

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED*
Petitioner

v.

NETWORK SYSTEM TECHNOLOGIES, LLC
Patent Owner

Patent No. 7,373,449

Inter Partes Review No. IPR2024-00338

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

* Qualcomm Incorporated filed a petition and a motion for joinder in IPR2024-01081 and was joined as a petitioner in this proceeding.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARD	1
III.	ARGUMENT	2
A.	Exhibit 2073 Should Not be Excluded.....	2
1.	Exhibit 2073 is Not Irrelevant	2
2.	Exhibit 2073 is Not Hearsay or Falls Under an Exception	3
B.	Paragraph 81 of Ex. 2070 Should Not be Excluded	4
C.	Exhibit 2081 Should Not be Excluded.....	5
D.	Exhibit 2082 Should Not be Excluded.....	8
E.	Exhibits 2065, 2067, and 2068 Should Not be Excluded	9
IV.	CONCLUSION.....	10

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Apple Inc. v. DSS Tech. Management, Inc.</i> , IPR2015-00369, Paper 40 (PTAB Jun. 17, 2016)	3, 9
<i>Ascend Performance materials Operations LLC v. Samsung SDI Co., Ltd.</i> , IPR2020-00349, Paper 53 (PTAB July 15, 2021)	9
<i>BMW of North America, LLC v. Stragent, LLC</i> , IPR2017-00676, Paper 33 (PTAB June 14, 2018)	2
<i>Clearlamp, LLC v. LKQ Corp.</i> , No. 12 C 2533, 2016 WL 4734389 (N.D. Ill. Mar. 18, 2016)	3
<i>CoStar Realty Information, Inc. v. Clantech, Inc.</i> , IPR2022-00799, Paper 77 (PTAB Nov. 21, 2023)	4
<i>Liberty Mut. Ins. Co. v. Progressive Cas. Ins.</i> , CBM2012-00010, Paper 59 (PTAB Feb. 14, 2014)	3, 4
<i>Meta Platforms, Inc. v. Eight KHZ, LLC</i> , IPR2023-01003, Paper 61 (PTAB Jan. 7, 2025)	10
<i>Spinal Elements, Inc. v. Spectrum Spine IP Holdings, LLC</i> , PGR2021-00050, Paper 47 (PTAB Aug. 17, 2022)	1

Rules

Fed. R. Evid. 401	1, 6, 9
Fed. R. Evid. 402	1, 6, 9
Fed. R. Evid. 403	8, 9
Fed. R. Evid. 703	4, 5
Fed. R. Evid. 803	4

Fed. R. Evid. 807	4
-------------------------	---

Regulations

37 C.F.R. § 42.20(c).....	1
---------------------------	---

37 C.F.R. § 42.53(f)(8)	7
-------------------------------	---

37 C.F.R. § 42.62(a).....	1
---------------------------	---

Other Authorities

PTAB Consolidated Trial Practice Guide.....	1, 2
---	------

LISTING OF EXHIBITS

Exhibit No.	Description
2001	WITHDRAWN
2002	<i>Curriculum vitae</i> of Dr. Erik Chmelar
2003	Neil Weste & David Harris, CMOS VLSI DESIGN: A CIRCUIT AND SYSTEMS PERSPECTIVE (4th ed. 2010)
2004	Jan Rabaey, Anantha Chandrakasan & Borivoje Nikolic, DIGITAL INTEGRATED CIRCUITS: A DESIGN PERSPECTIVE (2nd ed. 2003)
2005	William J. Dally & Brian Towles, <i>Route Packets, Not Wires: On-Chip Interconnection Networks</i> , PROC. 38TH DESIGN AUTOMATION CONF. (2001)
2006	John F. Wakerly, DIGITAL DESIGN: PRINCIPLES AND PRACTICES (4th ed. 2005)
2007	Fayez Gebali, Haytham Elmiligi & Mohamed Watheq El-Kharashi, NETWORKS-ON-CHIPS: THEORY AND PRACTICE (2009)
2008	Kurt Shuler, <i>Busses, Crossbars and NoCs: The 3 Eras of SoC Interconnect History</i> , ARTERISIP (Oct. 22, 2010), https://www.arteris.com/blog/busses-crossbars-and-nocs-the-3-eras-of-soc-interconnect-history/
2009	Kurt Shuler, <i>The SoC Interconnect Fabric: A Brief History</i> , ARTERISIP (Aug. 6, 2013), https://www.arteris.com/blog/the-soc-interconnect-fabric-a-brief-history/
2010	William Stallings, DATA & COMPUTER COMMUNICATIONS (6th ed. 1999)
2011	RESERVED
2012	United States District Courts — National Judicial Caseload Profile
2013-2020	RESERVED
2021	Order Resetting Jury Trial, <i>Network System Technologies, LLC v. Texas Instruments Incorporated</i> , Civil Action No. 2:22-cv-00482-

