

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

I. INTRODUCTION

Petitioners seek to exclude two categories of documents, as identified in their Motion to Exclude: the Deposition Evidence and the Chinese Patent Exhibits. Paper No. 34 at 1-2. The Deposition Evidence relates to deposition exhibits that were manufactured by Patent Owner and introduced for the first time at Mr. Fester's deposition without any foundation. They also fall outside the scope of Mr. Fester's direct examination. The Deposition Evidence is also highly prejudicial, misleading and irrelevant, as explained below, and therefore must be excluded. The Chinese Patent Exhibits should be excluded because Patent Owner failed to rely on them in any post-institution paper.

II. ARGUMENT

A. THE DEPOSITION EVIDENCE SHOULD BE EXCLUDED

1. Deposition Exhibit 2 (Ex-2019) And Related Testimony Should Be Excluded

Patent Owner argues that Deposition Exhibit 2 and the related testimony are within the scope of Mr. Fester's direct examination because it "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" Opp. at 2. However, Mr. Fester's direct examination does not take a position concerning the distance between the suction nozzle and the floor. *See generally* Ex-1003. To the contrary, Mr. Fester explained that a "POSITA would have

recognized additional advantages associated with providing the handle at the rear . . . which would allow more flexibility in using the handheld vacuum with an attachment for different types of cleaning.” Ex-1003, ¶¶69–72. Therefore, the modified device, as proposed by Mr. Fester, would allow for reducing the distance between the suction nozzle and the floor surface rather than increase it.

Patent Owner, for the first time during Mr. Fester’s deposition sought to introduce an exhibit, without any foundation, to support an argument that was never raised by Mr. Fester, nor is relevant to Mr. Fester’s positions on any motivation to combine any references. Notably, Patent Owner failed in its opposition to the instant motion to identify any specific direct testimony that Mr. Fester provided that is directly rebutted by Deposition Exhibit 2 or Mr. Fester’s testimony concerning that exhibit. Patent Owner also failed to explain the foundation for the introduction of Deposition Exhibit 2 at Mr. Fester’s deposition. Accordingly, Deposition Exhibit 2 (Ex-2019) and the related testimony (including EX-2018 at 29:17–30:20, 34:2–9) should be excluded.

2. Deposition Exhibits 3 and 4 And Related Testimony Should Be Excluded

Deposition Exhibits 3 and 4 are wholly irrelevant to the proceeding as they represent mock-ups of modified prior art vacuums Patent Owner created but that fail to capture key elements of Petitioners’ proposed modifications. It would therefore be unfairly prejudicial for Patent Owner to rely on the testimony relating to these

Exhibits. Exacerbating the problem, the exhibits were first introduced at Mr. Fester's deposition without any foundation, and key aspects of the exhibits were disputed by Mr. Fester at his deposition. As further explained below, Patent Owner's arguments concerning Deposition Exhibits 3 and 4, and the testimony related to these Exhibits,¹ fails.

First, Patent Owner does not argue—and therefore concedes—that Deposition Exhibits 3 and 4 exceed the scope of Mr. Fester's direct testimony. Opp. at 3–5. All related testimony must therefore be excluded for this independent reason.

Second, Patent Owner argues that it laid the proper foundation regarding Deposition Exhibits 3 and 4. Opp. at 4 (citing Ex-2018 at 84:24–85:5, 90:10–22). Not so.

As to Deposition Exhibit 3, Mr. Fester was initially asked if Exhibit 3 is “an accurate illustration of the vacuum cleaner of Conrad 630 with the handle design and position from Conrad 787 being used with a hose attachment.” Ex-2018 at 83:6–10. Mr. Fester testified that “No, it's not.” *Id.* at 83:12. Mr. Fester then explained various issues with the Exhibit, *id.* at 83:14-84:10, and Patent Owner's counsel proceeded questioning under the premise that the Exhibit had been adjusted to

¹ The testimony concerning Deposition Exhibit 3 includes: Ex-2018 at 82:19-85:4, 86:9-88:14. The testimony concerning Deposition Exhibit 4 includes: Ex-2018 at 97:17-98:5.

address the issues identified by Mr. Fester. *Id.* at 84:13–14 (“But if we include that [change] and make the connection in the suction. . .”). Thus, no foundation was ever laid for Exhibit 3, and the record fails to establish that Mr. Fester testified about Exhibit 3 as it was presented in the deposition.

As to Deposition Exhibit 4, Mr. Fester was again asked if the exhibit was “an accurate illustration,” *id.* at 90:10–16, to which he stated that “it is one possible motion.” *Id.* at 90:18–91:5. He further explained that his mock-ups were materially different. *Id.* at 91:14–93:5 (“Your statement is correct but it’s inconsistent with the mock-ups that I show in my declaration,” including because “Exhibit 4 shows no handle at the top of the vacuum.”). Thus, no foundation was ever laid for Exhibit 4, nor is Exhibit 4 relevant to any issue.

Third, Patent Owner argues that Deposition Exhibits 3 and 4 show that “the ability to use hose attachments with Conrad ’630’s vacuum would not have led to Petitioners’ proposed modification.” *Opp.* at 4. But Deposition Exhibit 4 does not show a hose attachment, and Mr. Fester testified that both Deposition Exhibits are not accurate representations of Petitioners’ proposed modification. Thus, Deposition Exhibits 3 and 4, and all related testimony, are not relevant to show why a POSITA would *not* have been led to the same modifications proposed by Petitioners.

Fourth, Deposition Exhibits 3 and 4, and the testimony concerning the exhibits, also have no bearing on Mr. Fester’s credibility. As explained above, the

Deposition Exhibits 3 and 4 do not show the modified device as was actually proposed by Mr. Fester. *See* Paper 30 (Petitioners’ Reply to Patent Owner’s Response) at 2–5, 11–14. Because Deposition Exhibits 3 and 4, and Mr. Fester’s related testimony, address irrelevant and improper hypotheticals by Patent Owner, detached from Mr. Fester’s proposed mock-ups, they do not shed any light on Mr. Fester’s credibility.

As such, Deposition Exhibits 3 and 4, and the testimony related to these Exhibits, must be excluded.

Finally, should the Board rely on the Deposition Evidence, it must be given minimal weight.

B. THE CHINESE PATENT EXHIBITS SHOULD BE EXCLUDED

Patent Owner’s only argument in opposition is that the Chinese Patent Exhibits should not be excluded because “Patent Owner does not rely on the Chinese [Patent] Exhibits in post-institution filings.” Opp. at 5-6. But that is exactly why they should be excluded—they were never relied on. This confirms that the Chinese Patent Exhibits should not be considered by the Board in its Final Written Decision and should be excluded.

III. CONCLUSION

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

DATED: November 20, 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 Petitioner's Reply To Patent Owner's Opposition To Petitioners' Motion To Exclude Evidence upon Patent Owner by email on November 20, 2024, to the following email addresses of record:

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