

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMAXTEC INC. and
SMAXTEC ANIMAL CARE GMBH,
Petitioners,

v.

ST REPRODUCTIVE TECHNOLOGIES, LLC,
Patent Owner.

Case No. IPR2024-00875
U.S. Patent No. 9,844,206

PETITIONERS' OPPOSITION TO MOTION TO EXCLUDE

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I. INTRODUCTION

Patent Owner's Motion to Exclude Evidence is legally unsupported and substantively meritless. Not only does it misstate the relevant rules of evidence, Patent Owner fails to cite a single case or Board decision to support its requested exclusions. This absence of authority underscores the speculative and overreaching nature of this motion. Petitioners therefore respectfully request that the Board deny Patent Owner's motion in its entirety.

II. EXHIBITS 1040 AND 1041 ARE ADMISSIBLE

Exhibits 1040¹ and 1041² are excerpts of books on statistical modeling and multivariate regression analysis. Ex1040, 1; Ex1041, 1. The exhibits—cited in both Petitioners' Reply and the Reply Declaration of Tami M. Brown-Brandl, Ph.D.—are probative of the unremarkable fact that prior to the '206 patent it was well known to one of ordinary skill in the art that relying on multiple variables typically provides better predictions than a single variable, rebutting Patent Owner's argument that it would not have been obvious to rely on a logical expression with both temperature

¹ Exhibit 1040 is an excerpt of the fourth edition of the book "Applied Linear Statistical Models," published in 1996 by McGraw-Hill.

² Exhibit 1041 is an excerpt of the fifth edition of the book "Multivariate Data Analysis," published in 1998 by Prentice-Hall.

and milk production for determining illness. Paper 30 at 9–10; Paper 22 at 26–28. Patent Owner’s arguments to exclude these excerpts under Rules 106 and 403 are unsupported and incorrect.

Federal Rule of Evidence 106 is inapplicable here. Rule 106 provides that “[i]f a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part — or any other statement — that in fairness ought to be considered at the same time.” Fed. R. Evid. 106. Notably, “Rule 106 **does not** prohibit admission of an incomplete document. Instead, it allows the party against whom the document is introduced to place the remainder in evidence without additional evidentiary foundation.” *United States v. Phillips*, 543 F.3d 1197, 1203 (10th Cir. 2008) (emphasis added).

Here, the books from which Exhibits 1040 and 1041 were excerpted are publicly available. Thus, Patent Owner was able (if it so chose) to ascertain whether the pages Petitioners relied on are accurate or whether they are contradicted by other portions of the books. Despite questioning Petitioners’ expert, Dr. Brown-Brandl, on Exhibits 1040 and 1041, Patent Owner chose not to introduce any other portions of the books (presumably because there is nothing actually making Petitioners’ excerpts “incomplete”). *See* Ex2024, 74:18–77:6. Instead, Patent Owner attempts to rely on an unfounded suggestion that there *might* be something else in one of those books that contradicts the proposition for which Petitioners offer them. *See id.*,

77:7–10. Thus, “neither Federal Rule of Evidence 106 nor the interest of justice requires [the Board] to exclude [these] Exhibits.” *See Mylan Pharm. Inc. v. Yeda Research & Dev. Co. Ltd.*, IPR2015-00644, Paper 91 at 39–40 (P.T.A.B. Dec. 2, 2016).

For similar reasons, Patent Owner’s challenge under Federal Rule of Evidence 403 fails. As explained above, Exhibits 1040 and 1041 are probative of issues in this IPR. Other than the fact that the evidence is allegedly incomplete, Patent Owner does not offer any reasons why the evidence is unfairly prejudicial, confusing, or misleading. Indeed, Patent Owner had a full and fair opportunity to determine whether the excerpts from these books are, in fact, misleading and it did not do so. The Board is “capable of . . . assessing the probative weight of [the] evidence, without fear of undue prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Novartis Pharms. Corp. v. Shilpa Pharma, Inc.*, IPR2022-00886, Paper 75 at 19 (P.T.A.B. Sept. 29, 2023). Patent Owner’s motion with respect to Exhibits 1040 and 1041 should therefore be denied.