Exhibit No.	Description
	RWS (E.D. Tex.), Dkt. 182 (Mar. 18, 2024)
2022	Claim Construction Order, <i>Network System Technologies, LLC v. Texas Instruments Incorporated</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 150 (Jan. 3, 2024)
2023-2027	RESERVED
2028	Docket Control Order, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd. et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.), Dkt. 59 (Jun. 16, 2023)
2029	Samsung's First Amended Answer and Counterclaims, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd. et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.), Dkt. 96 (Jan. 24, 2024) (Public Version)
2030	Samsung's P.R. 4-1 Identification of Proposed Terms and Claim Elements for Construction, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Nov. 28, 2023)
2031	Samsung's Amended P.R. 4-1 Identification of Proposed Terms and Claim Elements for Construction, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Dec. 18, 2023)
2032	Samsung's Preliminary Claim Construction and Extrinsic Evidence Pursuant to Local Patent Rule 4-2, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Dec. 19, 2023)
2033	P.R. 4-3 Claim Construction and Prehearing Statement, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 91 (Jan. 9, 2024)
2034	Plaintiff Network System Technologies, LLC's Opening Claim Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 100 (Feb. 20, 2024)

Exhibit No.	Description
2035	Defendant Samsung Electronics Co., Ltd.’s Responsive Claim Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 112 (March 12, 2024)
2036	Plaintiff Network System Technologies, LLC’s Reply Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 116 (March 19, 2024)
2037	RESERVED
2039	Second Amended Scheduling Order, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.) Dkt. 80 (Oct. 23, 2023)
2040	Defendants’ Joint Opening Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 77 (Oct. 12, 2023)
2041	Plaintiff Network System Technologies, LLC’s Responsive Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 81 (Nov. 16, 2023)
2042	Defendants’ Joint Reply Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 83 (Nov. 30, 2023)
2043	Plaintiff Network System Technologies, LLC’s Sur-Reply Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 86 (Dec. 14, 2023)
2044	Defendants’ Supplemental Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 105 (Mar. 1, 2024)

Exhibit No.	Description
2045	Plaintiff Network System Technologies, LLC’s Supplemental Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 106 (Mar. 1, 2024)
2046	Defendants’ Supplemental Invalidity Contention Cover Pleading, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.) (Jan. 23, 2024)
2047-2049	RESERVED
2050	Defendants’ Invalidity and Ineligibility Contentions And Disclosures Pursuant to Patent Rule 3-3 Cover Pleading, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd., et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.) (July 11, 2023)
2051-2061	RESERVED
2062	Statutory Disclaimer dated March 25, 2024
2063-2064	RESERVED
2065	Terms & Disclosures for Use of IEEE Websites (https://www.ieee.org/about/help/site-terms-conditions.html) (last accessed Sept. 20, 2024)
2066	RESERVED
2067	Transcript of Aug. 27, 2024 Deposition of Dr. Nikil Dutt in IPR2024-00343
2068	2014 Design, Automation and Test in Europe Conference (“DATE”) Website Main Page
2069	H. Nejatollahi et al., “Software and Hardware Implementation of Lattice-based Cryptography Schemes,” Center for Embedded and Cyber-Physical Systems (2017)
2070	Declaration of Dr. Nader Bagherzadeh

