

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUNTER’S MANUFACTURING COMPANY, INC. d/b/a
TENPOINT CROSSBOW TECHNOLOGIES,

Petitioner,

v.

RAVIN CROSSBOWS, LLC,

Patent Owner.

IPR2023-00407
Patent 9,354,015

**PATENT OWNER’S MOTION TO EXCLUDE
PURSUANT TO 37 C.F.R. § 42.64(c)**

I. INTRODUCTION

Under 37 C.F.R. § 42.64(c), Patent Owner respectfully moves to exclude all or parts of the following Exhibits:

Exhibit	Description	Reason to Exclude
EX1031	Exhibit from January 22, 2024 Deposition of Jonathan Teater: Modified Islas Configuration	Lack of relevance; lack of authentication; hearsay
EX1032	Exhibit from February 6, 2024 Deposition of Jonathan Teater: Side Views of Compared Configurations	Lack of relevance; lack of authentication
EX1033	Exhibit from February 6, 2024 Deposition of Jonathan Teater: Reverse-Draw Configurations	Lack of relevance; lack of authentication
EX1037 (partial)	Declaration of Stephen A. Batzer, Ph.D., P.E. in Support of Petitioner's Reply to Patent Owner's Response	Lack of relevance; lack of personal knowledge; testimony not based on sufficient facts or analysis

Petitioner relied on EX1031 and EX1037 in its Reply. The Reply cites EX1037 throughout (Paper 31 at 2, 5-21, 23-25), which in turn cites to EX1031. (EX1037 at ¶137.) Patent Owner moves to exclude EX1031 and the portion of EX1037 that cites EX1031 because it is objectionable for a host of reasons, including irrelevancy, lack of authentication, and it constitutes hearsay. Patent Owner also moves to exclude EX1032 and EX1033 because Petitioner did not rely on these Exhibits, likely because they are irrelevant and lack authentication. Finally, Patent

Owner moves to exclude certain testimony of Petitioner's expert, Dr. Batzer, proffered in support of Petitioner's Reply. (EX1037 at ¶¶ 7-14, 58, 60, 96-99, 106, 108, 139, 142, and 143.) Dr. Batzer's so-called opinions are irrelevant and not based on his personal knowledge or any pertinent expertise and should be excluded.

II. PATENT OWNER TIMELY OBJECTED

Patent Owner timely objected to Petitioner's Exhibits on February 21, 2024, within five days of Petitioner's service of the Exhibits. (Paper 33.)

III. ARGUMENT

A party may move to exclude evidence under the Federal Rules of Evidence. *See* 37 C.F.R. § 42.62 (“[T]he Federal Rules of Evidence shall apply to a proceeding.”). Exercising its discretion, the Board may “exclude the ... evidence in their entirety, or alternatively, decline to consider the ... related evidence.” *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 79, at 3, 2013 WL 8699189 (P.T.A.B. Aug. 9, 2013).

For the reasons set forth below, EX1031, EX1032, EX1033 (and the corresponding testimony by Mr. Teater), and portions of EX1037 are inadmissible under the Federal Rules of Evidence and should be excluded.

A. EX1031 Should Be Excluded

EX1031 purports to be a Modified Islas Configuration, entered as an Exhibit during the deposition of Jonathan Teater on January 22, 2024, over Patent Owner's

objection. (EX1034 at 254:20, 255:10, 255:21, 256:2, 258:10; EX1035 at 342:9, 342:22, 343:1, 343:7-346:8.) Petitioner relied on EX1031 in its Reply (Paper 31 at 24), citing EX1037 at ¶137 to support its argument that retooling Islas would allegedly avoid the bowstring interfering with the upper power cable. However, EX1031 is irrelevant because it is not a “retooling” of Islas. Instead, EX1031 is a Petitioner-created figure purportedly to illustrate its preferred relocation of power cables with red and blue lines. (EX1034 at 254:24-255:24.)

At minimum, EX1031 should be excluded because Petitioner did not establish its authenticity. Fed. R. Evid. 901. Under Fed. R. Evid. 901, “the proponent [of documents] must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” However, Petitioner has not provided a declaration demonstrating that EX1031 is what Petitioner purports it to be. FRE 901(b).

Second, even if Petitioner had properly authenticated EX1031, it is being offered for the truth of the matter asserted – the relationship of the bowstring to the power cables under a supposed retooling of Islas – and Petitioner has not proven that it falls within any hearsay exception. FRE 802-807. Thus, EX1031 should be excluded as hearsay. FRE 801-802.

