

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HANSHOW AMERICA INC. AND HANSHOW
TECHNOLOGY CO., LTD.,

Petitioner,

v.

SES-IMAGOTAG INC.,

Patent Owner.

Case No. IPR2024-00189

Patent No. 10,674,340

**PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO
EXCLUDE EVIDENCE**

Patent Owner’s Reply in Support of Motion to Exclude Evidence

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EXHIBIT LIST

Exhibit	Reference
2001	Declaration of Rajeev Surati, Ph.D., in Support of Patent Owner's Response
2002	Curriculum Vitae of Rajeev Surati, Ph.D.
2003	U.S. Patent No. 8,049,621 (the "'621 patent")
2004	U.S. Patent No. 7,949,568 (the "'568 patent")
2005	U.S. Patent No. 7,957,998 (the "'998 patent")
2006	Kumar et al., Overview of RFID Technology and Its Applications in the Food Industry, 74 J. FOOD SCIENCE 8 (2009) ("Kumar")
2007	Rohde & Schwarz, Near Field Communication (NFC) Technology and Measurements, White Paper (2011) ("Rohde")
2008	ISO/IEC 14443-2 (2010)
2009	ISO/IEC 15693-2 (2006)
2010	Alva, A seminar report on Near Field Communication, S.D.M COLLEGE OF ENGINEERING AND TECHNOLOGY, DHARWAD (2010) ("Alva")
2011	ISO/IEC 18092 (2004)
2012	ECMA-340 (2004)
2013	U.S. Pat. No. 6,002,344 ("Bandy-344")
2014	Excerpt of Meriam-Webster's Collegiate Dictionary, 11 th ed. (2014)
2015	U.S. Patent No. 8,923,893 (the "'893 patent")
2016	Edwin Bergsma, Planogram Data Requirements, Global Retail Business Solutions (2011)

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Exhibit	Reference
2017	"Planograms 101: What They Are and Why They're Important for Your Brand," ePac (2024) (available at https://epacflexibles.com/en-gb/planograms-101-what-they-are-and-why-theyre-important-for-your-brand/) (last accessed Aug. 26, 2024)
2018	Erwin Bergsma, Analyzing your first planogram, Global Retail Business Solutions (Aug. 2015)
2019	Violino and Roberti, The History of RFID Technology, RFID J. (Jan. 16, 2005) ("Violino") (2005)
2020	U.S. Patent Application Publication No. 2010/0190484 (the "484 publication")
2021	U.S. Patent No. 7,809,402 (the "'402 patent")
2022	U.S. Patent No. 7,546,948 (the "'948 patent")
2023	Masao Ohta & Yoshiyuki Higuchi, Study on the Design of Supermarket Store Layouts: The Principle of "Sales Magnet," 7 Int'l J. of Econ. Mgmt. Eng. 209 (2013)
2024	Deposition transcript of Dr. Emmanouil M. Tentzeris ("Tentzeris Dep. Tr.")
2025	Opposition against European Patent 3 883 277
2026	Google translation of JP2014/222374
2027	Affidavit of Grant E. Kinsel
2028	Deposition transcript of Dr. Emmanouil M. Tentzeris ("Tentzeris Reply Dep. Tr.") (Jan. 7, 2025)
2029	Email chain with the Board dated March 5, 2024, and May 14, 2014
2030	Email chain between J. Kaiser and H. Tan dated November 28-29, 2024
2031	Email chain with the Board dated December 18-19, 2024

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I. INTRODUCTION

Exhibits 1013-1021¹ should be excluded because Petitioners cannot satisfy the requirements of 37 C.F.R. §42.123(b) for filing supplemental information more than one month after institution. Paper 35 (“Motion”), 4-6. Moreover, these exhibits prejudice PO and are irrelevant. *Id.*, 10-12. Exhibits 1024-1027 should also be excluded because they are foreign language documents and English translations that do not comply with the Board’s rules. *Id.*, 12-13. Petitioners’ Opposition (Paper 36 (“Opposition”))² does not undermine these conclusions.

