

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

138 EAST LCD ADVANCEMENTS LIMITED,
Patent Owner.

IPR2024-00960
U.S. Patent 7,486,807

**PETITIONER'S MOTION TO EXCLUDE PATENT OWNER'S
EXHIBITS 2004 AND 2005**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	MOTION TO EXCLUDE AND EVIDENTIARY REQUIREMENTS	1
	A. 37 C.F.R. § 42.63(b).....	2
	B. Routine Discovery	2
III.	EXHIBITS 2004 AND 2005 SHOULD BE EXCLUDED FOR FAILURE TO COMPLY WITH THE BOARD’S RULES AND THE FEDERAL RULES OF EVIDENCE	3
IV.	CONCLUSION.....	7

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abbott Vascular, Inc. v. FlexStent, LLC</i> , IPR2019-00882, Paper 48 (PTAB Oct. 2, 2020).....	3, 5
<i>Adobe Inc. v. RAH Color Techs. LLC</i> , IPR2019-00627, Paper 124 (PTAB Aug. 31, 2020).....	3, 5, 6
<i>HTC Corp. v. NFC Tech., LLC</i> , IPR2014-01198, Paper 41 (PTAB Nov. 6, 2015).....	3, 5, 6
<i>Navistar, Inc. v. Fatigue Fracture Tech. LLC</i> , IPR2018-00853, Paper 58 (PTAB Aug. 29, 2019).....	3, 4
<i>Square, Inc. v. REM Holdings 3, LLC</i> , IPR2014-00312, Paper 58 (PTAB July 7, 2015).....	7
Rules	
FRE 602	1, 2, 5
FRE 801	7
FRE 802	7
FRE 901	1, 4, 5
Regulations	
37 C.F.R. § 42.61(a).....	7
37 C.F.R. § 42.62(a).....	2, 7
37 C.F.R. § 42.63(b)	<i>passim</i>
Other Authorities	
Consolidated Trial Practice Guide (Nov. 2019)	2, 3, 5

I. INTRODUCTION

The Board should exclude Patent Owner's Exhibits 2004 and 2005 under 37 C.F.R. § 42.63(b), FRE 602, FRE 901, and the Consolidated Trial Practice Guide, because the declarant of Exhibit 2005 lacks personal knowledge as to the accuracy of the alleged translation presented as Exhibit 2004. The declarant is not the translator and does not speak the language of the source document. Indeed, the declarant's supervisor acknowledged that the declarant would be unable to identify errors or confirm the accuracy of the translation. Patent Owner also failed to produce this declarant for deposition, which deprived Petitioner of the opportunity to depose the relevant declarant on the translation. Moreover, the declarant's supervisor also does not speak the source language, further precluding Petitioner from being able to obtain cross-examination testimony regarding the substance. Without a reliable declaration and by not making the declarant available for cross-examination, Patent Owner has failed to comply with 37 C.F.R. § 42.63(b) and Exhibits 2005 and 2004 should be excluded.

II. MOTION TO EXCLUDE AND EVIDENTIARY REQUIREMENTS

A Motion to Exclude must (a) identify where in the record the objection originally was made; (b) identify where in the record the evidence sought to be excluded was relied upon by an opponent; (c) address objections to exhibits in

numerical order; and (d) explain the basis and grounds for each objection.

Consolidated Trial Practice Guide¹ (“CTPG”) 79.

A. 37 C.F.R. § 42.63(b)

The Board’s rules require that, “[w]hen a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” 37 C.F.R. § 42.63(b). A declarant “may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” FRE 602 (emphasis added); *see* 37 C.F.R. § 42.62(a) (“**Generally.** Except as otherwise provided in this subpart, the Federal Rules of Evidence shall apply to a proceeding.”).

