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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052897
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Thomas Sköld

Petitioner,

v.

Galderma Laboratories, Inc.

Registrant.

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Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

REGISTRANT'S TRIAL BRIEF

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## I. INTRODUCTION

This proceeding is a priority/likelihood of confusion dispute under Section 2(d) of the Lanham Act. Yet Petitioner Thomas Sköld's ("Petitioner" or "Sköld") presentation of arguments and evidence have very little bearing on the issues of priority or likelihood of confusion. In fact, most of Sköld's testimony and exhibits do not even pertain to the relevant priority period.

Proper focus on the priority issue demonstrates that Sköld has not, and cannot, establish prior trademark rights in a mark confusingly similar to Galderma's RESTORADERM trademark. As detailed *infra*, no products even existed during the priority period. At most, Sköld used terms like "LipoDerm Lipoid Restoraderm," "RestoDerm," and "EpiLip" in a handful of informal documents he prepared during the fall of 2001 describing his unproven theory that a topical formulation could be used as a delivery vehicle for certain drugs. Whether Sköld shared those terms or similar "theory" documents with anyone other than CollaGenex Pharmaceuticals (Galderma's predecessor-in-interest) is unproven and disputed, as discussed below. At most, Sköld discussed his theory with two or three companies in September 2001.

As the record reflects, CollaGenex decided to pursue development of Sköld's theory. At the outset of its development efforts in December 2001, CollaGenex decided, with Sköld's knowledge, to adopt the term "Restoraderm" for the skin care product that it intended to develop based on Sköld's theory, and started filing for trademark protection for that mark around the world, again, with Sköld's knowledge, starting with foreign filings in January 2002 and a U.S. filing on February 28, 2002. It even announced in a February 12, 2002 press release CollaGenex's forthcoming RESTORADERM products.

While CollaGenex did take a patent license to develop Sköld's theory in 2002, no license or assignment of any "Restoraderm" trademark was affected because, at that time, no trademark rights existed. It was not until CollaGenex adopted the "Restoraderm" mark for its intended product, filed trademark applications for its mark around the world and in the U.S., and then made commercial use of the mark that trademark rights accrued. Further, CollaGenex and Sköld agreed that CollaGenex owns all trademarks, including Restoraderm. As such, while an agreement between CollaGenex and Sköld

licensed the technology under development from Sköld to CollaGenex, use of the “Restoraderm” mark was instead licensed from CollaGenex to Sköld.

The history of this proceeding makes clear that Sköld is highly disappointed that CollaGenex and Galderma were not able to transform his theory into commercial products. Although CollaGenex invested millions of dollars in development efforts, those efforts were unsuccessful. Thus, Galderma terminated its agreement with Sköld, gave him back his technology, and chose an alternative technology to use for its RestoraDerm line of skin care products. Even now, five years later, there are no commercial products in the marketplace based on Sköld’s theory.

Reflecting Sköld’s disappointment, this cancellation proceeding was brought as a breach of contract case, wherein Sköld’s Original Petition cited two grounds for cancellation—a “first contract theory” and a “second contract theory.” It was only after the Board pointed out that breach of contract is not a proper ground for cancellation in a Board proceeding that Sköld revised his petition to articulate a priority/likelihood of confusion claim. Yet, both the evidence offered by Sköld and his Trial Brief focus largely on the parties’ performance under several contracts and how those contracts should be construed and enforced against Galderma. Now, four years later, it is clear that Sköld still erroneously views this proceeding as a contract claim with the goal of having the Board step outside its purview and enforce Sköld’s grievances. No matter how much Sköld would like for his contract allegations to be in play, they simply do not fit within the framework of Section 2(d) of the Lanham Act. As a result, the Board has been presented with four testimonial depositions and well over 150 exhibits that have little to do with the only issue before the Board—whether Sköld made any qualifying use of a mark confusingly similar to Galderma’s RESTORADERM trademark prior to Galderma’s priority date of February 28, 2002, which he clearly did not.

## **II. STATEMENT OF ISSUES**

Whether Galderma’s registered trademarks so resemble a mark previously used by Sköld as to be likely to cause confusion, mistake, or deception under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

Whether Sköld assigned any and all prior trademark rights he may have owned in his RESTORADERM mark to Galderma such that he cannot now claim to own a mark confusingly similar to Galderma's registered trademarks.

### **III. DESCRIPTION OF THE RECORD**

#### **A. Evidence automatically of record**

The file histories and particulars for Galderma's U.S. trademark registrations for the mark RESTORADERM, U.S. Reg. No. 2,985,751 and U.S. Reg. No. 3,394,514, are of record pursuant to 37 C.F.R. § 2.122(b).

#### **B. Evidence offered by Galderma**

Galderma, through Notice of Reliance filed on March 31, 2014 (Docket No. 67), has made the following evidence of record:

1. United Kingdom Certificate of Trademark Registration No. 2290042 for RESTORADERM, filed January 14, 2002 ("Gald Ex. 1")
2. European Union Certificate of Trademark Registration No. 002537074 for RESTORADERM, filed January 14, 2002 ("Gald Ex. 2")
3. Switzerland Certificate of Trademark Registration No. 498975 for RESTORADERM, filed January 15, 2002, along with a copy of a certified translation thereof ("Gald Ex. 3")
4. Norway Certificate of Trademark Registration No. 216494 for RESTORADERM, filed January 15, 2002, along with a copy of a certified translation thereof ("Gald Ex. 4")
5. Israel Certificate of Trademark Registration No. 154752 for RESTORADERM, filed January 24, 2002, which includes a parallel certified translation thereof ("Gald Ex. 5")
6. Press Release from Business Wire, published on February 12, 2002, entitled "CollaGenex Licenses Novel Dermal Delivery Platform ("Gald Ex. 6")

7. Portions of Petitioner's Responses to Registrant's First Request for Admissions, served by Petitioner on Registrant on January 30, 2012 ("Gald Ex. 7")
8. Portions of Petitioner's Responses to Registrant's Second Request for Admissions, served by Petitioner on Registrant on January 2, 2013 ("Gald Ex. 8")
9. Portions of Petitioner's Responses to Registrant's First Set of Interrogatories, served by Petitioner on Registrant on January 30, 2012 ("Gald Ex. 9")
10. Portions of Petitioner's Responses to Registrant's Second Set of Interrogatories, served by Petitioner on Registrant on January 2, 2013 ("Gald Ex. 10")

C. Evidence offered by Sköld

Sköld filed the following testimony and documents:

1. Thomas Sköld, petitioner, testimonial Deposition of November 13, 2013 (Docket No. 77) ("Sköld Dep.")
2. Jeffrey Day, testimonial deposition of November 14, 2013 (Docket No. 77) ("Day Dep.")
3. Thomas Sköld, petitioner, testimonial deposition of January 14 2014 (Docket No. 75) ("Sköld Second Dep.")<sup>1</sup>
4. Petitioner's Notice of Reliance, filed December 6, 2013 (Docket No. 63)
5. Petitioner's Responsive Notice of Reliance, filed May 14, 2014 (Docket No. 68)

Galderma notes that Sköld also took the testimonial deposition of Dr. James Marks on November 14, 2013. Sköld has not filed as trial evidence a copy of that deposition transcript or its related documents.<sup>2</sup>

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<sup>1</sup> In December 2013, a disagreement arose between the parties regarding whether Sköld had offered certain documents on the record during the November 13, 2013 testimonial deposition of Petitioner Thomas Sköld. In a December 19, 2013 Order (Docket No. 64), the Board reopened Sköld's testimony period "for the **sole purpose** of conducting a second deposition of the witness [Petitioner Thomas Sköld] previously deposed in order to introduce the disputed documents" (emphasis in original). This sole-purpose deposition was held on January 14, 2014, and Galderma hereby renews its objections to the admission of any testimony beyond the scope of the special-purpose deposition.

D. Evidentiary Matters

1. Galderma's Motions to Strike filed with the Board

Galderma has filed with the Board two Motions to Strike, which have not been ruled upon.

The first Motion to Strike, filed May 27, 2014 (Docket No. 69), relates to the November 14, 2013 testimonial deposition of Dr. James Marks, specifically to documents and testimony not properly disclosed or produced during discovery. To the extent that the transcript of that deposition and related exhibits have not been made part of the record as trial evidence, as noted in Section III.C., *supra*, Galderma's May 27, 2014 Motion is withdrawn.

The second Motion to Strike, filed June 12, 2014 (Docket No. 71), relates to Sköld's Responsive Notice of Reliance, filed May 14, 2014 (Docket No. 68), and in particular to Sköld's offering of his own discovery responses in the form of denials to requests for admissions and admissions that had been supplemented without authorization or stipulation, all without offering the required explanation as to why each response was needed. Galderma's June 12, 2014 Motion is hereby renewed and maintained.

2. Evidentiary Objections

The bulk of "evidence" Sköld purports to rely on in support of his Amended Petition is inadmissible and should not be considered by the Board. While Sköld's evidence is inadmissible for a myriad of reasons that are specific to the individual documents offered, certain objections apply broadly to large swaths of the documents relied on by Sköld:

- **Authentication:** In many instances, Sköld has failed to prove that a given document is authentic. "To authenticate evidence, the party seeking to admit the evidence must present '*evidence* sufficient to support a finding that the matter in question is what its proponent claims.'"

Fed. R. Evid. 901(a) (emphasis added). Rather than establish a foundation of authenticity for the

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<sup>2</sup> For the Board's reference, Galderma notes that Sköld did file, as an exhibit to a response to a motion (Docket No. 70), a certified copy of the transcript of the testimonial deposition of Dr. James Marks. This does not satisfy the requirement that a certified copy of a transcript be "filed with Board, under cover of a notice of filing." *Sports Authority Michigan, Inc. v. PC Authority, Inc.*, 63 U.S.P.Q.2d 1782, 1786 n.4 (TTAB 2002). *See also* TBMP § 703.01(k). Evidence not "obtained and filed" in compliance with the applicable Rules should not be considered by the Board. 37 C.F.R. § 2.123(l).

documents offered through testimony, Sköld’s counsel repeatedly asked the witnesses a single leading and conclusory question (with minor deviation): “Is that a true copy of the document as found in your files?” Sköld has failed to establish the authenticity of documents offered based on this question because (i) it is an objectionable leading question; (ii) it asks for a legal conclusion; and (iii) that a document may be “found in [a witness’s] files” does not establish the authenticity of that document. Sköld’s failure to establish a foundation for authentication of these documents, such as how or when they came to be in Sköld’s “files,” any chain of custody of the documents, who created the documents, and how the “files” are maintained, are fatal to the admissibility of these documents.

- **Hearsay:** The majority of Sköld’s “evidence” is inadmissible pursuant to the hearsay exclusion. Hearsay is a statement made by any declarant, outside of testimony, that is offered for the truth of the matter asserted in the statement. Fed. R. Evid. 801. Hearsay statements are not admissible. Fed. R. Evid. 802. Many of the documents Sköld seeks to rely on are simply statements purportedly made by Sköld himself—these statements are textbook hearsay. Sköld was deposed and was perfectly able to make the declarations contained in those documents during his testimony, but chose not to do so. Sköld’s counsel repeatedly asked the question (with minor deviation): “Did you store the document in the ordinary course of business as you do with comparable business documents?” The Board cannot rely on Sköld’s answer to this question to satisfy any exception or exemption to the hearsay rule because (i) it is an objectionable leading question; (ii) it asks for a legal conclusion; and (iii) Sköld has testified to no actual facts upon which the Board could rely in finding that a given document meets the requirements for an exception or exemption to the hearsay rule. While Sköld’s counsel may have sought to meet the “business records exception,” his questioning was severely deficient. Sköld did not provide any foundational testimony to establish, for example, the fact that he ran a business, how he stored business records, whether he was required to store records, his record retention policy, and he

otherwise failed to present *any* testimony to provide a foundation for a finding that the hearsay documents offered satisfied the business records exception.

- **Relevance:** Documents that purportedly evidence use of the RESTORADERM mark that post-date February 28, 2002 (i.e., the date CollaGenex, Galderma's predecessor-in-interest, filed its first U.S. trademark application for the RESTORADERM mark) are irrelevant to establish Sköld's claim for priority of use.

A more detailed discussion of the inadmissibility of documents relied upon by Sköld can be found in Galderma's Objections to Evidence Submitted by Sköld (annexed hereto as "Appendix").

Additionally, Galderma restates and renews each of its objections made during the testimonial depositions taken by Sköld. For example, during these depositions Sköld's counsel repeatedly asked leading questions (*see, e.g.*, Sköld Dep. 20:10-20:15, 33:21-33:23) and questions that called for hearsay testimony (*see, e.g.*, Sköld Dep. 57:3-57:12, 149:8-149:10). Sköld's counsel also asked questions that called for expert testimony, without having ever provided notice or a written report as required by Fed. R. Civ. P. 26(a)(2) and TBMP § 401.03 (*see, e.g.*, Sköld Dep. 30:7-:17, 50:8-50:15; Day Dep. 13:6-13:24, 24:22-25:8, 27:16-31:20; Marks Dep. 9:7-9:24<sup>3</sup>). Accordingly, the testimony to which Galderma has asserted objections should not be considered by the Board.

#### IV. STATEMENT OF FACTS

##### A. Sköld's grounds for cancellation

Although Sköld has asserted half a dozen grounds for cancellation throughout this proceeding, only one remains before the Board, namely, priority and likelihood of confusion under Section 2(d) of the Lanham Act. The operative pleading in this proceeding is Sköld's Amended Petition, filed March 23, 2011 (Docket No. 15), with the exceptions that: (i) paragraphs 66-80, setting forth a "cause 5" for "first contract theory" and a "cause 6" for "second contract theory," were stricken by the Board's order of

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<sup>3</sup> To the extent that the transcript of the November 14, 2013 testimonial deposition of Dr. James Marks and related exhibits have not been made part of the record as trial evidence, as noted in Section III.C., *supra*, Galderma withdraws its objections made during that deposition.

October 13, 2011 (Docket No. 20); and (ii) “cause 2” for abandonment was dismissed by the Board’s order of November 8, 2012 (Docket No. 50). In its October 13, 2011 Order, the Board also disposed of:

- Sköld’s “cause 3” for “improper assignment,” finding it did not state a separate ground for cancellation but was a mere amplification of Sköld’s priority claim, and
- Sköld’s “cause 4” for “deception,” finding it did not state a separate ground for cancellation but was a mere amplification of Sköld’s abandonment claim, which, as noted above, has been dismissed.

