UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Padagis US LLC,
Petitioner

v.

Neurelis, Inc.,
Patent Owner

Case No. IPR2025-00465
Patent No. 11,241,414

PATENT OWNER'S REPLY BRIEF
IN SUPPORT OF ITS MOTION TO EXCLUDE

I. INTRODUCTION

Petitioner's Opposition (Paper 59, "Opp.") concedes that EX1080 should not have been filed. Opp. at 1 n.1. EX1073-1076 are likewise deficient.

II. EXPERT DEPOSITIONS DO NOT ESTABLISH RELEVANCE

Petitioner has yet to identify any citation in its Petition or Petitioner's Reply to EX1073, EX1074, and EX1075. *See* 37 C.F.R. § 42.104(b)(5). By introducing EX1073-1076 during Dr. Brown's deposition, Petitioner suggests that imbues them with admissibility. Opp. at 4. This is a pretext, because Petitioner cites to Dr. Brown's transcript (EX1077) only once in Reply, and that one cite is for an undisputed, unrelated point. Paper 43 at 12. EX1074 is not "relied on in expert testimony" (Opp. at 4), because Dr. Brown did not "recall ever seeing it." EX1077 at 160:4-9. And, EX1074 is not cited in either declaration of Petitioner's expert, Dr. Donovan. Opp. at 4 (table). Thus, no one provides the relevance of EX1074.

Petitioner's reliance on *TwinStrand* and *Intex* also does not apply. *TwinStrand* allows uncited exhibits to be used for background knowledge. *TwinStrand Biosciences, Inc. v. Guardant Health, Inc.*, IPR2022-01400, Paper 41 at 47 (P.T.A.B. Jan. 26, 2024). Here, Dr. Donovan does not even discuss EX1074. In *Intex*, the parties "did not object to the evidence during the depositions." *Intex Recreation Corp. v. Team Worldwide Corp.*, IPR2018-00875, Paper 129 at 87-88 (P.T.A.B.

Sept. 11, 2019). Here, Patent Owner objected to uncited exhibits as lacking foundation. EX1077 at 160:8-161:9, 171:18-173:9.

III. EX1075 AND EX1076 SHOULD BE EXCLUDED FOR HEARSAY

Petitioner offers out of court statements in the form of EX1075 and EX1076 for the truth of the matter asserted, and they should be excluded for hearsay under Fed. R. Evid. ("FRE") 801(c)(2). Petitioner has not established that any hearsay exception applies. *See Guangdong Laitu Imaging Tech. Co., Ltd. v. Really Right Stuff, LLC*, IPR2023-00853, Paper 13 at 26 (P.T.A.B. Oct. 25, 2023) ("Petitioner has not met its burden of explaining how … the residual [hearsay] exception is met").

A. EX1075 Should be Excluded for Hearsay and Lack of Relevance

EX1075 purports to be an excerpt of the prosecution history of abandoned Application No. 11/127,786. Importantly, EX1075 is not from the Meezan reference (EX1010), which forms the basis of each of Petitioner's obviousness combinations. Rather, Petitioner's expert[1] relies on a proposed amendment to the specification that is not part of the published patent application found in EX1010. *See Apple Inc., v. DoDots Licensing Solutions LLC*, IPR2023-00939, Paper 12 at 15-17 (P.T.A.B. Jan. 3, 2024) (declining to consider documents within the file history of a prior art reference, "as they are not part of the patent" and not prior art). Unlike Petitioner's

[1] Petitioner has not identified any citation to EX1075 in the Petition or Petitioner's Reply—nor any evidence to qualify EX1075 under any hearsay exception.

cited case, EX1075 is not "the specification" contemplated by 37 C.F.R. § 42.61(c) (i.e., the EX1010 used in obvious combinations). *See Sienna Biopharm., Inc. v. William Marsh Rice Univ.*, IPR2017-00045, Paper 52 at 2, 55-56 (P.T.A.B. Apr. 5, 2018) (denying motion to exclude where the exhibit sought to be excluded (Exhibit 1003, "Tankovich II") was used as prior art in an actual ground).

