UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, LLC
d/b/a ASSAULT FITNESS
Petitioner,

v.

WOODWAY USA, INC.
Patent Owner.

U.S. Patent No. 11,465,005 to Bayerlein et al.

Case No.: IPR2024-00083

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE UNDER 37 C.F.R. § 42.64(c)

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1002	U.S. Patent No. 11,465,005 File History ("the '005 Patent File History")
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1004	Robert Giachetti, Ph.D. P.E. Curriculum Vitae ("Giachetti CV")
1005	Complaint, Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, Filed April 11, 2022 ("Complaint") (Ex.1005 at 1-8) Waiver of Service (April 13, 2022) (Ex.1005 at 9-10)
1006	Amended Complaint, Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, Filed October 24, 2022 ("Amended Complaint")
1007	Treadmills: Supplier Guide © 2010. Trade Practices (Consumer Product Safety Standard) (Treadmills) Regulations 2009 ("ACCC Product Safety Supplier Guide")
1008	U.S. Patent No. 641,424 to Ziebell ("Ziebell")
1009	U.S. Patent No. 1,211,765 to Schmidt ("Schmidt")
1010	U.S. Patent No. 4,614,337 to Schonenberger ("Schonenberger")
1011	U.S. Patent No. 5,897,461 to Socwell ("Socwell")
1012	U.S. Patent No. 5,538,489 to Magid ("Magid")
1013	U.S. Patent No. 3,637,206 to Chickering ("Chickering")
1014	U.S. Patent No. 3,642,279 to Cutter ("Cutter")
1015	U.S. Patent No. 6,042,514 to Abelbeck ("Abelbeck")
1016	Power Transmission Handbook, (Power Transmission Distributors Association 1993) ("PT Handbook")
1017	Neil Sclater and Nicholas P. Chironis, Mechanisms & Mechanical Devices Sourcebook, Third Ed., (McGraw-Hill 2001) ("Sclater") (available at https://catalog.loc.gov/vwebv/holdingsInfo?searchId=26&recCount=25&recPointer=0&bibId=12308523)

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1023	United States District Courts – National Judicial Caseload Profile, December 2022
1024	Inhabitat, "HUMAN-POWERED GYMS in Hong Kong" (March 8, 2007) (available at https://inhabitat.com/human-powered-gyms-in-hong-kong/)
1025	Minute Order, Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 30, 2023.
1026	Intentionally left blank
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1028	Responsive Claim Construction Brief, Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 14, 2023
1029	U.S. Patent No. 4,635,771 to Shoji ("Shoji")
1030	Intentionally left blank
1031	English Translation of German Patent DE 199 22 822 B4 to Tollkien ("Tollkien")
1032	U.S. Provisional Patent Application No. 61/161027 File History

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1033	Claim Construction Order Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness No. 3:22-cv-00492-JO-BLM, Dkt. No. 59, Southern District of California, November 14, 2023
1034	Order Granting Motion to Extend Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, March 1, 2024
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1041	Woodway 4Front Owners Manual October 24, 2023 OM_EN_V2 (accessed March 31, 2024) (available at https://www.woodway.com/treadmills/4-front/)
1042	Woodway Homepage, (accessed March 31, 2024) (available at https://www.woodway.com/)
1043	Woodway Curve Specification (accessed March 31, 2024) (available at https://www.woodway.com/treadmills/curve/)
1044	Woodway Manual Treadmills Webpage (accessed March 31, 2024) (available at https://www.woodway.com/manual-treadmills/)
1045	Confidential Condensed Transcript of Deposition of Traci Bates taken on January 26, 2024 Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California

Exhibit #	Description
1046	Woodway Trueform Trainer Webpage dated August 12, 2020 (accessed April 4, 2024) available from Wayback at https://web.archive.org/web/20200812204597/https://www.woodway.com/product/trueform/trainer-powered-by-woodway/)
1047	Confidential Draft AirRunner Manual Treadmill Owner's Manual Assault Fitness Release v.01 (20.February,17)
1048	Order Granting Joint Motion to Amend the Scheduling Order Woodway USA, Inc., v. LifeCORE Fitness, Inc. d/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of California, April 29, 2024
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1054	Petitioner Objection Response Letter – Service Copy *LifeCore Fitness, LLC d/b/a Assault Fitness v. Woodway USA, Inc* IPR2024-00083, November 27, 2024

