

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUUL LABS, INC.,

Petitioner,

v.

NJOY, LLC,

Patent Owner.

Case No. IPR2024-00161
U.S. Patent No. 10,334,881

**PATENT OWNER'S OBJECTIONS TO
ADMISSIBILITY OF EVIDENCE SUBMITTED BY PETITIONER**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner NJOY, LLC, hereby objects as follows to the admissibility of evidence filed by Petitioner JUUL Labs, Inc. in conjunction with Petitioner's Reply to Patent Owner's Response, filed on November 20, 2024.

Evidence	Objections
Exhibit 1035	FRE 106: The exhibit is incomplete because it does not include the sworn errata submitted by the deponent. The exhibit is also incomplete because Petitioner did not submit at least Exhibit 2 from this deposition as an exhibit, which is at least relevant to Petitioner's arguments regarding notches, the construction of "end," and the construction of a "housing having a first aperture proximate the first end." Reply at 8. Petitioner filed this exhibit without allowing Patent Owner the opportunity to enter the entirety of the exhibit into the record. Patent Owner is prejudiced by this partial exhibit, which in fairness ought to be considered in its entirety. FRE 402: The exhibit includes testimony that is not relevant to any ground upon which trial was instituted.

Evidence	Objections
	FRE 403: The exhibit includes testimony, wherein the probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence. FRE 611: The exhibit includes testimony that goes beyond the scope of deponent's declaration.
Exhibit 1036	FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose. FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit's probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.

Evidence	Objections
	FRE 802: The entirety of the exhibit, including excerpts of deposition testimony and exhibits to Fuma’s memorandum, is inadmissible hearsay to the extent it is offered for the truth of the matter asserted. 37 C.F.R. § 42.63: The exhibit fails to comply with the requirements of 37 C.F.R. § 42.63. Specifically, this exhibit fails to include a complete translation of the underlying foreign-language documents. In particular, Exhibits B-D to Fuma’s memorandum are untranslated. 37 C.F.R. § 42.23(b): This exhibit is improper reply evidence. Petitioner could have and should have filed such evidence earlier (<i>i.e.</i>, with the Petition) in order to make its <i>prima facie</i> case.
Exhibit 1037	FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.

Evidence	Objections
Exhibit 1038	FRE 402: The exhibit includes testimony that is not relevant to any ground upon which trial was instituted, including at least with respect to Smoke51 Ohio (42:1-44:22), the passageway in the Fuma device (67:21-68:24), annotated versions of Figure 2 of the 881 Patent (88:16-92:1), and dependent claims of the 881 Patent (115:18-133:5). FRE 403: The exhibit includes testimony, wherein the probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence, including at least with respect to Smoke51 Ohio (42:1-44:22), the Smoke51 Duo (47:8-48:12), the passageway in the Fuma device (67:21-68:24), annotated versions of Figure 2 of the 881 Patent (88:16-92:1), and dependent claims of the 881 Patent (115:18-133:5).

Evidence	Objections
	FRE 611: The exhibit includes testimony that goes beyond the scope of deponent's declaration, including at least with respect to Smoke51 Ohio (42:1-44:22), the passageway in the Fuma device (67:21-68:24), annotated versions of Figure 2 of the 881 Patent (88:16-92:1), and dependent claims of the 881 Patent (115:18-133:5). FRE 701/702 and/or 37 C.F.R. § 42.65: The exhibit includes improper expert testimony from a lay witness that is not based on scientific, technical, or other specialized knowledge, that is not based on personal knowledge, and that calls for a legal conclusion, including at least with respect to the passageway in the Fuma device (67:21-68:24), annotated versions of Figure 2 of the 881 Patent (88:16-92:1) and dependent claims of the 881 Patent (115:18-133:5).
Exhibit 1039	FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose.

Evidence	Objections
	FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit's probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence. FRE 602: The deponent (Dan Hillenbrandt) lacks personal knowledge regarding the exhibit. FRE 701/702 and/or 37 C.F.R. § 42.65: The opinion testimony offered in this exhibit is not based on scientific, technical, or other specialized knowledge, and is also not based on personal knowledge. The opinion testimony fails to properly disclose the underlying facts or data on which the opinion is based. FRE 802: The entirety of the exhibit is inadmissible hearsay to the extent it is offered for the truth of the matter asserted.

Evidence	Objections
	FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is. 37 C.F.R. § 42.23(b): This exhibit is improper reply evidence. Petitioner could have and should have filed such evidence earlier (<i>i.e.</i>, with the Petition) in order to make its prima facie case.
Exhibit 1040	FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit's probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence. FRE 611: The exhibit goes beyond the scope of deponent's declaration.

Evidence	Objections
Exhibit 1041	FRE 402: The exhibit includes testimony that is not relevant to any ground upon which trial was instituted, including at least with respect to Exhibit 17 (240:6-242:25). FRE 403: The exhibit includes testimony, wherein the probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence, including at least with respect to his experience (34:2-17), the invention (58:14-19) and Exhibit 17 (240:6-242:25). FRE 611: The exhibit includes testimony that goes beyond the scope of deponent's declaration, including at least with respect to Exhibit 17 (240:6-242:25). FRE 802: The entirety of the exhibit is inadmissible hearsay to the extent it is offered for the truth of the matter asserted. FRE 701/702 and/or 37 C.F.R. § 42.65: The exhibit includes improper expert testimony from a lay witness that is

Evidence	Objections
	not based on scientific, technical, or other specialized knowledge, that is not based on personal knowledge, and that calls for a legal conclusion, including at least with respect to Exhibit 17 (240:6-242:25).
Exhibit 1042	FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence. FRE 611: The exhibit goes beyond the scope of deponent’s declaration.
Exhibit 1043	FRE 106: The exhibit is incomplete because it only includes excerpts of a demonstrative from a separate ITC proceeding (Investigation No. 337-TA-1372). In particular, slide 152 is at least relevant to Petitioner’s argument regarding the JUUL housing and the first aperture in the JUUL housing (Reply at

Evidence	Objections
	10-11), slide 156 is at least relevant to Petitioner’s argument regarding notches (Reply at 8), and slide 285 is at least relevant to Petitioner’s characterization of Patent Owner’s argument regarding the Vuse Solo in a separate ITC proceeding (Reply at 12-13). Petitioner filed this exhibit without allowing Patent Owner the opportunity to enter the entirety of the exhibit into the record. Patent Owner is prejudiced by this partial exhibit, which in fairness ought to be considered in its entirety. FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.

Evidence	Objections
Exhibit 1044	FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose. FRE 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence. 37 C.F.R. § 42.23(b): This exhibit is improper reply evidence. Petitioner could have and should have filed such evidence earlier (<i>i.e.</i>, with the Petition) in order to make its prima facie case.

Date: November 27, 2024

By: /Anish R. Desai/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 27, 2024, the foregoing
PATENT OWNER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE
SUBMITTED BY PETITIONER was served via electronic mail, upon the
following:

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