B. Routine Discovery

The Consolidated Trial Practice Guide identifies routine discovery for IPR proceedings as including “the cross-examination of the other side[’]s declarants,” requires that “a party presenting a witness’s testimony by affidavit should arrange to make the witness available for cross-examination,” and explains that this

¹ *Available at*

<https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialPracticeGuideConsolidated>.

requirement “applies to witnesses employed by a party as well as experts and non-party witnesses.” CTPG 23. The Board interprets this to mean that the party proffering a declaration to support its positions has an obligation to secure attendance of the declarant for deposition when requested and must make that declarant available for cross-examination. *Abbott Vascular, Inc. v. FlexStent, LLC*, IPR2019-00882, Paper 48, at 34 (PTAB Oct. 2, 2020); *Adobe Inc. v. RAH Color Techs. LLC*, IPR2019-00627, Paper 124, at 23-24 (PTAB Aug. 31, 2020); *HTC Corp. v. NFC Tech., LLC*, IPR2014-01198, Paper 41, at 4-5 (PTAB Nov. 6, 2015). When a declarant was not made available for cross-examination, the Board has struck the corresponding declarations and affidavits and, in some instances, deemed the declaration inadmissible. *Abbott Vascular*, IPR2019-00882, Paper 48, at 34; *Adobe*, IPR2019-00627, Paper 124, at 23-24; *HTC*, IPR2014-01198, Paper 41, at 4-5. When a translation lacks a proper supporting declaration, the Board also strikes the corresponding translation. *Navistar, Inc. v. Fatigue Fracture Tech. LLC*, IPR2018-00853, Paper 58, at 55-56 (PTAB Aug. 29, 2019).

III. EXHIBITS 2004 AND 2005 SHOULD BE EXCLUDED FOR FAILURE TO COMPLY WITH THE BOARD’S RULES AND THE FEDERAL RULES OF EVIDENCE

With respect to Exhibits 2004 and 2005, Patent Owner seeks to evade the Board’s rules by failing to provide a declaration with knowledge of the translation who could be questioned about its substance and by failing to produce the proper

declarant for cross-examination to be questioned about the substance.

Exhibit 2005 is a certificate of translation for Exhibit 2004, the alleged English translation of Japanese Publication No. 08-221547 (“Wakayama”; Ex. 2003). Paper 17 (“POR”) POR 9 n.2 (Apr. 21, 2005). Petitioner objected to Exhibit 2005 for failing to comply with 37 C.F.R. § 42.63(b) because the declarant was not able to testify to the accuracy of the translation. Paper 18.

Exhibit 2005 should be excluded because it fails to comply with 37 C.F.R. § 42.63(b) and FRE 901 because the declarant does not have personal knowledge as to the accuracy of the translation—indeed cannot testify to its accuracy—and was not produced for deposition. Once Exhibit 2005 is excluded, Exhibit 2004 must also be struck for failing to comply with 37 C.F.R. § 42.63(b) because there would be no “affidavit attesting to the accuracy of the translation” in the record. *Navistar*, IPR2018-00853, Paper 58, at 55-56.

The ’807 patent cites Wakayama as prior art for a known “face image model retrieval processing method.” Ex. 1001, 2:18-39. Patent Owner asserts that Wakayama’s method could be employed in the ’807 patent’s methods “for determining such similarity by forming a density image of a face so as to classify the category.” POR 11, 30. Patent Owner also relies on Wakayama to support its claim construction arguments for “an object of the image” being previously contained in the database. POR 30-31.

Because Wakayama (Ex. 2003) is in Japanese, Patent Owner must submit a translation and an affidavit or declaration of someone with personal knowledge attesting to the accuracy of the translation. 37 C.F.R. § 42.63(b); FRE 602; FRE 901. Patent Owner was also obligated to produce that declarant for deposition. CTPG 23; *Abbott Vascular*, IPR2019-00882, Paper 48, at 31-36; *Adobe*, IPR2019-00627, Paper 124, at 23-24; *HTC*, IPR2014-01198, Paper 41, at 4-5.

The certificate of translation (Ex. 2005) is signed by Emily Paras, a Project Manager for Morningside Translations, who testifies that “[t]o the best of [her] knowledge, the aforementioned documents are a true, full and accurate translation of the specified documents.” Ex. 2005. Ms. Paras is not the person who translated Wakayama into English and was not capable of verifying the accuracy or correctness of the translation because she does not speak Japanese. Ex. 1016, 20:2-21:1. Ms. Paras’s supervisor confirmed that Ms. Paras is not able to determine if there were inaccuracies or errors in the translation or whether the translation is accurate. Ex. 1016, 20:2-21:1. Accordingly, Ms. Paras does not and cannot have personal knowledge as to the accuracy of the translation in violation of the Federal Rules of Evidence and the Board’s rules. FRE 602; FRE 901; 37 C.F.R. § 42.63(b).

