

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIOFRONTERA INC., BIOFRONTERA BIOSCIENCE GMBH,
BIOFRONTERA PHARMA GMBH, and BIOFRONTERA AG
Petitioner,

v.

SUN PHARMACEUTICAL INDUSTRIES, INC.
Patent Owner.

Case No. IPR2024-01312
Patent 11,697,028

**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO
EXCLUDE EVIDENCE**

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PETITIONER’S EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 11,697,028 by Thomas Boyajian et al. entitled “Adjustable Illuminator for Photodynamic Therapy and Diagnosis” (“’028 Patent”)
1002	File History for U.S. Patent No. 11,697,028 provided in Application No. 17/942,353
1003	Reserved
1004	U.S. Patent Publication No. 2005/0075703 by Eric Larsen entitled “Photodynamic Stimulation Device and Methods” (“Larsen”)
1005	U.S. Patent Publication No. 2004/0068305 by Vineet Bansal et al. entitled “Phototherapy System and Device” (“Bansal”)
1006	Reserved
1007	Reserved
1008	U.S. Patent No. 7,033,381 (“Lundahl ‘381”)
1009	Office Action dated March 23, 2021, from file history of Application No. 17/009,871
1010	Office Action dated October 25, 2021, from file history of Application No. 16/791,004
1011	WO 99/56827 by Scott Lundahl et al. entitled “Illuminator for Photodynamic Therapy”
1012	Reserved
1013	U.S. Patent No. 11,179,574 by Thomas Boyajian et al. entitled “Method of administering 5-aminolevulinic acid (ALA) to a patient”
1014	U.S. Patent No. 6,223,071 (“Lundahl”)
1015	Declaration of Dr. Robert Grove
1016	Declaration of Dr. Michael Ehrenreich
1017	U.S. Pat. No. 5,079,262 (“Kennedy”)
1018	Complaint filed in <i>Sun Pharmaceutical Industries, Inc. v. Biofrontera Bioscience GmbH, Biofrontera Pharma GmbH, Biofrontera AG, and Biofrontera Inc.</i> , Civil Action No. 1:24-cv-11637 (D. Mass) (filed on June 25, 2024)

Exhibit No.	Description
1019	Plaintiff's Infringement Contentions submitted as Exhibit 4 attached to complaint filed in <i>Sun Pharmaceutical Industries, Inc. v. Biofrontera Bioscience GmbH, Biofrontera Pharma GmbH, Biofrontera AG, and Biofrontera Inc.</i> , Civil Action No. 1:24-cv-11637 (D. Mass) (filed on June 25, 2024)
1020	<i>In Re Certain Photodynamic Therapy Systems, Components Thereof, And Pharmaceutical Products Used In Combination With The Same</i> , Investigation No. 337-TA-1411 (complaint filed on June 25, 2024)
1021	Agostinis et. al., <i>Photodynamic Therapy of Cancer: An Update</i> , <i>CA Cancer J Clin.</i> Author manuscript; available in PMC 2012 July 1 (also published in final edited form at <i>CA Cancer J Clin.</i> 2011 ; 61(4): 250–281)
1022	Levulan® Kerastick® (aminolevulinic acid HCl) for Topical Solution, 20% Initial U.S. Approval: 1999, Revised 3/2010
1023	Michael H. Gold, <i>Therapeutic and Aesthetic Uses of Photodynamic Therapy, Part Two of a Five-Part Series, Lasers and Light Treatments for Acne Vulgaris, Promising Therapies</i> , <i>Journal of Clinical and Aesthetic Dermatology</i> , Vol. 1(3), pp. 28-34 (September 2008)
1024	Declaration of Brian Larivee in Support of Pro Hac Vice Motion
1025	Declaration of Chad Landmon in Support of Pro Hac Vice Motion
1026	Supplemental Declaration of Dr. Robert Grove
1027	Deposition Transcript of Nan Marie Jokerst, Ph.D., taken July 22, 2025
1028	Deposition Transcript of Heather J. Roberts, M.D., FAAD, taken July 25, 2025
1029	Deposition Transcript of Thomas D. Vander Veen, Ph.D., taken July 29, 2025