I. INTRODUCTION

Patent Owner's ("PO's") motion to exclude ("Mot.") takes statements out of context, ignores the knowledge and common sense of a person of ordinary skill in the art ("POSA") at the relevant time, faults Dr. Giachetti for merely elaborating on issues raised in his initial declaration and for responding to issues raised in PO's Response, and challenges the authenticity of documents, including its own, without providing any contrary evidence. Accordingly, PO's motion should be denied.

II. ARGUMENT

A. Ex. 1036: Second Declaration of Robert Giachetti, Ph.D.

PO seeks to exclude Ex. 1036 under Federal Rules of Evidence ("FRE") 401 and 402 but does not provide ***any*** arguments or analysis regarding its alleged lack of relevancy. (Mot., 4.) In fact, apart from the header, FRE 401 and 402 are not addressed in PO's motion. (*Id.*) Nonetheless, Dr. Giachetti's Declaration is relevant under FRE 401 and 402 because it identifies and explains technical issues that the PO's Response/Expert failed to explain or accurately address, and therefore has a tendency to make a fact more or less probable than it would be without the evidence.

PO also argues that Ex. 1036 should be excluded under FRE 602, 702, and 703 because Dr. Giachetti's lacks "personal knowledge and/or because Dr. Giachetti's testimony is not based on sufficient facts." (Mot. 4-5.) PO is wrong. Dr. Giachetti's opinions provided in Ex. 1036 are based upon: (1) his qualifications and

professional experience and (2) the documents he cited and considered. (Ex. 1036, ¶¶4-5.) Dr. Giachetti is a testifying expert pursuant to the Federal Rules of Evidence ("FRE") 703 and he may therefore rely on logic, judgment, and common sense as well as facts or data he has been made aware of or personally observed to render an opinion. Nor is there a requirement to cite to an "underlying source" for every statement in an expert's report—especially in rebuttal identifying flaws in PO's positions. *Kennedy v. Collagen Corp*., 161 F.3d 1226, 1231 (9th Cir. 1998) (internal citation omitted) ("Disputes as to … lack of textual authority for [an expert's] opinion, go to the weight, not the admissibility, of his testimony."). Accordingly, PO's arguments under FRE 602, 702, and 703 fail. *See*, FRE 602, 702, 703.

PO further argues that Ex. 1036 should be excluded under 37 C.F.R. § 42.23(b) for "improperly introduc[ing] new arguments." (Mot., 5-7.) But, Ex. 1036 does not present new arguments contrary to 37 C.F.R. § 42.23(b) because the cited to allegedly new arguments either merely elaborate on issues raised in the petition (and the supporting documents thereof) or simply respond to issues raised in Patent Owner's Response (POR). *See e.g*., Petition at 11, 20-33, 67, 69, 77-80, 89-91, and 93-95; *see also* P O's Response at 48–69. Accordingly, PO's argument under 37 C.F.R. § 42.23(b) fail. PO had the opportunity to depose Dr. Giachetti to seek clarification of his reply declaration testimony, but chose not to.

1. Dr. Giachetti's reply declaration testimony merely elaborates on his initial analysis and responds to issues raised in Patent Owner's Response

PO argues that Dr. Giachetti's testimony in ¶¶53-60 of his reply declaration are new arguments. (Mot., 6.) Dr. Giachetti referenced the state-of-the-art section of his first declaration (Ex. 1003), regarding what a POSA would have understood regarding treadmill running surfaces and bearing systems. (Ex. 1036, ¶¶53-60.) PO is particularly concerned with Dr. Giachetti's annotations to Ex. 1015, Fig. 12 (Mot., 6-7), because it was presented without annotations in his first declaration. (*Compare* Ex. 1003, ¶68, *with* Ex. 1036, ¶59.) As explained below, Dr. Giachetti's reply declaration testimony is not a new argument, instead it merely elaborates on his initial analysis and responds to issues raised in PO's Response. A party may submit rebuttal evidence in support of its reply. *See, Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1077-78 (Fed. Cir. 2015).

