

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARKNINJA, INC.,
SHARKNINJA OPERATING LLC,
SHARKNINJA MANAGEMENT LLC, AND
SHARKNINJA SALES COMPANY
Petitioners,

v.

DYSON TECHNOLOGY LIMITED,
Patent Owner.

Case No. IPR2023-01322
U.S. Patent No. 10,433,687

PETITIONERS' MOTION TO EXCLUDE EVIDENCE

I. PRELIMINARY STATEMENT

Pursuant to this Board’s Rules and the Federal Rules of Evidence (“FRE”), Petitioners move to exclude the following exhibits (collectively, the “Chinese Patent Exhibits”), which Patent Owner submitted, and to which Petitioner timely objected:

Exhibit No.	Description
2003	Chinese Patent Application No. 201610830364.1
2004	Chinese patent document no. CN1178622C
2005	China National Intellectual Property Administration, Case No. 114231 (Oct. 19, 2022) translation
2006	China National Intellectual Property Administration, Case No. 4W114231 (Oct. 19, 2022) translation
2007	The People’s Republic of China Beijing Intellectual Property Court Administrative Judgment (Oct. 25, 2023) original
2008	The People’s Republic of China Beijing Intellectual Property Court Administrative Judgment (Oct. 25, 2023) translation
2011	Chinese patent document no. CN101489454A
2012	Chinese patent document no. CN1361673A
2013	China National Intellectual Property Administration Case No. 4W114082 (sept. 23,2022) original
2014	China National Intellectual Property Administration, Case No. 4W114082 (Sept. 23, 2022) translation

Petitioners also move to exclude the following excerpts from the deposition of Mr. Joseph Fester and related exhibit Ex-2019, upon which Patent Owner relies in its Patent Owner Response (Paper No. 20) (collectively, the “Deposition Evidence”), and to which Petitioner timely objected:

Exhibit No.	Description
2018	Deposition Transcript of Joseph Fester (Apr. 26, 2024), as to the following excerpts only: • Testimony concerning Deposition Ex. 2 (Ex-2019): Ex-2018 at 29:17-30:20, 34:2-9. • Testimony concerning Deposition Ex. 3: Ex-2018 at 82:19-85:4, 86:9-88:14. • Testimony concerning Deposition Ex. 4: Ex-2018 at 97:17-98:5.
2019	Deposition Exhibit 2 – U.S. Patent No. 8,789.235 (“the ’235 patent”)

In accordance with the Trial Practice Guide requirements, Petitioner (a) identifies where in the record Petitioner’s original objections were made, (b) identifies where in the record this exhibit was relied upon by Patent Owner, (c) addresses objections to the exhibit in numerical order (as only one exhibit is being challenged), and (d) explains the basis and grounds for each objection.

II. THE CHINESE PATENT EXHIBITS SHOULD BE EXCLUDED

Petitioners timely objected to the Chinese Patent Exhibits. *See* Paper No. 9. Petitioners objected to the Chinese Patent Exhibits under FRE 401/402 (relevance) and FRE 403 (probative value outweighed by prejudice, confusing of issues, wasting time). *Id.* As explained in Petitioners’ objection (Paper No. 9), Patent Owner relied on the Chinese Patent Exhibits in its pre-institution Preliminary Patent Owner’s Response (Paper No. 6) to argue that this *inter partes* review proceeding should not be instituted. Patent Owner did not rely on the Chinese Patent Exhibits in any of its post-institution filings (*see* Papers Nos. 20, 31), confirming that the Chinese Patent

Exhibits are irrelevant and lack probative value. Thus, Patent Owner can no longer rely on the Chinese Patent Exhibits in support of any post-institution issue. The Chinese Patent Exhibits, therefore, should be excluded pursuant to 37 C.F.R. § 42.62.

III. THE DEPOSITION EVIDENCE SHOULD BE EXCLUDED

All three Deposition Exhibits at issue in this motion to exclude, and the related testimony, exceed the scope of Mr. Fester's direct examination and were improperly introduced at Mr. Fester's deposition in violation of FRE 611(b) and 37 C.F.R. § 42.53. *See* FRE 611(b) ("Cross-examination should not go beyond the subject matter of the direct examination."); 37 C.F.R. § 42.53 ("For cross-examination testimony, the scope of the examination is limited to the scope of the direct testimony."). As such, Ex-2019, and all deposition testimony relating to Deposition Exhibits 2, 3, and 4 must be excluded.¹

Petitioners timely objected to the Deposition Evidence under 37 C.F.R. § 42.64(a). *See* Ex-2018 at 27:5–7, 77:13–16, 89:24–5, 103:13–16. Petitioners now move to exclude the portions of the deposition testimony related to Deposition Exhibits, and the Deposition Exhibits, upon which Patent Owner relied in its Patent Owner Response (Paper No. 20).

¹ Petitioners' Motion to Exclude the deposition testimony (Ex-2018) is limited to the portions of the deposition of Mr. Fester upon which relate to Deposition Exhibits 2, 3, and 4 upon which Patent Owner relied in its Patent Owner Response (Paper No. 20).