Thus, Sköld’s only remaining ground for cancellation before the Board is priority and likelihood of confusion.<sup>4</sup>

- B. Sköld’s factual allegations and legal arguments relating to breach of contract are improper and should be disregarded.

The Board has twice ruled that Sköld’s breach of contract theories do not constitute grounds for cancellation. In Sköld’s Original Petition, filed on August 16, 2010, the ground for cancellation cited in the Petition’s ESTTA cover sheet was “Other: Mark is no longer owned by Registrant,” and the Original Petition further stated the grounds as “First Contract Theory” and “Second Contract Theory,” under either of which Galderma allegedly “no longer owns” its RESTORADERM trademarks.

Galderma filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (Docket No. 6) on the ground that the Original Petition failed to state a valid ground for cancellation. In an Order dated January 25, 2011 (Docket No. 10), the Board noted that “breach of contract is not a proper grounds for cancellation,” but interpreted the grounds for cancellation on behalf of Sköld and found that the Original Petition did assert facts which, if proved, could support a claim for priority of use and likelihood of confusion under Section 2(d) of the Lanham Act.

Sköld then filed his Amended Petition on March 23, 2011 adding Section 2(d) priority/likelihood of confusion as a ground, but maintaining his “First Contract Theory” and “Second Contract Theory”

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<sup>4</sup> Galderma notes that the recitation of the grounds for cancellation in the ESTTA cover sheet for Sköld’s Original Petition as “Mark is no longer owned by Registrant” is a vestige of Sköld’s later-stricken claims, discussed in more detail in Section IV.B., *infra*.

grounds despite the Board's January 25, 2011 Order. This necessitated the filing of a second motion by Galderma seeking clarification as to Sköld's grounds for cancellation (Docket No. 11), which resulted in the Board's striking paragraphs 66-80 from Sköld's Amended Petition in view of its previous ruling of October 13, 2011 that "breach of contract is not a proper ground for cancellation" (Docket No. 20).

Despite the foregoing, Sköld proceeded to offer into evidence and make arguments in his Trial Brief that can relate only to the breach of contract claims specifically stricken from his Amended Petition, especially with respect to his legal arguments set forth in Petitioner's Trial Brief at Sections V.D. and V.E. Such claims are beyond the scope of Sköld's Amended Petition and this proceeding, and Sköld's evidence and arguments relating to breach of contract should be disregarded.

C. Galderma and its RESTORADERM marks

Galderma, created in 1981 as a joint venture between Nestle and L'Oréal, is a fully-integrated specialty pharmaceutical company dedicated exclusively to the field of dermatology.<sup>5</sup> Galderma is committed to improving the health of skin with an extensive line of products across the world that treats a range of dermatological conditions, and has a research and development center in Sophia Antipolis, France, which is one of the largest research and development facilities dedicated exclusively to dermatology.<sup>6</sup>

Among its extensive portfolio of leading dermatology products, Galderma manufactures and sells RestoraDerm<sup>®</sup> skin restoring body wash and RestoraDerm<sup>®</sup> skin restoring moisturizer, which products are available at food and drug retail stores throughout the U.S., as well as through e-commerce websites.<sup>7</sup> Galderma, through its predecessor-in-interest, CollaGenex Pharmaceuticals, Inc. ("CollaGenex"),<sup>8</sup> has

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<sup>5</sup> Petitioner's Notice of Reliance, Ex. T63.

<sup>6</sup> Petitioner's Notice of Reliance, Ex. T63.

<sup>7</sup> Petitioner's Notice of Reliance, Ex. T63.

<sup>8</sup> Galderma purchased assets of CollaGenex in 2008, including CollaGenex's RESTORADERM trademarks and related business. Sköld Dep. 39:10-39:12. *See also* U.S. Trademark Registration No. 2985751 Office Records at Reel/Frame Numbers 004109/0413.

used the trademark RESTORADERM in connection with skin care preparations in U.S. commerce since at least as early as May 27, 2005.<sup>9</sup>

To protect the value in the goodwill associated with its RESTORADERM mark, Galderma has obtained, through its predecessor-in-interest, CollaGenex, the following trademark registrations, among others, all for the mark “RESTORADERM” (the first two of which are the subject of this proceeding)<sup>10</sup>:

Jurisdiction	Reg. No.	Filing Date	Reg. Date	Class/Goods
U.S.	2,985,751	Feb. 28, 2002	Aug. 16, 2005	“Therapeutic skin care preparations and treatment for skin disorders,” in International Class 05
U.S.	3,394,514	July 6, 2007	March 11, 2008	“Non-medicated skin care preparations,” in International Class 03
U.K.	2290042	Jan. 14, 2002	June 21, 2002	“Pharmaceutical, medicinal and veterinary preparations and substances,” in International Class 05
European Union (CTM)	002537074	Jan. 14, 2002	Nov. 24, 2005	“Pharmaceutical, medical and veterinary preparations and substances excluding hormone preparations,” in International Class 05
Switzerland	498975	Jan. 15, 2002	May 14, 2002	“Pharmaceutical, medicinal and veterinary preparations and substances,” in International Class 05
Norway	216494	Jan. 15, 2002	Nov. 14, 2002	“Pharmaceutical, medical and veterinarian preparations and substances,” in International Class 05
Israel	154752	Jan. 24, 2002	May 8, 2005	“Pharmaceutical, medicinal and veterinary preparations and substances, all for dermatological use or being for application to the skin,” in International Class 05

D. CollaGenex, Galderma’s predecessor-in-interest, and its early development of RESTORADERM skin care preparations

CollaGenex’s activities toward developing the skin care product with which CollaGenex would later use the brand RESTORADERM began in September 2001. In mid-September 2001, CollaGenex personnel met with Petitioner Thomas Sköld at CollaGenex’s headquarters in Newtown, Pennsylvania

<sup>9</sup> U.S. Trademark Registration No. 2985751.

<sup>10</sup> Registrant’s Notice of Reliance, Gald Ex. 1-Gald Ex. 5.

regarding potentially working together to develop a dermatology product based on Sköld's theory that a topical formulation could serve as a vehicle for delivering substances to the skin.<sup>11</sup>

That September 2001 meeting among CollaGenex and Sköld led to an agreement between the parties to work collaboratively together "to develop a stable formulation of the drug technology."<sup>12</sup> Indeed, Sköld testified that after his September 2001 meeting with CollaGenex, he did not speak to anyone other than CollaGenex regarding his theory, having "made a promise to [him]self" not to do so before CollaGenex had time to decide whether it would work with Sköld.<sup>13</sup> CollaGenex decided in the affirmative and entered into a December 12, 2001 Letter of Intent with Sköld.<sup>14</sup> Notably, the Letter of Intent made no mention of the term "Restoraderm."<sup>15</sup> This is consistent with Sköld's testimony that CollaGenex did not make the decision to use the mark RESTORADERM for its intended products until early 2002.<sup>16</sup> The Letter of Intent, however, did set out the parties' understanding of who would own rights in whatever trademark CollaGenex would later select, as follows:

All trademarks associated with the drug delivery system; the proposed intellectual property; products deriving therefrom and products marketed and to be marketed by Collagenex or any commercial partner of Collagenex anywhere in the world shall be applied for and registered in the name of Collagenex and be the exclusive property of Collagenex.<sup>17</sup>

The parties shortly thereafter ratified the December 12, 2001 Letter of Intent by entering into a detailed "Cooperation, Development and Licensing Agreement" on February 11, 2002 (the "2002 Cooperation

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<sup>11</sup> Sköld Dep. 79:18-79:21. *See also id.* at 12:23-13:14 ("And during the spring and the summer is when the idea to develop a technology based on things I learned long before. And it wasn't until August when I really got started on the project, 2001"); 112:2-112:9 (describing the product as a "delivery vehicle"); 112:10-112:19 (explaining that Sköld's theory can only be used for examples and still needs "in this case Collagenex to make a decision on what kind of product" they would like to develop).

<sup>12</sup> Sköld Dep. 17:13-17:20, 113:15-114:6 and Ex. B thereto ("It is agreed between us that the development of a stable formulation of the drug technology is key . . . and that such formulation should be cosmetically acceptable . . . . This base product or 'vehicle' should be developed and placed on stability between December 2001 and February 2002 . . . .").

<sup>13</sup> Sköld Dep. 101:24-102:10.

<sup>14</sup> Sköld Dep. 17:13-17:20, 113:15-114:6 and Ex. B thereto.

<sup>15</sup> Sköld Dep. 113:15-113:23 and Ex. B thereto.

<sup>16</sup> Sköld Dep. 120:13-121:9. *See also* Registrant's Notice of Reliance at Gald Ex. 9, Response to Interrogatory No. 4 ("At an early stage of development Sköld and Mats Silvander were brainstorming about giving the development a name and came up with Lipoid, LipoDerm, Restoraderm for use with various aspects of the technology under consideration. . . . In early 2002 Collagenex had a couple of sessions internally (Jeff Day, Rob Ashley and Chris Powala) to decide which [sic] the Sköld's trademarks they were comfortable with and settled on Restoraderm.")

<sup>17</sup> Sköld Dep. 114:7-114:22 and Ex. B thereto.

Agreement”).<sup>18</sup> By then, CollaGenex had already decided upon a brand, as evidenced by CollaGenex’s filing of five (5) trademark applications in various jurisdictions for the mark RESTORADERM in January 2002.<sup>19</sup> Accordingly, the 2002 Cooperation Agreement did specifically identify the trademark to be owned by CollaGenex and used with the eventual product, as follows:

All trademarks applied for or registered (including “Restoraderm”) shall be in the sole name of Collagenex and be the exclusive property of Collagenex during the term and thereafter (“the Trade Marks”).<sup>20</sup>

In the 2002 Cooperation Agreement, CollaGenex granted Sköld a license to use CollaGenex’s RESTORADERM mark under quality control standards to be set by CollaGenex:

Sköld is permitted to use the Trade Marks on protocols and similar documents used in the development of the Technology and the Products but only in the styles and formats as may be designated, from time to time, by CollaGenex in writing. Sköld agrees that the nature and quality of any materials Sköld used by Sköld which incorporates the Trade Marks shall conform to quality standards set by CollaGenex.<sup>21</sup>

CollaGenex then issued a press release on February 12, 2002, the day after finalizing the 2002 Cooperation Agreement with Sköld, announcing its plans to develop a Restoraderm product.<sup>22</sup> This was the first public use of a RESTORADERM mark made by either party, and, notably, such use was by CollaGenex on its own behalf, as Sköld’s name was not mentioned in the press release.

Shortly thereafter, on February 28, 2002, CollaGenex filed, with Sköld’s knowledge,<sup>23</sup> the U.S. trademark application for RESTORADERM that matured into U.S. Reg. No. 2,985,751.<sup>24</sup> It later filed another U.S. trademark application for RESTORADERM, on July 6, 2007, which matured into U.S. Reg. No. 3,394,514.<sup>25</sup> These trademark registrations were among the assets Galderma purchased from

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<sup>18</sup> Sköld Dep. 121:25-123:16; *id.* at 124:13-124:16 (noting that Section 4.2.1 of the 2002 Agreement “[c]orrelates with the Letter of Intent”). *See also* Day Dep. 64:20-66:13 (confirming that the 2002 Agreement is written so as to ratify the Letter of Intent in terms of all trademarks being the exclusive property of CollaGenex).

<sup>19</sup> Registrant’s Notice of Reliance, Gald Ex. 1 – Gald Ex. 5.

<sup>20</sup> Sköld Dep. 123:9-123:16.

<sup>21</sup> Sköld Dep. 121:25-122:11 and Ex. T2 thereto.

<sup>22</sup> Registrant’s Notice of Reliance at Gald Ex. 6.

<sup>23</sup> Registrant’s Notice of Reliance at Gald Ex. 7, Admission No. 49.

<sup>24</sup> U.S. Trademark Registration No. 2985751.

<sup>25</sup> U.S. Trademark Registration No. 3394514.

CollaGenex in 2008.<sup>26</sup> Neither CollaGenex nor Galderma has ever executed an instrument assigning title to any of their RESTORADERM trademark filings to Sköld.<sup>27</sup>

E. Sköld had nothing more than a “theory” or “concept” for a technology before striking a development deal with CollaGenex.

1. The technology was still under development during the relevant priority period.

Sköld’s technology upon which his asserted trademark rights rest was only an unproven theory prior to Galderma’s priority date. The very purpose of Sköld’s September 2001 meeting with CollaGenex was to find a company with whom he could work to “develop[] a stable formulation of the drug technology” and, eventually, consumer-facing products.<sup>28</sup> Sköld admitted in testimony that all he had to offer at that time was “some conjecture about how the vehicle that [he] describe[d] works,”<sup>29</sup> as further evidenced by the fact that no testing of his theory or concept had been conducted to date according to Sköld himself:

Q. But at that point you didn’t have any results, did you, sir, 2001?

A. No clinical data if that’s what you mean.

Q. Well, you hadn’t done any stability testing, isn’t that correct, as of September 2001?

A. I would say no.

Q. You hadn’t done any penetration testing?

A. No.

Q. You hadn’t done any feasibility testing?

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<sup>26</sup> Sköld Dep. 45:16-46:2. *See also* U.S. Trademark Registration Nos. 2985751 and 3394514, Office Records at Reel/Frame Numbers 004109/0411-416.

<sup>27</sup> Galderma notes that, contrary to Sköld’s theory set forth in Petitioner’s Trial Brief at Sections V.D. and V.E., CollaGenex did not purchase any trademark rights in its RESTORADERM marks from Sköld in a 2004 “Asset Purchase Agreement.” Sköld Dep. 134:20-135:16, and Ex. E thereto. It already owned several trademark filings and registrations in various countries throughout the world at that point, *see supra* Section IV.C., and it defies logic to suggest that CollaGenex purchased assets it already owned, especially since no RESTORADERM trademarks are even mentioned in the 2004 “Asset Purchase Agreement.” In fact, an earlier draft of that agreement did include a reference to a “Restoraderm trademark” among the assets to be purchased by CollaGenex, but, after CollaGenex’s attorneys pointed out to Sköld that CollaGenex already owned its Restoraderm trademarks, that provision was removed. Sköld Dep. 134:20-139:20.

<sup>28</sup> Sköld Dep. 113:11-114:2 and Ex. B thereto.