Dr. Giachetti included a state-of-the-art section in his first declaration to explain a POSA's understanding of the treadmill technology at the relevant time. (Ex. 1003, ¶¶50-91; Ex. 1036, ¶54.) Regarding treadmill running surfaces, Dr. Giachetti explained that "[t]he running surface is the portion of the treadmill where the user is expected to place their feet while exercising." (Ex. 1003, ¶58.) PO's Expert Dr. Blair agreed, defining "running surface" as "a surface of the running belt on which a runner's feet would typically make contact when the user is running on

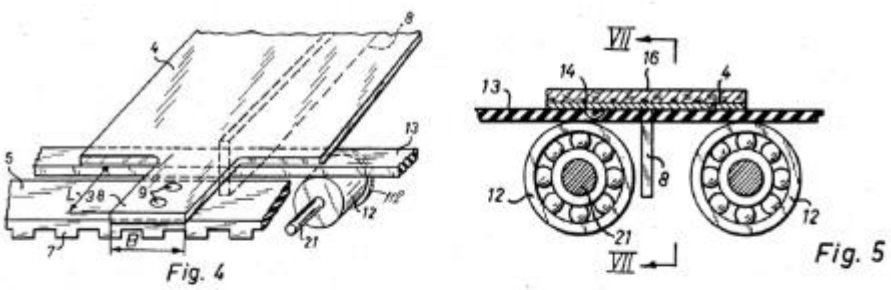
the treadmill during normal use." (Ex. 2018, ¶92; *see also* Ex. 1040 at 60:2-22; Ex. 1020, 5.) Dr. Giachetti explained that treadmills typically include one of two different types of running surfaces: a belt style running surface (*e.g.*, Socwell, Ex. 1011, Fig. 1), and a track-style running surface (*e.g.*, Schonenberger, Ex. 1010, Fig. 1; *see also* Tollkien, Ex. 1031). (Ex. 1003, ¶¶58-59; Ex. 1036, ¶54.)

The type of running surface that is used corresponds with the type of bearing system selected for the treadmill. The belt style treadmill generally implements rollers (*e.g.*, Chickering Ex. 1013, Fig. 1), or a bearing surface (*i.e.*, a "deck" or slider bed) (*e.g.*, Socwell, Ex. 1011, Fig. 1). Whereas small rolling element bearings are predominantly selected for the track style running surface because the transverse slats are strong enough to resist the operator's loads without anything directly underneath the slats where the operator's foot is. (Ex. 1003, ¶66; Ex. 1036, ¶55.)

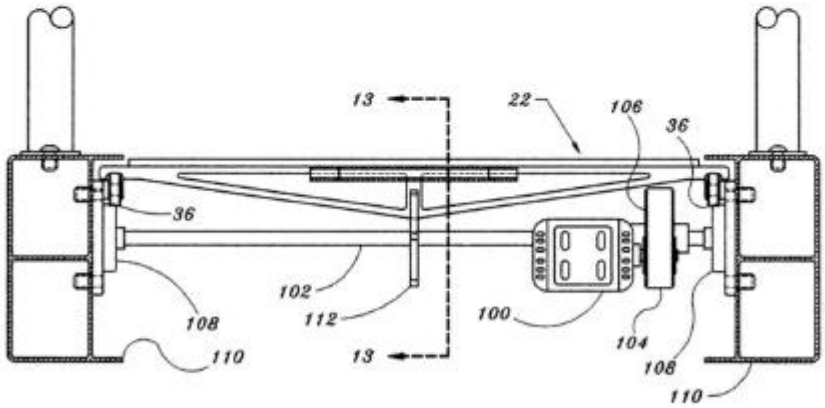
Historically, treadmills that implement small rolling element bearings still include front and rear connections, such as a roller, drum, sheave, pulley, or shaft assembly, between the two frontmost side bearings and also the two rearmost side bearings to ensure alignment of the endless belt(s). These common and well understood methods are also found in known Power Transmission technology, *i.e.*, conveyor technology, see, for example PT Handbook, Ex. 1016, 6-2, 6-4. (Ex. 1003, ¶66; Ex. 1036, ¶56.)