Exhibit No.	Description
2071	<i>Curriculum vitae</i> of Dr. Nader Bagherzadeh
2072	A survey of Research and Practices of Network on Chip
2073	Routing Algorithms for On Chip Networks
2074	McGraw Hill Dictionary
2075	IEEE Dictionary
2076	Supported Token-Ring Functions – IBM Documentation
2077	Token Ring Solutions
2078	Transcript of Nov. 4, 2024 Deposition of Dr. Todd Mowry
2079	Transcript of Nov. 15, 2024 Deposition of Sean O’Bryan
2080	Transcript of Sept. 20, 2024 Deposition of Gordon MacPherson
2081	IEEE - Terms & Disclosures for Use of IEEE Websites
2082	IEEE XPlore Metrics (Radulescu)
2083	IEEE Xplore Metrics (Goossens2002)
2084	<i>Markman</i> Hearing Transcript, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.) (Apr. 9, 2024)
2085	Declaration of Peter Krusiewicz
2086	Declaration of Peter Krusiewicz in Support of <i>Pro Hac Vice</i> Motion
2087	Transcript of Feb. 25, 2025 Deposition of Dr. Nikil Dutt
2088	Transcript of Feb. 11, 2025 Deposition of Dr. Todd Mowry

Patent Owner Network Systems Technology, LLC (“Patent Owner”) hereby provides its response to Petitioner Qualcomm Inc.’s (“Petitioner”) Motion to Exclude (Paper 57) (hereinafter, “Motion”).

I. INTRODUCTION

Petitioner’s Motion should be denied. The Board’s Consolidated Trial Practice Guide (“CTPG”) states that motions to exclude cannot be used “to challenge the sufficiency of the evidence to prove a particular fact” or as “a vehicle for addressing the weight to be given evidence.” CTPG at 79. But that is precisely what Petitioner does throughout its Motion.

II. LEGAL STANDARD

The party moving to exclude evidence bears the burden of proving that the material sought to be excluded is inadmissible under the Federal Rules of Evidence (“FRE”). 37 C.F.R. §§ 42.20(c), 42.62(a). Evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” FRE 401-402. The Board routinely rejects challenges to admissibility on relevance grounds. *See, e.g., Spinal Elements, Inc. v. Spectrum Spine IP Holdings, LLC*, PGR2021-00050, Paper 47 at 54-55 (PTAB Aug. 17, 2022) (denying motion to exclude because declaration “easily clears the very low threshold of relevance” and movant’s arguments went to “the weight we should give [the] testimony, not its admissibility”).

A motion to exclude may not “be used to challenge the sufficiency of the evidence to prove a particular fact” and “is not a vehicle for addressing the weight to be given evidence[.]” CTPG at 79. Attacking the sufficiency of the evidence is improper for a motion to exclude as the Board can weigh the evidence appropriately without excluding it. *BMW of North America, LLC v. Stragent, LLC*, IPR2017-00676, Paper 33 at 14 (PTAB June 14, 2018).

III. ARGUMENT

A. Exhibit 2073 Should Not be Excluded

Petitioner argues that Exhibit 2073 should be excluded on relevancy and hearsay grounds. Mot., 2-3. The Board should reject both arguments.

1. Exhibit 2073 is Not Irrelevant

Petitioner argues that Exhibit 2073 is irrelevant because it is “an unapproved draft student thesis [that] is inherently unreliable.” Mot., 2. Tellingly, Petitioner fails to address the actual content of Exhibit 2073. Dr. Bagherzadeh cited Exhibit 2073 as evidence that a POSITA would understand that off-chip network architectures are different than, and therefore not necessarily applicable to, on-chip architectures. EX2070, ¶81 (citing EX2073, 7). For example, Exhibit 2073 confirms that there are “significant difference[s] between on-chip and off-chip (on board) applications.” EX2073, 7. This is consistent with the ‘449 Patent, which explains that an “NoC’s premises are different from off-chip networks, and, therefore, most of the network design choices must be reevaluated” because “[o]n-chip networks have different

properties . . . leading to different design choices.” EX1001, 1:66-2:5; EX2070, ¶101; *see also* POR, 6-8 (detailing the differences between on-chip and off-chip networks). Moreover, the fact that Exhibit 2073 is dated “December 2007” does not make Exhibit 2073 inadmissible; at most, this only goes to the weight of the evidence. Mot., 2.

