

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINDERFARMS, INC.
Petitioner

v.

GENEXA, INC.
Patent Owner

Case No. PGR2023-00051

U.S. Patent No. 11,617,795

PETITIONER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64(B)(1)

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“F.R.E.”), the undersigned counsel, on behalf of Petitioner, hereby serves and submits the following objections to evidence submitted by Patent Owner accompanying Patent Owner’s Response. These objections are timely because they are filed within ten days of institution of trial.

II. OBJECTIONS

A. Exhibit 2001 (Business Wire Press Release)

Petitioner objects to Exhibit 2001, and any reference to or reliance on this exhibit, on the following grounds:

37 C.F.R. § 42.61 (Admissibility of evidence): This exhibit is not admissible under any applicable rule of the Patent Trial and Appeal Board.

F.R.E. 401/402 (Relevance): This exhibit is not relevant to any ground upon which the trial was instituted. This exhibit is an online press release issued on Patent Owner’s behalf that discusses Genexa launching over-the-counter medicines. It does not appear that an independent third party generated the press release, but that the Patent Owner was involved in generating its content.

37 C.F.R. § 42.65 (Expert Testimony): This exhibit does not disclose the

underlying facts or data on which the opinion is based, and experts cited therein have not provided affidavits.

F.R.E. 403 (Excluding relevant evidence for prejudice, confusion, waste of time, needlessly presenting cumulative evidence or for other reasons): This exhibit includes information whose probative value to any ground upon which this proceeding was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. This exhibit is an online press release issued on Patent Owner's behalf which contains unsubstantiated and biased claims that Patent Owner is the "first clean medicine company" and is "disrupting the over-the-counter (OTC) industry with the launch of its first-to-market clean medicine line for kids and adults.". Thus, it is unfairly prejudicial and likely to cause confusion and a waste of time.

F.R.E. 801/802/805 (Hearsay): This exhibit, which was not merely offered to show what was presented or discussed during prosecution, but rather was offered for its truth, is inadmissible hearsay and/or double hearsay with no applicable exceptions or exemptions.

F.R.E. 901 (Authentication and Identification): This exhibit is not of the kind that is self-authenticated, and has not been properly authenticated or identified as to support a finding that the item is what the proponent claims it to be.

III. CONCLUSION

For at least the foregoing reasons, Petitioner objects to Exhibit 2001.

Dated: April 4, 2024

Respectfully submitted,

By:/ Brian W. Nolan /
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2024 a copy of the attached
PETITIONER’S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R §
42.64(B)(1), was served by electronic mail to the attorneys of record, at the
following addresses:

LEAD COUNSEL	BACK-UP COUNSEL
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Objections to Evidence

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Dated: April 4, 2024

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