A side bearing system is often used with track style running surfaces because

track style running surfaces are typically much more rigid than a belt style and accordingly, are able to resist the loads from the user without a supplemental support structure beneath. For example, U.S. Patent No. 4,614,337 to Schonenberger (Ex. 1010) and U.S. Patent No. 6,042,514 to Abelbeck (Ex. 1015) are examples of treadmills with track-style running surfaces with side roller bearing systems including small rolling element bearings. (Ex. 1003, ¶68; Ex. 1036, ¶58.)



Schonenberger, Ex. 1010, Figs. 4, 5

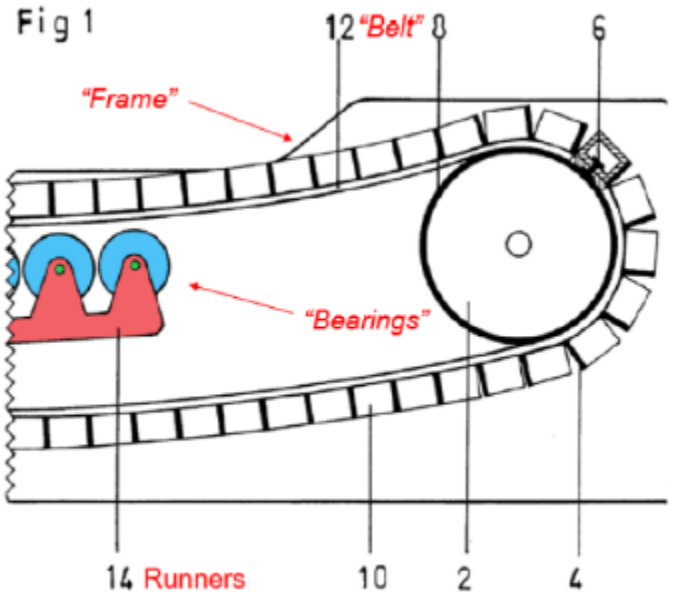


Abelbeck, Ex. 1015, Fig. 12

Ex. 1003, ¶68

In his first declaration, Dr. Giachetti explained how Tollkien discloses the

"*plurality of bearings coupled to the frame*" limitations of claims 6, 13, and 16 in his first declaration, including that a POSA would have understood that the runners 14 are mounted and fixed to the frame and the bearings are mounted for rotation about the axels and relative to the frame to provide rolling engagement with the continuous belt 12. (Ex. 1003, ¶¶307-309, 348-349, 363-364.)



Ex.1031,Fig.1 (Annotated)

Ex. 1003, ¶307; Ex. 1036, ¶51

During his deposition, Dr. Giachetti explained that Tollkien's disclosure of "runners 14 placed underneath the running surface to prevent the belt from bouncing when in use" "means that the runners are attached to the treadmill underneath the running surface and that they provide an upward force to that running surface while the person is on it." (Ex. 1031, ¶[0020]; Ex. 2082, 72:1-8.) Dr. Giachetti further

explained that a POSA would have understood that the runners are mounted to the frame "otherwise, it wouldn't provide the upward force for what Tollkien is talking about in terms of the bouncing." (Ex. 2082, 72:20-23; Ex. 1036, ¶¶65-66.)

Nonetheless, in its POR, PO argued that Petitioner did not "provide any support for the proposition that Tollkien discloses that the runners 14 are 'mounted and fixed to the frame' or that any portion of the runners 14 constitute 'bearings' as that term is used in the '005 Patent." (POR, 22.) PO's expert, Dr. Blair, testified that that "the runners 14 could be attached to the belt itself or attached to and suspended between the front and rear pulleys." (POR, 24; Ex. 2018, ¶114.) However, during his deposition, Dr. Blair admitted that Tollkien's disclosure of the runners preventing the belt from bouncing means "that the runners 14 have to be fixed to something other than the belt." (Ex. 1050, 88:11–15; Ex.1036, ¶¶68-70.) Dr. Blair also clarified during his deposition that the runners would have to be either coupled to the frame or to a structure wholly external to the treadmill, e.g., the ceiling. (Ex.1050, 88:11-24, 87:17-22, 89:3-17.) Dr. Giachetti explained that Dr. Blair's hypothetical attachment of Tollkien's runners/bearings to structure other than the frame (*e.g.*, the ceiling) would not have been reasonable to a POSA. (Ex.1036, ¶¶69-73.)