2. Exhibit 2073 is Not Hearsay or Falls Under an Exception

Exhibit 2073 is not hearsay because it is relied upon for the effect that it would have had on a POSITA rather than the truth of the matters asserted therein. *Apple Inc. v. DSS Tech. Management, Inc.*, IPR2015-00369, Paper 40 at 37-39 (PTAB Jun. 17, 2016) (denying motion to exclude exhibits that were used to demonstrate what a POSITA would have known as hearsay); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins.*, CBM2012-00010, Paper 59 at 37 (PTAB Feb. 14, 2014) (same); *see also Clearlamp, LLC v. LKQ Corp.*, No. 12 C 2533, 2016 WL 4734389, at *9 (N.D. Ill. Mar. 18, 2016) (finding datasheet was not hearsay because “it is being offered to show the effect that it would have had on a skilled artisan”). Additionally, the Motion should also be denied because it “does not identify specifically the textual portions [of Exhibit 2073] . . . that allegedly are being offered for the truth of the matter asserted.” *Liberty Mut.*, CBM2012-00010, Paper 59 at 36.

Petitioner ignores Patent Owner's authenticating declaration explaining that Exhibit 2072 was obtained from the Middle East Technical University library.

EX2085, ¶3. Even if the Board were to find that Exhibit 2072 is hearsay, it falls under the exception for statements in learned treatises, periodicals, or pamphlets. FRE 803(18). As discussed below, Dr. Bagherzadeh cited Exhibit 2073 in his direct testimony and reasonably relied on it. *Infra*, §III.B. Alternatively, Exhibit 2073 is admissible under the residual exception because it is trustworthy and probative for the limited purpose for which it is offered, at least because it is consistent with the teachings of the '449 Patent and the understanding of a POSITA. FRE 807.

B. Paragraph 81 of Ex. 2070 Should Not be Excluded

Petitioner argues that paragraph 81 of Dr. Bagherzadeh's declaration (Exhibit 2070) should be excluded because it relies on Exhibit 2073. Mot., 3-4. However, as discussed above, Petitioner failed to show that Exhibit 2073 is inadmissible. *Supra*, §III.A. But even if, *arguendo*, the Board were to find that Exhibit 2073 is inadmissible, that does not mean that paragraph 81 of Dr. Bagherzadeh's declaration should be excluded because an expert may rely on facts or data that are not admissible as long as experts in the field would reasonably rely on those kinds of facts or data. FRE 703. Dr. Bagherzadeh is a qualified expert in the pertinent field, and he reasonably relied on Exhibit 2073 in forming his opinions. *Liberty Mut.*, CBM2012-00010, Paper 59 at 36. Indeed, the Board has held that "[a]n expert may rely on hearsay in forming an opinion under FRE 703." *CoStar Realty Information*,

Inc. v. Clantech, Inc., IPR2022-00799, Paper 77 at 55 (PTAB Nov. 21, 2023)
(denying motion to exclude).

Petitioner's bald assertion that an expert would not reasonably rely on Exhibit 2073 is merely attorney argument that should be afforded no weight. Mot., 4. Tellingly, Petitioner's expert, Dr. Mowry, does not assert that an expert in the field would not reasonably rely on Exhibit 2072. EX1043, ¶42. This is because Dr. Mowry relies on Exhibit 2073 to argue that off-chip network architectures are applicable to NoCs. *Id.*, ¶17 (citing EX2073, 7). There is no basis to exclude Dr. Bagherzadeh's testimony reasonably relying on Exhibit 2073 when ***Petitioner's own expert*** relied on Exhibit 2073 when rendering opinions in his reply declaration. Moreover, Petitioner identifies no cognizable prejudice. FRE 703.

