

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OPTICIS CO., LTD.,
Petitioner,

v.

INNEOS LLC,
Patent Owner.

IPR2023-01256
Patent 7,198,416

PETITIONER'S OBJECTIONS
TO EVIDENCE FILED WITH PATENT OWNER'S RESPONSE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Opticis Co., Ltd. (“Petitioner”) hereby files the following objections to evidence filed in support of Patent Owner Inneos LLC’s (“Patent Owner’s”) Response to Institution of Inter Partes Review (Paper No. 18) (“Patent Owner Response” or “POR”). Petitioner’s objections apply the Federal Rules of Evidence (“FRE”) and the Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) (“Practice Guide”).

I. Objections Based on Witness Availability

Petitioner objects to any testimony or document for which a corresponding witness is not made available by Patent Owner for cross-examination. *See* Practice Guide, pp. 22-23, 49, and 50; 37 C.F.R. § 42.53(a)-(d); FRE 901; FRE 802; FRE 602; FRE 401/402/403. On April 30, 2024, Petitioner emailed counsel for Patent Owner regarding the availability of Dr. Michael Lebby, Curtis Ray, Eric Grann, Brian Peters, Scott Fluegel, and Michael Liang for cross-examination. The parties have had preliminary discussions, but Patent Owner has not yet confirmed which witnesses will be made available for cross-examination.

II. Additional Evidentiary Objections

Patent Owner’s Evidence	Petitioner’s Objection
Exs. 2027-2031 These exhibits are purported to be computer files from the 2003-2004 time period.	FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibits are what Patent Owner claims.

	FRE 802 (Inadmissible as improper hearsay): The exhibits are inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits are irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent these exhibits have any marginal relevance, they should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. The declarations of Curtis Ray (Ex. 2045) and Scott Fluegel (Ex. 2047) are insufficient to cure any relevancy, hearsay, or authentication deficiencies with respect to these exhibits. <i>See also</i> Objections with respect to Exs. 2045 and 2047.
Ex. 2032 (“Email from Curtis Ray to Eric Grann with attachment, dated October 16, 2003.”); Ex. 2034 (“Email from Curtis Ray to Brian Peters and Eric Grann with screenshot of attachment, dated November 11, 2003.”); Ex. 2035 (“Email from Curtis Ray to Eric Grann with screenshot of attachment sheet 1, dated January 13, 2004.”)	FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibits are what Patent Owner claims. FRE 802 (Inadmissible as improper hearsay): The exhibits are inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits are

	irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent these exhibits have any marginal relevance, they should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. <i>See also</i> Objection with respect to Exs. 2045 and 2046.
Ex. 2033 (“Windows Explorer window containing metadata for “straightmux,” “straightmuxsec,” and “ymuxxsec”.”)	FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims. FRE 802 (Inadmissible as improper hearsay): The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibit is irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent this exhibit has any marginal relevance, it should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. <i>See also</i> Objections with respect to Exs. 2027-2031, to which Ex. 2033 purportedly corresponds.
Ex. 2036 (“Email from Brian Peters to Mike Rogers, dated July 17, 2003.”); Ex. 2041 (“Email from Brian Peters to Hatch Graham, dated December 8,	There is no authenticating record or witness to support these exhibits.

2003.”); Ex. 2050 (“Email from Brian Peters to Eric Grann and Curtis Ray, dated November 10, 2003.”)	There are no applicable hearsay exceptions. FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibits are what Patent Owner claims. FRE 802 (Inadmissible as improper hearsay): The exhibits are inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits are irrelevant under FRE and thus inadmissible under FRE 402. To the extent these exhibits have any marginal relevance, they should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time.
Ex. 2037 (“Computer file titled ‘Utem Focuser’, last modified July 21, 2003.”) Ex. 2038 (“Computer file titled ‘Utem Focuser.SMF’, last modified July 22, 2003.”); Ex. 2039 (“Windows Explorer window containing metadata for ‘Utem Focuser’ and ‘Utem Focuser.SMF’.”); Ex. 2040 (“Windows Explorer window containing metadata for “New LX4 mux with 500 micron pitch” and contents of “New LX4 mux with 500 micron pitch”.”)	FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibits are what Patent Owner claims. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits are irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent these exhibits have any marginal relevance, they should be excluded under FRE 403 as unfairly prejudicial,

	tending to confuse the issues, and/or a waste of time. FRE 802 (Inadmissible as improper hearsay): The exhibits are inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. The testimony of Eric Grann (Ex. 2046) is insufficient to cure any relevancy, hearsay, or authentication deficiencies with respect to these exhibits. <i>See also</i> Objections with respect to Ex. 2046.
Ex. 2042 (“Computer file titled ‘Single Lens LX4 coupler1’, last modified January 9, 2004.”) and Ex. 2043 (“Windows Explorer window containing metadata for ‘Single Lens LX4 coupler1’.”)	At least Ex. 2042, to which Ex. 2043 purportedly relates, was modified. <i>See</i> Ex. 2047. The declarations of Curtis Ray (Ex. 2045) and Scott Fluegel (Ex. 2047) are insufficient to cure any relevancy, hearsay, or authentication deficiencies with respect to these exhibits. <i>See also</i> objections with respect to Exs. 2045 and 2047. FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibits are what Patent Owner claims. FRE 802 (Inadmissible as improper hearsay): The exhibits are inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 1002 (Requirement of the Original)

	FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits are irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent these exhibits have any marginal relevance, they should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time.
Ex. 2044 (“Windows Explorer window containing metadata for “ceramic” and “ymux”.”)	FRE 901 (Inadmissible as lacking authenticity): Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims. FRE 802 (Inadmissible as improper hearsay): The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibit is irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent the exhibit has any marginal relevance, it should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. <i>See also</i> Objections with respect to Exs. 2027-2031, to which Ex. 2044 purportedly corresponds.
Ex. 2045 (“Declaration of Curtis Ray, dated April 23, 2024.”)	The declaration of Curtis Ray includes speculation and topics for which he did

	not have personal knowledge. <i>See, e.g.</i> Ex. 2045, ¶¶ 6-9, 12, 14, 15. Moreover, the declaration includes out-of-court statements (e.g., those of others or in documents) offered for the truth of the matter. <i>See id.</i>, ¶¶ 5-15. FRE 802 (Inadmissible as improper hearsay): The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 602 (Need for Personal Knowledge) FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibit is irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent the exhibit has any marginal relevance, it should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. To the extent that Curtus Ray is being offered as an expert, Patent Owner has failed to provide the necessary disclosures under Fed. R. Civ. P. 26, and the testimony is further deficient under FRE 702 and 703.
Ex. 2046 (“Declaration of Eric Grann, dated April 23, 2024.”)	The declaration of Eric Grann includes speculation and topics for which he did not have personal knowledge. <i>See, e.g.</i>, Ex. 2046, ¶¶ 5-6, 12, 20, 21-24. Moreover, the declaration includes out-of-court statements (e.g., those of others

	or in documents) offered for the truth of the matter. <i>See id.</i>, ¶¶ 7-18, 21-24. FRE 802 (Inadmissible as improper hearsay): The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein. FRE 602 (Need for Personal Knowledge) FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibit is irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent this exhibit has any marginal relevance, it should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. To the extent that Eric Grann is being offered as an expert, Patent Owner has failed to provide the necessary disclosures under Fed. R. Civ. P. 26, and the testimony is further deficient under FRE 702 and 703.
Ex. 2047 (“Declaration of Scott Fluegel, dated April 23, 2024.”)	The substance of Scott Fluegel’s declaration constitutes impermissible hearsay, he lacks personal knowledge of the material to which he testifies, and he cannot properly authenticate the documents he identifies. FRE 802 (Inadmissible as improper hearsay): The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein.

	FRE 602 (Need for Personal Knowledge) FRE 401/402/403 (Inadmissible as irrelevant, unfairly prejudicial, tending to confuse the issues, and a waste of time): The exhibits is irrelevant under FRE 401 and thus inadmissible under FRE 402. To the extent the exhibit has any marginal relevance, it should be excluded under FRE 403 as unfairly prejudicial, tending to confuse the issues, and/or a waste of time. To the extent that Scott Fluegel is being offered as an expert, Patent Owner has failed to provide the necessary disclosures under Fed. R. Civ. P. 26, and the testimony is further deficient under FRE 702 and 703.
Ex. 2049 (“Supplemental Declaration of Dr. Lebby, Ph.D.”)	Petitioner objects to Exhibit 2049. <i>See</i> FRE 701 (“Opinion Testimony by Lay Witnesses”); FRE 702 (“Testimony by Expert Witnesses”); FRE 703 (“Bases of an Expert’s Opinion Testimony”); FRE 602 (“Need for Personal Knowledge”); FRE 402 (“General Admissibility of Relevant Evidence”); FRE 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.61 (“Admissibility”); 37 C.F.R. § 42.24(b)(2) (Type-Volume Limits for Patent Owner Response); 37 C.F.R. § 42.6(a)(3) (Rule Against Incorporation by Reference). The declarant of Exhibit 2049, Dr. Lebby, fails to provide sufficient

	underlying facts or data upon which the statements contained therein could legitimately be based, in violation of FRE 702. Dr. Lebby has also not “reliably applied the principles and methods to the facts of the case,” and his opinions in Exhibit 2049 are not “the product of reliable principles and methods,” in violation of FRE 702. Furthermore, there is no indication that Dr. Lebby based his opinions on facts or data upon which an expert in the relevant field would reasonably rely in violation of FRE 703. In addition, Dr. Lebby lacks personal knowledge of material to which he testifies in violation of FRE 602. Accordingly, permitting reliance on Exhibit 2049 in Patent Owner’s Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (FRE 403).
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These objections are timely served within five business days of the service of Patent Owner’s April 26, 2024, Response to Institution of Inter Partes Review (Paper No. 18).

Dated: May 3, 20204

By: /Michael H. Jones/

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Counsel for Petitioner Opticis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I electronically served the document described as **PETITIONER’S OBJECTIONS TO EVIDENCE FILED WITH PATENT OWNER’S RESPONSE** on the following counsel of record for Patent Owner:

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