<sup>29</sup> Sköld Dep. 81:9-81:23. *See also* Day Dep. 54:23-55:2 (discussing the September 2001 meeting among himself, Sköld, and CollaGenex and begrudgingly agreeing on cross-examination that “whatever was described by Mr. Sköld during that meeting related to his theory or concept”).

A. No.

Q. Certainly no in vivo testing?

A. No. Feasibility is, of course, something you can do on a piece of paper also. So I would say that what's been done before was more reviewing -- we have to understand that I have been working with lipids for a number of years and for two years together with a Professor Bugh that specialized in, more or less, what this is all about.

So it would be wrong to say that it wasn't anywhere. But it was -- I would still say that during the summer and the short period thereafter, *it was still on the drawing board*.<sup>30</sup>

Further testimony revealed that no studies or testing of Sköld's theory for the technology had been conducted before Galderma's priority date.<sup>31</sup>

2. Even the proposed use of the term "Restoraderm" was only an idea, one among several, that Sköld had for potential brands, until CollaGenex selected it and put it in use.

Sköld alleges that he had originally come up with three different names for various aspects of the technology to be developed from his theory, including "Lipoid," "LipoDerm," and "Restoraderm."<sup>32</sup> A document Sköld claims he gave CollaGenex in October 2001 shows two more of his potential brand ideas—"RestoDerm" and "EpiLip"<sup>33</sup>—for a total of 5 ideas Sköld had for potential brands in all. Ultimately, Sköld testified, CollaGenex was the one who selected the term "Restoraderm" for use on a product and, at CollaGenex's direction, Sköld placed labels on "experimental example samples" of his theory that bore only the term "Restoraderm," rather than any of his other ideas for trademarks:

Q. Could you explain your conception of the trademark Lipoderm?

...

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<sup>30</sup> Sköld Dep. 82:18-83:17.

<sup>31</sup> Sköld Dep. 82:18-83:17. *See also* Sköld Dep. 112:25-113:6 (describing samples of Sköld's technology as "experimental up till 2009"); Sköld Dep. 115:20-116:14 (noting that samples sent to CollaGenex in late 2001 and early 2002 were for "technical purposes").

<sup>32</sup> Registrant's Notice of Reliance at Gald Ex. 9, Response to Interrogatory Number 4.

<sup>33</sup> Sköld Dep. 113:7-113:10 (describing Exhibit T74).

A. Lipoderm was in mid 2001 supposed to become a brand for a specific product, not the technology, but for the SBR, the skin barrier repair, product. I offered both Restoraderm and Lipoderm to Collagenex. They wanted Restoraderm technology for the technology. But the Lipoderm they turned down in favor of a name they came up with themselves, which was Ceracel.<sup>34</sup>

\* \* \*

Q. Based that direction from Collagenex, you placed that name on the experimental samples; isn't that correct?

A. That is correct. I gave them two examples, LipoDerm or Restoraderm. They chose Restoraderm.<sup>35</sup>

3. The only physical manifestation of Sköld's concept was in the form of "experimental example samples" required for further evaluation and testing.

Sköld testified to giving CollaGenex "experimental example samples"<sup>36</sup> of a "topical formulation"<sup>37</sup> in late 2001 and early 2002.<sup>38</sup> Those samples were provided to CollaGenex for "sample testing," according to Sköld's witness Jeffrey Day.<sup>39</sup> Indeed, such samples were experimental in nature, not for use by individuals, but rather for "technical purposes."<sup>40</sup>

F. Sköld admitted that there was no sale of his experimental example samples.

The only transfer of material embodying Sköld's concept or theory was his "delivery" of experimental example samples to CollaGenex in late 2001 and early 2002, discussed in Section IV.E.3,

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<sup>34</sup> Sköld Dep. 22:5-22:16.

<sup>35</sup> Sköld Dep. 121:4-121:9.

<sup>36</sup> Sköld Dep. 119:5-119:15.

<sup>37</sup> Sköld Dep. 21:20-21:23.

<sup>38</sup> As to the labeling of Sköld's experimental example samples, the testimony establishes only that, if the samples were labeled, they were labeled "RESTORADERM" at CollaGenex's direction. Sköld Dep. 120:24-121:9. No evidence of the experimental example sample labels exists. Sköld Dep. 119:10-119:15 (testifying that Sköld does not have any evidence of labels); Day Dep. 59:8-59:15 (testifying that samples were sent back to Thomas Sköld, so any copies of labels would be in his possession).

<sup>39</sup> Day Dep. 57:12-57:24.

<sup>40</sup> Sköld Dep. 116:10-116:14.

*supra*.<sup>41</sup> Sköld explicitly stated during his testimonial deposition that no payment was made for these samples:

Q. Now, these experimental example samples that you prepared in late 2001, early 2002, you weren't paid for those, were you, sir? You didn't charge Collagenex for those?

A. No, I did not.<sup>42</sup>

G. Sköld testified that he used his personal name, as opposed to the term "Restoraderm," in connection with consulting services.

From the time that Sköld retired from a company called Ponsus in the summer of 2001,<sup>43</sup> Sköld testified that he has worked under his own personal name:

Q: Since you retired from Ponsus, the work you've done you've done under your own name, Thomas Sköld; isn't that correct?

A: Correct.

Q: So any type of consulting or formulation work you've done, you've done as Thomas Sköld; is that correct?

A: That's correct.<sup>44</sup>

No business cards, invoices, letterhead, email signature blocks, or any other evidence showing Sköld has ever advertised or provided consulting services under any brand, let alone a RESTORADERM brand, are of record.

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<sup>41</sup> Sköld has not explained how he "transported" his experimental example samples to CollaGenex in November or December of 2001, *see* Sköld Dep. 21:20-22:3, or how he "delivered" such samples to CollaGenex in January 2002, *see* Sköld 22:18-22:21. His witness, Jeffrey Day, testified that such samples were sent to CollaGenex in 2001, *see* Day Dep. 9:22-10:4, and that Sköld hand-delivered samples to Day, while he was employed by CollaGenex, at the 2002 "Caribbean Derm" meeting, *see* Day Dep. 58:4-58:6. No additional details are of record. Galderma notes that the "Caribbean Derm" meeting is an annual industry conference lasting about a week and that testimony mentioning the "Caribbean Derm meeting" does not refer to a week-long meeting regarding Sköld's technology. *See, e.g.*, Sköld Dep. 23:11-23:17.

<sup>42</sup> Sköld Dep. 119:5-119:9. Rather, the "experimental example samples" were for technical, experimental purposes only. Sköld Dep. 116:10-116:14.

<sup>43</sup> Sköld Dep. 12:23-13:14 ("In 2000 I decided to resign and retire from my position as the CEO. I had one year to think about things because I wasn't supposed to end my position until the summer of 2001. And during the spring and the summer is when the idea to develop a technology based on things I learned long before. And it wasn't until August when I really got started on the project, 2001."). *See also id.* at 95:12-96:6.

<sup>44</sup> Sköld Dep. 95:7-96:14.

- H. Sköld's other activities during the relevant period of priority are characterized by vague, indefinite, inconsistent, and contradictory testimony.

Prior to striking a deal with CollaGenex on December 12, 2001, Sköld testified that he had some interactions with four other potential development partners in September 2001, amounting to one alleged (and highly unlikely to have occurred) meeting with Johnson & Johnson (“J&J”); one telephone call with Medicis; a scheduled but later canceled meeting with Allergan; and an undefined “effort to promote to” Bicoastal.<sup>45</sup> Notably, Sköld has failed to offer any evidence from any of these third-parties to corroborate his vague, indefinite, inconsistent, and contradictory testimony of his interactions with them.

1. The subject matter of Sköld's September 2001 scheduled meetings is far from clear.

Several September 2001 emails to and from Sköld were offered by Sköld (as Exhibits T7, T69, T71, and T73<sup>46</sup>) as purportedly “confirm[ing] [Sköld's] planned meetings with Johnson & Johnson, Medicis and Allergan.”<sup>47</sup> These emails, even assuming they corroborate Sköld's testimony that he planned to meet with the listed companies, never mention the term “Restoraderm” in discussing the subject matter of the meetings.

2. Sköld's testimony regarding a September 11, 2001 meeting with Johnson & Johnson contradicts his earlier assertions that the meeting was canceled.

Sköld's testimony stating that he met with J&J at their offices in New Jersey regarding his theory on September 11, 2001<sup>48</sup> directly contradicts his own previous accounts of that day. For instance, Sköld swore in his January 30, 2012 response to Galderma's Interrogatory No. 24 that his scheduled meeting with J&J was postponed due to the events of September 11, 2001.<sup>49</sup> A January 12, 2008 email from Sköld to a J&J representative confirms the accuracy of Sköld's interrogatory response, as Sköld directly

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<sup>45</sup> Sköld Dep. 18:6-18:18, 20:3-20:16, 20:25-21:3, 36:3-36:10.

<sup>46</sup> Galderma objected to the admissibility of Sköld's Exhibits T7, T69, T71, and T73 on a number of grounds on the record during the November 2013 deposition of Thomas Sköld, *see* Sköld Dep. 35:5-35:24, and hereby renews and maintains its objections to Sköld's use of these documents (*see* Appendix), but uses them here for rebuttal purposes.

<sup>47</sup> Sköld Dep. 35:5-35:24. The testimony mentions another email, at Exhibit T27, which Galderma presumes was mentioned unintentionally as the document is dated 2009.

<sup>48</sup> Sköld Dep. 106:22-106:24.

<sup>49</sup> Registrant's Notice of Reliance at Gald Ex. 9, Response to Interrogatory Number 24.

and unequivocally states in that email message that his planned September 11, 2001 meeting with J&J was canceled.<sup>50</sup>

MR. ROCHFORD: Let me just identify this on the record. What's been marked as Galderma Exhibit A is a string of emails originally produced under Sköld Bates No. 00164 and 165 and 166, and I'd like to direct the witness' attention now that he's had a chance to read it, to the January 12 2008 email from Thomas Sköld to Joe Willis.

BY MR. ROCHFORD:

Q: Now, Mr. Willis was employed by Johnson & Johnson at that time; isn't that correct Mr. Sköld?

A: Sorry. Again?

Q: Mr. Willis was employed by Johnson & Johnson?

A: When?

Q: As of January 2008 when you sent this email.

A: I believe so.

Q: And you are sending him a message regarding a derm delivery system, and you state in paragraph 2 or 3 of that message, "What is kind of interesting is that on September 11, 2001, I was scheduled to present my early findings of my development efforts for your people in your New Jersey office. On my way in to your office, the first aircraft hit one of the towers and the presentation got canceled (even though I stayed watching it all on TV in your cafeteria for the entire day)."

Did I read that correctly, sir?

A: Right.

Q: Does that refresh your recollection that the presentation to J & J, Ortho and Neutrogena on September 11, 2001 was canceled?

A: No. It was not canceled.

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<sup>50</sup> Sköld Dep. 104:11-106:9.

Q: Is this a false statement?

A: It's not a false statement, but it's not a correct statement.

Q: I have to say, Mr. Sköld, I don't know anyone who doesn't remember that day or that morning with absolute clarity.

A: I do remember it with absolute clarity.

Q: As of January 12, 2008, your recollection was the presentation got canceled?

A: It doesn't necessarily have to be so, but I still stated it, so . . .<sup>51</sup>

Sköld's equivocation only undermines his credibility. Sköld's own email message demonstrates that in 2008, before this proceeding was commenced, Sköld volunteered to a J&J executive that his September 11, 2001 scheduled meeting with J&J had been cancelled after "the first aircraft hit one of the towers."

And Sköld's new assertion that the meeting went forward as planned goes well beyond contradicting his prior statements—it totally defies common sense. The idea that J&J employees would attend an introductory meeting about an unproven theory while horrific and tragic events are taking place directly across the river is both absurd and offensive. A reasonable factfinder can only conclude that Sköld's current testimony that a meeting occurred is wholly incredible and cannot be believed.

Yet even Sköld's apparently manufactured claims about a meeting with J&J do not help his position. He offers only the following vague testimony:

Q: Did you use the phrase Restoraderm technology when you met with J&J, Johnson & Johnson?

A: Yes, I did.<sup>52</sup>

What is meant by "use the phrase Restoraderm technology" was never elucidated by any further testimony, nor had any foundation testimony been elicited describing what was meant by "Restoraderm technology."

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<sup>51</sup> Sköld Dep. 104:11-106:9.

<sup>52</sup> Sköld Dep. 19:9-19:12.

Sköld's Trial Brief would have the Board draw an inference that during his alleged September 11, 2001 meeting with J&J, Sköld gave J&J representatives two pages of written materials describing his theory, and that each page bore the term "Restoraderm" in some fashion. However, such an inference is not supported by the record. No copies of documents allegedly provided to J&J were offered by Sköld, and no testimony was elicited stating that the materials allegedly provided to J&J featured the term "Restoraderm" in any manner.

Instead, Sköld offered two, one-page descriptions of his theory as examples of what the written materials allegedly given to J&J might have looked like.<sup>53</sup> While both examples bear the term "Restoraderm," Sköld's testimony stops short of stating that the versions allegedly provided to J&J displayed the term.<sup>54</sup> He testified only that "some version" of the document identified as Exhibit T8 and something "substantially similar" to the document identified as Exhibit T9 were provided to J&J and that those example documents display the term "Restoraderm" among other terms like "Lipoid" and "Lipoderm."<sup>55</sup> But, Sköld does not go so far as to say that the documents he *allegedly* provided to J&J contained the term "Restoraderm."<sup>56</sup>

3. Sköld's prior interactions with Medicis are characterized by vague, indefinite, and evasive testimony.

Sköld's priority allegations relating to his "use" of his RESTORADERM mark with a company called Medicis stem from his alleged participation in a conference call with Medicis representatives regarding his technology on September 12, 2001.<sup>57</sup> Sköld testified that Medicis representatives had been made aware of the "terminology Restoraderm technology" at some point in or around September 2001 *either* in words *or* in documents:

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<sup>53</sup> Sköld Dep. 17:3-17:6, 36:14-36:22, and Exs. T8, T9 thereto. The first example description (offered as Exhibit T8) is dated November 5, 2001 and entitled "A theory of the 'Mode of Action' concerning this new technology," and the wording LipoDerm Lipoid Restoraderm Technology appears at the bottom of the page. Sköld Dep. 81:13-81:19, 89:9-89:11. The second example (offered as Exhibit T9) bears no date and is entitled "LipoDerm Restoraderm a vehicle technology for topical use." Sköld Dep. 94:18-95:6, and Ex. T9 thereto.