Exhibit No.	Description
1030	Complainant's Post-Hearing Brief (Public Version) filed in <i>In Re Certain Photodynamic Therapy Systems, Components Thereof, And Pharmaceutical Products Used In Combination With The Same</i> , Investigation No. 337-TA-1411 ¹
1031	Trial Transcript Day 3 (Open Sessions) for <i>In Re Certain Photodynamic Therapy Systems, Components Thereof, And Pharmaceutical Products Used In Combination With The Same</i> , Investigation No. 337-TA-1411
1032	Trial Transcript Day 4 (Open Sessions) for <i>In Re Certain Photodynamic Therapy Systems, Components Thereof, And Pharmaceutical Products Used In Combination With The Same</i> , Investigation No. 337-TA-1411
1033	Trial Transcript Day 2 (Open Sessions) for <i>In Re Certain Photodynamic Therapy Systems, Components Thereof, And Pharmaceutical Products Used In Combination With The Same</i> , Investigation No. 337-TA-1411

¹ All exhibits provided from the related ITC proceeding are publicly accessible redacted versions of those filings.

I. INTRODUCTION

Patent Owner seeks to exclude supplemental testimony of Dr. Grove that exposes the flawed assumptions relied on by Dr. Jokerst. In particular, Dr. Grove’s supplemental testimony elaborates on what a POSITA would understand about LED light distribution and connecting hinges to panels rebutting Dr. Jokert’s testimony on the same. The submission of such rebuttal evidence is so routine that the Federal Circuit has noted, “we have regularly held, ‘the 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.’” *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 706–07 (Fed. Cir. 2020)) (emphasis added) (quoting *Anacor Pharm., Inc. v. Iancu*, 889 F.3d 1372, 1380–81 (Fed. Cir. 2018)).

However, the Board need not even reach the issue whether Dr. Grove’s testimony is proper rebuttal evidence because Patent Owner’s purported “Motion to Exclude” is in substance an unauthorized Motion to Strike. While Patent Owner cites to Federal Rule of Evidence (FRE) 403 in its headings, none of the arguments it presents are about FRE 403, which requires the probative value of the evidence against be “substantially outweighed” by other factors like unfair prejudice or confusion. Instead, Patent Owner’s argument is that Dr. Grove’s supplemental testimony presents new theories raised in a reply, which the Board has “stated repeatedly” should not be addressed by a Motion to Exclude. *Palo Alto Networks*,

Inc. v. Finjan, Inc., IPR2015-01979, Paper No. 62 (PTAB March 15, 2017) (“a motion to exclude is not a vehicle for arguing that Petitioner’s arguments and supporting evidence are outside the proper scope of a reply”); *accord Apple, Inc. v. Parus Holdings, Inc.*, IPR2020-00686, Paper No. 37 at 41-42 (PTAB Sept. 9, 2021).

Yet, even if the Board were to address Patent Owner’s unauthorized and untimely arguments of supposed new theories raised in a reply, then those too would fail. Dr. Grove’s supplemental testimony merely elaborates on how the combination of Lundahl and Larsen set out in his original declaration would read on the claims. *Apple Inc. v. Gesture Tech. Partners, LLC*, 127 F.4th 364, 372 (Fed. Cir. 2025) (“a party is not barred from elaborating on its arguments on issues previously raised”) (internal quotations and brackets omitted).

II. EXHIBITS 1026 AND 1036 ARE ADMISSIBLE REBUTTAL EVIDENCE

Patent Owner seeks to “exclude ¶¶12-17, 19 of EX1026 and exclude 591:5-7, 592:2-8 of EX1031.” PO Mot. to Exclude at 14. Yet, this evidence “squarely responds to [the] Patent Owner Response” and is admissible. *See Apple v. Andrea Elecs.*, 949 F.3d at 707.

