

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

**PATENT OWNER'S OPPOSITION TO PETITIONERS' MOTION TO
EXCLUDE EVIDENCE**

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Petitioner has no basis to exclude its own expert's admissions and associated exhibits: each exhibit is within the scope of Mr. Fester's direct examination under FRE 611(b), and Petitioners' challenges to scope and other grounds at best go to weight, not admissibility. Petitioners' motion to exclude documents from Chinese counterpart proceedings is moot because Patent Owner does not rely on the Chinese Patent Exhibits in its post-institution filings. Petitioners' motion should be denied.

I. PETITIONERS' MOTION TO EXCLUDE SHOULD BE DENIED

As the movant, Petitioner "has the burden of proof to establish that it is entitled to the requested relief." *Microsoft Corp. v. Surfcaster, Inc.*, IPR2013-00292, Paper 93 at 54 (citing 37 C.F.R. § 42.20(c)). There is a "strong public policy for making all information filed in an administrative proceeding available to the public, especially in a inter partes review It is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces of evidence." *Biomarin Pharmaceutical v. Genzyme Therapeutic Products Limited Partnership*, IPR2013-00537, Paper 79 at 25. Petitioners' challenges at best go to weight, not admissibility, or are moot.

A. The Deposition Evidence Should Not Be Excluded

Petitioner seeks to exclude certain of its own expert's admissions made at his deposition, and the exhibits associated with those admissions, primarily based on scope. Mot. at 5-8. Petitioners' complaints at best go to weight, not admissibility.

1. Deposition Exhibit 2 (Ex-2019) And Related Testimony Should Not Be Excluded

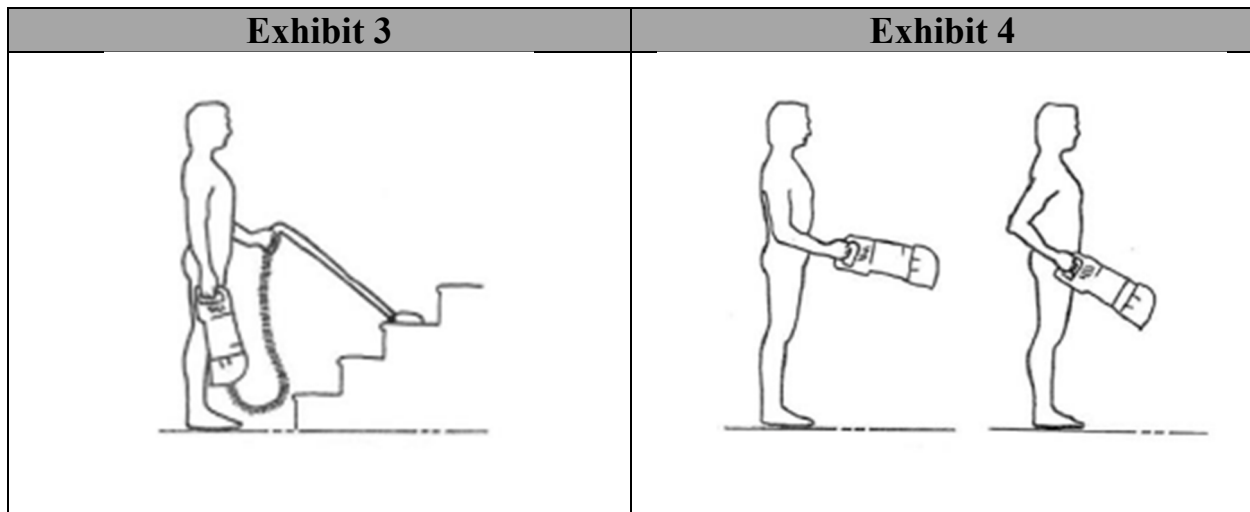
Petitioners do not challenge the relevance of Exhibit 2 and related testimony and do not argue that its probative value is outweighed by prejudice or other considerations under FRE 403. Instead, Petitioners argue that Exhibit 2 and related testimony should be excluded because it exceeds the scope of Mr. Fester's direct examination under Federal Rule of Evidence 611(b). Mot at 5. Exhibit 2 is a patent listed on Mr. Fester's CV, which is Appendix A to Mr. Fester's declaration, and which names Mr. Fester as an inventor. Exhibit 1003 at App'x A. Exhibit 2 and related testimony, including EX-2018 at 29:17-30:20, 34:2-9, is thus fairly within the scope of Mr. Fester's direct examination. Further, Exhibit 2 and Mr. Fester's testimony directly rebut Mr. Fester's opinions that a POSA would have been motivated to modify Conrad '630. Patent Owner's Response cited to Exhibit 2 and testimony to show that reduced efficiency and poorer cleaning performance would not have motivated a POSA to modify Conrad '630 as Mr. Fester proposes because Exhibit 2, Mr. Fester's own patent cited in the CV he submitted with his declaration, shows as the distance between the suction nozzle and the floor surface increases, a vacuum experiences a loss of suction resulting in reduced efficiency and poorer cleaning performance, and which applies equally when the vacuum is tilted away from perpendicular. *See* Paper No. 20 at 36.