<sup>54</sup> Sköld Dep. 18:19-19:16.

<sup>55</sup> Sköld Dep. 107:11-107:16, 36:14-36:22.

<sup>56</sup> Sköld Dep. 18:19-19:16, 36:14-37:7.

<sup>57</sup> Sköld Dep. 20:3-20:16.

Q. Did Medicis have before, in your words or in documents sent to it, the terminology Restoraderm technology?

...

A. Yes, they did.<sup>58</sup>

Whether that “terminology” was communicated in either words or documents was initially cleared up on cross-examination when Sköld testified that he had not given Medicis any written documents relating to the conference call:

Q. And you didn’t provide any materials to Medicis in connection with that call, did you, sir?

A. It was -- how would I do that? Except verbally.<sup>59</sup>

But then that ambiguity was reintroduced when Sköld went on to say: “I can’t say for sure exactly when and how and maybe even if, but I’m fairly certain that they had received more info for us to talk about . . .

”<sup>60</sup>

Sköld further testified ambiguously that other calls were held with Medicis about his theory before and after the September 2001 conference call, in which either he or Jeffrey Day participated.<sup>61</sup> No additional details relating to a call he or Day may have participated in before or after Sköld’s September 12, 2001 conference call were elicited, nor is there any indication that use of the term “Restoraderm” was referenced in any such calls:

Q. So you don’t know for sure if Medicis had any material or prior information about your concept?

A. Prior information they absolutely did, but what kind of documents they had, I can’t say. But we had -- there was numerous calls with Medicis before and after this meeting.

...

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<sup>58</sup> Sköld Dep. 20:18-20:23.

<sup>59</sup> Sköld Dep. 99:2-99:6.

<sup>60</sup> Sköld Dep. 99:7-99:14.

<sup>61</sup> Sköld Dep. 100:3-100:23.

Q. Had you talked to them before about your theory?

A. Yes.

...

Q. Are you sure it wasn't somebody else who talked to Medicis, or is it your testimony you spoke to them prior to September?

A. I know I spoke to them prior, but it also could be that it's been Jeff Day that has had part of that relationship.

Q. So you can't say for sure?

A. I can't say for sure.<sup>62</sup>

4. Sköld's prior interactions with Allergan are characterized by vague and indefinite testimony.

Regarding a third company, Allergan, Sköld testified initially that he "present[ed]" or "provide[d]" the phrase "Restoraderm technology" *either* in paper *or* in a telephone call to Allergan:

Q. Did you present, provide to Allergan in paper or in telephone discussion a phrase, Restoraderm technology?

...

A. Yes.<sup>63</sup>

What is meant by "presented" or "provided" the "phrase Restoraderm technology" was never elucidated by any further testimony,<sup>64</sup> nor had any foundation testimony been elicited describing what was meant by "Restoraderm technology."

Even the vague and indefinite testimony above was later recanted in part when Sköld admitted on cross-examination that he was "very uncertain" about whether Allergan had received any written materials:

Q: And the meeting with Allergan that had been discussed was canceled; was it not?

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<sup>62</sup> Sköld Dep. 99:20-100:23.

<sup>63</sup> Sköld Dep. 21:13-21:18.

<sup>64</sup> Sköld did, however, testify that no meeting with Allergan took place in 2001. Sköld Dep. 20:25-21:12.

A: That's correct.

Q: And you didn't provide any materials to Allergan, did you, sir?

A: I'm very uncertain what Allergan got or didn't get.

Q: So you can't testify to any more than that?

A: I can't be a hundred percent sure.<sup>65</sup>

5. Sköld's Trial Brief assertion that BiCoastal was made aware of the term "Restoraderm," even referentially, is unsupported by evidence.

There is no evidence that Sköld "used," in any sense of the word, the term "Restoraderm" in connection with any discussion or meetings with a company called BiCoastal. The only testimony elicited mentioning "BiCoastal" asked whether an email offered as evidence by Sköld "indicate[s] [Sköld's] effort to promote to bicoastal pharma."<sup>66</sup> The entirety of that email is provided below, and, as the Board can see, there is no mention of the term "Restoraderm":

**Arthur Jackson**

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**From:** Thomas Sköld [skold@ponsus.se]  
**Sent:** Monday, September 03, 2001 6:06 AM  
**To:** Ralph Soldo  
**Subject:** Conference call

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Exhibit	T 70
Skold v. Galderma	
Cancellation No. 92052897	

Good morning Ralph,

I hope your long weekend was pleasant.

I am writing you just to find out about our conference call with David Kohn on Tuesday. Were you able to agree with David, before the weekend, about a certain time on Tuesday? If not, please respond on this E-mail as soon as you can so I know when I need to be on my home phone.

I really hope we can do this on Tuesday. That would give you some time to send us something in writing that I can use internally. Then as you know I will be on the east coast Monday and Tuesday next week. I will be arriving at Newark Monday 2 p.m. We have a meeting with Ortho McNeil and Neutrogen on Tuesday afternoon so we could meet to finalize this either Monday afternoon or before and during lunch on Tuesday.

Please advice.

All the best,  
 Regards

Thomas

6. Sköld gave conflicting accounts regarding his September 2001 meeting with CollaGenex.

Sköld's documentary evidence in the form of a September 4, 2001 email from Jeff Day to Sköld discloses that a meeting with CollaGenex was scheduled to take place the following week on Monday,

<sup>65</sup> Sköld Dep. 97:20-98:5.

<sup>66</sup> Sköld Dep. 35:20-36:10.

September 10, 2001.<sup>67</sup> Yet, Sköld testified that the meeting with CollaGenex occurred on September 12, 2001 and that such meeting was impromptu—that is, it was not previously scheduled.<sup>68</sup>

In another version of the story, as told in Sköld’s interrogatory responses, the meeting took place on September 11, 2001.<sup>69</sup> The September 11, 2001 version of this meeting is also asserted in a document Sköld offered during his testimonial deposition entitled “Recollections of Promotional Meetings,”<sup>70</sup> in which the CollaGenex meeting is reported as having been held on September 11, 2001 in Newtown, Pennsylvania.<sup>71</sup> As noted in Section IV.H.2., *supra*, that is also when he purportedly spent the entire day at J&J’s offices in New Jersey.

7. Day’s testimony was wholly uncredible.

The testimony given by Sköld’s witness, Jeffrey Day, in a testimonial deposition of November 14, 2013, was marred by indicia of bias, contradictions, uncertainty, and a lack of candor. Sköld and Day have been friends since 1997, long before Day joined CollaGenex in October 2001 as its Vice President of Dermatology.<sup>72</sup> In the fall of 2001, unemployed at the time, Day assisted Sköld in setting up meetings with U.S. dermatology companies for Sköld to discuss his theory<sup>73</sup> with the understanding that “financially there would have been something in it” for him,<sup>74</sup> that “he would be remembered.”<sup>75</sup>

On cross-examination, Day testified that he “d[id] not recall” any documents being given to CollaGenex representatives during Sköld’s September 2001 meeting with CollaGenex.<sup>76</sup> On redirect, however, and while looking at a sworn declaration he signed on May 15, 2013, Day testified that he was “very confident” that a document was “there and seen” during that meeting after all.<sup>77</sup>

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<sup>67</sup> Day Dep. 49:7-49:21 and Ex. H thereto.

<sup>68</sup> Sköld Dep. 78:9-78:14.

<sup>69</sup> Registrant’s Notice of Reliance Gald Ex. 9, Response to Interrogatory Nos. 4 and 24.

<sup>70</sup> Registrant maintains its objections to Sköld’s use of this document, but uses it here for rebuttal purposes.

<sup>71</sup> Sköld Dep. 12:4-12:13; Sköld Dep. 49:10-49:18 and Ex. T132.

<sup>72</sup> Sköld Dep. 72:19-73:13, 24:14-25:2.

<sup>73</sup> Sköld Dep. 75:6-75:10; Day Dep. 50:19-50:22.

<sup>74</sup> Day Dep. 50:19-51:16.

<sup>75</sup> Sköld Dep. 75:16-75:23.

<sup>76</sup> Day Dep. 54:16-54:22.

<sup>77</sup> Day Dep. 78:6-78:22.

Day repeatedly expressed difficulty remembering key dates by, as examples, responding that counsel was “killing [him] with this” by inquiring as to Day’s dates of employment;<sup>78</sup> answering that he was “struggling with dates” in response to a question about when he left a company called Ferndale and started his own company, Rx Pharmaceuticals;<sup>79</sup> admitting that he needed to “get [his] bearings on the dates” regarding a study about which he had testified;<sup>80</sup> among others.

Evidence of untruthful statements in Day’s professional biography further impact his credibility. Day’s website biography stated that a company he founded, Rx-Pharma, had “develop[ed] several products utilizing the Restoraderm platform” before Day joined CollaGenex, which, as Day testified occurred in October 2001.<sup>81</sup> This blatantly false statement and Day’s less-than-forthright response when confronted with it evidence this witness’s general lack of credibility:

Q. Now, no products utilizing the Restoraderm platform were developed while you were at Rx-Pharma, were there, sir?

A. That’s correct.

Q. So that’s an incorrect statement in your bio?

A. Technically you’re correct, I guess.

Q. I don’t know about technically. In reality I’m correct, right? There were no Restoraderm products, no products utilizing the Restoraderm platform while you were at Rx Pharmaceutical, were there?

A. That’s true.<sup>82</sup>

## V. ARGUMENT

Despite having 4 years to prepare his case, taking four trial depositions, and offering well over 150 exhibits, Sköld’s evidence falls far short of establishing priority of use of his alleged RESTORADERM mark. In fact, the record submitted by Sköld evidences the opposite. Ultimately, even

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<sup>78</sup> Day Dep. 6:20-6:22.

<sup>79</sup> Day Dep. 38:14-38:19, 40:7-40:11.

<sup>80</sup> Day Dep. 68:5-68:16.

<sup>81</sup> Day Dep. 73:12-74:3, 76:20-77:5.

<sup>82</sup> Day Dep. 77:6-77:18.

assuming all of his factual allegations are true and accurate, none of his activities in the relevant period of priority are of a kind, in nature or extent, that can support a Section 2(d) claim of prior proprietary rights in a “Restoraderm” trademark. Nevertheless, to the extent that some prior trademark right may have accrued, such right was assigned by Sköld to Galderma’s predecessor-in-interest, CollaGenex.

A. Sköld has offered no competent evidence of prior use of the mark RESTORADERM, technical, analogous, or otherwise, sufficient to support his Section 2(d) claim.

To establish priority and likelihood of confusion under Section 2(d) of the Lanham Act, a petitioner must show its own prior proprietary rights in a mark that produce a likelihood of confusion with respect to the mark sought to be canceled. *See* 15 U.S.C. § 1052(d); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162, 64 U.S.P.Q.2d 1375, 1378 (Fed. Cir. 2002). Priority in a mark may be established “through ownership of a prior registration, actual use or through use analogous to trademark use, such as use in advertising brochures, trade publications, catalogues, newspaper advertisements and Internet websites which create a public awareness of the designation as a trademark identifying the party as a source.”<sup>83</sup> *Giersch v. Scripps Networks Inc.*, 90 U.S.P.Q.2d 1020, 1022 (TTAB 2009).

1. Galderma has priority of use and registration in its RESTORADERM marks dating back to at least as early as February 28, 2002.

Galderma’s date of priority in its RESTORADERM mark is at least as early as February 28, 2002. Galderma’s predecessor-in-interest, CollaGenex, filed the application maturing into U.S. Reg. No. 2,985,751 at issue on February 28, 2002 (*see supra* Section IV.C.), and it may rely upon that date as its constructive date of first use. Lanham Act § 7, 15 U.S.C. § 1057(c).

2. Sköld’s evidence does not establish priority of use.

The evidence of record reflects, at most, referential use of the term “Restoraderm” as one of several terms perhaps used by Sköld in connection with his unproven theory in a few private meetings or phone calls. Sköld’s own testimony explicitly forecloses a finding of actual trademark use, and no use of the term analogous to trademark use was established. Moreover, the probative value of the evidence offered in support of showing prior use of his alleged RESTORADERM mark is substantially

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<sup>83</sup> There is no question that Sköld does not own a prior trademark registration.

undermined by a number of factors, including: critical factual omissions; testimony contradicted or unsupported by other testimony or by what documentary evidence is available; a lack of contemporary documentation or advertising showing any use prior to the filing of Galderma's trademark application; and the imperfect or selective memories of Sköld's witnesses.

- a. Sköld's efforts toward landing a development deal with a dermatology company are not of a type that can support trademark rights.

Sköld's contacting of a handful of companies in the hopes of finding someone to help him develop his theory or concept for a technology, even assuming he referred to the term "Restoraderm technology" in doing so (which is very much in doubt, *see supra* Section IV.H.), is not the type of commercial use in trade, or use analogous to trademark use, that can confer proprietary rights. *See Travelers Petroleum, Inc. v. Selfway, Inc.*, 195 U.S.P.Q. 578, 582 (TTAB 1977), *aff'd*, *Selfway, Inc. v. Travelers Petroleum, Inc.*, 579 F.2d 75, 198 U.S.P.Q. 271 (C.C.P.A. 1978) (finding the dissemination of a business plan in the form of a brochure to potential investors "wholly inadequate to create any awareness of the term in relation to the business he hoped to establish or the goods he hoped to sell"). The plaintiff in an analogous case, *Duffy v. Charles Schwab & Co.*, sought to form a business partnership for purposes of offering a new financial product, and his delivery of proposals to four organizations and his distribution of samples to a few companies, all identifying the proposed product as "Mutual Fund Report Card," did not confer any proprietary rights in the designation. 54 U.S.P.Q.2d 1820, 1821, 1823-24 (D.N.J. 2000) ("The law only protects a party's goodwill and business, not a party's intention to create goodwill and business.").

Similarly, the defendant in *American Express Co. v. Goetz*, who conceived of an idea for a consumer credit card feature and developed software for that purpose, sent proposals to various credit card companies describing his concept and referring to it as "My Life, My Card." 85 U.S.P.Q.2d 1913, 1914 (2d Cir. 2008). His use of the designation in a manner not "open and notorious" only in "communications with a few commercial actors" as "a component of [the defendant's] business proposal"

was not sufficient to confer priority of rights over the subsequent commercial usage by one of the companies he contacted. *Id.* at 1916-17.