C. Exhibit 2081 Should Not be Excluded

Petitioner submitted a declaration from an IEEE employee, Mr. Gordon Macpherson, who discusses a copy of Goossens2002 obtained in December 2023 from the IEEE Xplore website. EX1025, ¶¶8-9. Citing Mr. MacPherson's declaration, the Petition argued Goossens2002 was "publicly available prior to the '449 Patent's priority date." Petition, 10.

Petitioner seeks to exclude Exhibit 2081, which is a copy¹ of the IEEE website terms of service providing, among other things, that (i) “IEEE does not represent or warrant that the information accessible via these sites is accurate, complete or current” and (ii) that its “sites could contain typographical errors, miscatalogued information, or technical inaccuracies.” EX2081, 3. The IEEE terms of service also provide:

By your use of these sites, you agree that you do not and will not rely on it being appropriately catalogued or complete for any purpose, including but not limited to patentability of any invention, invalidity of any claim of any patent or application

Id.

Petitioner argues that Exhibit 2065 “should be excluded under FRE 401-402 as irrelevant.” Mot., 4. However, Petitioner ignores that Exhibit 2081 was cited in the Response in conjunction with Mr. MacPherson’s deposition testimony. POR, 66 (citing EX2081, 3 and EX2080, 23:16-25:14). After reviewing the IEEE terms of service (EX2080, 23:16-24:16), Mr. MacPherson agreed that information on IEEE Xplore may be miscatalogued:

Q. Would you agree that it is possible for information to be miscatalogued on IEEE Xplore?

¹ Petitioner refers to Ex. 2081 as a “purported copy” but ignores Patent Owner’s authenticating declaration. EX2085, ¶9.

THE WITNESS: The answer is that I believe it is possible.

Id., 24:17-23 (objection omitted). Then, after reviewing IEEE's caution against relying on the accuracy of its records for invalidity (*id.*, 25:5-14), Mr. MacPherson agreed that he cannot verify the underlying information discussed in his declaration:

Q. I asked, would it be fair to say that you cannot attest to whether the underlying information, including the metadata, which was received from the conference organizers, is accurate?

THE WITNESS: Yes.

Id., 26:6:10. Petitioner did not move to exclude this testimony. 37 C.F.R. § 42.53(f)(8) ("Any objection to the content . . . of . . . the deposition . . . is waived unless made on the record during the deposition and preserved in a timely filed motion to exclude"). Exhibit 2081 easily passes the low bar for relevance because it is relevant to, at least provides context for, Mr. MacPherson's testimony.

Petitioner's arguments merely go the weight of the evidence, not its admissibility. For example, Petitioner argues that "a statement directed to disclaiming legal liability for typographical mistakes . . . is a separate issue from whether a Petitioner has proven . . . that a particular publication obtained from the IEEE Xplore service is prior art." Mot., 5. As an initial matter, this mischaracterizes the terms of service, which refer not just to "typographical mistakes" but also "miscatalogued" information. EX2081, 3. More to the point, whether IEEE's records are accurate is certainly relevant to whether and when Goossens2002 was available

on IEEE Xplore. The fact that IEEE “provided a declaration,” as Petitioner notes, does make Exhibit 2081 irrelevant; to the contrary, the terms of service and Mr. MacPherson’s associated deposition testimony undermine Petitioner’s reliance on Mr. MacPherson’s declaration in arguing that Goossens2002 is prior art. EX2080, 23:16-25:14.

Petitioner also argues for exclusion under FRE 403. Mot., 5. But Petitioner does not explain why Exhibit 2081’s probative value is *substantially* outweighed by any alleged prejudice, and ignores the substantial probative value discussed above. *Id.*; FRE 403. Tellingly, the Motion cites no case in which the Board excluded evidence on relevance grounds, much less evidence that directly undermines a party’s argument regarding a disputed issue.

