

Filed on behalf of ST Reproductive Technologies, LLC.
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Paper No. 29
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMAXTEC INC. and
SMAXTEC ANIMAL CARE GMBH,
Petitioners

v.

ST REPRODUCTIVE TECHNOLOGIES, LLC,
Patent Owner

Case IPR2024-00885
Patent No. 8,823,515

**ST REPRODUCTIVE TECHNOLOGIES, LLC'S
OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner ST Reproductive Technologies, LLC (“Patent Owner”) objects to the admissibility of Exhibits 1040 through 1058, which were submitted by Petitioners along with Paper No. 28 (“Reply”). Patent Owner’s objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five business days of service of the Reply and its attached exhibits. Patent Owner’s objections provide notice to Petitioners that Patent Owner may move to exclude these exhibits under 37 C.F.R. § 42.64(c).

I. EXHIBIT 1040

Exhibit 1040 is a copy of an excerpt from Chapter 6 of a book titled “Applied Linear Statistical Models.”

Patent Owner objects to 1040 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Furthermore, Patent Owner objects to Exhibit 1040 under Fed. R. Evid. 106. The exhibit appears to be an excerpt of a document and, therefore, is incomplete. Accordingly, Patent Owner objects to the use of the exhibit to the extent it does not include all statements or recorded parts that in fairness ought to be considered at the same time.

Patent Owner also objects to Exhibit 1040 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy. Moreover, the exhibit contains only a partial excerpt of the document, and the full context of the document is needed to verify the document’s authenticity. Petitioners have not provided the complete document or any additional information establishing that the excerpt is an accurate and unaltered representation of the original source.

Patent Owner also objects to Exhibit 1040 because Petitioners have not shown that Exhibit 1040 pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, Exhibit 1040 does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to

conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

II. EXHIBIT 1041

Exhibit 1041 is an excerpt from a book titled “Multivariate Data Analysis.”

Patent Owner objects to Exhibit 1041 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Furthermore, Patent Owner objects to Exhibit 1041 under Fed. R. Evid. 106. The exhibit appears to be an excerpt of a document and, therefore, is incomplete. Accordingly, Patent Owner objects to the use of the exhibit to the extent it does not include all statements or recorded parts that in fairness ought to be considered at the same time.

Patent Owner also objects to Exhibit 1041 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a

true and correct copy. Moreover, the exhibit contains only a partial excerpt of the document, and the full context of the document is needed to verify the document's authenticity. Petitioners have not provided the complete document or any additional information establishing that the excerpt is an accurate and unaltered representation of the original source.

Patent Owner also objects to Exhibit 1041 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

III. EXHIBIT 1042

Exhibit 1042 is an article titled “Automatic Health and Oestrus Control in Dairy Husbandry through Computer Aided Systems.”

Patent Owner objects to Exhibit 1042 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1042 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

Patent Owner also objects to Exhibit 1042 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the

matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

IV. EXHIBIT 1043

Exhibit 1043 is a copy of U.S. Patent Application Publication US2003/0121972.

Patent Owner objects to Exhibit 1043 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

V. EXHIBIT 1044

Exhibit 1044 is a copy of a webpage titled “Help Google Search know the best date for your web page.”

Patent Owner objects to Exhibit 1044 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1044 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because

Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

To the extent Petitioners rely on any statement in Exhibit 1044 as evidence to prove the truth of the matter asserted, such statement is hearsay under Fed. R. Evid. 801 and therefore inadmissible under Fed. R. Evid. 802. For example, Patent Owner objects to Exhibit 1044 to the extent they rely on it to for the truth of the assertion that “[s]ometimes, Google shows dates next to listings in its search results” or that such dates are a “best estimate of when a page was published or significantly updated.” Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Permitting Petitioners to rely on the exhibit would be misleading and unfairly prejudicial to Patent Owner under Fed. R. Evid. 403.

VI. EXHIBIT 1045

Exhibit 1045 is a copy of U.S. Patent No. 6,342,242.

Patent Owner objects to Exhibit 1045 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

VII. EXHIBIT 1046

Exhibit 1046 is a copy of U.S. Patent No. 5,069,160.

Patent Owner objects to Exhibit 1046 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

VIII. EXHIBIT 1047

Exhibit 1047 is a copy of U.S. Patent No. 3,642,218.

Patent Owner objects to Exhibit 1047 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

IX. EXHIBIT 1048

Exhibit 1048 is an article titled “Determinants of Estrous Behavior in Lactating Holstein Cows.”

Patent Owner objects to Exhibit 1048 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1048 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not

explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

Patent Owner also objects to Exhibit 1048 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

X. EXHIBIT 1049

Exhibit 1049 is an article titled “Relationship Between Level of Milk Production and Multiple Ovulations in Lactating Dairy Cows.”

Patent Owner objects to Exhibit 1049 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1049 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

Patent Owner also objects to Exhibit 1049 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is

outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

XI. EXHIBIT 1050

Exhibit 1050 is an article titled “Milk Loss and Treatment Costs Associated with Two Treatment Protocols for Clinical Mastitis in Dairy Cows.”

Patent Owner objects to Exhibit 1050 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1050 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

To the extent Petitioners rely on any statement in Exhibit 1050 as evidence to prove the truth of the matter asserted, such statement is hearsay under Fed. R. Evid. 801 and therefore inadmissible under Fed. R. Evid. 802. For example, Patent Owner objects to Exhibit 1050 to the extent they rely on it to for the truth of the

assertion that medicated animals are in fact milked or that the yield of discarded milk is in fact measured. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Permitting Petitioners to rely on the exhibit would be misleading and unfairly prejudicial to Patent Owner under Fed. R. Evid. 403.

Patent Owner also objects to Exhibit 1050 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

XII. EXHIBIT 1051

Exhibit 1051 is an article titled “Economics of feeding pasteurized colostrum and pasteurized waste milk to dairy calves.”

Patent Owner objects to Exhibit 1051 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1051 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

To the extent Petitioners rely on any statement in Exhibit 1051 as evidence to prove the truth of the matter asserted, such statement is hearsay under Fed. R. Evid. 801 and therefore inadmissible under Fed. R. Evid. 802. For example, Patent Owner objects to Exhibit 1051 to the extent they rely on it to for the truth of the assertion that medicated animals are in fact milked or that the yield of discarded milk is in fact measured. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Permitting

Petitioners to rely on the exhibit would be misleading and unfairly prejudicial to Patent Owner under Fed. R. Evid. 403.

Patent Owner also objects to Exhibit 1051 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

XIII. EXHIBIT 1052

Exhibit 1052 includes an article titled “Effect of Health and Reproductive Disorders on Milk Yield and Fertility in Dairy Cows” and an excerpt of an article titled “*Leptospira hardjo* – A brief summary of some points.”

Patent Owner objects to Exhibit 1052 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Furthermore, Patent Owner objects to Exhibit 1052 under Fed. R. Evid. 106. The exhibit appears to include an excerpt of a document and, therefore, is incomplete. Accordingly, Patent Owner objects to the use of the exhibit to the extent it does not include all statements or recorded parts that in fairness ought to be considered at the same time.

Patent Owner also objects to Exhibit 1052 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy. Moreover, the exhibit contains a partial excerpt of a document, and the full context of the document is needed to verify the document’s authenticity. Petitioners have not provided the complete document or any additional information establishing that the excerpt is an accurate and unaltered representation of the original source.

Patent Owner also objects to Exhibit 1052 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

XIV. EXHIBIT 1053

Exhibit 1053 is an article titled “Using Activity and Milk Yield as Predictors of Fresh Cow Disorders.”

Patent Owner objects to Exhibit 1053 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1053 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

Patent Owner also objects to Exhibit 1053 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

XV. EXHIBIT 1054

Exhibit 1054 is a copy of U.S. Patent No. 7,905,832.

Patent Owner objects to Exhibit 1054 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

XVI. EXHIBIT 1055

Exhibit 1055 is a copy of the Reply Declaration of Tami M. Brown-Brandl, Ph.D.

Patent Owner objects to portions of Exhibit 1055 as untimely because Petitioners should have introduced them in the Petition, and they are improper new evidence and supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123. Specifically, the opinions in Dr. Brown-Brandl's declaration relating to the public accessibility of Trevarthen (EX1055, ¶¶ 5-17) are improper new evidence and supplemental information because Petitioners and Dr. Brown-Brandl had the opportunity to submit that evidence and disclose those opinions with the Petition and in Dr. Brown-Brandl's first declaration (EX1003). Moreover, Petitioners had another opportunity to address Patent Owner's evidence and arguments relating to the public accessibility of Trevarthen when Petitioners requested (and were granted) leave to file a preliminary reply to Patent Owner's Preliminary Response. *See* Papers 9-10. Additionally, Dr. Brown-Brandl's

opinions citing, relying on, or relating to Exhibits 1040 through 1054 and Exhibit 1058 are improper new opinion evidence and supplemental information that should have been provided with the Petition.