- b. Sköld made no prior statutory/technical use of his alleged RESTORADERM mark.

Sköld has made no prior, actual trademark use of his alleged RESTORADERM mark. “Actual use” for purposes of Section 2(d) refers to the “bona fide use of a mark in the ordinary course of trade” necessary to support a trademark application under Section 45 of the Lanham Act (15 U.S.C. § 1127), sometimes called “technical use.” *See Cent. Garden & Pet Co. v. Doskocil Mfg. Co.*, 108 U.S.P.Q.2d 1134, 1142 (TTAB 2013). For goods, such technical use requires a sale or transport of goods in commerce bearing the mark. Lanham Act § 45, 15 U.S.C. § 1127. For services, technical use of a mark requires that the mark be used or displayed in the sale or advertising of services and that such services are rendered. *Id.* Sköld has provided no evidence of a sale of goods or the advertising and rendition of services provided under a RESTORADERM trademark prior to Galderma’s priority date. On the contrary, Sköld’s own testimony and admissions establish that Sköld made no such prior technical use.

- i. Sköld did not have a prior, bona fide sale or transport in commerce of goods under his alleged RESTORADERM mark.

Sköld has offered no evidence of a sale of goods bearing the mark to date, let alone a sale that predates Galderma’s February 28, 2002 priority date. As an initial matter, the evidence shows that no products existed during the priority period with which Sköld could have made trademark use. *See supra* Section IV.E. It is axiomatic that in order to place a mark into actual use with goods, the goods to which the mark relates must be in existence, and not merely in a developmental stage. *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 U.S.P.Q. 989, 991 (TTAB 1982); *see Gay Toys, Inc. v. McDonald’s Corp.*, 585 F.2d 1067, 199 U.S.P.Q. 722, 723 (C.C.P.A. 1978) (finding a plaster mockup of a toy did not constitute the goods of “toys”). The Board in *Richardson-Vicks Inc.*, under highly similar facts, found that the applicant did not establish use of the mark for skin cream, even under the more liberal “token use” doctrine in place at the time, noting that “[a]t the time the shipment of [skin] cream [upon which the applicant alleged first use] took place, there was no specific product or products contemplated to be sold

under said mark, applicant only having a somewhat vague concept that women’s skin care products would be sold” and that the “applicant’s skin care products [were] *drawing board items*.” 216 U.S.P.Q. at 991-92 (emphasis added). “Drawing board items” is exactly what Sköld had during the priority period, or, in his words: “it was still on the drawing board.” *See supra* Section IV.E.1. As discussed in Sections IV.E.3. and IV.F., *supra*, the only material in existence was in the form of “experimental example samples” provided to CollaGenex for evaluation and testing.

Even to the extent that Sköld’s experimental example samples could be characterized as “goods,” Sköld admitted that such samples were not purchased or sold during the priority period. *See supra* Section IV.F. Consistent with that testimony, Sköld’s Trial Brief made the admission that there still have been no sales to date: “Upon development, the products of Restoraderm technology can be expected to be sold in drug stores.” *See* Petitioner’s Trial Brief V.C., p. 43. With respect to the “selling activities” theory put forth in Sköld’s Trial Brief, there is no legal support for the notion that the giving of a sample to a potential product development partner in the course of negotiating a potential deal is transformed into a sale of goods in commerce after the fact once, over the course of years, payments have been made for the services performed under the development deal.

Nor can Sköld’s providing CollaGenex with a few experimental samples, even if they did bear the term “Restoraderm,” whether by handing them over or mailing them to CollaGenex, for initial evaluation while CollaGenex considered a potential development deal with Sköld, or subsequently for sample testing once that deal was struck, *see supra* Section IV.E.3., constitute the type of public, commercial transaction necessary to qualify as a “transport” of goods pursuant to Section 45 of the Lanham Act (15 U.S.C. § 1127). Transportation of branded goods sufficient to constitute actual use of a mark requires that such transportation be public in nature. *Simmons v. Western Publ’g Co.*, 834 F. Supp. 393, 397, 31 U.S.P.Q.2d 1143, 1146 (N.D. Ga. 1993) (“[S]hipment to a potential manufacturer . . . does not constitute the kind of public use necessary to establish ownership of a mark.”); *Walt Disney Prods. v. Kusan, Inc.*, 204 U.S.P.Q. 284, 287 (C.D. Cal. 1979) (shipment of a prototype game between inventor and manufacturer not a public

use for trademark purposes). Sköld's giving samples to CollaGenex equates to an internal shipment among business associates, not a bona fide, public use of a trademark.

- ii. Sköld did not advertise or provide RESTORADERM-branded consulting services under his alleged RESTORADERM mark.

The record establishes that Sköld made no prior trademark use of his asserted mark in connection with services. Not only is there is no evidence showing Sköld's alleged use of the term "Restoraderm" in connection with advertising or rendering services, both of which elements are required for a showing of technical trademark use with services, Sköld explicitly testified that his consulting services were offered and provided under his own personal name, not a brand name, let alone the name "Restoraderm." *See supra* Section IV.G. Conspicuously absent from the record are examples of business cards, letterhead, invoices, email signature blocks, and the like bearing the mark. And, as discussed in Section V.A.2.a., *supra*, Sköld's effort to ink a product development deal is not the type of activity that can support trademark use irrespective of whether Sköld now characterizes those efforts as "marketing." *See* Petitioner's Trial Brief, Section V.A., p. 38.

- c. Sköld made no prior use of his RESTORADERM mark in a manner analogous to trademark use.

A party relying on non-technical or analogous use to support a claim of priority "must show that its putative mark essentially functioned as a trademark—identifying the source of goods in the mind of the consumer—notwithstanding that technical trademark use . . . had not commenced." *Cent. Garden*, 108 U.S.P.Q.2d at 1142-43. "The touchstone of analogous use is a factual determination of whether the use of the mark has created in the minds of the relevant public an association between the goods or services and their source." *Id.* at 1142. *See also Jim Dandy Co. v. Martha White Foods, Inc.*, 458 F.2d 1397, 1399, 173 U.S.P.Q. 673, 674 (C.C.P.A. 1972) (requiring popularization in the public mind). That association "must reasonably be expected to have a substantial impact on the purchasing public," *Herbko*, 308 F.3d at 1162, 64 U.S.P.Q.2d at 1378, and it must have already been made prior to the date the opposing party acquired proprietary rights in its mark, *Cent. Garden*, 108 U.S.P.Q.2d at 1144. As an initial matter, it should be noted that the vast majority of Sköld's testimonial and documentary evidence

relates to events that took place after Galderma's priority date of February 28, 2002, and any inference Sköld would have the Board draw from this evidence is irrelevant to the issue of Sköld's priority.

Moreover, for use of a mark to be analogous to trademark use, it must be "tied in some way to a good or service"; otherwise "such use could give rise only to a right in gross." *Id.* at 1145. As discussed in Section IV.E., *supra*, no specific goods or services were associated with Sköld's even referential use of the term "Restoraderm," during the relevant priority period, since, at that time Sköld had only a theory or concept for a technology that might have later been used to develop an actual product.

Nor were Sköld's activities in September 2001 of a "nature or extent" sufficient for a showing of analogous use. *T.A.B. Sys. v. PacTel Teletrac*, 37 U.S.P.Q.2d 1879, 1881 (Fed. Cir. 1996) (noting that a claim of analogous use can only succeed where the "use is of such a nature and extent as to create public identification of the target term with the opposer's product or service"). Aside from his interactions with Galderma's predecessor, CollaGenex, Sköld's priority of use claims rest almost entirely on interactions he allegedly had with a few other companies during September 2001 for the premise that "[i]n September 2001, Sköld marketed in the United States his product and services, as 'Restoraderm,' to three of the ten or 'a little bit' more most credible U.S. companies for developing a dermatology products [sic] . . . ." See Petitioner's Trial Brief, Section V.A., p. 38. Indeed, after that date, any further efforts to develop his theory or concept were directed solely toward CollaGenex. See *supra* Section IV.D. As noted in Section V.A.2.a., *supra*, Sköld's efforts to find a development partner are not in the nature of trademark use. Furthermore, the notion that representatives from three dermatology development companies may have heard of, what Sköld described as, "the phrase Restoraderm technology" or "the terminology Restoraderm technology," is entirely inconsistent with the requirements of "populariz[ation] in the public mind," *Jim Dandy*, 173 U.S.P.Q. at 674, "substantial impact on the purchasing public," *Herbko*, 64 U.S.P.Q.2d at 1378, "open and notorious public use," *Computer Food Stores, Inc. v. Corner Store Franchises, Inc.*, 176 U.S.P.Q. 535, 538 (TTAB 1973), or any other standard courts have articulated for analogous use.

- d. Sköld's vague, uncertain, and inconsistent evidence cannot support a finding of prior use.

The probative value of Sköld's evidence is substantially undermined by a variety of factors: vague and indefinite testimony; testimony contradicted or unsupported by other testimony or what little, relevant documentary evidence is available; the imperfect or selective memory of Sköld with respect to key dates and events; and the wholly uncredible testimony of Sköld's fact witness. The Board and courts have repeatedly held that vague, uncertain, inconsistent, and contradictory evidence cannot support the "critical inference of identification in the mind of the consuming public" necessary for finding use giving rise to proprietary trademark rights. *See, e.g., Cent. Garden*, 108 U.S.P.Q.2d at 1144; *T.A.B. Sys.*, 37 U.S.P.Q.2d at 1882 (noting that, where evidence "falls short of supporting the critical inference of identification in the mind of the consuming public, [the Federal Circuit has] not hesitated to reject an analogous use opposition"); *Computer Food Stores*, 176 U.S.P.Q. at 538; *Powermatics, Inc. v. Globe Roofing Prods. Co.*, 144 U.S.P.Q. 430, 432 (C.C.P.A. 1965). Rather, such evidence "should carry with it conviction of its accuracy and applicability." *B.R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 66 U.S.P.Q. 232 (C.C.P.A. 1945).

Sköld's and his witness's testimony regarding the activities Sköld relies upon to establish trademark use were riddled with vague and ambiguous statements—such as, the "phrase Restoraderm technology" was "used"; certain documents "were seen"; Sköld "presented" his technology, and so on—with little or no additional details from which a definite fact finding probative of trademark use could be drawn. *See supra* Section IV.H. Moreover, there was absolutely no corroboration from any of the companies with whom Sköld allegedly met to support that they had any awareness of the term "Restoraderm."

Further, while the accuracy of dates is critical in a priority of use contest, the witnesses testified inconsistently regarding the dates of Sköld's alleged activities. *See supra* Sections IV.H.2., IV.H.6., and IV.H.7. Sköld even contradicted his own previously-sworn statements as to whether he spent the entire

day on September 11, 2001 at CollaGenex's offices in Pennsylvania or at Johnson & Johnson's offices in New Jersey. *See supra* Sections IV.H.2 and IV.H.6.

3. The parties' contemporaneous conduct reflects a mutual understanding that no rights in a RESTORADERM trademark had arisen before Galderma's priority date.

The record establishes that both parties proceeded in late 2001 and early 2002 under the understanding that no trademark rights in the term "Restoraderm" existed prior to CollaGenex's filing its February 28, 2002 U.S. trademark application for its RESTORADERM mark.<sup>84</sup> Before that, "Restoraderm" was only one among several ideas Sköld had for potential brand names, and it was CollaGenex who selected "Restoraderm" for use with potential products to be developed. *See supra* Section IV.E.2. Indeed, once it had made that decision and entered into a Letter of Intent in December 2001, under which CollaGenex and Sköld would work together to develop his theory, and which stated that any trademark rights relating thereto would be owned by CollaGenex, CollaGenex then set out implementing an international trademark protection strategy, starting with filing 5 trademark applications for its RESTORADERM mark in January 2002 in the U.K., the E.U., Switzerland, Norway, and Israel. *See supra* Section IV.C. This understanding is further reflected in the parties' 2002 Cooperation Agreement, which does not define rights that already existed in a "Restoraderm" mark, but rather addresses in prospective terms which party "shall" own trademark rights once CollaGenex's development of Sköld's theory or concept was underway, stating: "All trade marks applied for or registered (including 'Restoraderm') shall be in the sole name of CollaGenex and be the exclusive property of CollaGenex during the Term and thereafter." *See supra* Section IV.D.

- B. Any trademark rights in the mark RESTORADERM that predated Galderma's constructive use priority date were assigned to Galderma as of February 11, 2002.

Even if the Board finds that Sköld made some use of his alleged RESTORADERM mark before Galderma's priority date sufficient to create rights under Section 2(d) of the Lanham Act, then the 2002

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<sup>84</sup> It should be noted also that, despite Sköld's Trial Brief assertions, his witness, Jeffrey Day, did not testify on behalf of CollaGenex, and thus Galderma. Day was not deposed as a corporate representative, nor would he have been had Sköld elected to depose a witness representing Galderma's perspective.

Cooperation Agreement must be construed as affecting an assignment of any and all such rights from Sköld to CollaGenex. As discussed in Section IV.D., *supra*, the 2002 Cooperation Agreement reads, in pertinent part: “All trade marks applied for or registered (including ‘Restoraderm’) shall be in the sole name of CollaGenex and be the exclusive property of CollaGenex during the Term and thereafter (‘the Trade Marks’).”<sup>85</sup> The 2002 Cooperation Agreement even includes a license from CollaGenex to Sköld allowing him to use the trademark with CollaGenex’s permission under quality standards set by CollaGenex, clearly indicating the parties’ roles, with CollaGenex as the owner and licensor and Sköld as the licensee. *See supra* Section IV.D.

While Galderma maintains that these provisions address trademark rights prospectively and reflect the parties’ contemporaneous understanding that neither party had acquired trademark rights in the U.S. as of February 11, 2002, if any of Sköld’s prior activities did give rise to some prior rights in his alleged RESTORADERM mark, then the 2002 Cooperation Agreement can only be read as an assignment of such rights to CollaGenex. There are no other instruments affecting Galderma’s title to any of its RESTORADERM trademarks,<sup>86</sup> and Sköld, having, assigned whatever rights he may have had in his alleged RESTORADERM mark to Galderma’s predecessor, CollaGenex, cannot now seek to cancel Galderma’s trademark registrations based on prior rights in a confusingly similar mark.