Exhibit 2005 should also be excluded because Patent Owner disregarded its routine discovery obligations and did not produce Ms. Paras for a deposition. Ex. 1017, 1-2; CTPG 23; *Abbott Vascular*, IPR2019-00882, Paper 48, at 34;

Adobe, IPR2019-00627, Paper 124, at 23-24; *HTC*, IPR2014-01198, Paper 41, at 4-5. Without an opportunity to cross-examine Ms. Paras, her declaration is inadmissible. *Adobe*, IPR2019-00627, Paper 124, at 23-24. Patent Owner also did not produce the actual translator for a deposition. *See generally* Ex. 1017. Instead, Patent Owner produced Samuel Wu, the Managing Director of Morningside Translations, who did not prepare the translation, does not speak Japanese, and cannot attest to the accuracy of the translation. Ex. 1016, 14:15-17, 18:3-18. Nor did Mr. Wu submit a substitute declaration attesting to the accuracy on which he could be deposed. Accordingly, Mr. Wu could not testify as to the accuracy of the translation. *See generally* Ex. 1016.

Moreover, Mr. Wu ***admitted*** that Ms. Paras was unable to testify to the accuracy of the translation and thus ***admitted*** that she could not answer questions as to accuracy if asked. Ex. 1016, 20:2-21:1. Patent Owner's gamesmanship to (1) put forth a declarant who Patent Owner knew could not testify to the translation's accuracy, (2) refuse Petitioner the opportunity to ask the testifying declarant about the translation's accuracy, (3) put forth another deponent who admitted that the original declarant could not testify to the translation's accuracy and could not himself address any questions as to the translation's accuracy renders the rules meaningless in this context.

Neither Ms. Paras's nor Mr. Wu's representations that the translations are

accurate are based on statements by the actual translator. But even if they were, the translator's statements are inadmissible hearsay under FRE 801 and 802 and Ms. Paras and Mr. Wu cannot rely on them in this proceeding. 37 C.F.R. § 42.62(a).

Accordingly, Exhibit 2005 must be excluded.

Because Patent Owner has failed to provide a declaration or affidavit of someone with personal knowledge reliably attending to the accuracy of Exhibit 2004, Exhibit 2004 should also be excluded. 37 C.F.R. §§ 42.61(a), 42.63(b). *See Square, Inc. v. REM Holdings 3, LLC*, IPR2014-00312, Paper 58, at 33-36 (PTAB July 7, 2015) (excluding an exhibit because translation was not accompanied by an affidavit as required by 37 C.F.R. § 42.63(b)).

IV. CONCLUSION

For the foregoing reasons, the Board should exclude Patent Owner's Exhibits 2004 and 2005.

Respectfully submitted,

Dated: September 15, 2025

/Kevin D. Rodkey/

Kevin D. Rodkey
Backup Counsel for Petitioner
Reg. No. 65,506

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing **Petitioner's Motion to Excludes Patent Owner's Exhibits 2004 and 2005** contains 15 pages or less, excluding those portions identified in 37 C.F.R. § 42.24(b), as measured by the word-processing system used to prepare this paper.

Dated: September 15, 2025

/Kevin D. Rodkey/

Kevin D. Rodkey
Backup Counsel for Petitioner
Reg. No. 65,506

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner's Motion to Exclude Patent Owner's Exhibits 2004 and 2005** was served on September 15, 2025, via email directed to counsel of record for the Patent Owner at the following:

Cyrus A. Morton
CMorton@RobinsKaplan.com

Samuel J. LaRoque
SLaRoque@RobinsKaplan.com

Aaron R. Fahrenkrog
AFahrenkrog@RobinsKaplan.com

Emily J. Tremblay
ETremblay@RobinsKaplan.com

William R. Jones
WJones@RobinsKaplan.com

Derrick J. Carman
DCarman@RobinsKaplan.com

Dated: September 15, 2025

/Lisa C. Hines/

Lisa C. Hines
Case Manager
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP