

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DYSON TECHNOLOGY LIMITED AND DYSON, INC.,
Petitioners,

v.

OMACHRON INTELLECTUAL PROPERTY INC.,
Patent Owner.

Case No. IPR2024-00690
U.S. Patent No. 10,117,550

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Omachron Intellectual Property Inc. (“Omachron”) objects to the following exhibits filed by Petitioners Dyson Technology Limited and Dyson, Inc. (“Petitioners” or “Dyson”) with the Petition.

Exhibit No.	Objection(s)
1002	FRE¹ 402/403/702/703: Dr. Giachetti repeatedly offers only the inadmissible bare conclusion that it would have been “obvious” for a Skilled Artisan to combine certain references, to make certain modifications, or to “try” certain modifications without explicit guidance, without providing the required factual support or analysis. <i>See, e.g.</i>, EX1002, ¶¶ 262-263, 265, 267-272, 274-275, 287, 291-294, 301, 314-317, 326-329, 348-349, 361, 367, 374, 380, 387, 393, 396, 397-400, 411, 416, 421, 428, 446, 452. As the Federal Circuit held in <i>TQ Delta, LLC v. Cisco Sys.</i>, “conclusory expert testimony does not qualify as substantial evidence.” 942 F.3d 1352, 1358 (Fed. Cir. 2019) (citing <i>MobileMedia Ideas LLC v. Apple Inc.</i>, 780 F.3d 1159, 1172 (Fed. Cir. 2015)). Dr. Giachetti’s above testimony is inadmissible because “a conclusory assertion with no explanation is inadequate to support a finding that there would have been a motivation to combine” because “[t]his type of finding, without more, tracks the ex post reasoning <i>KSR</i> warned of and fails to identify any actual reason why a skilled artisan would have combined the elements in the manner claimed.” <i>Id.</i> at 1359 (citing <i>In re Van Os</i>, 844 F.3d 1359, 1361–62 (Fed. Cir. 2017)). Dr. Giachetti’s testimony about PTO practice and his interpretation of what the Examiner did or did not say is improper because it is outside of the scope of any expertise that has been established for him. So, such testimony is improper under FRE

¹ Federal Rules of Evidence.

	402/403/702/703, which at least includes paragraphs 52-55 of his Declaration (EX1002). Dr. Giachetti repeatedly relies on exhibits that gap-fill aspects alleged to be necessary to form the claimed invention but that are not disclosed in the art included in the instituted grounds. To the extent Dr. Giachetti relies on such independently objectionable exhibits, his testimony is also improper under FRE 402/403 and 702, which at least includes paragraphs 286 (citing to EX1012); 427 (citing to EX1014); 308 (citing to EX1015); 301 (citing to EX1020).
1012	402/403: Petitioner improperly uses this exhibit to gap-fill aspects alleged to be necessary to form the claimed invention but that are not disclosed in the art included in the instituted grounds. <i>Compare, e.g.,</i> EX1002, ¶ 286 (relying on EX1012 for the disclosure of an electrified power tool), <i>with</i> Paper 1 at 4 (Asserted Grounds of Unpatentability on which review was requested); 37 C.F.R. § 42.104(b).
1014	402/403: Petitioner improperly uses this exhibit to gap-fill aspects alleged to be necessary to form the claimed invention but that are not disclosed in the art included in the instituted grounds. <i>Compare, e.g.,</i> EX1002, ¶ 427 (relying on EX1014 for the disclosure of a handle extending from a sidewall of the suction motor and fan assembly housing), <i>with</i> Paper 1 at 4 (Asserted Grounds of Unpatentability on which review was requested); 37 C.F.R. § 42.104(b).
1015	402/403: Petitioner improperly uses this exhibit to gap-fill aspects alleged to be necessary to form the claimed invention but that are not disclosed in the art included in the instituted grounds. <i>Compare, e.g.,</i> EX1002, ¶ 308 (relying on EX1015 for the disclosure of a cyclonic separator), <i>with</i> Paper 1 at 4 (Asserted Grounds of Unpatentability on which review was requested); 37 C.F.R. § 42.104(b).
1020	402/403: Petitioner improperly uses this exhibit to gap-fill aspects alleged to be necessary to form the claimed invention but that are not disclosed in the art included in the instituted grounds.

	<i>Compare, e.g.,</i> EX1002, ¶ 301 (relying on EX1020 for the disclosure of a handle with a hand grip portion that extends upwardly and forwardly), <i>with</i> Paper 1 at 4 (Asserted Grounds of Unpatentability on which review was requested); 37 C.F.R. § 42.104(b).
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Date: October 1, 2024

Respectfully submitted,

By: /Brian M. Buroker/

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Certificate of Service

A copy of the PATENT OWNER'S OBJECTIONS TO EVIDENCE
SUBMITTED BY PETITIONER was served via electronic mail on the following
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