## VI. CONCLUSION

For the foregoing reasons, Galderma respectfully submits that it has priority of use and registration of its RESTORADERM trademarks and requests that the Board dismiss Sköld’s Petition for Cancellation.

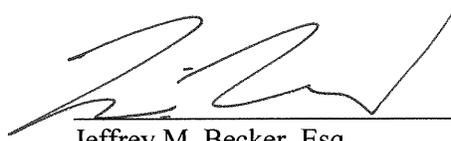
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<sup>85</sup> Sköld Dep. 121:25-123:16 and Ex. T2 thereto.

<sup>86</sup> It should be noted, however, that Sköld has alleged that CollaGenex purchased whatever trademark rights Sköld may have owned in a “Restoraderm” trademark in 2004. *See* Petitioner’s Trial Brief at Sections V.D. and V.E. Galderma maintains that there is no basis for interpreting the 2004 Agreement as a purchase of any trademark rights. *See supra* Section IV.D. n.27. That said, even under Sköld’s theory, Galderma would still be the current owner of any “Restoraderm” trademark rights. That is because none of Sköld’s allegations relating to whether the parties performed their obligations under that agreement and what assets allegedly “should have been returned” to Sköld are relevant to Board proceedings, *Vaughn Russell Candy Co. v. Cookies in Bloom, Inc.*, 47 U.S.P.Q.2d 1635, n.6 (TTAB 1998) (“[I]t does not lie within the jurisdiction of the Board to enforce the contract between the parties.”), and, in particular, they are not relevant to this proceeding, as the Board has already dispensed with Sköld’s breach of contract claims and stricken from the Amended Petition his factual allegations relating thereto. *See supra* Section IV.B.

Respectfully submitted,

Date: August 13, 2014

A handwritten signature in black ink, appearing to read 'J. M. Becker', written over a horizontal line.

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**APPENDIX**

Registrant, Galderma Laboratories, Inc. hereby objects to the following documents<sup>1</sup> submitted by Petitioner in this action and respectfully requests that the Board strike them from the record or limit their use in this proceeding:

<b>Petitioner’s Exhibit Number and Description</b>	<b>Objection and Explanation</b>
T1 – Aug. 17-18, 2004 emails between D. Glazer and Sköld concerning 2004 Agreement.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has elicited no testimony that the purported email is what it claims to be. <i>See</i> Sköld Dep. 57:13-58:24, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers the email for the truth of the facts purportedly asserted by “David Glazer” therein.</li> </ul>
T2 – 2002 Agreement between Collagenex and Sköld.  Page 3 of the agreement is provided twice, with the second copy showing the text “Exhibit A” which is visible in the original.	<ul style="list-style-type: none"> <li>• <i>Best Evidence Rule</i> (FRE 1002/1003) – Only a copy of the purported contract was presented to the witness and offered into evidence. Rather than proffer a duplicate of some original document, the document Petitioner offered into evidence appears to be a copy of a facsimile with handwritten alterations. <i>See e.g.</i>, Ex. T2 at § 2.1(a) and (b).</li> </ul>
T3 – 2004 Agreement between Collagenex and Sköld.	<ul style="list-style-type: none"> <li>• <i>Best Evidence Rule</i> (FRE 1002/1003) – Only a copy of the purported contract was presented to the witness and offered into evidence. Rather than proffer a duplicate of some original document, the document Petitioner offered into evidence appears to be a copy of a facsimile. The document purports to have a signature page, <i>see</i> Ex. T3 at p. 23, but there is no signature page in Petitioner’s Exhibit T3.</li> </ul>
T7 – Aug. 28–Sep. 4, 2001 emails between Sköld and J. Fowler discussing promotional activity with Neutrogena (J&J), Medicis, and Allergan.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has elicited no testimony that the purported email is what it claims to be. <i>See</i> Sköld Dep. 34:18-35:16, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers the email for the truth of the facts purportedly asserted by fowlerjoe@msn.com and Sköld therein. <i>See</i> Sköld Dep. 34:18-35:16, Nov. 13, 2013.</li> </ul>
T8 – Mode of Action document	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901)/<i>Lack of Personal Knowledge</i> (FRE 602) – Petitioner has elicited no testimony about the document offered into evidence, quite the opposite, Petitioner’s only testimony about Petitioner’s Exhibit T8 was that he had once “show[n] Collagenex” a document that was “<i>not</i> identical to that found as Trial Exhibit T8.” <i>See</i> Sköld Dep. 17:3-</li> </ul>

<sup>1</sup> Registrant also objects on relevance grounds to all documents that purportedly evidence use by Sköld of the Restoraderm mark after February 28, 2002.

Petitioner's Exhibit Number and Description	Objection and Explanation
	17:9, Nov. 13, 2013.
T9 – A description of the Restoraderm Technology	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901)/<i>Lack of Personal Knowledge</i> (FRE 602) – Petitioner has elicited no testimony about the document offered into evidence, in fact the only testimony was: “that text or the substantial equivalent” was “used” in meetings. <i>See</i> Sköld Dep. 36:14-36:22, Nov. 13, 2013.</li> </ul>
T10 – Oct. 22, 2002 email from S. Kennedy (Collagenex) to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions (e.g., “did you store the document in the ordinary course of business as you do with comparable business documents?”), which failed to establish that the document is what it is claimed to be. <i>See</i> Sköld Second Dep., 27:16-28:4, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Sheila Kennedy; the admission by party-opponent hearsay exemption of FRE 802(d)(2) does not apply to predecessors in interest (<i>i.e.</i>, Collagenex) and Petitioner has failed to establish the business records exception (FRE 803(6)) through its leading and conclusory statements as discussed above.<sup>2</sup> <i>See</i> Sköld Second Dep. 27:16-28:4, Jan. 14, 2014.</li> </ul>
T11 – Epitan Agreement dated 9 May 2003. The complete document includes SKÖLD-001950, found as Ex. T124	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has elicited no testimony that the purported agreement is what it claims to be, that the witness had ever seen the purported agreement before the deposition, or that the witness had signed the purported agreement. <i>See</i> Sköld Dep. 67:4-69:2, Nov. 13, 2013.</li> </ul>
T12 – Dec. 9, 2003 email from R. Ashley (Collagenex) to other Collagenex personnel.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has elicited no testimony that the purported agreement is what it claims to be; Petitioner testified that the email was “forward[ed]” to him, without stating who or under what circumstances it was forwarded to him; it is apparent from the face of the email that it was not forwarded to him electronically, thus evidencing that Petitioner cannot testify to the contents of this email when sent or that it was even sent (since Petitioner has also failed to produce any electronic metadata). <i>See</i> Sköld Dep. 69:4-70:10, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Robert Ashley therein; no exemption or exception to the hearsay rule applies.</li> </ul>
T13 – Draft amendments to agreement attached to SKÖLD-000036	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has elicited no testimony that the purported agreement is what it claims to be, that the witness had ever seen the purported agreement before the deposition, or how, when, and where Petitioner acquired the document. <i>See</i> Sköld Dep. 29:12-30:22, Nov. 13, 2013.</li> </ul>

<sup>2</sup> *See, e.g., United States v. Ferber*, 966 F. Supp. 90, 98 (D. Mass. 1997) (email not business record even where maintained as matter of routine if business under no duty to maintain emails); *New York v. Microsoft Corp.*, 98-1233, 2002 U.S. Dist. LEXIS 7683 (D.D.C. Apr. 12, 2002) (email does not qualify as business record even where “kept in the course of [] regularly conducted business activity”).