Finally, given the lack of relevance and authentication and because it is hearsay, EX1031 should be excluded as irrelevant, a waste of time, and likely to cause confusion under FRE 401-403.

B. EX1032 Should Be Excluded

EX1032 purports to be Side Views of Compared Configurations, entered as an Exhibit during the deposition of Jonathan Teater on February 6, 2024, over Patent Owner's objection. (EX1035 at 337:9, 339:20, 340:17, 3:40:25, 341:13.) Because Petitioner does not rely on EX1032 in Reply or otherwise, (*see generally*, Paper 31, EX1037), EX1032 and any Mr. Teater testimony about EX1032 should be excluded as irrelevant, a waste of time, and likely to cause confusion under FRE 401-403.

EX1032 should also be excluded because Petitioner failed to establish its authenticity. Fed. R. Evid. 901. Under Fed. R. Evid. 901, "the proponent [of documents] must produce evidence sufficient to support a finding that the item is what the proponent claims it is." However, Petitioner has not provided a declaration establishing that EX1032 is what Petitioner purports it to be. FRE 901(b).

C. EX1033 Should Be Excluded

EX1033 purports to be Reverse-Draw Configurations, entered as an Exhibit during the deposition of Jonathan Teater on February 6, 2024, over Patent Owner's objection. (EX1035 at 347:3.) Like EX1032, because Petitioner does not rely on EX1033, (*see generally*, Paper 31, EX1037), and because this Exhibit was outside the scope of redirect, EX1033 should be excluded as irrelevant, a waste of time, and likely to cause confusion under FRE 401-403.

In addition, EX1033 should be excluded because Petitioner did not establish its authenticity. Fed. R. Evid. 901. Under Fed. R. Evid. 901, “the proponent [of documents] must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” However, Petitioner has not provided a declaration establishing that EX1033 is what Petitioner purports it to be. FRE 901(b).

D. Portions of EX1037 Should Be Excluded

EX1037 is described as the Declaration of Stephen A. Batzer, Ph.D., P.E. in Support of Petitioner's Reply to Patent Owner's Response. Patent Owner moves to exclude portions of EX1037.

First, as discussed above, because EX1031 should be excluded, the portion of Dr. Batzer's opinion that relies on EX1031 should likewise be excluded. (EX1037 at ¶137.) Although experts can rely on inadmissible evidence in some circumstances (FRE 703), the testimony must be “based on sufficient facts or data” and “the product of reliable principles and methods.” FRE702(b)-(c). Because EX1031 is not a “retooling” of Islas but is just a Petitioner-created figure purportedly to illustrate its preferred relocation of power cables with red and blue lines (EX1034 at 254:24-255:24), Dr. Batzer's testimony is not based on sufficient facts or the product of reliable principles and should be excluded under FRE 702(b)-(c) and 703. There is no probative value to this testimony that would help the Board evaluate Dr. Batzer's opinion. FRE 703.

Second, EX1037 also includes subject matter that should be excluded pursuant to FRE 602 or 702-703 because Dr. Batzer presents as “facts,” information outside his personal knowledge and/or are not based on sufficient facts or data or the product of reliable principles and methods reliably applied in this case.

Specifically, Dr. Batzer opines on the “credibility” of Patent Owner’s expert, Mr. Teater. (EX1037 at ¶¶7-14.) Dr. Batzer does not have expertise in evaluating the credibility of another expert. Dr. Batzer also conclusory opines without any factual basis that “[c]rossbow manufacturers have tolerated cam lean just fine,” (EX1037 at ¶58), and that “determining the direction of the already present helical journals does not in any way add any weight or thereby effect synchronization.” (*Id.* At ¶60.) Similarly, Dr. Batzer offers opinions on the nature of the crossbow market, for which he does not have the requisite expertise. (*Compare id.* at ¶106 with EX1030 at 93:15-94:25.)

Finally, Patent Owner moves to exclude portions of EX1037 as irrelevant under FRE 401-403 because those portions do not make any facts at issue in the *inter partes* review more or less probable than they would have been without the evidence, they are unfairly prejudicial, confuse the issues, and are a waste of time. In its Reply, Petitioner does not rely on Dr. Batzer’s opinions set forth in EX1037 at ¶¶ 96-99, 108, 139, 142, and 143. (*See generally*, Paper 31.) As such, these portions of the EX1037 are not relevant and should be excluded.

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Exclude

Dated: April 2, 2024

Respectfully submitted,

/Christopher M. King/
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Registration No. 71,128
Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner's Motion to Exclude** was served on April 2, 2023, by email to Petitioner's counsel of record:

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Dated: April 2, 2024

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