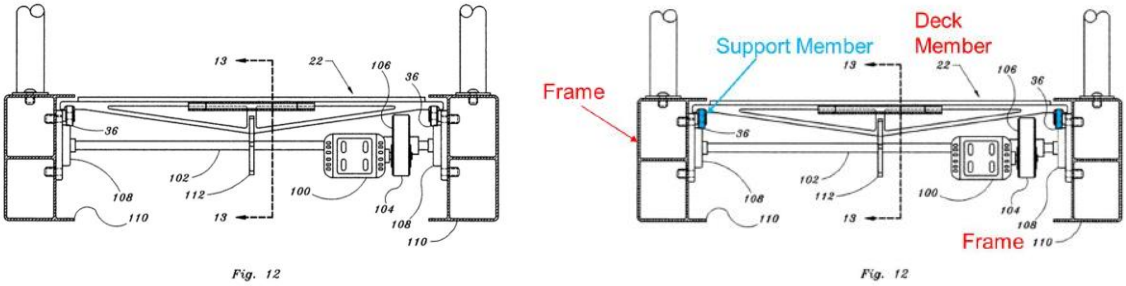
PO's POR argument faulted Tolkien for not expressly illustrating its mechanism for mounting the runners 14 to the frame. However, 35 U.S.C. § 103

does not require such a rigid test. Instead, to support an obviousness conclusion, "either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, *2 (Bd. Pat. App. & Inter. 1985) (emphasis added). Tollkien's disclosure regarding the runners 14 preventing the belt from bouncing in paragraph 20 at least implies, or renders obvious to a POSA, mounting the runners to the frame.

"To reach a proper determination under 35 U.S.C. § 103, one must step backward in time and into the shoes worn by the hypothetical person of ordinary skill in the art." *See* MPEP 2142. Dr. Giachetti's discussion of the state of the art in treadmill running surfaces and corresponding bearing systems provided such a reference. (Ex. 1003, ¶¶50-91; Ex. 1036, ¶54.) For example, a POSA would have had an understanding of how Tollkien's bearings are coupled to its frame based on, for example, the teachings of other prior art treadmills having similar side bearing systems that include small rolling element bearings mounted to the side of the frame to support track style running surfaces such as U.S. Patent No. 4,614,337 to Schonenberger (Ex. 1010) and U.S. Patent No. 6,042,514 to Abelbeck (Ex. 1015). (Ex. 1003, ¶¶58-59, 68.)

Accordingly, in his reply declaration, Dr. Giachetti referenced this

background information from his first declaration. (Ex. 1036, ¶¶54-60 citing Ex. 1003, ¶¶58-59, 68.) Dr. Giachetti included Figure 12 of Abelbeck in his first declaration (Ex. 1003, ¶68) (reproduced below left) and annotated this figure to highlight how the bearings are mounted to the frame in his reply declaration. (Ex. 1036, ¶59, below right.)



Ex. 1015, Fig. 12 (Annotated)

PO now argues that Dr. Giachetti's rebuttal arguments are new arguments, because allegedly "the Abelbeck reference was neither mentioned nor cited at all in the Petition, and the annotated figure and accompanying description in Exhibit 1036 was not provided in Dr. Giachetti's Opening Declaration … ." (Mot., 6.) However, Dr. Giachetti was simply elaborating on his first declaration testimony in response to PO's arguments. Accordingly, PO's motion should be denied.

