

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ATHALONZ, LLC,
Patent Owner.

Case IPR2024-00639
Patent No. 11,375,768

PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE

I. Exhibit 1024

Petitioner does not dispute that Exhibit 1024 is an unrelated patent directed to an unrelated technology with a priority date five years after the Challenged Patent. Petitioner relies on Exhibit 1024 solely to support its claim construction argument for “first/second material,” but this extrinsic evidence has no bearing on the parties’ dispute, given the clear definitions supported by the claims and specification. Moreover, Petitioner has not shown any contradiction between how Exhibit 1024 uses the terms “first material” and “second material” and how those terms are used in the Challenged Patents. Requiring the Board to analyze and construe an unrelated, irrelevant patent would be a waste of time and resources. *See* FRE 403.

II. Exhibit 1026

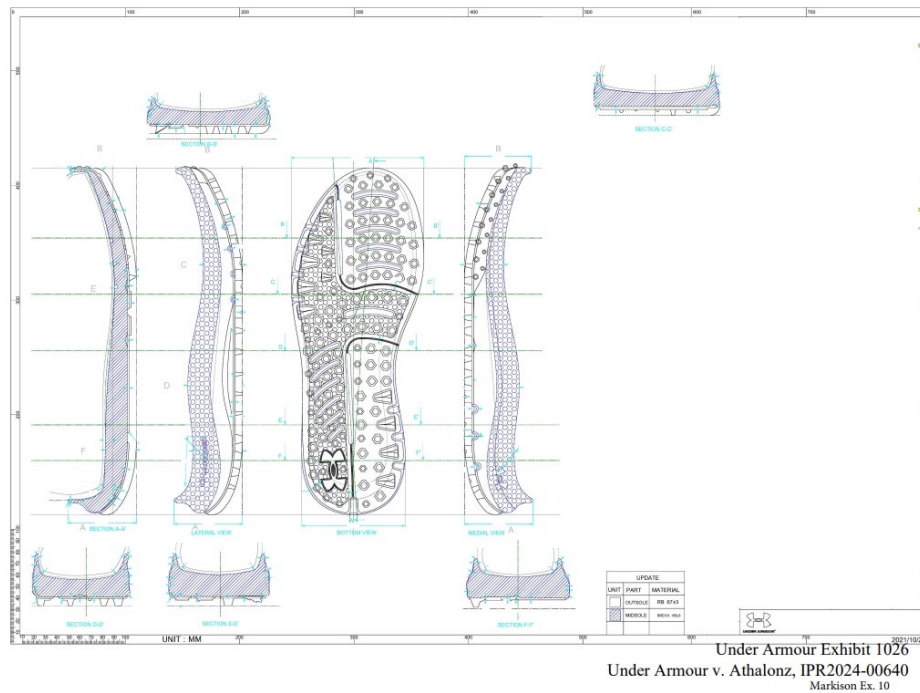
There are two independent bases for excluding Exhibit 1026: (1) Petitioner has failed to meet even the low bar required to authenticate evidence under FRE 901, and (2) Exhibit 1026 is in fact not an authentic copy of any Under Armour document, and instead has selective redactions that remove critical details from the original.

First, Petitioner does not dispute that it offers no testimony or evidence supporting the authenticity of Exhibit 1026. Petitioner’s only argument is that its reply brief “explains” (without citation) that the document is the redacted version of a document produced in district court. This is not accurate (the reply brief includes

no such explanation) and in any event is simply not sufficient evidence to meet its burden under FRE 901. Paper 35 at 4 (citing cases).

Second, Exhibit 1026 is actually not authentic, and is instead a selectively redacted document that is not maintained in the ordinary course of Petitioner's business. Petitioner claims that "Patent Owner's counsel . . . does not provide any evidence that the document is anything other than what Petitioner suggests it is," and that "Patent Owner's counsel has the unredacted version and offers no evidence that the unredacted document shows anything different regarding the materials used in the sole of the shoe," Paper 36, 6. This statement is audacious—Petitioner essentially argues that counsel should have violated the district court Protective Order, which prohibits Patent Owner from providing the unredacted document for review, to prove that Petitioner's exhibit is altered. Putting that aside, the images below show the extent of the redactions Petitioner has made to Exhibit 1026 based on Patent Owner's counsel's¹ review of the unredacted document:

¹ Not all of Patent Owner's counsel have appeared in the district court case, and counsel primarily responsible for the IPRs where Exhibit 1026 is being used has still not even seen the unredacted version.



As these images show, Exhibit 1026 is not what Petitioner claims it is—it is not an authentic copy of an Under Armour shoe blueprint. Instead, it is a selectively

redacted PDF created for this IPR with white redactions making it impossible to tell what was removed or why. This fails to meet the requirements of FRE 901.

None of Petitioner's contrary arguments withstand scrutiny. Petitioner points to the presence of Under Armour's logo, a copyright symbol, and a date of creation as sufficient authentication under FRE 901(b)(4) and 902(7), but those indicators are plainly insufficient because the document has been indisputably altered. Indeed, Petitioner removed other key details from the document, such as the actual project name, the date last updated, and the "confidential" legend affixed to the document in the ordinary course of business—along with significant material technical information, including multiple images of shoes with color coding and dozens of shoe dimensions. Petitioner's claim that it questioned Mr. Markison about Exhibit 1026 during his deposition (without disclosing that it was materially altered) fails. Mr. Markison had no personal knowledge of the document and his subsequent testimony confirmed that he could not read it, much less authenticate it. EX1023, 213:22-217:18. And finally, Petitioner's reliance on Patent Owner's citations to UA000000077 in its infringement contentions fails—the contentions were marked confidential under the Protective Order and no witness authenticated the confidential version, the contentions contain no images whatsoever from UA000000077, and Patent Owner was citing the actual UA000000077—not the materially altered version that Petitioner has proffered as Exhibit 1026.

At bottom, Petitioner took a district court document that it had designated as confidential and—rather than redacting material in the customary way that visibly shows where material has been removed—selectively removed material in a way that disguised its removal and created a false impression of completeness. Petitioner then used the altered document in a deposition without disclosing the alterations, and again used the altered document and resulting deposition testimony in its Reply, without even explaining what the document was—and without ever disclosing the scope of the alterations. And since Petitioner never provided any witness testimony about the document, there was no witness Patent Owner could depose about it. None of Petitioner’s cited cases involved altered evidence like this, and courts that have addressed analogous issues have excluded evidence on authenticity grounds. *See, e.g., Leo v. Long Island R. Co.*, 307 F.R.D. 314, 326 (S.D.N.Y. 2015) (excluding video that had been “heavily edited by [counsel’s] staff” such that “there was no way—in the absence of testimony by the editor or someone else with personal knowledge—to determine how it had been edited and whether portions supportive of [the adverse party’s] case had been deleted”); *Carrasco v. New Mexico Dep’t of Workforce Sols.*, No. 10-0999 MCA/SMV, 2013 WL 12092509, at *14 (D.N.M. Mar. 19, 2013) (“The Court agrees with Defendants that the unexplained redaction of the employment application renders the document unreliable and not capable of authentication.”). The Board should do the same here.

Dated: June 11, 2025

Respectfully submitted,

/Connor Houghton/
Connor Houghton
Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on June 11, 2025
a copy of the foregoing document was served by email upon the following:

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