III. EXHIBIT 1044 IS ADMISSIBLE

Exhibit 1044 is a printout of a webpage from Google’s blog for web developers relating to how Google determines what dates to show next to a listing in search results. Ex1044, 1–2. The exhibit is probative of whether a date-limited Google search would locate the Trevarthen prior art reference. Paper 22 at 14–15;

Paper 30 at 2–3. Patent Owner’s arguments that this exhibit should be excluded under Federal Rules of Evidence and as impermissible new evidence are incorrect. Indeed, Patent Owner’s actions speak louder than its words. Patent Owner submitted as exhibits several webpage printouts (Ex2017, Ex2018, and Ex2019) without additional evidence of authenticity and then relies on them for the truth of the matters asserted therein. *See* Paper 22 at 8–9 (citing Ex2011 that relies on the exhibits). For the same reasons Patent Owner’s exhibits were not improper, so too is Exhibit 1044 not improper.

With respect to authenticity, Patent Owner does not point to any alleged indication that Exhibits 1044 is not what it purports to be—a printout of a webpage from Google. To the contrary, the exhibit includes distinctive characteristics that support a finding that it is, in fact, a printout of a publicly available webpage. For example, the exhibit includes a URL in the bottom left corner and a date it was captured in the top left corner. It is well known that this information is added by an internet browser when a webpage is printed out, and one can follow the URL on the exhibit to the same webpage, showing that it is authentic. Fed. R. Evid. 901(b)(4); *see SAP America, Inc. v. Lakshmi Arunachalam*, CBM2013-00013, Paper No. 61 at 28–29 (P.T.A.B. Sept. 18, 2014) (“[U]nder FRE 901(b)(4) a party may authenticate evidence using circumstantial evidence in conjunction with the appearance, contents, substance, internal patterns, or other distinctive characteristics of the

evidence. Although Patent Owner has not provided evidence such as hash values or metadata . . . the contents and substance of the documents indicate that they are what they purport to be. Given their [*sic*] technical nature of the documents, this panel can assign them appropriate weight.”); *cf. Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374 (Fed. Cir. 2021) (“District courts have taken judicial notice of the contents of webpages available through the Wayback Machine ‘as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’”) (quoting *Erickson v. Neb. Mach. Co.*, 2015 WL 4089849, at *1 n.1 (N.D. Cal. July 6, 2015)).

Exhibit 1044 also need not be excluded as hearsay. Under Federal Rule of Evidence 807, a hearsay statement is not excluded if (1) “the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of the circumstances under which it was made and evidence, if any, corroborating the statement,” and (2) “it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” Fed. R. Evid. 807(a). Exhibit 1044 meets this standard. The exhibit is a printout of a Google webpage, and Google’s own explanation of how it ascertains dates is sufficiently trustworthy. Furthermore, public evidence provided by Google itself is more probative of this point than other evidence, short of invoking the Board’s process for compelling testimony of a third party (*e.g.*, Google). Google’s explanation of its

indexing process is therefore admissible under Rule 807. *See QSC Audio Prods., LLC v. Crest Audio, Inc.*, IPR2014-00127, Paper 43 at 14–15 (P.T.A.B. Apr. 29, 2015) (holding information on prior art reference admissible under Rule 807).

Finally, Exhibit 1044 is not improper new evidence. “[T]he petitioner in an inter partes review proceeding may introduce new evidence after the petition stage if the evidence is a legitimate reply to evidence introduced by the patent owner.” *Anacor Pharms., Inc. v. Iancu*, 889 F.3d 1372, 1380 (Fed. Cir. 2018). As explained above, Exhibit 1044 is probative and directly addresses Patent Owner’s argument that a date-limited Google search would not locate the Trevvarthen prior art reference. *See* Paper 22 at 14–15.³ As such, Exhibit 1044 is legitimate evidence in Reply. Moreover, Patent Owner had the opportunity to cross-examine Petitioners’ expert

³ The Board has discretion not to exclude probative evidence. *See SAP America, Inc. v. Lakshmi Arunachalam*, IPR2013-00194, Paper No. 67 at 36 (Sept. 18, 2014) (citing *Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010)). It is within the Board’s discretion to assign the appropriate weight to be accorded to evidence, and it can do so here. *See, e.g., Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010) (holding the Board has discretion to give more weight to one item of evidence over another).

on the exhibit (but it chose not to). Thus, the probative value of Exhibit 1044 is not outweighed by any alleged unfair prejudice to Patent Owner. *See* Fed. R. Evid. 403.

DATED: August 8, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing document was served via electronic mail on Patent Owner's counsel of record at the email addresses dmoффett@akingump.com, mmahoney@akingump.com, twlanders@akingump.com, jhernandez@akingump.com, and AG-ST-SMAXTEC@akingump.com, as indicated in Patent Owner's Amended Mandatory Notices, dated October 16, 2024.

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