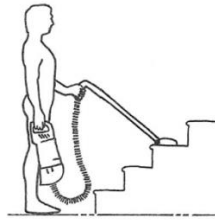
Deposition Exhibit 2 (Ex-2019) and Related Testimony Must Be

Excluded: Ex-2019 was introduced for the first time by Patent Owner at the deposition of Mr. Fester and was never relied upon by Mr. Fester in his declaration. Moreover, although Ex-2019 is a patent listing Mr. Fester as an inventor, he testified that it had “been a number of years” since he reviewed the patent; thus, he was not familiar with its contents. EX-2018 at 30:10–11. Thus, Ex-2019 and all related testimony, including EX-2018 at 29:17–30:20, 34:2–9, exceed the scope of Mr. Fester’s direct examination and must be excluded pursuant to FRE 611(b).

Testimony Concerning Deposition Exhibit 3 Must Be Excluded:² The underlying exhibit exceeds the scope of Mr. Fester’s direct examination and lacks foundation. Patent Owner’s counsel introduced Deposition Exhibit 3 for the first time in this proceeding during Mr. Fester’s deposition, without providing any foundation regarding the document. Ex-2018 at 77:10–16, 82:19–12. As such, any deposition testimony concerning Deposition Exhibit 3 exceeds the scope of Mr. Fester’s direct examination, and is irrelevant, highly prejudicial, misleading, and lacks foundation. The testimony concerning Deposition Exhibit 3, including the portions upon which Patent Owner relies (Ex-2018 at 82:19–85:4, 86:9–88:14), must

² Patent Owner did not file Deposition Exhibit 3 as an exhibit.

be excluded pursuant to FRE 401, 402, 403, and 611(b). Deposition Exhibit 3 is reproduced below:³



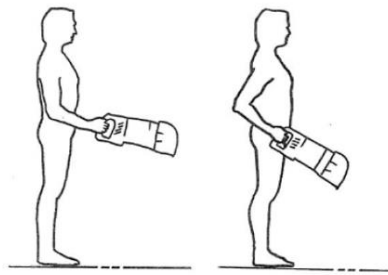
After introducing Deposition Exhibit 3 for the first time during Mr. Fester's deposition, Patent Owner's Counsel proceeded to question Mr. Fester about the mockup shown in the exhibit. As explained in Petitioners' Reply to Patent Owner's Response, Patent Owner's mockup, as shown in Deposition Exhibit 3, ignores Mr. Fester's declaration and provides an entirely new modified version of the prior art. Paper No. 30 at 2. As such, Deposition Exhibit 3, and all related deposition testimony, exceed the scope of direct examination, are misleading, irrelevant, and highly prejudicial, and must be excluded pursuant to FRE 401, 402, 403, and 611(b).

³ Deposition Exhibit 3 resembles diagram J, which Patent Owners later provided in Patent Owner Response. Paper No. 20 at 30.

Testimony Concerning Deposition Exhibit 4 Must Be Excluded:⁴ The underlying exhibit exceeds the scope of Mr. Fester's direct examination and lacks foundation. Patent Owner's counsel introduced Deposition Exhibit 4 for the first time in this proceeding during Mr. Fester's deposition, without providing any foundation regarding the document. Ex-2018 at 89:24–90:16. As such, any deposition testimony concerning Deposition Exhibit 4 exceeds the scope of Mr. Fester's direct examination, and is irrelevant, highly prejudicial, misleading, and lacks foundation. The testimony concerning Deposition Exhibit 4, including the portions upon which Patent Owner relies (Ex-2018 at 97:17–98:5), must be excluded pursuant to FRE 401, 402, 403, and 611(b). Deposition Exhibit 4 is reproduced below:⁵

⁴ Patent Owner did not file Deposition Exhibit 3 as an exhibit.

⁵ Deposition Exhibit 4 resembles diagrams A and B, which Patent Owners later provided in Patent Owner Response. Paper No. 20 at 22.



After introducing Deposition Exhibit 4 for the first time during Mr. Fester's deposition, Patent Owner's Counsel proceeded to question Mr. Fester about the mockup shown in the exhibit. As explained in Petitioners' Reply to Patent Owner's Response, Patent Owner's mockup, as shown in Deposition Exhibit 4, ignores Mr. Fester's declaration and provides an entirely new modified version of the prior art. Paper No. 30 at 2. As such, Deposition Exhibit 4, and all related deposition testimony, exceed the scope of direct examination, are misleading, irrelevant, and highly prejudicial, and must be excluded pursuant to FRE 401, 402, 403, and 611(b).

IV. CONCLUSION

In view of the reasons explained above, Petitioner respectfully requests the Board exclude the Chinese Patent Exhibits and the Deposition Evidence.

DATED: November 6, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. § 42.120 of a copy of this Petitioners' Motion To Exclude Evidence upon Patent Owner by email on November 6, 2024, to the following email addresses of record:

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