

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUXOTTICA OF AMERICA INC.,
Petitioner,

v.

E-VISION OPTICS, LLC,
Patent Owner.

Case No. IPR2024-01071

U.S. Patent No. 8,905,541

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S ALLEGED
EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE TO
PETITION**

Petitioner Luxottica of America Inc. hereby objects to the alleged evidence submitted with Patent Owner's Response to Petition. Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects to the alleged evidence on the grounds identified in the table below. These objections are timely, because they are being filed within five business days of the Patent Owner's Response (*i.e.*, by April 7th). *See* 37 C.F.R. 42.64(b)(1).

Exhibit	Ground(s) for Objection
Ex. 2014— Declaration of James H. Oliver, Ph.D.	<p>F.R.E. §§ 401, 402, and 403: The paragraphs in Ex. 2014 that are not cited in Patent Owner's Response are irrelevant to this proceeding. <i>See, e.g.</i>, Ex. 2014 ¶¶ 1-25, 37-38, 41-42, 45, 47, 49, 68-79, 85-86, 90-92. Any belated attempt by Patent Owner to rely on any of these irrelevant paragraphs would likely violate at least 37 C.F.R. § 42.6(a)(3).</p> <p>F.R.E. §§ 602, 702, 703: The declarant's testimony fails to establish that it is based on the kinds of facts or data upon which experts in the field (to the extent James H. Oliver, Ph.D., has ever been properly qualified as an expert in the relevant field) would reasonably rely, and it is based on insufficient facts and data and is unreliable. <i>See, e.g.</i>, Ex. 2014 ¶¶ 26-36, 39-40, 43-44, 46, 48, 50-67, 80-84, 87-89.</p> <p>F.R.E. § 702: Insufficient showing by Patent Owner that the declarant "is qualified as an expert by knowledge, skill, experience, training or education."</p> <p>F.R.E. §§ 703, 801, 802: Petitioner objects to the declarant's testimony to the extent it impermissibly acts as a conduit for hearsay not falling under any exception.</p>

	<p>In addition, to the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>37 C.F.R. § 42.65(a): The declarant’s testimony fails to disclose the underlying facts and data on which the opinion is based. <i>See, e.g.</i>, Ex. 2014 ¶¶ 26-36, 39-40, 43-44, 46, 48, 50-67, 80-84, 87-89.</p>
Ex. 2016—Museum of Failure website – “Oakley Thump”	<p>F.R.E. §§ 401, 402, 403: This exhibit is a web capture from 2025. Patent Owner does not demonstrate that the information in the web capture existed or applied at the ’541 patent’s earliest claimed priority date. The exhibit is thus irrelevant. This exhibit is additionally irrelevant because it is not cited in the Patent Owner’s Response. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. Any belated attempt by Patent Owner to rely on this exhibit would likely violate at least 37 C.F.R. § 42.6(a)(3).</p> <p>F.R.E. §§ 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>F.R.E. § 901: This exhibit is neither authenticated nor self-authenticating.</p>

<p>Ex. 2017—CNET website – “Oakley Thump Review”</p>	<p>F.R.E. §§ 401, 402, 403: This exhibit is a web capture from 2025. Patent Owner does not demonstrate that the information in the web capture existed or applied at the ’541 patent’s earliest claimed priority date. The exhibit is thus irrelevant. This exhibit is additionally irrelevant because it is not cited in the Patent Owner’s Response. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. Any belated attempt by Patent Owner to rely on this exhibit would likely violate at least 37 C.F.R. § 42.6(a)(3).</p> <p>F.R.E. §§ 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>F.R.E. § 901: This exhibit is neither authenticated nor self-authenticating.</p>
<p>Ex. 2018—GlobeNewswire website – “Exclusive Media Event Marks Debut of OAKLEY THUMP”</p>	<p>F.R.E. §§ 401, 402, 403: This exhibit is a web capture from 2025. Patent Owner does not demonstrate that the information in the web capture existed or applied at the ’541 patent’s earliest claimed priority date. The exhibit is thus irrelevant. This exhibit is additionally irrelevant because it is not cited in the Patent Owner’s Response. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value. Any belated attempt by Patent Owner to rely on this exhibit would likely violate at least 37 C.F.R. § 42.6(a)(3).</p> <p>F.R.E. §§ 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>F.R.E. § 901: This exhibit is neither authenticated nor self-authenticating.</p>

Ex. 2019—Nugroho, et al., “Understanding and Evaluating User Centered Design in Wearable Expressions”	<p>F.R.E. §§ 401, 402, 403: This exhibit is irrelevant. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value.</p> <p>F.R.E. §§ 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>F.R.E. § 901: This exhibit is neither authenticated nor self-authenticating.</p>
Ex. 2020—Wearable Computing – a New Approach in Concurrent Enterprising	<p>F.R.E. §§ 401, 402, 403: This exhibit is irrelevant. Even if relevant, a danger of unfair prejudice, confusing the issues, and/or wasting time substantially outweighs any probative value.</p> <p>F.R.E. §§ 801, 802: To the extent Patent Owner relies on this exhibit for the truth of the matter asserted, Petitioner objects to this exhibit as inadmissible hearsay that does not fall under any exceptions.</p> <p>F.R.E. § 901: This exhibit is neither authenticated nor self-authenticating.</p>

Dated: April 7, 2025

Respectfully Submitted,

/ Jacob L. Peterson /

Jacob L. Peterson, Reg. No. 65,096

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4), I certify that on April 7, 2025, I caused to be served via email a true and correct copy of PETITIONER'S OBJECTIONS TO PATENT OWNER'S ALLEGED EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE on Patent Owner's counsel of record:

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Respectfully Submitted,

Dated: April 7, 2025

/ Jacob L. Peterson /
Jacob L. Peterson (Reg. No. 65,096)