Filed on behalf of ST Reproductive Technologies, LLC.
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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

PATENT OWNER'S MOTION TO EXCLUDE

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I. INTRODUCTION

Pursuant to 37 C.F.R. §42.64(c) and the Federal Rules of Evidence ("Fed. R. Evid."), Patent Owner ST Reproductive Technologies, LLC ("Patent Owner") moves to exclude Exhibits 1040, 1041, and 1044, which were submitted by Petitioners in support of their Reply (Paper 28), filed on May 16, 2025. The exhibits should be excluded under Rules 106, 403, 801, 802, 901, and 902, and for the reasons discussed further below. Under 37 C.F.R. §§42.64(b)-(c), a party may move to exclude improper evidence when timely objections are filed. Patent Owner timely objected to these exhibits on May 23, 2025. *See* Paper 29, 1-4, 6-7.

II. EXHIBIT 1040 IS INADMISSIBLE UNDER RULES 403 AND 106

Exhibit 1040 is a copy of an excerpt from Chapter 6 of a math textbook titled "Applied Linear Statistical Models" ("Neter") and should be excluded because it is incomplete, and any probative value from its inclusion would be substantially outweighed by dangers of unfair prejudice to Patent Owner and misleading the Board. Fed. R. Evid. 106, 403. Patent Owner timely objected to the incomplete nature of Exhibit 1040 (*see* Paper 29, 1-3), and Petitioners provided no supplemental evidence under 37 C.F.R. §42.64(b)(2).

Exhibit 1040 is incomplete because—other than title and copyright pages—it consists only of a single page from "Section 6.1: Multiple Regression Models" of Neter, and that section spans multiple additional pages. *See* EX1040, 217;

EX2024, 68:18-71:12 (Petitioners' expert agreeing that "Exhibit 1040 that [she] relied on does not include the entirety of Chapter 6.1" and that "Exhibit 1040 cuts off mid-sentence"). Petitioners introduced the incomplete exhibit with their Reply. *See* Paper 28, v, 18. And as Rule 106 recognizes, incomplete exhibits are prejudicial. Indeed, Petitioners' cherry-picked excerpt is especially prejudicial and misleading here because it comprises only a single page of Section 6.1 and, as Petitioners' expert acknowledged, the omitted pages could include statements that refute Petitioners' argument that "[i]t was foundational knowledge that relying on multiple variables" was advantageous. *See* Paper 28, 18 (citing EX1040); EX2024, 71:13-72:13 (Petitioners' expert testifying that "it's possible" that the omitted pages "could potentially list reasons why you would not want to add variables to a regression model" and that there are "pluses and minuses" to adding variables to a regression model). Accordingly, a complete copy of at least Section 6.1 of Neter should, in fairness, be introduced so that it can be considered at the same time as the excerpted pages that comprise Exhibit 1040. *See* Fed. R. Evid. 106. However, because no new evidence is permitted in a Sur-Reply (37 C.F.R. §42.23(b)), Patent Owner's only option was to object to the exhibit to encourage Petitioners to provide a complete, substitute exhibit as supplemental evidence under 37 C.F.R. §42.64(b)(2). Patent Owner did object (*see* Paper 29, 1-3), but Petitioners made the strategic decision to not provide a complete exhibit in

response. Thus, the probative value of the incomplete Exhibit 1040 is substantially outweighed by the dangers of unfair prejudice, confusing the issues, and misleading the fact finder and, pursuant to Rule 403, and consistent with Rule 106, Exhibit 1040, as well as the citation to Exhibit 1040 in Petitioner's Reply (Paper 28, 18) should be excluded. Additionally, Exhibit 1055, ¶33, should also be excluded because it relies on the inadmissible incomplete exhibit.

III. EXHIBIT 1041 IS INADMISSIBLE UNDER RULES 403 AND 106

Exhibit 1041 is a copy of an excerpt from a math textbook titled "Multivariate Data Analysis" ("Hair") and should be excluded because it is incomplete, and any probative value from its inclusion would be substantially outweighed by dangers of unfair prejudice to Patent Owner and misleading the Board. Fed. R. Evid. 106, 403. Patent Owner timely objected to the incomplete nature of Exhibit 1041 (*see* Paper 29, 3-4), and Petitioners failed to provide any supplemental evidence.