II. EXHIBITS 1013 THROUGH 1021**A. Exhibits 1013-1021 Should Be Excluded Because They Were Filed More than a Year Late**

Petitioners continue to ignore the requirements for submitting supplemental information more than one month after institution under 37 C.F.R. §42.123(b). That is not surprising, because 37 C.F.R. §42.123(b) requires Petitioners to “show why the supplemental information reasonably could not have been obtained earlier...” 37

¹ Exhibits 1018-1021 (original) should also be excluded for the independent reason that they are foreign language documents and English translations that do not comply with the Board’s rules. Motion, 8-10.

² Continuing to disregard the Board’s Rules, the Opposition is in 12-point font with less than double-spaced footnotes. *See* 37 C.F.R. §42.6(a).

Patent Owner’s Reply in Support of Motion to Exclude Evidence C.F.R. §42.123(b). Petitioners plainly could have obtained and filed these exhibits much earlier—i.e., before institution—had they exercised even a modicum of diligence. *See, e.g., Conmed Corp. v. Bonutti Skeletal Innov. LLC*, IPR2013-00624, Paper 18, 8 (Feb. 21, 2014) (explaining that Petitioner’s counsel’s responsibilities include reviewing uploaded documents). Thus, Petitioners cannot meet the requirements for filing supplemental information, and the exhibits should be excluded.

Instead of addressing 37 C.F.R. §42.123(b), Petitioners contend the Board should excuse the late filing because “consideration on the merits would be in the interests of justice.” Opposition, 1 (citing 37 C.F.R. §42.5(c)(3)). In support, Petitioners contend that the Board “has excused similar late actions.” *Id.* (citing *Walmart Inc. v. Caravan Canopy Int’l, Inc.*, IPR2020-01026, Paper 48, 2, (Sept. 17, 2021)). But the situation in *Walmart* is not even remotely “similar.” In *Walmart*, petitioner filed an exhibit with its Reply, but it was “improperly captured.” *Walmart*, IPR2020-01026, Paper 39, 11-12. The petitioner then sought authorization to correct the improperly captured exhibit, which the Board allowed. IPR2020-01026, Paper 48, 2-3. Here, Petitioners failed to file the exhibits at all with the Petition and then waited more than a year to file them (without authorization). Petitioners’ disregard for the Board’s rules bears no resemblance to the petitioner’s actions in *Walmart*.

Petitioners also argue that the Board in *Sophos Ltd.* and *Nuna Baby Essentials, Inc.* “provided the offending party with at least one more opportunity to correct the

Patent Owner’s Reply in Support of Motion to Exclude Evidence record....” Opposition, 1. But in those IPRs, the Board provided petitioners the “opportunity” to correct their errors prior to institution. *Sophos Ltd. v. Open Text Inc.*, IPR2023-00732, Paper 23, 13 (Nov. 2, 2023) (prior to institution, the Board ordered petitioner to file exhibits referenced in its expert’s declaration); *Nuna Baby Essentials, Inc. v. Britax Child Safety, Inc.*, IPR2018-01683, Paper 11, 2-5 (Dec. 18, 2018) (explaining no exhibits were filed with petition and setting a deadline for petitioner to file its exhibits pre-institution). Here, Petitioners should not be provided an “opportunity” to file Exhibits 1013-1021 over six months after institution.

B. The Exhibits Prejudice PO and Are Irrelevant

PO plainly was prejudiced by not having access to exhibits that Petitioners allege support their expert’s opinion until after the POR was due. Motion, 10-11. Despite this, Petitioners contend PO is not prejudiced because PO “nowhere argued against the substance of the opinion by Petitioners’ expert formed by considering, in part, these challenged exhibits.” Opposition, 2. That is wrong. Petitioners argue that a POSITA would have been motivated to modify Fujiwara/Bandy based in part on the contents of Exhibits 1013-1021, and PO responded that a POSITA would not have been motivated to make the modifications. Paper 21 (“POR”), 46-48.

