltd. and EndyMed Medical, Inc., Case Nos. IPR2024-00383, IPR2024-00384, IPR2024-00463, taken May 16, 2025) is the cross-examination deposition transcript of Petitioner's expert, Dr. Jean Woloszko, Petitioner objects to all portions of Exhibit 2157 that describe, relate to, or rely upon Exhibits 2158 and 2159, which are documents identified and marked by Patent Owner for the first time during Dr. Woloszko's deposition but never previously filed as exhibits in this proceeding, as non-compliant with 37 C.F.R. § 42.23(b). Exhibit 2157, at 61:19-103:9. Petitioner's counsel timely objected to these documents during Dr. Woloszko's deposition. An example of objectionable portions of Exhibit 2157

include, but are not limited to Patent Owner's reliance on page 99, line 180¹ to page 100, line 8, page 102, line 19 to page 103, line 9, and page 212², of Exhibit 2157 as not being compliant with 37 C.F.R. § 42.23(b). Paper 47, at 1, 11. The cited sections of Exhibit 2157 are Patent Owner's counsel asking Dr. Woloszko to read Exhibits 2158 and 2159, discussed below, and confirm what these unadmitted documents say into the record. Petitioner further objects to this evidence under FRE 401/402(lack of relevance), FRE 403 (danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence), and FRE 802 (hearsay).

To the extent Patent Owner argues that it is citing to page 99, line 180 to page 100, line 8, page 102, line 19 to page 103, line 9, and page 212 of Exhibit 2157 only to impeach Dr. Woloszko, Petitioner further objects to the evidence as improper impeachment evidence. As explained above, Patent Owner's sur-reply cites to Patent Owner's counsel having Dr. Woloszko read passages of unadmitted

¹ There are only 22 lines on page 99 of Exhibit 2157. Petitioner assumes Patent Owner meant to cite Exhibit 2157, 99:18-100:8.

² Exhibit 2157 does not have 212 pages. Petitioner assumes Patent Owner is citing to a portion of Exhibit 2157 that relates to questioning about page 212 of Exhibit 2158.

documents, Exhibits 2158 and 2159, and paraphrase those passages into the record for its substance. Dr. Woloszko did not author these documents, they are not Dr. Woloszko's prior testimony, and Dr. Woloszko had never seen the unadmitted documents before or adopted any portion of them. Thus, neither the unadmitted documents nor Dr. Woloszko's testimony regarding these unadmitted documents can serve as proper impeachment of Dr. Woloszko.

II. Exhibits 2158-2159

Petitioner objects to Patent Owner's citation of Exhibit 2158 (the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, dated December 19, 2024), and Exhibit 2159 (the Notice of Commission Determination to Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and On Remedy, the Public Interest, and Bonding) as not being compliant with 37 C.F.R. § 42.23(b).

Patent Owner relies on Exhibit 2158, generally, and pages 203-204 and 206-208, specifically, regarding the Administrative Law Judge's ("ALJ") findings on the construction of the desired distance limitation (Paper 47 at 1-3, 8-9), relies on Exhibit 2158, generally, and pages 198, 200, 205-209, 212, and 231, specifically, regarding the ALJ's findings regarding the prior art, Mehta (Paper 47 at 3, 5-9, 11),

and relies on page 267 of Exhibit 2158 regarding the ALJ's findings regarding the prior art, Na '848 (Paper 47 at 16).

Patent Owner relies on Exhibit 2159 for the assertion of that the ITC "Commission is not reviewing the ALJ's validity determinations." (Paper 47 at 1).

Exhibits 2158 and 2159 were not previously filed as exhibits in this proceeding. Submitting Exhibits 2158 and 2159 as exhibits with Patent Owner's sur-reply violates 37 C.F.R. § 42.23(b), which states a sur-reply "may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." This is an improper attempt to skirt 37 C.F.R. § 42.23(b), and Petitioner objects on this basis. Petitioner further objects to this evidence under FRE 401/402(lack of relevance), FRE 403 (danger of causing unfair prejudice, confusing the issues, causing undue delay, wasting time, and/or needlessly presenting cumulative evidence), and FRE 802 (hearsay).

To the extent Patent Owner argues that it is citing to Exhibits 2158 and 2159 only to impeach Dr. Woloszko, Petitioner further objects to the evidence as improper impeachment evidence. As discussed below, Patent Owner's sur-reply cites to Exhibit 2158 for the Administrative Law Judges findings, and cites to Exhibit 2159 for the assertion of that the ITC "Commission is not reviewing the ALJ's validity determinations." Dr. Woloszko did not author Exhibits 2158 and 2159, they are not Dr. Woloszko's prior testimony, and Dr. Woloszko had never

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

seen Exhibits 2158 and 2159 before or adopted any portion of them. Thus, these cannot serve as proper impeachment of Dr. Woloszko.

Respectfully submitted,

Date: June 3, 2025

/ Guy Yonay /
Guy Yonay
Registration No. 52,388

CERTIFICATE OF SERVICE

I hereby certify that a complete copy of the attached Petitioner's Objections to Patent Owner's Evidence, is being served via electronic mail, on June 3, 2025, the same day as the filing of the above-identified document in the USPTO with the Patent Trial and Appeal Board, to lead and back-up counsel of record for Patent Owner, pursuant to its November 27, 2024 Updated Mandatory Notices, as follows:

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Date: June 3, 2025

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