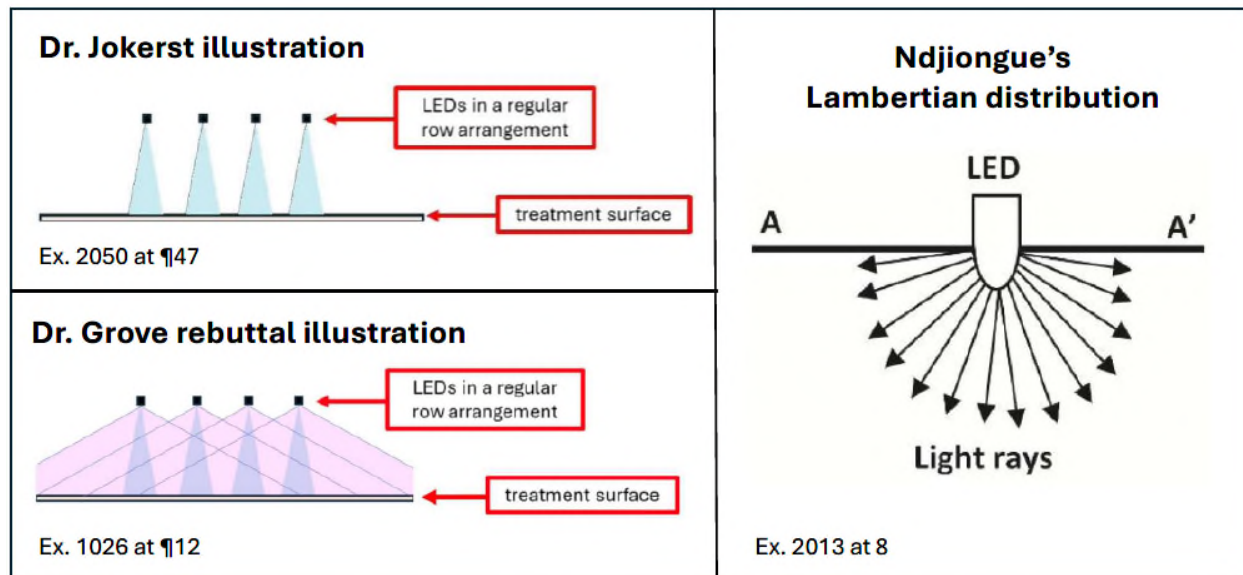
A. Exhibit 1026 Rebuts Dr. Jokerst’s Testimony

Patent Owner seeks to exclude paragraphs 12-17 and 19 of Exhibit 1026, but this testimony directly responds to the assertions and mischaracterizations provided in paragraphs 37-48 and 121 of Dr. Jokerst’s Declaration, and none of Dr. Grove’s

analysis represents “new theories” as alleged by Patent Owner. See PO Mot. to Exclude at 1. This rebuttal testimony is provided in support of Dr. Grove’s “disagree[ment] with how Dr. Jokerst has illustrated and characterized the light distribution pattern from LEDs.” Ex. 1026 at ¶9; see also *id.* at ¶10 (“Dr. Jokerst’s discussion and illustration of the illumination profile for LEDs mischaracterizes what is known in the art.”). As Dr. Grove elaborates in these paragraphs, the established understanding of an LED’s light distribution pattern by a POSITA supports his conclusion that the combination of Lundahl and Larson demonstrates uniform illumination of a treatment surface, thereby challenging Dr. Jokerst’s contrary testimony.

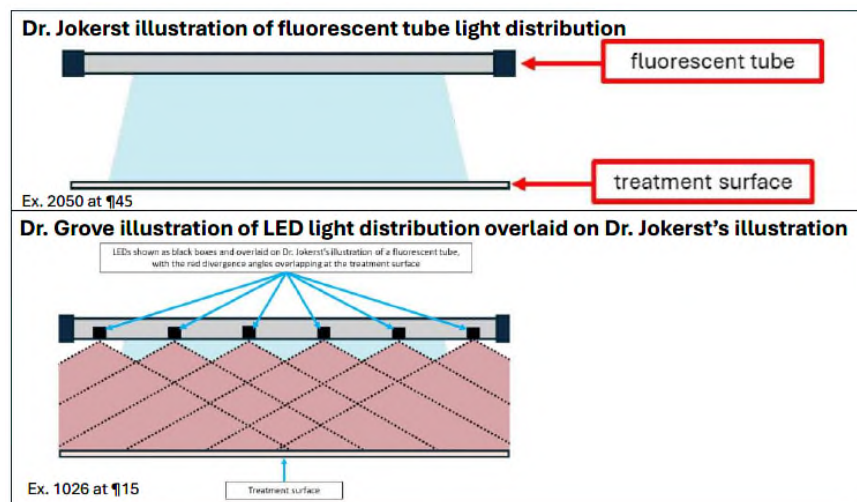
Paragraphs 11-13 of Dr. Grove’s Supplemental Declaration directly respond to Dr. Jokerst’s incorrect characterization of Lambertian light output. See EX2050 at ¶¶46-47. Dr. Jokerst admits that LEDs have a “Lambertian output characteristic,” yet the illustration of LED light output provided by Dr. Jokerst does not accurately reflect a Lambertian distribution. *Id.* at ¶46. In rebuttal, and to correct this mischaracterization, Dr. Grove provides a modified version of Dr. Jokerst’s illustration of LED light distribution, in view of the knowledge a POSITA would have regarding Lambertian distribution, as evidenced by Ndjiongue. *Id.* at ¶12 (“Applying the Lambertian light output profile described in Ndjiongue to the illustration provided by Dr. Jokerst,...”). As shown below, Dr. Grove’s rebuttal