Similar to Exhibit 1040, Exhibit 1041 was introduced with the Reply and is incomplete because, other than title and copyright pages, it consists only of a single page from a subchapter—namely, page 172 of "Stage 3: Assumptions in Multiple Regression Analysis" ("Stage 3")—and omits the additional pages included in the subchapter. *See* EX1041, 172; EX2024, 74:18-77:6 (Petitioners' expert agreeing that Exhibit 1041 "cuts off mid-word and mid-sentence" and that omitted "page 173 and beyond [presumably] includes additional information on Stage 3"). Once

again, the incomplete exhibit is especially prejudicial and misleading here because the exhibit comprises only a single cherry-picked page and omits content potentially detrimental to Petitioners' position. *See* Paper 28, 18 (citing EX1041); EX2024, 77:7-22 (agreeing that the omitted pages in Exhibit 1041 could explain "whether a variable should be added or -- *or should not* or why it would *not* be advantageous to add that variable") (emphases added)). Petitioners' expert also testified that she would need the "page before" the excerpt to understand some of the statements in the exhibit. EX2024, 78:16-20 ("Q So you would need the full context of Hair to understand what he's discussing in this passage, right? A At least I would need the page before, yes."). Accordingly, a complete copy of at least "Stage 3" of Hair, as well as at least page 171 of the previous subchapter, should be introduced so that they can be considered with the excerpted pages. *See* Fed. R. Evid. 106. However, as with Exhibit 1040, Petitioners failed to provide a complete exhibit in response to Patent Owner's objections served after the Reply (Paper 29, 3-4). Thus, the probative value of the incomplete Exhibit 1041 is substantially outweighed by the dangers of unfair prejudice, confusing the issues, and misleading the fact finder and, pursuant to Rule 403, and consistent with Rule 106, Exhibit 1041, as well as the citation to Exhibit 1041 in Petitioner's Reply (Paper 28, 18) should be excluded. Additionally, Exhibit 1055, ¶33, which relies on the incomplete exhibit, should also be excluded.

IV. EXHIBIT 1044 IS INADMISSIBLE UNDER RULES 801, 802, 901, 902, AND 403

Exhibit 1044 is an unauthenticated copy of a webpage titled " Help Google Search know the best date for your web page." Exhibit 1044 should be excluded because it constitutes inadmissible hearsay, has not been authenticated, and is unduly prejudicial to Patent Owner. Patent Owner timely objected to Exhibit 1044 (*see* Paper 29, 6-7), and Petitioners failed to provide any supplemental evidence in response.

Exhibit 1044 should be excluded as inadmissible hearsay because it consists of statements made outside of this proceeding upon which Petitioners rely to prove the truth of the matter asserted. *See* Fed. R. Evid. 801, 802. In particular, Petitioners rely on Exhibit 1044 for the assertion that "[s]ometimes, Google shows dates next to listings in its search results" and that such dates are a "best estimate of when a page was published or significantly updated." *See* Paper 28, 2. The exhibit is not used for any other purpose than to show the truth of these assertions, in a purported effort to demonstrate how Google's search engine operates. *Id.* Exhibit 1044 also does not fall under any of the hearsay exceptions under Rule 803 or 807, and Petitioners offer no bases for the Board to conclude otherwise. Petitioners' reliance on Exhibit 1044 for the truth of the matter asserted therein, and the absence of an applicable exception, warrants exclusion.

Moreover, Exhibit 1044 should be excluded because it has not been authenticated as required under Rule 901. Petitioners have failed to submit *any* evidence providing the authentication required for Exhibit 1044 under Rule 901(a)-(b), and the exhibit, which consists only of a printout of a webpage, is not self-authenticating under Rule 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.

Finally, Exhibit 1044 is impermissible new evidence submitted in support of Petitioners' Reply, rather than along with the Petition. Any probative value Exhibit 1044 may have is outweighed by unfair prejudice to Patent Owner. Fed. R. Evid. 403. For example, Patent Owner is prejudiced because its experts were not afforded the opportunity to analyze the document and provide opinions in response to Petitioners' assertions based on the document.

For these reasons, Exhibit 1044, as well as the portions of Petitioners' Reply that rely on it (*see* Paper 28, 2), should be excluded.

V. CONCLUSION

Patent Owner respectfully requests that the Board exclude Exhibits 1040, 1041, and 1044, and preclude Petitioners from using those exhibits at any hearing or in any paper in this proceeding. Patent Owner further requests that the Board

exclude the portions of Exhibit 1055 that rely on Exhibits 1040 and 1041, the citations to Exhibits 1040 and 1041 in the Reply, and the portions of the Reply that rely solely on Exhibit 1044.

Date: August 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Patent Owner's Motion to Exclude was served on counsel of record on August 1, 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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