UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Padagis US LLC,
Petitioner

v.

Neurelis, Inc.,
Patent Owner

Case No. IPR2025-00466
Patent No. 11,793,786

PATENT OWNER'S MOTION TO EXCLUDE

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.62(a) and 42.64(c), Patent Owner moves to exclude EX1073-EX1076 and EX1080, several of which were not cited in the Petition or in Petitioner's Reply ("Reply"), or even in Petitioner's expert declaration (EX1078). This motion is timely filed and is made based on objections already in the record. Paper 45.

II. MOTION TO EXCLUDE AND EVIDENTIARY REQUIREMENTS

When presented with improper evidence, the Board may exclude it or decline to consider it. *See CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 79 at 3 (P.T.A.B. Aug. 9, 2013). The Federal Rules of Evidence ("FRE") govern (37 C.F.R. § 42.62(a)), including FRE 106, 401-403, 801-802, and 901.

A Motion to Exclude must: (a) identify where in the record the objection originally was made; (b) identify where in the record the evidence sought to be excluded was relied upon by an opponent; (c) address objections to exhibits in numerical order; and (d) explain the basis and grounds for each objection. Consolidated Trial Practice Guide ("CTPG") § II.K.[1]

[1] Available at: https://www.uspto.gov/patents/ptab/trial-practice-guide (last updated 12/12/2025).

III. EX1073 SHOULD BE EXCLUDED

EX1073 purports to be an excerpt from a textbook authored by Patent Owner's expert, Dr. Brown, that was first filed in connection with Petitioner's Reply. Patent Owner objected to EX1073 under FRE 401-403. Paper 45 at 1. EX1073 was not cited in the Petition or Petitioner's Reply, and it should therefore be excluded for lack of relevance. "The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge." 37 C.F.R. § 42.104(b)(5).

The only citations to EX1073 are found in Dr. Donovan's (Petitioner's expert) reply declaration, from which Petitioner attempts to bulk-cite as an improper incorporation by reference. *See* Paper 43 at 19 (citing "EX1078, ¶¶34-39"). Such citations to "large portions of another document, without sufficient explanation of those portions, amounts to incorporation by reference." *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 8 (Aug. 29, 2014) (informative).

EX1073 should be excluded under FRE 401-403, as Petitioner has not demonstrated its relevance to this proceeding.

IV. EX1074 SHOULD BE EXCLUDED

EX1074 purports to be U.S. Patent No. 6,962,691, which was first filed in connection with Petitioner's Reply. Patent Owner objected to EX1074 under FRE 401-403. Paper 45 at 1. EX1074 was not cited in the Petition or Petitioner's Reply,

and it was not even cited in Petitioner's expert declaration. EX1074 should therefore be excluded for lack of relevance. "The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge." 37 C.F.R. § 42.104(b)(5).

EX1074 should be excluded under FRE 401-403, as Petitioner has not demonstrated its relevance to this proceeding.

V. EX1075 SHOULD BE EXCLUDED

EX1075 purports to be an excerpt of the prosecution history of U.S. Patent Application No. 11/127,786. Patent Owner objected to EX1075 under FRE 401-403 as it is not relevant to any of the grounds of invalidity, under FRE 106 as incomplete, and under FRE 802 as hearsay. Paper 45 at 1-2. EX1075 was not cited in the Petition or Petitioner's Reply. EX1075 was only cited in a single paragraph of Petitioner's expert's reply declaration. EX1078 ¶47.

A. The Board Should Exclude EX1075 for Lacking Relevance

EX1075 was not cited in the Petition or Petitioner's Reply, and it should therefore be excluded under FRE 401-403 for lack of relevance. "The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge." 37 C.F.R. § 42.104(b)(5).

EX1075 purports to be a proposed amendment to the Meezan specification, a patent application that was eventually abandoned. EX1075 is not part of the Meezan publication (EX1010) relied upon for the invalidity grounds. EX1075 contradicts the express disclosure of the asserted art relied on in the Petition and by Dr. Donovan, and Petitioner has not demonstrated its relevance to patentability in this proceeding.