illustration more accurately reflects the Lambertian distribution as shown in Ndjiongue, compared to Dr. Jokert's illustration:



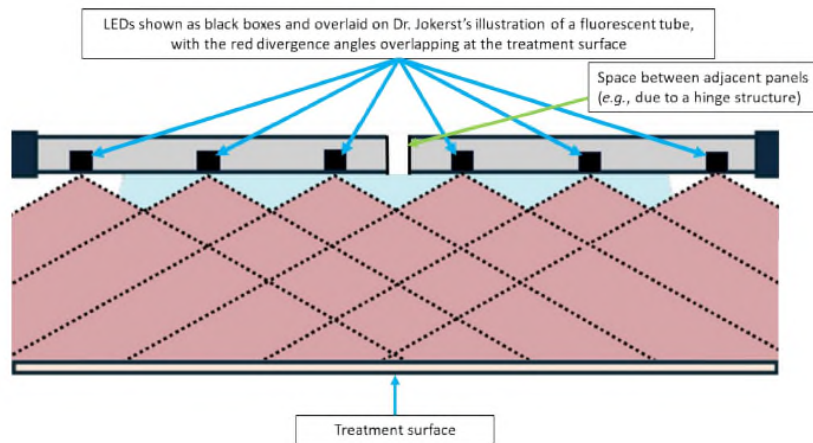
Paragraphs 14-21 (including challenged paragraphs 14-17 and 19) provide rebuttal to Dr. Jokerst's testimony alleging that the combination of Larsen and Lundahl would not "uniformly illuminate" the treatment surface due to gaps resulting from the use of LEDs as shown above in Dr. Jokert's incorrect illustration. See Ex. 2050 at ¶121. In rebuttal, Dr. Grove opines that for the combination of Lundahl and Larsen to achieve the desired uniformity of illumination with LEDs "the only factor that needs to be addressed is the spacing between LEDs within each row, but this is a very straightforward process, and is easily within the skill of a POSA," because Lundahl provides sufficient guidance on the spacing between vertical rows of light sources and the distance between the light sources and the treatment surface. *Id.* at ¶14. Dr. Grove then explains, in his rebuttal, that a POSITA

would use their knowledge of LED divergence angles to ensure that light is distributed without gaps over the treatment surface. *Id.* at ¶15. Dr. Grove again modifies a figure used by Dr. Jokerst to illustrate this concept as shown below where LEDs illuminate the same treatment surface area as a fluorescent tube without any gaps on the treatment surface:



In addition, Dr. Grove opines that “contrary to Dr. Jokerst’s assertions,” the fact that a POSITA would be able to achieve uniform distribution of light with LEDs is supported by the ’028 Patent’s acknowledgement that the patent’s uniform illumination can be achieved using either fluorescent lamps or LEDs without any mention of challenges or design considerations associated with switching between those two light sources. Ex. 1025 at ¶16 (citing Ex. 1001 at 3:52-62). As Dr. Grove notes, this silence in the ’028 Patent supports Dr. Grove’s testimony that spacing LEDs to prevent gaps in the illumination “is a very straightforward process,” further undercutting Dr. Jokerst’s testimony to the contrary. *Id.*

Challenged paragraph 17 rebuts Dr. Jokerst’s testimony that using hinged panels “would create gaps between the panels, affecting the uniformity.” See Ex. 2050 at ¶126. In rebuttal, Dr. Grove shows how gaps between panels due to hinges are likewise “easily addressed by accounting for the overlap of divergence angles,” and provides the below illustration demonstrating this point:



Ex. 1026 at ¶17.