2. Dr. Giachetti's testimony regarding the gap between Tollkien's runners and running belt is permissible rebuttal testimony

PO also argued in its POR that Tollkien's runners are fixed bumpers, not bearings, and noted "a conspicuous space between the belt and the round elements

of runners 14" in Fig. 1. (POR, 22-23.) PO now argues that Dr. Giachetti's response to this argument in his reply declaration, explaining that 'a POSA would have understood that this gap between the belt and the runners would not be present when a user is running on the treadmill due to the weight of the runner,' was a new argument. (Mot., 7; Ex. 1036, ¶2.) PO's fixed bumper argument was unreasonable, unforeseeable, and contrary to a POSA's understanding of relevant art and thus unnecessary to state in the Petition. Nevertheless, in view of PO's Response, Petitioner and Dr. Giachetti properly addressed it on reply. A party may submit rebuttal evidence in support of its reply. *See Belden*, 805 F.3d at 1077–78. Therefore, PO's motion should be denied.

B. Exs. 1041–1044, 1046: Woodway Webpage and Documents

PO also challenges Exhibits 1041–1044, and 1046 under FRE 901 as allegedly lacking authenticity. First, the list of exhibits includes websites clearly identifying where one may locate the above-referenced exhibits and demonstrating their public availability. *See* Reply at ix-x. Second, each of Exhibits 1041–1044 and 1046 is authentic under Rule 901(b) because their "appearance, contents, substance, internal patterns, [and/or] other distinctive characteristics" demonstrate that they bear all the earmarks of authentic documents. *See* FRE 901(b). Third, each of the said exhibits is self-authenticated pursuant to FRE 902(6)-(7) as these documents include copyright trade inscriptions, establishing that they are published by Woodway. *See*

e.g., *EMC Corp. v. PersonalWeb Tech. LLC*, IPR2013-00084, Paper 64 at 50-51 (PTAB May 15, 2014). Finally, Exhibits 1041–1044, 1046 are all PO's own documents, and PO does not provide any evidence suggesting these exhibits are not authentic. On the contrary Woodway's website (Ex. 2037) is referenced in PO's own Response, which further demonstrates that the above-mentioned exhibits are authentic. *See* POR at v. Accordingly, PO's motion should be denied.

C. Ex. 1053: Tru Grit Runner Webpage

PO argues that Ex. 1053 lacks authentication under FRE 901 and is hearsay under FRE 801–802. (Mot., 9-11.) As to the authentication objections, we note that Exhibit 1053 includes a website identifying where one may locate this exhibit which also demonstrates its public availability. *See* Reply at x. Ex. 1053 is also authentic under Rule 901(b) because its "appearance, contents, substance, internal patterns, [and/or] other distinctive characteristics" demonstrate that it bears all the earmarks of an authentic document. *See* FRE 901. Still further, Ex. 1053 is self-authenticating at least under FRE 902(7).

Regarding PO's hearsay argument, Ex. 1053 is not offered to prove the truth of the matters asserted therein. Indeed, as offered, the text and image of Ex. 1053 are not statements at all. *See, Foreword Mag., Inc. v. OverDrive, Inc*., No. 1:10-CV-1144, 2011 WL 5169384, at *4 (W.D. Mich. Oct. 31, 2011) ("When a printout from a third party website is offered merely to show that certain images and text appeared

on the website, they are not statements at all and thus fall outside the ambit of the hearsay rule.") (internal citations omitted). Accordingly, PO's motion should be denied.

Respectfully submitted,

Dated: February 4, 2025

/ Andrew B. Turner /

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Certificate of Service

The undersigned hereby certifies that on February 4, 2025, a complete and entire copy of **PETITIONER'S OPPOSITION TO MOTION TO EXCLUDE AND EXHIBIT**, was served via electronic mail to the attorneys listed below:

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Certificate of Compliance Pursuant to 37 C.F.R. § 42.24

This paper complies with the type-volume limitation of 37 C.F.R. § 42.24. The paper contains 12 pages, excluding the parts of the paper exempted by 37 C.F.R. § 42.24(a).

This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(ii) and the type style requirements of § 42.6(a)(iii)&(iv).

Respectfully submitted,

Dated: February 4, 2025

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