The only citations to EX1075 are found not in the Petition or Petitioner's Reply, but instead in Dr. Donovan's reply declaration, from which Petitioner attempts to bulk-cite as an improper incorporation by reference. *See* Paper 43 at 15 (citing "*Id.*, ¶¶21, 43-48."). Such citations to "large portions of another document, without sufficient explanation of those portions, amounts to incorporation by reference." *Cisco Sys., Inc.*, IPR2014-00454, Paper 12 at 8 (informative).

B. <u>The Board Should Exclude EX1075 As Incomplete</u>

Patent Owner objected to EX1075 under FRE 106 as incomplete and taken out of context. Paper 45 at 1. For example, EX1075 is missing a notice of abandonment and examiner interview (filed June 29, 2009), a non-final rejection (dated Nov. 24, 2008), and a supplemental response to the final office action filed with a Request for Continued Examination (Aug. 25, 2008). In response to this objection, Petitioner served what purports to be the full prosecution history of EX1075 as supplemental evidence. *See* 37 C.F.R. § 42.64(b)(2). Upon filing the

supplemental evidence in opposition to this motion to exclude, Patent Owner expects the supplemental evidence to resolve the FRE 106 objection, though not the relevance and hearsay objections.

C. The Board Should Exclude EX1075 for Hearsay

Petitioner's EX1075 should be excluded as hearsay under FRE 801-802. Through Dr. Donovan, Petitioner relies on EX1075 for the truth of the matter asserted as alleged evidence of the subjective belief of the authors that the "highly branched" description of the alkyl chains in ¶[0117] of Meezan (EX1010) was actually intended to mean "long." EX1078 ¶47. This assertion is hearsay and should be excluded under FRE 801-802.

VI. EX1076 SHOULD BE EXCLUDED

EX1076 purports to be an excerpt of prosecution history of U.S. Patent Application No. 13/371,274.

Patent Owner objected to EX1076 under FRE 402-403, as it was prepared in a different proceeding about a different patent filed years after the priority date and is not relevant to any grounds of invalidity and under FRE 802 for hearsay. Paper 45 at 2. EX1076 was only cited in a single paragraph of Petitioner's reply expert declaration. EX1078 ¶50.

A. The Board Should Exclude EX1076 for Lacking Relevance

Petitioner's EX1076 should be excluded under FRE 401-403 because EX1076 purports to originate from the file history of a different patent. EX1076 was dated September 2013, more than seven years after Meezan's 2006 publication date (EX1010) and more than four years after the priority date of the '786 Patent. Nor is EX1076 corroborated with any evidence contemporaneous with Meezan's publication date. Petitioner has not shown how EX1076 is relevant to this proceeding or any of the asserted grounds of invalidity. Under FRE 401-403, EX1075 should be excluded for lacking relevance.

B. The Board Should Exclude EX076 for Hearsay

Petitioner's EX1076 should be excluded as hearsay under FRE 801-802 because Petitioner relies on EX1076 for the truth of the matter asserted regarding the subjective belief of one of the inventors of Meezan, Edward Maggio, as of September 2013. Paper 43 at 15-16; EX1078 ¶¶49-50. This assertion is hearsay and should be excluded under FRE 801-802.

VII. EX1080 SHOULD BE EXCLUDED

EX1080 is U.S. Patent No. 8,278,292 and should be excluded for lack of relevance under FRE 401-403 as it was not cited in the Reply or reply expert declaration. Patent Owner objected to EX1080 under FRE 401-403. Paper 45 at 2.

Petitioner conceded that EX1080 was "not cited in any paper and was inadvertently submitted." Paper 49 at 1 n.1.

VIII. CONCLUSION

For at least the foregoing reasons, EX1073-EX1076 and EX1080 should be excluded as inadmissible under the Federal Rules of Evidence.

Date: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S 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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