Petitioners' arguments about scope, and that Mr. Fester testified that it had "been a number of years' since he reviewed the patent," Mot. at 5, at best go to weight, not admissibility.

2. Deposition Exhibits 3 and 4 And Related Testimony Should Not Be Excluded

Petitioners do not challenge the relevance of Exhibits 3 and 4 and do not argue that their probative value is outweighed by prejudice or other considerations under FRE 403, but instead seek to exclude Exhibits 3 and 4 as "exceed[ing] the scope of Mr. Fester's direct examination and lacks Foundation," Mot. at 5, 7. Petitioners seek to exclude related testimony as "exceed[ing] the scope of Mr. Fester's direct examination, and is irrelevant, highly prejudicial, misleading, and lacks foundation," Mot. at 5, 7. Each of Petitioners' complaints again at best go to weight, not admissibility.

Deposition Exhibits 3 and 4 are illustrations by Patent Owner's expert Mr. Donald Davidshofer that Patent Owner used to explore Mr. Fester's opinions regarding alleged motivations to combine references.



As to their foundation, Mr. Fester testified that Exhibit 3 was an “illustration” showing “a vacuum hanging down since the handle is on the back,” Ex. 2018 at 84:24-4, and that Exhibit 4 illustrates “one possible motion” for pushing the vacuum shown in the illustration. *Id.* at 90:10-22.

These exhibits and testimony are squarely within the scope of Mr. Fester’s opinions. Mr. Fester opines in his declaration that a POSA would have been motivated to modify Conrad ’630’s handle, and provides his own illustrations, and these exhibits (and associated testimony) illustrate why a POSA would not have modified Conrad ’630 as Petitioners propose.

Specifically, Patent Owner’s Response cited to Mr. Fester’s testimony regarding Exhibits 3 and 4 to show that the ability to use hose attachments with Conrad ’630’s vacuum would not have led to Petitioners’ proposed modification because Petitioners’ proposed modifications increases arm, hand, and wrist stress and strain as compared to the original design. *See* Paper No. 20 at 20-23, 27-31.

Mr. Fester’s testimony regarding Exhibits 3 and 4 also goes to his credibility as an expert witness because his admissions are contrary to his declaration testimony. *Id.* Evidence that is considered for the purposes of deciding an issue of credibility should not be excluded. *See Samsung Electronics America, Inc. v. Smartflash, LLC*, Case CBM2014-00190 (PTAB May 26, 2016) (Paper 47) at 24 (“Although we were not persuaded by this evidence, we did consider it for the purposes of deciding an issue of credibility. We, therefore, decline to exclude this testimony under FRE 401, 402, or 611(b).”).

Petitioners’ remaining challenges to admissibility are unexplained and at best go to weight.

Accordingly, Petitioners’ motion to exclude Exhibits 3 and 4 and related testimony should be denied.

B. Petitioners’ Motion to Exclude the Chinese Exhibits Should Be Denied as Moot

Patent Owner does not rely on the Chinese Exhibits¹ in its post-institution filings. *See* Paper Nos. 20, 31. A motion to exclude exhibits not relied upon in Patent Owner’s post-institution filings or by the PTAB in the final written decision should be denied as moot. *See, e.g., Brunswick Corp. v. Cobalt Boats, LLC*, Case IPR2015-01060 (PTAB Sept. 28, 2016) (Paper 78) at 42 (“Petitioner’s motion is also moot

¹ Exhibit Nos. 2003-2008, 2011-2014.

with respect to Exhibits 2001–2013, as those exhibits are not relied upon in Patent Owner’s post-institution filings or our Decision.”). Accordingly, Petitioners’ motion to exclude the Chinese Patent Exhibits should be denied as moot.

II. CONCLUSION

Petitioners’ Motion to Exclude should be denied.

Date: November 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete copy of the foregoing document was served on November 13, 2024 on counsel of record for the Petitioners via email to the following address: GDC-SharkNinjaIPRD@gibsondunn.com.

/s/ Christian Huehns

Christian Huehns (Reg. No. 77,717)