

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMBODY, INC. AND ZIMMER BIOMET HOLDINGS, INC.,
Petitioners

v.

LIFENET HEALTH,
Patent Owner.

IPR2025-00248 (U.S. Patent No. 10,137,223)
IPR2025-00249 (U.S. Patent No. 11,318,227)

**PATENT OWNER'S IDENTIFICATION OF
IMPROPER REPLY EVIDENCE AND ARGUMENT**

On February 13, 2026, by email, the Board denied Patent Owner's request for authorization to file a Motion to Strike and/or to submit Sur-Reply evidence. The Board instead authorized Patent Owner to "file a paper identifying the alleged improper arguments and evidence.... Patent Owner should only identify in its initial submission the alleged new evidence and arguments raised in Petitioner's Reply."

Accordingly, Patent Owner submits this identification of Reply evidence and argument that Patent Owner contends exceeds the proper scope of reply as set forth in 37 C.F.R. § 42.23(b) ("A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution.") and in the Board's Trial Practice Guide § II.I ("Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.... 'Respond,' in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.").

This paper identifies only material that Patent Owner would have included in its requested Motion to Strike. Patent Owner reserves the right to dispute additional improper arguments and evidence in its Sur-Reply.

I. IPR2025-00248

A. FFT Testing

IPR2025-00248 Exhibit 1219 (Supplemental Declaration of Dr. Simpson)

presents the results of supplemental FFT testing. *E.g.*, -248 Ex. 1219 ¶¶ 32 (“I have also conducted additional testing ... [F]or these plots I did not use a mask.”), 35 (“I have now run additional tests to show the effects of noise.”), 39 (“I performed additional testing ... without a mask.”). This is relied upon in -248 Reply pages 14-15 to support alleged anticipation by Huang². IPR2025-00248, Paper 27 (“-248 Reply”). These new testing results are also relied upon to support alleged anticipation and obviousness by Lee. -248 Ex. 1219 ¶ 64; -248 Reply 23.

B. Porosity of Aligned Scaffolds

IPR2025-00248 Exhibits 1211-1213 and 1219 present new evidence directed to alleged aligned scaffolds with porosity between 60%–90%. -248 Ex. 1219 ¶ 55 (citing -248 Exs. 1211-1213) (“[T]he prior art plainly taught aligned scaffolds that have the claimed porosity.”). This is relied upon at -248 Reply page 19.

C. Adjustment of Porosity

IPR2025-00248 Exhibits 1214-1215 and 1219 present new evidence directed to adjustment of electrospinning parameters and fiber diameter to reach a porosity between 60%–90%. -248 Ex. 1219 ¶ 54 (citing -248 Exs. 1214-1215) (“A POSA would have known that routine electrospinning parameters could be changed to alter porosity” and “fiber size is the most important factor in obtaining a high porosity.”). This is relied upon in -248 Reply page 19. *Compare with* -248 Pet. 46 (“[T]ailoring the porosity of electrospun fibers is well within the knowledge of a POSA, for

example by using well-known methods including freeze-drying, salt leaching, and gas foaming.”).

II. IPR2025-00249

A. FFT Testing

IPR2025-00249 Exhibit 1219 (Supplemental Declaration of Dr. Simpson) presents the results of supplemental FFT testing. *E.g.*, -249 Ex. 1219 ¶¶ 32 (“I have also conducted additional testing ... [F]or these plots I did not use a mask.”), 35 (“I have now run additional tests to show the effects of noise.”), 39 (“I performed additional testing ... without a mask.”). This is relied upon at -249 Reply page 12 to support alleged disclosure by Huang2. IPR2025-00249, Paper 26 (“-249 Reply”). These new testing results are also relied upon in -249 Exhibit 1219, paragraph 75, to support alleged disclosure by Lee, which is cited at -249 Reply page 25.

B. Obviousness over Huang2 and Kuo, or Lee and Kuo

IPR2025-00249 Exhibit 1219 presents new evidence directed to the alleged obviousness of performing Kuo’s method to create a scaffold for tendon or ligament repair by using the scaffold of Huang2 or Lee as a starting point in that process. - 249 Ex. 1219 ¶¶ 44-50 (Huang2), 78-80 (Lee), *e.g.*, *id.* ¶ 48 (“[T]here was plainly motivation to use the flat sheet aligned scaffold of Huang2 as the first step of the Kuo process.”), ¶ 50 (“[A] POSA would have [been] motivated to take the seeded electrospun flat scaffold made by the techniques of Huang2 and roll it to treat a tendon and ligament.”). This is relied upon at -249 Reply pages 14-17 (Huang2) and

26 (Lee) to support alleged obviousness.

III. CONCLUSION

In accordance with the Board's emailed instruction, this paper "only identif[ies] ... the alleged new evidence and arguments" and is "non-argumentative." If additional context would assist the Board in ascertaining whether Petitioner's evidence and argument is improper, Patent Owner requests the opportunity to provide it. Moreover, to the extent Petitioner files argument in response to this paper, Patent Owner seeks leave to reply.

Dated: February 20, 2026

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Certification of Service

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on February 20, 2026, a copy of the foregoing document and attached exhibits were served by electronic mail upon the following counsel of record for Petitioner:

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