Petitioners also argue that PO’s failure to challenge Arntzen and ISO/IEC 14443 negates any alleged prejudice. Opposition, 2-4. But the Arntzen and ISO/IEC 14443 references are properly of record. Thus, PO’s failure to object to them is

Patent Owner's Reply in Support of Motion to Exclude Evidence irrelevant to the prejudice caused by the untimely filing of Exhibits 1013-1021.

Petitioners finally argue that “[i]f [Exhibits 1013 through 1021] were irrelevant and duplicative, then the late filing could not have prejudiced Patent Owner.” Opposition, 3. In the same paragraph, Petitioners argue the exhibits “are clearly relevant.” *Id.* Thus, Petitioners moot their own argument. Regardless, Petitioners are wrong—the untimely exhibits are prejudicial and irrelevant. Petitioners’ late filing prejudiced PO because Petitioners deprived PO of the ability to evaluate them prior to the POR.³ And Petitioners’ expert’s subsequent testimony demonstrates that the exhibits are duplicative/cumulative and thus of low/no relevance. Ex. 2028, 73:11-24. The exhibits thus should be excluded. *Blackberry Corp. v. Zipit Wireless, Inc.*, IPR2014-01507, Paper 50, 21-22 (Mar. 29, 2016) (expunging the evidence as untimely and cumulative of evidence already of record).

III. UPDATED EXHIBIT 1021

Petitioners argue they could not reach the service provider by December 2, 2024. Opposition, 4. But Petitioners ignore that the exhibit should have been filed with the Petition more than one year earlier in November 2023. Updated Exhibit 1021 should be excluded. *See* Motion, 10.

³ Petitioners also argue Exhibits 1019 and 1021 were supposedly filed in IPR2024-00190. Opp., 3-4. But these exhibits were filed in a different form. Motion, 6-7.

IV. EXHIBITS 1018-1021 (ORIGINAL) AND 1024-1027

These exhibits should be excluded because the supporting affidavits do not comply with the Board's rules. Motion, 8, 12-14. Petitioners rely on *Uber Tech's, Inc. v. X One, Inc.*, IPR2017-01264, Paper 48, 35-37 (Oct. 12, 2018) to argue that the affidavits are in compliance. Opposition, 5-7. But in *Uber*, the affiant declared the translation "has been verified to be an accurate and complete rendering of the original document." IPR2017-01264, Paper 48, 36 (internal quotation marks omitted). Here, the declarants certify the documents are "a true and accurate translation" without personal knowledge and without stating that the translations have "been verified" to be accurate. Ex. 1019; Ex. 1021 (original); Ex. 1025; Ex. 1027. Thus, the declarations are materially different from *Uber*. Further, Petitioners do not address the limitation of liability in Exhibits 1019, 1025, and 1027.

Petitioners also argue that PO did not identify its objections with particularity. Opposition, 7-8. Petitioners' reliance on *Abbott Diabetes Care Inc. f/k/a TheraSense, Inc. v. DexCom, Inc.*, IPR2022-00922, Paper 42, 31-32 (Nov. 2, 2023) is misplaced. In *Abbott*, the objection was to "hundreds of paragraphs" in an expert's declaration followed by boilerplate objections. Here the objections were specific under F.R.E. 602, 603, and 604 and explained that the affiant lacked personal knowledge. Paper 27, 6, 12-14. Moreover, Petitioners knew what acceptable affidavits looked like (*see, e.g.,* corrected Ex. 1003) and had ample time to obtain them.

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February 10, 2025

Respectfully submitted,

By: / Jessica C. Kaiser /

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Lead Counsel for Patent Owner

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on February 10, 2025, a copy of **PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE** was served upon the below-listed counsel by electronic mail:

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Dated: February 10, 2025

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