

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNAFFIX B.V.,
Petitioner,

v.

HANGZHOU DAC BIOTECH CO., LTD.,
Patent Owner.

IPR2022-01531
Patent No 10,131,682

**PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE
EVIDENCE**

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I. DAC’s Motion to Exclude Is Procedurally Proper

Contrary to Petitioner’s assertion, DAC’s Motion to Exclude is proper. The CTPG does not prohibit challenging evidence that violates explicit Board orders, as here. In its April 4, 2025 Order, the Board instructed Petitioner “*not [to] introduce new evidence*” other than the deposition transcript of Patent Owner’s declarant.” Paper 40 at 3-4 (emphasis added). Petitioner’s attempt to introduce new exhibits at this late stage is a clear violation of the Board’s explicit order.

Additionally, as Petitioner concedes, in *Netflix* and *Intel*, the Board granted “motion[s] to exclude exhibits first introduced in expert deposition and submitted with a sur-reply” in similar circumstances. Paper 51 at 2. Just as DAC’s motion here, the motions to exclude in *Netflix* and *Intel* are based on both **procedural** (37 C.F.R. § 42.23(b)) and **evidentiary** (FRE 403) grounds. *Netflix, Inc. v. DivX, LLC*, IPR2020-00511, Paper 46 at 56 & n.21 (PTAB Aug. 13, 2021); *Intel Corp. v. ParkerVision, Inc.*, IPR2020-01265, Paper 44 at 75 & n.28 (PTAB Jan. 21, 2022). In both cases, the Board did not take issue with the form of the motion; in fact, it granted the motions to exclude based on **procedural** grounds alone. *Netflix*, Paper 46 at 55-56 & n.21 (granting the motion because “Rule 42.23(b) provides a blanket prohibition on [a party] filing exhibits with a sur-reply”); *Intel*, Paper 44 at 75 & n.28 (granting the motion “pursuant to 37 C.F.R. § 42.23(b)”). In *Intel*, the Board authorized the movant “to raise its argument regarding the filing of [a new exhibit with sur-reply]

in a motion to exclude in accordance with the schedule for motions to exclude,” as the Board did here. *Intel*, Paper 31 at 2 (PTAB Sept. 27, 2021).

Petitioner’s cited cases are inapposite. In *Streck v. Ravgen*, the movant sought to exclude “new arguments” in the non-movant’s sur-reply. IPR2021-01577, Paper 62 at 91 (PTAB Apr. 18, 2023). In *Apple v. Parus*, the movant sought to exclude paragraphs of an expert’s supplemental declaration, and the *sole* basis of the motion was “the proper scope of reply evidence.” IPR2020-00686, Paper 37 at 41-42 (PTAB Sept. 9, 2021). In *Life Spine v. Globus*, (i) Petitioner sought and received specific guidance from the Board regarding new exhibits prior to their introduction (which Petitioner did not do here); (ii) Patent Owner did not contest the new exhibits (as DAC does here); and (iii) Petitioner’s new exhibits were six single-page diagrams, three of which were annotations of exhibits already in the record (*see* IPR2022-01434, EX1085-EX1090), which hardly compares to the over 100 pages of highly technical material here that Petitioner’s counsel himself admitted was “very lengthy” and contained “a lot of detail” (EX1091 at 34:8-9). Petitioner failed to cite a single case where the Board found a similar motion to exclude improper.

Lastly, contrary to Petitioner’s assertion (Paper 51 at 10), DAC’s counsel objected to Exhibits 1089 and 1090 on proper grounds during deposition. *See, e.g.*, EX1091 at 28:1-7, 29:3-7, 32:14-19, 35:15-17, 36:20-22. Moreover, DAC promptly filed its motion to exclude the very next business day after Petitioner filed its sur-

sur-reply. *See Netflix*, Paper 46 at 55 (no waiver of objection because the movant “was not required to object to [non-movant’s] filing *before* [non-movant] filed”).

II. Exhibits 1089 and 1090 and Related Testimony Should Be Excluded

In addition to being procedurally improper and untimely (Paper 50 at 1-4), Exhibits 1089 and 1090 and related deposition testimony should also be excluded under FRE 403 because any probative value is substantially outweighed by unfair prejudice (*id.* at 4-6). Petitioner’s sole basis for relevancy is impeachment. Paper 51 at 5-6, 8-9, 11. But Exhibits 1089 and 1090 are not proper impeachment material.

