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.: IPR2025-01125
U.S. Patent No. 12,089,889

PETITIONER'S REPLY TO PATENT OWNER PRELIMINARY RESPONSE

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I. ARGUMENT

A. Nasal Medical Device Experience is Not Required for the Expert, As Neurent Conceded in the Previous IPRs

Neurent argues that the "Board should discount or disregard the Petition's reliance on the declaration of Dr. Daniel van der Weide (Ex.1003)" because he "has no stated experience with or knowledge about treating nasal conditions." Preliminary Response ("POPR"), Paper 8, 10. Neurent made the exact opposite argument in related IPRs involving the same parties, IPR2024-00279, IPR2024-00280, and IPR2024-00669 (the "Foundry IPRs"), where Neurent argued that a "**POSITA Did Not Require Nasal Medical Device Experience**." IPR2024-00279, Paper 26, 29. Neurent went on to argue that "the POSITA factors support [that] ordinary skill included three years' medical device experience," and that "**[n]asal anatomy and physiology "complex[ity]" [] is inconsequential**." *Id*., 31. The Board agreed with Neurent, finding that prior experience designing or developing nasal medical devices was not required for a POSITA. IPR2024-00279, Paper 41, 12.

Furthermore, as the Board found in the Foundry IPRs, "as it concerns an engineer with extensive experience designing and developing RF ablation devices … **we see no basis to conclude that such person may not become familiar with the features of the nose through review of the literature** and/or consultation with clinicians." IPR2024-00669, Paper 43, 15 (citing Ex. 1098 ¶ 44 (testifying a person with device design experience could learn about the relevant nasal anatomy and

apply their skill to problems or solutions for that area by reviewing the relevant literature)). Here, Dr. Daniel van der Weide has "extensive experience designing and developing RF ablation devices." *Id*.; Ex. 1003, ¶¶7-13. Furthermore, the Board held in the Foundry IPRs that although an expert "may not have had personal experience designing devices for the nose prior to [the priority date of the patent] does not mean that he cannot testify from a POSA's perspective." *Id*. (citing *Osseo Imaging, LLC v. Planmeca USA, Inc.*, 116 F.4th 1335, 1341 (Fed. Cir. 2024 ("An expert need not have acquired the skill level prior to the time of the invention to be able to testify" because "an expert can acquire the necessary skill level later and develop an understanding of what a [POSA] knew at the time of the invention")).

In addition to previously agreeing that nasal medical device experience was not necessary, Neurent also ignores the more than 18 years of time that elapsed between the priority dates of the patents at issue in the Foundry IPRs and the priority date of the '889 patent (the patents at issue in the Foundry IPRs were assumed to have a July 21, 2006 priority date and the '889 patent at issue here has an April 9, 2020 priority date. (*Compare* Pet., 6 to IPR2024-00669, Paper 43, 9)). Thus, the information and knowledge available to those of skill in the art regarding the neuromodulation devices and techniques claimed in the '889 patent significantly increased between 2006 and 2020. Accordingly, Dr. Daniel van der Weide is fully qualified to opine as a POSITA for this matter.

B. The Definition of a POSITA Need Not Include Experience in Treating Nasal Conditions

Aerin proposes the following definition of a POSITA: "[a] POSITA would have had at least a bachelor's degree in biomedical engineering, mechanical engineering, electrical engineering, or a related field, plus two or three years of industry experience, or research experience, relating to medical devices that apply energy to tissue." Pet., 8. Neurent largely agrees with Aerin's proposed definition except that Neurent proposes that the definition include "knowledge and experience in treating nasal conditions, or access to a person with that knowledge and experience." POPR, 7. Neurent argues that the Board's decision in the Foundry IPRs supports its arguments. However, in the Foundry IPRs the Board refused to discount the testimony of an expert for a "for a lack of first-hand experience designing RF ablation devices *specific for the nose*." IPR2024-00669, Paper 43, 16. Similar to the experts in the Foundry IPRs, Dr. Daniel van der Weide has extensive experience in designing medical devices, including medical devices for tissue ablation. Ex. 1003, ¶10. In addition to Dr. Daniel van der Weide's experience over his 30-year career, he has extensive experience as a founder of numerous medical devices companies, including percutaneous ablation devices and RF treatment devices, 7 papers relating to ablation devices, and has at least 2 patents relating to ablation devices. EX-1022, 14-40. Accordingly, the Office should reject Neurent's POSITA definition and its attempt to discount the testimony of Dr. Daniel van der Weide.

Respectfully submitted,
GREENBERG TRAURIG, LLP

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **Petitioner's Reply to Patent Owner's Preliminary Response** has been served on counsel via electronic mail:

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