

Filed on behalf of ST Reproductive Technologies, LLC.
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Paper No. 40
Date Filed:
August 15, 2025

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 IPR2024-00885
Patent No. 8,823,515

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

I. EXHIBITS 1040 AND 1041 ARE INADMISSIBLE.

Petitioners misconstrue Patent Owner's Motion as relying on Fed. R. Evid. 106 as a standalone basis for excluding EXS1040-1041, separate from Fed. R. Evid. 403. As the Motion makes clear, the exhibits should be excluded under Rule 403 because they are incomplete documents, the probative value of which is substantially outweighed by dangers of unfair prejudice, confusing the issues, and misleading the Board. Rule 106 *supports* exclusion under Rule 403 because it recognizes the presence of those dangers where incomplete exhibits omit relevant information "that in fairness ought to be considered." Here, the exhibits are prejudicial and misleading because they include only purported advantages of using "multiple variables" in a model, while excluding disadvantages that would show why the claimed combination of variables was not obvious. As Petitioners' expert recognizes, "as a textbook," the omitted pages would include those disadvantages. EX2024, 77:7-22.

The Opposition suggests that *Patent Owner* should have fixed Petitioners' deficient exhibits by introducing the entire documents, but that ignores the proper procedures for supplementing evidence in IPRs. Patent Owner was not permitted to introduce evidence after the Reply because sur-replies "may not be accompanied by new evidence other than deposition transcripts." 37 CFR §42.23(b). The only course of action available to Patent Owner without leave was to object to the exhibits

under 37 CFR §42.64(b)(1), which it did. If Petitioners believed that depositing Dr. Brown-Brandl on the entire documents would cure the prejudice they caused (Opp., 2-3), then it was Petitioners' burden to provide substitute documents. 37 CFR §42.53(d)(2); Paper 17, 4 ("Cross-examination ordinarily takes place after any supplemental evidence is due."). Petitioners failed to do so.

Petitioners' cited cases do not support admission of the incomplete exhibits or change the procedures for supplementing evidence in IPRs. For example, *U.S. v. Phillips* at most shows, in the context of a criminal case, that Rule 106 alone does not "prohibit admission of an incomplete document" and that the opposing party *may* "place the remainder in evidence without additional evidentiary foundation." 543 F.3d 1197, 1203 (10th Cir. 2008). However, Patent Owner does not rely on Rule 106 as a standalone basis for exclusion. And, because this is an IPR proceeding, only Petitioners, not Patent Owner, had an opportunity to enter documents in evidence after the Reply. *Mylan* is also inapposite. There, in response to an incompleteness objection, the patent owner made the whole document "available to petitioners" by producing it at its attorney's offices and by authorizing petitioners to use the complete document as produced in district court. *Mylan Pharm. Inc. v. Yeda Rsch. & Dev. Co. Ltd.*, IPR2015-00644, Paper 91, 39-40 (P.T.A.B. Dec. 2, 2016); Paper 73, 3-4 (P.T.A.B. Apr. 22, 2016). Here, despite Patent Owner's timely

objection, Petitioners failed to make the documents “available” by any means.

II. EXHIBIT 1044 IS INADMISSIBLE.

EX1044 is not self-authenticating, and Petitioners fail to offer additional evidence corroborating its authenticity. EX1044 is purportedly a printout from a website, and Petitioners point only to the URL and alleged date the webpage was captured as evidence of authenticity (Opp., 4-5). But “[p]rintouts from a web site do not bear the indicia of reliability demanded for other self-authenticating documents under Fed. R. Evid. 902.” *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782 (C.D. Cal. 2004) (striking documents despite them bearing a “URL address and date stamp”). *SAP* is distinguishable because, in addition to dates and URLs, the proponent cited further evidence of authenticity, including trademark and copyright notices on the document, and relied on a declarant who was “subject to cross examination.” *SAP America, Inc. v. Lakshmi Arunachalam*, IPR2013-00194, Paper No. 67, 36 (P.T.A.B. Sept. 18, 2014). Even then, the Board considered the evidence “thin.” *Id.*

Petitioners’ response leads with the irrelevant argument that *Patent Owner* also filed exhibits derived from websites. But the nature and content of Patent Owner’s exhibits have no bearing on the authenticity of Petitioners’ exhibits and do not supersede Petitioners’ obligation to adhere to the Federal Rules of Evidence. In

any event, Patent Owner *did* authenticate the webpage exhibits that it filed. Contrary to Petitioners' assertion, Patent Owner timely served a supplemental declaration of Meredith Knoff (EX2023) via email on March 10, 2025 in response to Petitioners' objections to the authenticity of EXS2017-2019. The email was sent to Petitioners' then lead and backup counsel, Jeff Plies and Blaine Hackman, and to Petitioners' requested service email address "smaXtec-IPRS@dechert.com." Presumably, the declaration resolved Petitioners' concerns because they failed to move to exclude any exhibits on authenticity grounds. In contrast, Petitioners failed to resolve Patent Owner's objections to EX1044, electing not to serve supplemental evidence at all.

EX1044 should also be excluded as inadmissible hearsay that does not fall under any exception. Petitioners do not dispute that they rely on the exhibit for the truth of the matter asserted, instead invoking the "residual exception" of Fed. R. Evid. 807, which does not apply here. Rule 807(a)(2) requires that EX1044 be more probative on the point it is offered "than any other evidence that the proponent can obtain *through reasonable efforts*." But Petitioners say nothing about the reasonableness of any efforts they took or could have taken to obtain other evidence to support their proposition. *See Conoco Inc. v. Dep't of Energy*, 99 F.3d 387, 394 (Fed. Cir. 1996) (holding proponent "'made no showing that reasonable efforts could not have produced' more probative evidence, [so] the evidence was not admissible"

under residual exception). Nor do they offer any evidence “corroborating the statement[s]” in EX1044. Fed. R. Evid. 807(a)(1). By contrast, in *QSC*, the Board’s “concern with ensuring trustworthiness and accuracy” of a hearsay exhibit was “alleviated” by additional corroborating documents. *QSC Audio Prods., LLC v. Crest Audio, Inc.*, IPR2014-00127, Paper 43, 14-15 (P.T.A.B. Apr. 29, 2015).

Petitioners further suggest that their reliance on hearsay is excusable because Patent Owner allegedly “relies on [EXS2017-2019] for the truth of the matters asserted therein.” Opp., 4. But again, exhibits submitted by Patent Owner cannot cure Petitioners’ hearsay problem. Moreover, unlike EX1044, Patent Owner’s EXS2017-2019 were properly relied on by its expert, Ms. Knoff, to corroborate opinions based on her knowledge and expertise, and Petitioners had the opportunity to cross-examine her on those documents and opinions. *See* EX2011, ¶¶24-25, 27, 30. Ms. Knoff also testified in her supplemental declaration (EX2023) that she would reasonably rely on such documents in her work. *See Samsung Elecs. Co. v. Queen’s Univ. at Kingston*, IPR2015-00604, Paper 51, 51 (P.T.A.B. Aug. 4, 2016) (admitting hearsay under Rule 703 where experts “would reasonably rely on those kinds of facts or data in forming an opinion”). In contrast, although Dr. Brown-Brandl lists EX1044 in her “Materials Considered” (EX1055, 4), she never cites to the exhibit, let alone rely on its hearsay statements to form her opinions.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Patent Owner's Motion to Exclude was served on counsel of record on August 15, 2025, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as delivering a copy via electronic mail to counsel of record for the Petitioners at the following addresses:

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