Petitioner's Exhibit Number and Description	Objection and Explanation
T14 – Jul 10-12, 2004 emails between J. Day (Collagenex) and Sköld (Email mentions Therapeutics, Inc./Product Development Co.)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions (“Is the document stored in the ordinary course of business as you do with comparable, important business documents?”), which failed to establish that the document is what it is claimed to be; Petitioner's testimony that he regularly keeps email print-outs with a header that reads “Arthur Jackson” (Petitioner's counsel) is not credible; and the document is incomplete as Petitioner states the document contains a communication between Jeff Day and Dan Piacquadio that is either cut off from the document or never existed thus impeaching his personal knowledge about the contents of this document. <i>See</i> Sköld Second Dep. 31:2-32:7, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself; the admission by party-opponent hearsay exemption of FRE 802(d)(2) does not apply to predecessors in interest (<i>i.e.</i>, Collagenex) and Petitioner has failed to establish the business records exception (FRE 803(6)) through its leading and conclusory statement as discussed above. <i>See</i> Sköld Second Dep. 31:2-32:7, Jan. 14, 2014.</li> <li>• <i>Best Evidence Rule</i> (FRE 1002) – This is a copy of an email that by Petitioner's own admission is missing a conversation between Jeff Day and Dan Piacquadio.</li> </ul>
T15 – July 19, 2004 email from J. Day (Collagenex) to Sköld	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. <i>See</i> Sköld Dep. At 70:15-71:8, Nov. 13, 2013.</li> </ul>
T16 – Oct. 4, 2004 emails between Collagenex and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 32:8-33:6, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Sheila Kennedy, Chris Powala, and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T17 – Dec. 15, 2005 email from G. Ford (Collagenex) to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 32:8-33:6, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T18 – Feb. 27, 2006	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
email from B. Zerler (Collagenex) to Sköld (with attached data)	<p>questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 34:5-34:22, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Brad Zerler therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, including, as discussed above, Petitioner's leading questions that asked for legal conclusions that were presumably aimed at meeting the ordinary course of business exception.</li> </ul>
T19 – Jul. 7, 2006 letter from Wiggin & Dana (Sköld's attorneys) to Collagenex	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 35:2-35:22, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Ian Bjorkman therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, including, as discussed above, Petitioner's leading questions that asked for legal conclusions that were presumably aimed at meeting the ordinary course of business exception.</li> </ul>
T20 – Jun. 27-Jul. 27, 2006 emails between G. Ford (Collagenex) and formulator, copying Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, Petitioner does not even allege that he was copied on certain portions of the email thread, and is thus unable to authenticate those portions of the thread. <i>See</i> Sköld Second Dep. At 36:2-36:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Tomas Danielsson and Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, including, as discussed above, Petitioner's leading questions that asked for legal conclusions that were presumably aimed at meeting the ordinary course of business exception. This thread also presents hearsay within hearsay and Petitioner is required to satisfy an exception or exemption for each piece of hearsay, which he has failed to do.</li> </ul>
T21 – Jul. 27-Aug. 1, 2007 emails between G. Ford (Collagenex) and Sköld re: American Academy of Dermatology (AAD) meeting	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, including Petitioner's leading questions that asked for legal conclusions that were presumably aimed at meeting the ordinary course of business exception. <i>See</i> Sköld Second Dep. 37:5-38:2, Jan. 14, 2014.</li> </ul>
T22 – Jan. 29, 2009	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
letter from Wiggin & Dana (Sköld's attorneys) to Collagenex	matters purportedly asserted by Thomas Clauss therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, including Petitioner's leading questions that asked for legal conclusions that were presumably aimed at meeting the ordinary course of business exception. <i>See</i> Sköld Second Dep. 38:11-39:21, Jan. 14, 2014.
T23 – Sep. 1, 2008 emails between S. Samira (Galderma) and Sköld, attaching memo on technology consultation meeting (“Restoraderm technical Meeting”)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 39:22-40:23, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T24 – Sep. 3, 2008 emails between S. Samira (Galderma) and Sköld	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. <i>See</i> Sköld Second Dep. 41:8-42:7, Jan. 14, 2014.</li> </ul>
T25 – Sep 1-Sep 4, 2008 emails between S. Samira (Galderma), L. Fredon (Galderma) and Sköld	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. <i>See</i> Sköld Second Dep. 42:8-43:12, Jan. 14, 2014.</li> </ul>
T27 – July 9-Jul 15, 2009 emails between Q. Cassady (Galderma) and Sköld	<ul style="list-style-type: none"> <li>• <i>This document was not offered into evidence.</i> <i>See</i> Sköld Dep. 35:11-35:12, Nov. 13, 2013.</li> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions about this document and did not offer it into evidence.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T28 – Dec. 1, 2009 email from Sköld to C. de Bruyne (Galderma)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 44:23-45:15, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T29 – Jan. 27-Feb. 8, 2010 emails between J. Wallace (Galderma)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when,</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
and Sköld	<p>where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 45:18-46:12, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T30 – May 21-29, 2007 emails between Sköld and [REDACTED] (email mentions [REDACTED])	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 46:15-47:9, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and an unidentified person therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T31 – July 24, 2008 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 47:10-48:4, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and an unidentified person therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T32 – Aug. 1, 2007 email from [REDACTED] recommending Sköld's dermatology products to [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 48:8-49:8, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be only a partial reproduction of the document as the top line, "original message," indicates that there is additional discussion omitted from the document offered by Petitioner.</li> </ul>
T33 – Aug. 2-4, 2007 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 49:9-50:5, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by [REDACTED] and himself therein; Petitioner has not offered any testimony that would support the application</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	of any exemption or exception to the hearsay exclusion.
T34 – PowerPoint on a mucosal form of the Restoraderm technology, attached to email of SKÖLD-000102-3 (T33) and to email of SKÖLD-000117-18 (T35)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to establish that the document is an attachment to T33 or T35 as his description of the exhibit states. <i>See</i> Sköld Second Dep. 50:12-52:2, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T35 – Aug. 3-4, 2007 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 52:3-53:1, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by [REDACTED] and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T36 – Business plan on a mucosal form of the Restoraderm technology, attached to Email of SKÖLD-000117-18 (Ex. T35)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to establish that the document is an attachment to T35 as his description of the exhibit states. <i>See</i> Sköld Second Dep. 53:2-54:3, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T37 – Spreadsheet attached to email of Sköld-000117-18 (Ex. T35)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner admittedly did not know who created the document and never established when, where, or how the witness purportedly acquired the document. Petitioner's counsel asked no questions to establish that the document is an attachment to T35 as his description of the exhibit states. <i>See</i> Sköld Second Dep. 54:4-55:7, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T38 – Jan. 7-13, 2008 emails between Sköld, [REDACTED] (email mentions [REDACTED])	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 55:8-55:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T39 – Jan. 15-25, 2008	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
emails between Sköld, [REDACTED] (email mentions [REDACTED])	<p>questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 54:1-56:20, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T40 – Mar. 3, 2010 email (with attachments) to [REDACTED], including an FDA Meeting Report from 2004 on [REDACTED] Restoraderm product, and the “restoraderm Development Report” of Feb. 30, 2005	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner admittedly could not say who purportedly created the attachment to the email. <i>See</i> Sköld Second Dep. 56:21-59:10, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T41 – Feb. 11-Mar. 17, 2010 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. <i>See</i> Sköld Second Dep. At 59:11-60:11, Jan. 14, 2014.</li> </ul>
T42 – Aug. 19-22, 2011 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 60:12-61:15, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T43 – Aug. 29, 2011 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 61:18-62:16, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T44 – Dec. 13-15, 2011 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when,</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
[REDACTED]	<p>where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 62:17-63:17, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T45 – Nov. 29, 2007 emails between G. Ford (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 63:18-64:17, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T46 – Feb. 12, 2008 Collagenex response letter to Wiggin & Dana (Sköld's attorneys)	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion; application of the business records exception cannot be based on leading questions that ask for legal conclusions. <i>See</i> Sköld Second Dep. 64:18-65:24, Jan. 14, 2014.</li> </ul>
T47 – PowerPoint presentation on Restoraderm including Collagenex logo. The presentation was attached to the email of SKÖLD-001790-91 (Ex. T53, below)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to establish that the document is an attachment to T53 as his description of the exhibit states. <i>See</i> Sköld Second Dep. 65:25-67:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion; application of the business records exception cannot be based on leading questions that ask for legal conclusions. <i>See</i> Sköld Second Dep. 65:25-67:25, Jan. 14, 2014.</li> </ul>
T48 – Feb. 14, 2002, email from J. Day (Collagenex) to Sköld (Email mentions P&G)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 67:7-68:2, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that the declarant, Jeff Day, was an available witness that Petitioner deposed.</li> </ul>
T49 – Dec. 5-6, 2010 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 68:3-69:9, Jan. 14, 2014.</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and ██████████ therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T50 – Jan. 26, 2004 email from J. Day (Collagenex) to Sköld (email mentions Scientific Advisory Board)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 69:10-70:1, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that the declarant, Jeff Day, was an available witness that Petitioner deposed.</li> </ul>
T51 – Statement from Collagenex of agreed term sheet for 2004 Agreement	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner has failed to establish that this document is what it claims to be, because on its face this document is an undated and unsigned “agreement.” <i>See</i> Sköld Second Dep. At 70:14-71:25, Jan. 14, 2014.</li> </ul>
T52 – Jul. 15, 2004, email from J. Day (Collagenex) to Sköld (email mentions Abramovitz)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 72:1-73:3, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that the declarant, Jeff Day, was an available witness that Petitioner deposed.</li> </ul>
T53 – Sep. 3-8, 2004 emails between Ranbaxy, Sköld, and Collagenex	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, Petitioner cannot authenticate this email chain because he was not a party to the initial email in the chain and therefore cannot attest to the authenticity of that part of the chain. <i>See</i> Sköld Second Dep. 73:4-73:23, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by third parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T54 – Meeting agenda attached to SKÖLD-001790 (Ex. T53)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, Petitioner's counsel asked no questions to establish that the document is an</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<p>attachment to T53 as his description of the exhibit states. <i>See</i> Sköld Second Dep. 74:4-75:3, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by third parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T55 – Oct. 26, 2004 email from G. Ford (Collagenex) to Sköld (email mentions Galderma)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, this document appears to be an incomplete email string and contains foreign language portions that have not been translated. <i>See</i> Sköld Second Dep. 75:4-75:24, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion</li> </ul>
T56 – Nov. 3-18, 2004 emails between Collagenex and Sköld on additional Restoraderm samples from Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, this document appears to be an incomplete email. <i>See</i> Sköld Second Dep. 76:1-77:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford and Art Clapp therein; to the extent a hearsay exemption applies to the portion of Art Clapp's purported statements, no exemption or exception applies to the purported statements of Greg Ford.</li> </ul>
T57 – Mar. 10-16, 2009 email between A. Clapp (Galderma) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 77:14-78:12, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Art Clapp therein; to the extent a hearsay exemption applies to the portion of Art Clapp's purported statements, no exemption or exception applies to the purported statements of Petitioner.</li> </ul>
T58 – Jun 2, 2009 email from Q. Cassidy (Galderma) to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 40:3-40:25, Nov. 13, 2013.</li> </ul>
T59 – Jun 16-17, 2009 emails between Q.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
Cassady (Galderma) and Sköld	<p>document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 47:20-48:22, Nov. 13, 2013.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Quintin Cassady therein; to the extent a hearsay exemption applies to the portion of Quintin Cassady's purported statements, no exemption or exception applies to the purported statements of Petitioner.</li> </ul>
T60 – Jun. 22, 2009 email from Q. Cassady (Galderma) to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 78:13-79:13, Jan. 14, 2014.</li> </ul>
T61 – Sköld's list, sent to Galderma, of items to be returned per Section 8.5 of the 2004 Agreement	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 60:22-61:18, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; no exemption or exception to the hearsay rule applies to the purported statements of Petitioner.</li> </ul>
T62 – May 31-Jul. 14, 2010 emails between C. de Bruyne (Galderma) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 79:16-80:18, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Chris De Bruyne therein; to the extent a hearsay exemption applies to the portion of Chris De Bruyne's purported statements, no exemption or exception applies to the purported statements of Petitioner.</li> </ul>
T63 – Sep. 14, 2010 Press Release form Galderma on Cetaphil Restoraderm	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked a leading question about how the document should be described, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 80:21-81:5, Jan. 14, 2014.</li> <li>• <i>Notice of Reliance Improper</i> (TBMP § 704 et seq., 37 C.F.R. § 2.122(e)) – Internet postings and press releases are not “official records” within the meaning of the Rules, which only apply to “records of public offices or agencies, or records kept in the performance of duty by a public officer” nor is T64 found in “libraries” or in “general circulation.” Further, T63 does not indicate a date or URL, so it is not admissible under TBMP § 704.08(b).</li> </ul>
T64 – Mar. 11-22, 2010 emails introducing	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
Sköld to ██████ and between Sköld and ██████	<p>document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 81:13-82:11, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T65 – Jun. 1-2, 2010 emails between Sköld and ██████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 82:12-83:6, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T66 – Oct. 4-5, 2010, emails between Sköld and ██████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 83:7-84:3, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T67 – Feb. 10-21, 2011 emails between Sköld and ██████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 84:4-84:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T68 – Jun. 30, 2011 email from Sköld to ██████ re: meeting	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 85:1-85:22, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T69 – Aug. 31-Sep. 5, 2001 emails between	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
Sköld and J. Day	<p>document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 35:5-35:18, Nov. 13, 2013.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T70 – Sep 3, 2001 email from Sköld to BiCoastal Pharma (Ralph Soldo) re: teleconference (email mentions Ortho McNeil/Neutrogena)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 35:20-36:12, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T71 – Sep. 4-5, 2001 emails between Sköld and J. Day (email mentions Allergan)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 35:5-35:18, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T72 – Sep. 4-5, 2001 emails between Sköld and J. Day (email mentions Allergan)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 85:23-86:22, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T73 – Sep. 6, 2001 email from Sköld to J. Day (email mentions Medicis)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel did not ask any questions to establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established when, where, or how the witness purportedly acquired the document. Additionally, this document is in a foreign language without a translation. <i>See</i> Sköld Dep. 35:5-35:18, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself therein; Petitioner has</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.
T74 – A business plan prepared by Sköld “using the mark Restoraderm”	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel did not establish the authenticity of this document, Petitioner never marked the document or offered it into evidence; Petitioner never established where or how the witness purportedly acquired, stored, or found the document. <i>See</i> Sköld Dep. 37:15-37:23, Nov. 13, 2013. <i>See also</i> Day Dep. 56:8-56:22, Nov. 14, 2013.</li> </ul>
T75 – Feb. 17-18, 2002 emails between J. Day (Collagenex) and Sköld (email mentions Connectis)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 86:23-87:17, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T76 – Mar. 21-May 1, 2002 emails between Collagenex and Sköld (email mentions ATS (Advanced Tissue) and Atric (Steve Garrett))	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 87:18-88:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T77 – Apr. 29-May 3, 2002 emails between R. Ashley (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 88:14-89:8, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Robert Ashley therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T78 – May 7, 2002 email from J. Day (Collagenex) to Sköld re: presentation to Board	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, the document purports to have an attachment, which is missing. <i>See</i> Sköld Second Dep. 89:9-90:6, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<p>any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</p> <ul style="list-style-type: none"> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial. Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T79 – Apr. 12-Jun. 26, 2002 emails between R. Ashely (Collagenex), Epitan, and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 90:22-91:19, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by non-parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T80 – May 27 (Sweden)-May 26 (AU), 2005 emails between Sköld and Epitan	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Petitioner and Michael Kleinig therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. <i>See</i> Sköld Second Dep. 91:20-92:17, Jan. 14, 2014.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial. Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T81 – Oct. 4-9, 2002 emails between Collagenex and Sköld (email mentions Fujisawa (Hean Rumsfield), Ortho, Watson)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 93:5-94:1, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by non-parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T82 – Mar. 7-10, 2003 emails between Collagenex and Sköld (email mentions Ortho)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 94:2-94:21, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>