Petitioner introduced Exhibits 1089 and 1090 to support new arguments based on “acid-catalyzed” reactions, not for impeachment. Paper 48 at 4-5. Dr. Tumey did not opine on any “acid-catalyzed” reactions in any of his declarations. Dr. Tumey opined on the construction of the “Y” term in his December 6, 2024 declaration (EX2038), and Petitioner did not respond with any evidence or argument based on “acid-catalyzed” reactions in its reply (Paper 36; EX1076). Rather, for Ground 1, Petitioner filed a new exhibit, Dondoni (EX1064), which does not disclose or refer to any “acid-catalyzed” reactions. With the Board’s permission (Paper 40), Dr. Tumey addressed Dondoni in his April 25, 2025 declaration (EX2047).

Only during the May 9, 2025 deposition did Petitioner raise the issue of “acid-catalyzed” reactions in a thinly veiled attempt to introduce new evidence and theory. Petitioner asked Dr. Tumey about the reaction of Compound 196 in Figure 15 of the

patent. EX1091 at 17:20-18:12. In this reaction, the hydroxylamine in Compound 196 reacts with a **drug**, not a cell-binding agent, to form Compound 195. EX1001 at 21; EX1091 at 23:1-10. Thus, the hydroxylamine in Compound 196 is a “Z” group, not a “Y” group. Dr. Tumey did not opine on the construction of “Z”. For this reason alone, Exhibits 1089 and 1090 and related deposition testimony should be excluded under FRE 403.

Petitioner mischaracterizes Dr. Tumey’s testimony in an attempt to justify its introduction of Exhibits 1089 and 1090. Dr. Tumey did not specifically opine on the patent’s Figure 15 in his declarations. In deposition, when asked about the reaction of Compound 196 containing an antibody (mAb) in the presence of “HCl (0.1 eq)” in Figure 15 (EX1001 at 21), Dr. Tumey stated that “there may have been some sort of a copy-and-paste error,” EX1091 at 22:2-11, and explained the reasons for his belief, *id.* at 23:18-24:10 (noting that “it doesn’t really make sense ... to add HCl to a buffer” in which “reactions with antibodies always occur,” and “the antibody itself has both acidic and basic residues, which ... are going to immediately quench that HCl”). Petitioner’s counsel then introduced “pre-labeled” Exhibits 1089 and 1090 and asked Dr. Tumey about portions of these exhibits. EX1091 at 28:10-18, 36:5-37:37:5. Neither discloses any reaction of an antibody-containing compound having an hydroxylamine (as in Compound 196 of the patent) in the presence of “HCl (0.1 eq)” (as depicted in Figure 15 of the patent). Petitioner’s counsel did not ask

Dr. Tumey any questions based on Exhibits 1089 and 1090 to “impeach” any testimony regarding Figure 15 of the patent.

Additionally, Exhibit 1090 does not show that “other catalysts ... were known in the art,” as Petitioner asserts. Paper 51 at 5. Petitioner cannot dispute that Exhibit 1090 is not prior art. Exhibit 1090 is not relevant to anticipation or obviousness, nor claim construction. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc) (“[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question ***at the time of the invention***, i.e., as of the effective filing date of the patent application.”) (emphasis added). There is no evidence that at the time of the invention of the ’682 patent, any reaction disclosed in Exhibit 1090 was known in the art. Petitioner also improperly cites Exhibit 1090’s paragraphs 136 (Paper 48 at 2) and 102 (*id.* at 5) in its sur-sur-reply when its counsel did not even ask Dr. Tumey about these paragraphs.

Even if Exhibits 1089 and 1090 and related deposition testimony had minimal probative value (they do not), that value is substantially outweighed by unfair prejudice under FRE 403 because DAC has no opportunity to submit further briefing or present expert testimony to rebut the new attorney argument and new exhibits now presented in Petitioner’s sur-sur-reply.

For the reasons stated above and in DAC’s opening brief, Exhibits 1089 and 1090 and related testimony (EX1091 at 26:3-37:5) should be excluded.

Date: May 27, 2025

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CERTIFICATE OF LENGTH (37 C.F.R. § 42.24)

The undersigned hereby certifies that the foregoing document has five (5) pages and thus complies with the applicable page limit.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served in its entirety on May 27, 2025 upon the following parties via Electronic Mail:

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