UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AERIN MEDICAL INC.

Petitioner,

v.

NEURENT MEDICAL LTD.

Patent Owner.

Case No. IPR2025-01124

U.S. Patent No. 11,998,262

PATENT OWNER'S SUR-REPLY IN SUPPORT OF PRELIMINARY RESPONSE

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Petitioner's Reply does not (and cannot) remedy the gaps in the Petition. Petitioner admits the claimed treatment outcomes are not in the prior art, and thus bases their alleged obviousness on Dr. van der Weide's say-so. *See* Paper 8 ("POPR"), 2, 14-26. But Dr. van der Weide identifies no experience with treating the claimed conditions or access to someone with such experience. Indeed, the Petition and his declaration do not even claim he is a POSITA. *Id.*, 10-11. As the Board has found, and the Reply fails to rebut, treatment experience/access is required for treatment claims. Without it, Dr. van der Weide's testimony is insufficient and unreliable, and the Petition is fatally deficient. Institution should be denied.

I. For Treatment Claims, a POSITA Would Have Treatment Experience or Access to Someone With Such Experience

Petitioner argues a POSITA "need not include experience in treating nasal conditions." Reply, 3. This position is unsupported by any substantive reasoning and is inconsistent with the treatment claims at issue. As the Board found in IPR2024-00279, -00280 and -00669 ("Foundry IPRs"), where claims involve nasal treatment methods, a POSITA "require[s] … knowledge and experience in treating nasal conditions, or access to a person with that knowledge and experience." *E.g.*, IPR2024-00279, Paper 41, 12. PO proposes the same definition here. POPR, 7.

Contrary to the Reply (at 1), Neurent's position has been consistent: for methods of treatment, Neurent defined POSITA to include clinicians and provided

testimony from clinicians with relevant treatment experience. *See, e.g.*, IPR2024-00279, Paper 3, 17; Paper 26, 27 ("Board-certified otolaryngologist"). Tellingly, Foundry did too. *Id.*, Paper 22, 19 (including M.D.); Ex.2004 (clinician).

II. Petitioner's Arguments About Nasal Medical Devices Are Inapposite

Absent substantive reasons treatment experience/access is not required for treatment claims, Petitioner's Reply resorts to misleading citation of statements about a different issue: whether a POSITA engineer needed nasal, versus general, medical device experience. Reply, 1-3. Neurent's/the Board's statements about that issue—which were not about treatment outcome limitations—are inapposite.

In the Foundry IPRs, Foundry argued an engineer opining about bipolar electrodes in a nasal medical device needed nasal device experience. IPR2024-00669, Paper 43, 13-17. The Board disagreed, finding a POSITA with general device experience could learn about "features of the nose" from literature or a clinician. *Id.*, 15-16. As Neurent explained, because the claims at issue did not turn on any "complexity" of nasal anatomy, experience with it was "inconsequential" to the engineer's qualifications. IPR2024-00279, Paper 26, 31-34.

Those statements are not inconsistent with Neurent's arguments here and do not support Petitioner. Reply, 1. The Board did not find in the Foundry IPRs that an engineer was a POSITA as to treatment outcomes without any treatment experience/access. To the contrary, as Neurent argues here, the Board found such

experience/access is a "requirement." IPR2024-00279, Paper 41, 12.

III. Dr. van der Weide's Testimony Should be Discounted or Disregarded

Absent a claim to such treatment experience or access to one with it, Dr. van der Weide's testimony about treatment outcomes should be discounted or disregarded. Petitioner's arguments do not (and cannot) fix this deficiency.

First, that Dr. van der Weide has device experience (Reply, 2, 3), does not change that he cites no nasal treatment experience or access to one with it.

Second, that POSITAs could acquire skill post-priority (*id.*, 2), does not mean Dr. van der Weide did. He cites no relevant treatment experience/access at any time.

Third, though different priority dates could change the state of the art (*id.*, 2), Petitioner does not argue how the art changed in a relevant way here. In fact, Petitioner admits no prior art taught the claimed treatments. Petition, 12, 42.

Fourth, that the Board accepted an engineer's testimony about electrodes when he lacked nasal device experience (Reply, 3), is not evidence an engineer without treatment experience/access can reliably opine on treatment outcomes.

Last, though the Board found an engineer could consult literature or a clinician about anatomy (Reply, 1), the Petition/declaration do not claim Dr. van der Weide had access to such a clinician or literature about treatment outcomes. Indeed, unlike the Foundry IPRs, Aerin failed to submit a clinician declaration here, and the claimed treatment outcomes are not disclosed in prior art literature. Petition, 12, 42.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 6, 2025, I caused a true and correct copy of the following materials:

- Patent Owner's Sur-Reply in Support of Preliminary Response

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