D. Exhibit 2082 Should Not be Excluded

In a related IPR, Petitioner was initially unable to produce Mr. MacPherson for cross-examination, so the parties needed to request authorization to apply for a subpoena. *Qualcomm Inc. v. Network Sys. Techs., LLC*, IPR2024-00343, Paper 31 (PTAB Sept. 10, 2024) (“the 343 IPR”). To avoid needing to do the same here, and for the convenience of the witness, the parties agreed that Mr. MacPherson’s deposition transcript from the 343 IPR would be admissible in this IPR.

Exhibit 2082 includes the IEEE “metrics” tab showing when Rădulescu2004, which was at issue in the 343 IPR, was viewed on IEEE. EX2082, 2. The Response

cites testimony from Mr. MacPherson's deposition regarding these metrics, which Petitioner did not move to exclude. POR, 66 (citing EX2079, 16:23-20:6). The Response then cites Exhibit 2083, which is the corresponding metrics page for Goossens2002, rather than Exhibit 2082, which was for Rădulescu2004 in the 343 IPR. *Id.*; EX2083. The Board should not exclude Exhibit 2082 because it provides context for Mr. MacPherson's deposition testimony and how that testimony applies equally to Goossens2002. *Apple*, IPR2015-00369, Paper 40 at 37 (declining to exclude exhibits that were not cited in patent owner response because they were relevant to assessing a witness's credibility).

E. Exhibits 2065, 2067, and 2068 Should Not be Excluded

Petitioner acknowledges that Exhibits 2065, 2067, and 2068 were introduced as exhibits during the deposition of Dr. Dutt on February 25, 2025. Mot., 6. Petitioner argues that they should be excluded as irrelevant under FRE 401-403 because the Sur-Reply "does not cite or rely on" these exhibits. *Id.* Petitioner cites no authority for this argument, nor does it even identify what these exhibits are. At a minimum, these exhibits are relevant because they provide context for Dr. Dutt's deposition testimony, which is cited in the Sur-Reply. *See* POSR, 27 (citing Dr. Dutt's deposition testimony); *Apple*, IPR2015-00369, Paper 40 at 37; *Ascend Performance materials Operations LLC v. Samsung SDI Co., Ltd.*, IPR2020-00349, Paper 53 at 12 (PTAB July 15, 2021) ("if exhibits are introduced during a deposition

for the purposes of testing the witness' testimony, a party should be able to submit those exhibits with the transcript, so the Board has the full context available in order to evaluate the testimony"); *Meta Platforms, Inc. v. Eight KHZ, LLC*, IPR2023-01003, Paper 61 at 79 (PTAB Jan. 7, 2025) (finding that filing exhibits with sur-reply "was proper so the Board has the full context in which to evaluate [the witness's] . . . cross-examination testimony").

IV. CONCLUSION

For the foregoing reasons, Petitioner's motion to exclude should be denied.

Respectfully submitted,

Dated: March 10, 2025

By: /Angelo J. Christopher/
Angelo J. Christopher
Reg. No. 81,594
NIXON PEABODY LLP
70 West Madison Street
Suite 5200
Chicago, IL 60602-4378
Tel. 312-977-4391
Fax 844-450-2568

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner's Response to Petitioner's Motion to Exclude** was served on March 10, 2025, via email:

J. Derek Vandenburg
Aaron W. Pederson
Nathan D. Louwagie
Ryan D. Rypka
Peter M. Kohlhepp
Carlson Caspers Vandenburg & Lindquist, P.A.
225 South Sixth Street, Suite 4200
Minneapolis, MN 55402
dvandenburg@carlsoncaspers.com
apederson@carlsoncaspers.com
nlouwagie@carlsoncaspers.com
rrypka@carlsoncaspers.com
pkohlhepp@carlsoncaspers.com

Counsel for Petitioner

By: /s/ Angelo J. Christopher

Counsel for Patent Owner