

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 REPLY IN SUPPORT OF
ITS MOTION TO EXCLUDE**

I. EX1031 Should Be Excluded

EX1031 purports to be a Modified Islas Configuration, entered as an Exhibit during Jonathan Teater's deposition 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.) While Petitioner appears to have preferred speaking objections, Patent Owner simply objected to this entire line of questioning directed to the Modified Islas Configuration. (Paper 40, 1.) Petitioner admits that it could have "verbally described the Islas modification and asked the witness on it." (Paper 40, 2.) It did not. Instead, EX1031 is a Petitioner-created figure purportedly made to illustrate Petitioner's preferred relocation of power cables with red and blue lines. (EX1034 at 254:24-255:24.)

In its Opposition, Petitioner asserted that "Ex. 1031 simply visually illustrates [how Islas could be modified to have a reverse-draw configuration]." (Paper 40, 3.) As such, Petitioner appears to agree EX1031 is not evidence, but is instead a demonstrative. However, to the extent Petitioner maintains EX1031 is evidence, EX1031 should be excluded.

Petitioner bears the burden of producing "evidence sufficient to support a finding that the item is what the proponent claims it is." FRE 901(a). Petitioner fails to do so. Petitioner merely asserts that EX1031 is a modification of Islas's disclosure. (EX1034 at 254:10-11.) Petitioner contends that Dr. Batzer's declaration

“that Ex. 1031 is exactly what TenPoint purports it to be – a modification of Islas,” is sufficient evidence to authenticate that EX1031 is a modification of Islas. (Paper 40, 3.) But Dr. Batzer has made no such assertion; he merely cited to Mr. Teater's deposition testimony, (EX1037, ¶138), which was strenuously objected to by Patent Owner's counsel. (EX1034 at 254:20, 255:10, 255:21, 256:2, 258:10.) By trying to authenticate EX1031 via assertion, rather than evidence, Petitioner fails to meet its burden to authenticate EX1031 under FRE 901.

Additionally, by using EX1031 to depict the relationship of the bowstring to the power cables under its proffered Islas modification, Petitioner offers the exhibit for the truth of that relationship. In other words, Petitioner seeks to use EX1031 for a hearsay purpose, without providing an exception into which the Exhibit falls. FRE 801-803.

Finally, because the EX1031 has not been authenticated and constitutes hearsay, it should be excluded as irrelevant, a waste of time, and likely to cause confusion under FRE 401-403. The Board should exclude EX1031.

II. EX1032 Should Be Excluded

EX1032 purports to be Side Views of Compared Configurations, entered as an Exhibit during Mr. Teater's deposition on February 6, 2024, over Patent Owner's objections. (EX1035 at 337:9, 339:20, 340:17, 340:25, 341:13.) Petitioner's position to the contrary is unsupported. (Paper 40,3-4.) EX1032 and any of Mr.

Teater's testimony about EX1032 should be excluded as irrelevant, a waste of time, and likely to cause confusion under FRE 401-403 because Petitioner does not rely on this exhibit or Mr. Teater's testimony. But rather than withdraw EX1032, Petitioner carefully avoids admitting it does not rely on this information and presses for the inclusion of EX1032. Petitioner's maneuvering should be rejected.

Petitioner fails to produce "evidence sufficient to support a finding that the item is what the proponent claims it is." FRE 901(a). Instead, Petitioner puts the work to the Board to compare EX1032 with other exhibits as the trier of fact under FRE 901(b)(3). (Paper 40, 4) Petitioner fails to establish that the comparison exhibits themselves are authenticated specimens, as required by the very rule Petitioner invokes. Because Petitioner falls short of its burden, the Board should exclude EX1032.

III. EX1033 Should Be Excluded

EX1033 purports to be Reverse-Draw Configurations, entered as an Exhibit during Mr. Teater's deposition on February 6, 2024, over Patent Owner's stated objection. (EX1035 at 347:3.) The scope of redirect is limited to the scope of the direct testimony. 37 C.F.R. § 42.53(d)(5)(ii). EX1033 was outside the scope of redirect because it featured an additional component that was absent during the initial direct testimony. (*Compare* EX1031 *with* EX1033.) Because EX1033 was outside the scope of redirect, it should be excluded as irrelevant, a waste of time, and

likely to cause confusion under FRE 401-403. Petitioner's timeliness argument likewise fails as EX1032 became objectionable upon Petitioner's introduction of the additional component that was absent during the initial direct testimony.

As with EX1032, Petitioner is careful to avoid an admission it does not rely on EX1033, (Paper 40, 5), and refuses to withdraw it. This is improper. Similar to its argument regarding EX1032, Petitioner simply directs the Board to compare EX1033 with other figures without establishing that the comparisons are authenticated specimens, (Paper 40, 5). *See* FRE 901(b)(3). Because Petitioner fails to meet its burden to produce evidence sufficient to support a finding that the item is what Petitioner claims it is, the Board should exclude EX1033.

IV. 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. The portions of Dr. Batzer's opinion that address the credibility of the Patent Owner's expert should be excluded. Under the auspices of opinion, Dr. Batzer criticizes Patent Owner's expert, Mr. Teater, who meets the definition of a POSA that Petitioner itself put forth. (EX1037 at ¶¶ 7–14; Paper 41, 3.) Dr. Batzer does not have expertise in evaluating the credibility of another expert. By doing so, Dr. Batzer invades the Board's province in evaluating an expert's credibility. "The PTAB [i]s entitled to weigh the credibility of the witnesses." *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d

1354, 1358 (Fed. Cir. 2018) (internal citations omitted); *see Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 856 (1982) (“Determining the weight and credibility of the evidence is the special province of the trier of fact.”). The portions of EX1037 that purport to offer an opinion about Mr. Teater’s credibility as an expert witness—who falls squarely within Petitioner’s definition of a POSA—is inappropriate and should be excluded.

Because EX1031 should be excluded, the portion of Dr. Batzer’s opinion that relies on EX1031 should likewise be excluded. (EX1037 at ¶138.) While experts can rely on inadmissible evidence in some circumstances, the testimony must be “based on sufficient facts or data” and “the product of reliable principles and methods.” FRE 702(b)–(c). Because 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), without any further explanation, 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.

V. CONCLUSION

For at least the reasons provided above and in Paper No. 38, Patent Owner respectfully requests the Board to grant its motion and exclude EX1031, EX1032, EX1033 (and the corresponding testimony of Mr. Teater), and portions of EX1037.

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U.S. Patent No. 9,354,015

Patent Owner's Reply in Support of
Its Motion to Exclude

Dated: April 16, 2024

Respectfully submitted,

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Counsel for Patent Owner

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U.S. Patent No. 9,354,015

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CERTIFICATE OF COMPLAINT

This Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude
complies with the page limitation required by 27 C.F.R. §42.24(c)(2).

Dated: April 16, 2024

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U.S. Patent No. 9,354,015

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner's Reply in Support of Its Motion to Exclude** was served on April 16, 2024, by email to Petitioner's counsel of record:

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Dated: April 16, 2024

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