<b>Petitioner's Exhibit Number and Description</b>	<b>Objection and Explanation</b>
T83 – Mar. 13-14 emails between J. Day (Collagenex), Sköld and others re: AAD meeting, with attached agenda	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. With respect to the attachment, while Petitioner testifies that Jeff Day prepared the attachment, he provided no basis for this assertion. Further, Petitioner had an opportunity to establish the authenticity of this document when deposing Jeff Day and chose not to do so. <i>See</i> Sköld Second Dep. 94:22-95:24, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Michael Burns, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T84 – May 12-16, 2003 emails between J. Day (Collagenex), Sköld, and R. Ghadially	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 95:25-96:20, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Ruby Ghadially, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T85 – Jul. 21, 2003 email from J. Day (Collagenex) to D. Goostree (Skin Medica, Inc.)	<ul style="list-style-type: none"> <li>• <i>Authentication/Best Evidence Rule</i> (FRE 901, 1002) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, Petitioner offered conflicting testimony – testifying both that he was copied on the email and that it was forwarded to him. However, it is apparent from the face of this document that Petitioner was neither copied on nor forwarded this email. Further, the document appears to be adulterated because Diane Goostree's signature appears, but there is no email header showing Ms. Goostree's message. Further, Petitioner had an opportunity to establish the authenticity of this document when deposing Jeff Day and chose not to. <i>See</i> Sköld Second Dep. 96:21-98:4, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Diane Goostree and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T86 – Oct. 2-4, 2003	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
emails between Collagenex and Sköld (email mentions Cardinal)	<p>questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 98:5-99:4, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Ruby Ghadially, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – The text of this document references attachments and admitting the document into evidence without the attachments is prejudicial. Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T87 – Oct. 23-24, 2003 emails between J. Day (Collagenex) and Sköld (Ex. T87 is found to be an incomplete copy of the email. A complete copy is found in Exhibit T142)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Petitioner's admission, in his trial brief, that this document is incomplete supports a finding that his cursory questioning was insufficient to authenticate the document. <i>See</i> Sköld Second Dep. 99:5-99:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T88 – Oct. 25-Nov. 7, 2003 emails between J. Day (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 100:1-100:20, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T89 – Jun. 30-July 8, 2004 emails between J. Day (Collagenex), Sköld, and others.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 100:21-101:19, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Joey Gregan, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	of the fact that Jeff Day was an available witness that Petitioner deposed.
T90 – Feb. 27-Sep. 27, 2004 emails between J. Day (Collagenex), Galderma, and Sköld (email mentions Galderma)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 101:20-102:14, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Art Clapp, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed; to the extent a hearsay exemption applies to the portion of Art Clapp's purported statements, no exemption or exception applies to the purported statements of Petitioner and Jeff Day.</li> </ul>
T91 – Jul 10-12, 2004 emails between J. Day (Collagenex) and Sköld (email mentions Therapeutics, Inc./Product Development Co.)	<ul style="list-style-type: none"> <li>• <i>Authentication/Best Evidence Rule</i> (FRE 901, 1002) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, while in his trial brief Petitioner avers that this T91 and T14 are “replicate copies,” a review of these exhibits that part of T14 is missing several lines of text that are present in T91. Accordingly, neither document is a reliable copy. <i>See</i> Sköld Second Dep. 102:15-103:21, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Art Clapp, and Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T92 – Feb. 20-Aug. 9, 2004 emails between J. Day (Collagenex), Sköld, and others (email mentions TexasDerm)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 103:22-104:18, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by non-parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T93 – Aug. 16-17, 2004 emails between J. Day (Collagenex), Sköld, and others (email mentions Ranbaxy)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 104:19-105:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by non-parties therein; Petitioner has not offered any testimony that would support the application of any exemption</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	or exception to the hearsay exclusion.
T94 – Sep. 10, 2004 email B. Zerler (Collagenex) to Sköld (email mentions Ranbaxy), attaching an initial outline	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions and asked no questions about the email's attachment, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 105:14-106:15, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Brad Zerler therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T95 – Mar. 2-Mar. 4, 2005 emails between G. Ford (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 106:16-107:14, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by non-parties therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T96 – Sept. 28, 2004 email from InyX-Pharma to G. Ford (Collagenex), Sköld, and others	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 107:15-108:12, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Uli Bartke therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T97 – Jun. 14, 2005 email from G. Ford (Collagenex) to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 108:13-109:7, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T98 – Jan. 22, 2007 email from G. Ford (Collagenex) to Sköld (email mentions Pfizer and J&J)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 109:8-110:2, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Greg Ford and himself therein; Petitioner</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.
T99 – Aug. 3-9, 2007 emails between Sköld and Steifel	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 110:3-110:22, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T100 – Nov. 17-Dec. 10, 2007 emails between Sköld and ██████████ on introduction to ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 110:23-111:21, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T101 – Jan. 30-31, 2008 emails between Sköld and ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 111:22-112:16, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T102 – Jan. 30, 2010 emails between Sköld and ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 112:17-113:18, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial. Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T103 – Jan. 28-Feb. 10, 2010 emails between Sköld and ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when,</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
(email mentions ██████████)	<p>where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 112:17-113:18, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T104 – May 18, 2010 emails between Sköld and ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 114:20-115:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T105 – Feb. 18-23, 2010 emails between Sköld and ██████████ on a teleconference	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 115:14-116:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial; Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T106 – Sept. 8, 2010 email from ██████████ to Sköld confirming recent meeting	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 116:14-117:13, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial; Petitioner has presented no testimony to rebut this prejudice. Petitioner's leading question that the attached document is an unidentified "international patent application" does not render this document admissible.</li> </ul>
T107 – Oct. 26, 2010 email ██████████	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
<p>██████████ to Sköld (translation attached; email attachment with questions attached).</p>	<p>document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 117:15-119:18, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ██████████ therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Translation</i> (FRE 604) – While there is an English language document attached, it is not accompanied by an affirmation from a qualified interpreter as required by the rules.</li> </ul>
<p>T108 – Nov. 15-19, 2010 emails between Sköld and ██████████</p>	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Dep. 119:19-121:2, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
<p>T109 – Nov. 27-30, 2010 emails between Sköld and ██████████</p>	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 121:3-122:14, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and ██████████ therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment; earlier emails in the string also refer to an attached "CDA," which is not included in this exhibit. Admitting only part of this document into evidence is prejudicial. Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
<p>T110 – Nov. 29, 2010 email from Sköld to ██████████ et al (██████████) on signed CDA</p>	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, the email purports to have several attachments that are not part of this exhibit. <i>See</i> Sköld Second Dep. 122:15-124:7, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing several attachments. Admitting only part of this</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	document into evidence is prejudicial. Petitioner has presented no testimony to rebut this prejudice.
T111 – Nov. 2-4, 2011 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 124:8-125:11, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T112 – Feb. 11-May 17, 2010 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 125:12-126:7, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T113 – Jul. 8-26, 2011 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 126:8-127:5, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T114 – Jun. 7-30, 2011 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 127:6-128:6, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T115 – Sep. 8-9, 2011 emails between Sköld, [REDACTED] (CDA)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, this document contains foreign language portions that have not been translated and is missing an attachment. <i>See</i> Sköld Second Dep. 128:7-129:14, Jan. 14, 2014.</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<ul style="list-style-type: none"> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing an attachment. Admitting only part of this document into evidence is prejudicial, and Petitioner has presented no testimony to rebut this prejudice</li> </ul>
T116 – Jan. 5-7 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 129:15-130:24, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T117 – Jan. 20, 2012 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 130:25-131:19, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T118 – Apr. 10-11, 2012 emails between [REDACTED] and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 131:20-132:14, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T119 – Oct. 12, 2011 email from Sköld to [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, the email purports to have several attachments that are not part of this exhibit. <i>See</i> Sköld Second Dep. 132:15-133:18, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<ul style="list-style-type: none"> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing several attachments. Admitting only part of this document into evidence is prejudicial, and Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T120 – Feb. 1, 2013 email from J. Day to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 133:19-134:14, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Jeff Day therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T121 – May 6-10, 2006 emails between G. Ford (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 134:15-135:9, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T122 – May 11, 2006 emails between G. Ford (Collagenex) and Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 135:10-136:4, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and Greg Ford therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T123 – Feb. 6, 2008 email from ████████ to Sköld	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 136:5-136:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by ████████ therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T124 – Page from Epitan Agreement. This is the page missing from Ex. T11.	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<p>document appears to only be a single page of a larger agreement. <i>See</i> Sköld Second Dep. 137:5-137:25, Jan. 14, 2014.</p> <ul style="list-style-type: none"> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a single page from an agreement and Petitioner that it is only certain sections from an agreement. Admitting only part of this document into evidence is prejudicial, and Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T125 – Sköld's recollections of companies to whom Sköld assisted in promoting the Restoraderm technology during the term of Sköld's collaborative relationship with Collagenex	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Sköld Dep. 10:3-18, Nov. 13, 2013.</li> <li>• <i>Hearsay/Prejudice</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. It appears this document was created for the purposes of this litigation and its use as independent evidence would be purely prejudicial. Petitioner's counsel had the opportunity to question Petitioner and elicit testimonial evidence; Petitioner cannot substitute unsworn out-of-court documents for testimony.</li> </ul>
T126 – Listing of companies Sköld recollects promoting the Restoraderm technology to in the period after his collaborative relationship with Collagenex	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to authenticate this document and did not offer it into evidence. In fact, the only testimony with respect to T126 was as follows: Q. Exhibit 126, have you looked over the text? A. I do. <i>See</i> Sköld Dep. 10:19-21, Nov. 13, 2013.</li> <li>• <i>Hearsay/Prejudice</i> (FRE 802) – Petitioner offers this document for the truth of the matters presumably asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. It appears this document was created for the purposes of this litigation and its use as independent evidence would be purely prejudicial. Petitioner's counsel had the opportunity to question Petitioner and elicit testimonial evidence; Petitioner cannot substitute unsworn out-of-court documents for testimony.</li> </ul>
T127 – Apr. 9-15, 2010 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, this document contains foreign language portions that have not been translated and is missing attachments. <i>See</i> Sköld Second Dep. 138:2-139:5, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is a copy of an email that appears to be missing attachments and is presented in a foreign language. Admitting only part of this document into evidence, in a foreign language,</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	is prejudicial, and Petitioner has presented no testimony to rebut this prejudice.
T128 – Oct. 10-11, 2010 emails between Sköld and [REDACTED]	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 139:6-139:25, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself and [REDACTED] therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T129 – Collagenex form 10-K for the fiscal year ended December 31, 2001	<ul style="list-style-type: none"> <li>• <i>Best Evidence Rule/Prejudice</i> (FRE 1002) – This is purportedly a partial copy of CollaGenex's Form 10-K for 2001. Admitting only part of this document into evidence is prejudicial, and Petitioner has presented no testimony to rebut this prejudice.</li> </ul>
T132 – Listing of Sköld's recollections of meetings Sköld undertook to promote Restoraderm technology	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Sköld Dep. 12:4-12:13, Nov. 13, 2013.</li> <li>• <i>Hearsay/Prejudice</i> (FRE 802) – Petitioner offers this document for the truth of the matters presumably asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. As discussed above at T125 and T126, it appears this document was created for the purposes of this litigation and its use as independent evidence would be purely prejudicial. Petitioner's counsel had the opportunity to question Petitioner and elicit testimonial evidence; Petitioner cannot substitute unsworn out-of-court documents for testimony.</li> </ul>
T133 – Listing of drugs for which Sköld recalls having supervised the formulation in Restoraderm technology, with an indication of stability for many	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Sköld Dep. 12:14-12:22, Nov. 13, 2013.</li> <li>• <i>Hearsay/Prejudice</i> (FRE 802) – Petitioner offers this document for the truth of the matters presumably asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion. As discussed above at T125, T126, and T133, it appears this document was created for the purposes of this litigation and its use as independent evidence would be purely prejudicial. Petitioner's counsel had the opportunity to question Petitioner and elicit testimonial evidence; Petitioner cannot substitute unsworn out-of-court documents for testimony.</li> </ul>
T135 – Feb. 18, 2002 emails between J. Day and Sköld regarding promotion (Optime).	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 141:4-141:22, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
	<p>matters purportedly asserted by Jeff Day and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that the declarant, Jeff Day, was an available witness that Petitioner deposed.</p>
T136	<ul style="list-style-type: none"> <li>• Petitioner does not purport to rely on an exhibit T134, because it is an “inadvertent replicate copy.” <i>See</i> Petitioner’s Brief at 5, n.1.</li> </ul>
T137 – Apr. 29-May 3, 2002 emails between Collagenex and Sköld (email mentions Antares Pharma (Dario Carraras))	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 145:7-146:2, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by Rob Ashley and himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T138	<ul style="list-style-type: none"> <li>• Petitioner does not purport to rely on an exhibit T138, because it is an “inadvertent replicate copy.” <i>See</i> Petitioner’s Brief at 5, n.1.</li> </ul>
T139	<ul style="list-style-type: none"> <li>• Petitioner does not purport to rely on an exhibit T139, because it is an “inadvertent replicate copy.” <i>See</i> Petitioner’s Brief at 5, n.1.</li> </ul>
T140	<ul style="list-style-type: none"> <li>• Petitioner does not purport to rely on an exhibit T140.</li> </ul>
T141	<ul style="list-style-type: none"> <li>• Petitioner does not purport to rely on an exhibit T141, because it is an “inadvertent replicate copy.” <i>See</i> Petitioner’s Brief at 5, n.1.</li> </ul>
T142 – Sept. 18-Oct. 24, 2003 emails between Collagenex and Sköld (email mentions Novartis (Katrin Kriwet)).	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel only asked leading questions that asked for legal conclusions, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Sköld Second Dep. 148:13-149:9, Jan. 14, 2014.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by himself, Jeff Day, and others therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion, especially in light of the fact that Jeff Day was an available witness that Petitioner deposed.</li> </ul>
T143 – Fowler et al., a published scientific poster presented at a American Contact Dermatitis Society, 16th Annual Meeting, February 17, 2005 (New Orleans, LA)	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Sköld Dep. 146:12-147:15, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by some third-party therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T144 – pp. 1- 3, 5-6, and 10 of the meeting program of the American Contact	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel asked no questions to authenticate this document, and only asked a single leading question about whether counsel’s description of the document was correct. <i>See</i> Sköld Dep. 146:12-147:15, Nov. 13, 2013.</li> </ul>

Petitioner's Exhibit Number and Description	Objection and Explanation
Dermatitis Society, 16th Annual Meeting, February 17, 2005 (New Orleans, LA)	
T145 – Document authentication worksheet	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel asked no questions to authenticate this document and did not offer it into evidence, instead, it appears Petitioner attempted to use this document to authenticate other documents, rather than actually authenticating documents through testimony as the rules require.</li> <li>• <i>Relevance/Prejudice</i> (FRE 401, 403) – It appears this document was created for the purposes of this litigation and its use as independent evidence would be purely prejudicial. Petitioner’s counsel had the opportunity to question Petitioner and elicit testimonial evidence; Petitioner cannot substitute unsworn out-of-court documents for testimony.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner’s counsel admits that the creation of this document was a “collaborative” effort amongst Petitioner and Petitioner’s counsel. <i>See</i> Sköld Dep. 10:22-10:24, Nov. 13, 2013. Petitioner offers this document for the truth of the matters presumably asserted by himself and his counsel therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T146 – Declaration of Thomas Sköld dated 14 May 2013	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Sköld Dep. 14:2-15:14, Nov. 13, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – While it is unclear how or even if Petitioner has attempted to rely on this declaration, it is undoubtedly an out of court statement offered for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> <li>• <i>Improper Form of Testimony</i> (37 C.F.R. § 2.123(b), (1)) – Absent a stipulation by the parties, testimony may not be submitted in the form of an affidavit or declaration. The parties here have not so stipulated and the introduction of testimony through a declaration is therefore not in compliance with the Trademark Rules and cannot be considered.<sup>3</sup></li> </ul>
T148 – Affidavit of Jeffrey S. Day dated 15 May 2013	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner’s counsel asked no questions to authenticate this document and did not offer it into evidence. <i>See</i> Day Dep. 14:3-14:10, Nov. 14, 2013.</li> <li>• <i>Hearsay</i> (FRE 802) – To the extent Petitioner seeks to rely on a declaration by Jeff Day, a witness he deposed, it is undoubtedly an admissible out of court statement offered for the truth of the matters purportedly asserted by</li> </ul>

<sup>3</sup> *See Order of Sons of Italy in America v. Memphis Mafia Inc.*, 52 U.S.P.Q.2d 1364, 1365 n.3 (T.T.A.B. 1999) (striking “statement” submitted by defendant where the parties had not agreed to filing testimony in the form of an affidavit or declaration).

Petitioner's Exhibit Number and Description	Objection and Explanation
	<p>himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</p> <ul style="list-style-type: none"> <li>• <i>Improper Form of Testimony</i> (37 C.F.R. § 2.123(b), (l)) – Absent a stipulation by the parties, testimony may not be submitted in the form of an affidavit or declaration. The parties here have not so stipulated and the introduction of testimony through a declaration is therefore not in compliance with the Trademark Rules and cannot be considered.<sup>4</sup></li> </ul>
T149 – James G. Marks, M.D. Curriculum Vitae <sup>5</sup>	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel only asked a leading question, which failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. <i>See</i> Marks Dep. 4:16-4:22, Nov. 14, 2013.</li> <li>• <i>Relevance/Prejudice</i> (FRE 401, 403) – Petitioner offered no evidence of the relevance of the curriculum vitae of this opinion witness in this proceeding.</li> <li>• <i>Hearsay</i> (FRE 802) – To the extent Petitioner seeks to rely on a curriculum vitae created by James Marks, a witness he deposed, it is undoubtedly an admissible out of court statement offered for the truth of the matters purportedly asserted by himself therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>
T150 – Jan. 11, 2002 email from Ylva Margereta Skoglosa, and stapled document	<ul style="list-style-type: none"> <li>• <i>Authentication</i> (FRE 901) – Petitioner's counsel asked no questions to authenticate this document and did not offer it into evidence, and thus failed to establish that the document is what it is claimed to be; Petitioner never established when, where, or how the witness purportedly acquired the document. Further, Petitioner, not the witness, is listed as a recipient of this purported email, and the witness did not testify as to how he acquired the email. <i>See</i> Marks Dep. 6:6-6:25, Nov. 14, 2013.</li> <li>• <i>Prejudice</i> – This document was not provided to Registrant's counsel until the time of the deposition of James Marks, even though Petitioner himself is listed as the recipient of the email and Petitioner had ample time to acquire a translation of the document.</li> <li>• <i>Hearsay</i> (FRE 802) – Petitioner offers this document for the truth of the matters purportedly asserted by some third-party therein; Petitioner has not offered any testimony that would support the application of any exemption or exception to the hearsay exclusion.</li> </ul>

<sup>4</sup> *See id.*

<sup>5</sup> As discussed in Section III.D.1, *supra*, Registrant has also filed a Motion to Strike (Docket No. 69) relating to both T149 and T150.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13th day of August 2014, the foregoing *Registrant's Trial Brief* was served on Petitioner's counsel of record, via email to the following:

Arthur E. Jackson  
Moser IP Law Group  
[artjksn@gmail.com](mailto:artjksn@gmail.com)  
[docketing@mtiplaw.com](mailto:docketing@mtiplaw.com)

A handwritten signature in black ink, appearing to read 'L. Normand', written over a horizontal line.

Lisa Normand