Though Petitioner contends it is not relying on EX075 "for the truth of the matter asserted," Dr. Donovan's declaration indicates otherwise. Opp. at 12. Dr. Donovan calls EX1075 "the ***correct*** Meezan specification" that "*specifically* emphasizes that 'DDM' has a 'long alkyl chain[].'" EX1078 at 25-26 (emphasis in original). Again, the text of the Meezan publication submitted with the Petition and used in the grounds of invalidity (i.e., EX1010) refers to the alkyl chains as "highly branched," not "long." EX1010 ¶[0149]. This the opposite of the requirement of the challenged claims that the alkyl chains be straight ("n" in n-dodecyl beta-D-maltoside). Thus, this is not the situation in which a movant seeks to exclude the actual reference used in an invalidity ground (as in *Sienna*). Nor is this the situation where a patent specification discusses experiments, and then a party seeks to rely on "the experiments discussed in the [s]pecification," as in Petitioner's cited case. *See Noven Pharms., Inc. v. Novartis AG*, IPR2014-00550, Paper 69 at 41 (P.T.A.B. Sept. 28, 2015) (discussing 37 C.F.R. § 42.61(c)).

Petitioner's argument under FRE 803(6) fares no better, as Petitioner has not provided evidence that the business-records exception applies. Petitioner's attorney argument does not supplant a business records declaration. *See Guangdong*, IPR2023-00853, Paper 13 at 23 (rejecting attorney argument to meet hearsay exception). Nor does the fact that "an attorney from DLA Piper" sought to amend a specification on behalf of a ***different client*** have any bearing on the admissibility of EX1075. Petitioner seeks to swallow the evidentiary requirements.

B. <u>EX1076 Should be Excluded for Hearsay and Lack of Relevance</u>

EX1076 is a purported declaration of Edward Maggio from September 2013, prepared for a different patent with different claims and specification, and filed over four years after the priority date of the challenged patent. Paper 43 at 15-16; EX1078, ¶¶49-50. Patent Owner notes that it is not "bound by the statement made to the PTO in connection with a later prosecution of a ***different*** patent" (and in this case, a different client). *Georgia-Pac. Corp. v. U.S. Gypsum Co.*, 195 F.3d 1322, 1333 (Fed. Cir. 1999), *opinion amended on reh'g,* 204 F.3d 1359 (Fed. Cir. 2000).

Petitioner seeks to admit EX1076 under FRE 703, but this does not apply for several reasons. First, at best, FRE 703 would allow Dr. Donovan to discuss EX1076, but FRE 703 does not bestow admissibility upon the underlying document. Second, FRE 703 only applies when "experts in the particular field would reasonably

rely" on such documents. Other than attorney argument, Petitioner has adduced no facts to support this requirement.

Petitioner's cited case does not apply, because there, the patent owner sought to exclude an expert declaration, not the "underlying facts and data." *eBay Inc. v. Glob. Equity Mgmt. (Sa) Pty. Ltd.*, IPR2016-01829, Paper 60 at 3 (P.T.A.B. Apr. 18, 2018). Here, Patent Owner does not seek to exclude Dr. Donovan's declaration on evidentiary grounds, just the underlying exhibits.

Petitioner's FRE 807 argument is similarly deficient. Petitioner asserts that it could not obtain anything "more probative on the point for which it is offered" (Opp. at 14), but that is bare attorney argument with no supporting facts. Perhaps Petitioner could not obtain anything "more probative," because Petitioner failed to address this limitation in the Petition, and its expert wholesale failed to address this limitation in her opening declaration. Paper 48 at 4-7. Thus, Petitioner grasped a thin reed in turning to a purported declaration made during prosecution for a different invention and different patent family, made years after the challenged patent's prior art date. FRE 807 is also inapplicable because Petitioner did not give Patent Owner "reasonable notice of the intent to offer the statement." FRE 807(b). Petitioner introduced EX1076 for the first time in its Petitioner's Reply.

IV. CONCLUSION

EX1073-1076 and EX1080 should be excluded as inadmissible.

Date: June 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO EXCLUDE were served on counsel of record for the Petitioner by filing this document through PTAB P-TACTS and by sending the same via electronic mail to the following addresses:

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