Patent Owner also objects to Exhibit 1055 as inadmissible under at least Fed. R. Evid. 702 because Dr. Brown-Brandl's opinions are conclusory; do not sufficiently disclose underlying facts or data in support; are unreliable; and lack the requisite scientific, technical, or other specialized knowledge sufficient to help the trier of fact understand the evidence or determine a fact in issue. Dr. Brown-Brandl lacks sufficient skill in the art, making her testimony unreliable and unhelpful to understanding the evidence and determining facts in issue. Additionally, under Fed. R. Evid. 401, Fed. R. Evid. 402, and Fed. R. Evid. 403, her opinions are irrelevant, confusing, and of minimal probative value. In particular, paragraphs 5-17 of Exhibit 1055 relating to opinions on the public accessibility of Trevarthen (EX1005) do not sufficiently disclose underlying facts or data in support; are unreliable; and lack the requisite scientific, technical, or other specialized knowledge sufficient to help the trier of fact understand the evidence or determine a fact in issue. For example, Dr. Brown-Brandl fails to provide or explain her qualifications for assessing the public availability of documents, assessing the reliability or accuracy of date-limited searches run on Google, or for her opinion that Google could have "omitted" results from the time

period specified in a date-limited search. She also fails to provide or explain her qualifications for concluding that an examiner involved in an International Search Report for the Australian Patent Office “most likely located Trevvarthen through internet searches” (EX1055, ¶¶ 16-17). Additionally, Dr. Brown-Brandl does not explain or provide evidence showing how her searches using Google Scholar (EX1055, ¶¶ 11-13) accurately reflect the results of a search performed before the priority date of the patent, or whether her search accurately determines whether a document was publicly available and accessible before a certain date.

Patent Owner further objects to all portions of Exhibit 1055 citing, relying on, or relating to Exhibits 1040 through 1054 and Exhibit 1058 because those exhibits are untimely, incomplete, lack authentication, were not established as prior art to the challenged claims, and/or are relied on for hearsay purposes, as explained above. Accordingly, under Fed. R. Evid. 401, Fed. R. Evid. 402, and Fed. R. Evid. 403, her opinions citing, relying on, or relating to such exhibits are irrelevant and of minimal probative value. Such opinions are also inadmissible under Fed. R. Evid. 702 because they rely on exhibits that should be excluded, and thus they are conclusory and not based on sufficient facts or data.

XVII.EXHIBIT 1056

Exhibit 1056 is a transcript from the April 23, 2025 deposition of Dr. Timothy Bowser. Patent Owner preserves the objections made during the deposition.

XVIII. EXHIBIT 1057

Exhibit 1057 is a transcript from the April 29, 2025 deposition of Meredith Knoff. Patent Owner preserves the objections made during the deposition.

XIX. EXHIBIT 1058

Exhibit 1058 is an article titled “Logistic regression in the medical literature: Standards for use and reporting, with particular attention to one medical domain.”

Patent Owner objects to Exhibit 1058 as untimely because Petitioners should have introduced it in the Petition, and it is improper new evidence or supplemental information. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b); 37 C.F.R. § 42.123.

Patent Owner also objects to Exhibit 1058 under Federal Rule of Evidence (“Fed. R. Evid.”) 901, 1002, and 1003, and pursuant to 37 C.F.R. § 42.61 because Petitioners fail to provide the authentication required for the exhibit, and it is not self-authenticating under Fed. R. Evid. 902. For example, Petitioners have not explained what the document is, have not provided evidence regarding the origin or preservation of the document, and have not established that the document is a true and correct copy.

Patent Owner also objects to Exhibit 1058 because Petitioners have not shown that the exhibit pre-dates the priority date of the patent under review in this proceeding, and presents no evidence that the exhibit was sufficiently accessible to the public interested in the art before the critical date. Accordingly, the exhibit does not pass the test of relevant evidence under Fed. R. Evid. 401 and is thus not admissible under Fed. R. Evid. 402. To the extent Petitioners rely on any dates provided in the exhibit itself, these statements would be offered for the truth of the matter asserted, and would be further inadmissible as hearsay under Fed. R. Evid. 801 and 802. Petitioners do not provide any basis for the Board to conclude that the statements fall within any hearsay exception. Further, any probative value is outweighed by unfair prejudice under Fed. R. Evid. 403 because Patent Owner would be at a disadvantage if the exhibit were admitted into this proceeding as evidence of prior art.

Dated: May 23, 2025

Respectfully submitted,

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Counsel for Patent Owner

ST Reproductive Technologies, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on counsel of record on May 23, 2025 by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as delivering a copy via electronic mail to counsel of record for the Petitioners at the following addresses:

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Dated: May 23, 2025

Respectfully submitted,

By: /Daniel L. Moffett/

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Counsel for Patent Owner