Lastly, challenged paragraph 19 rebuts Dr. Jokerst’s testimony that there is no reasonable expectation of success that the combination of Lundahl and Larsen would provide “measured irradiance at a treatment surface of the patient is at least within 60% of the measured maximum.” See *e.g.*, Ex. 2050 at ¶137. Dr. Grove rebuts this argument by noting that the 60% standard required by the claims is not a high bar and is significantly less than the uniformity of 90-100% discussed in the specification of the ’028 Patent. Ex. 1026 at ¶19. In addition, Dr. Grove notes that the ’028 Patent specification does not provide any details on the spacing of LEDs needed to achieve the 90-100% uniformity, which supports Dr. Grove’s opinion that

a POSITA would have been able to space the LEDs appropriately based on their knowledge of the art to achieve the required level of uniformity. *Id.*

Thus, paragraphs 12-17 and 19 of Exhibit 1026 are proper rebuttal evidence that “squarely responds to” the testimony and illustrations provided by Dr. Jokerst. *Apple v. Andrea Elecs.*, 949 F.3d at 707.

B. Exhibit 1031 Rebuts Dr. Jokerst’s Testimony

For Exhibit 1031, Patent Owner seeks to exclude portions 591:5-7 and 592:2-8, which are excerpts of Dr. Grove’s trial testimony at the ITC regarding hinges with Larsen’s panels. Starting with the first excerpt at 591:5-7, Dr. Grove testified that there are “three locations” to place a hinge on Larsen’s panels. Ex. 1031 at 590:25-591:7; *see also id.* at 591:18-20 (ITC judge overruling Patent Owner’s objection to this testimony). This testimony directly rebuts Dr. Jokerst’s testimony that the “hinges could be placed in numerous locations.” *See* Ex. 2050 at ¶174.

Next, the second excerpt at 592:2-8, provides Dr. Grove’s testimony that the most common option known to a POSITA for connecting panels with hinges “is to put what are called butt hinges between the two panels,” which had been used for generations. Ex. 1031 at 592:2-8. Again, this is direct rebuttal to at least Dr. Jokerst’s testimony that “a POSITA reading Larsen’s disclosure would have attached hinges to the bottom of the panels.” Ex. 2050 at ¶174 (emphasis omitted).

Thus, the portions of Exhibit 1031 at 591:5-7 and 592:2-8 are proper rebuttal

evidence that “squarely responds to” the testimony provided by Dr. Jokerst.

III. PATENT OWNER’S MOTION PROVIDES NO BASIS FOR EXCLUSION UNDER FEDERAL RULE OF EVIDENCE 403

Patent Owner refers to FRE 403 in its introductory sentence and in sub-headings, but never once addresses FRE 403 in any of its arguments. FRE 403 states that “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice,...” FRE 403 (emphasis added). Patent Owner asserts that Exhibits 1026 and 1031 are “unduly prejudicial.” See PO Mot. to Exclude at 10 and 13. However, Patent Owner never discusses the “probative value” of the evidence or how it is “substantially outweighed” by the alleged prejudice. See *Captioncall LLC v. Ultratec, Inc.*, IPR2014-00780, Paper No. 35 at 8 (PTAB Dec. 1, 2015) (“Patent Owner fails to address the ‘substantially outweighed’ aspect of the Rule [FRE 403]”).

Here, the probative value of the evidence is considerable, as it presents Dr. Groves’s testimony regarding how a POSITA would interpret the combined teachings of Lundahl and Larsen to render obvious uniform illumination of a treatment surface, relying in part on the well-established knowledge of a POSITA related to light distribution properties of LEDs. See Ex 1026 at ¶¶12-17; Ex. 1032 at 591:5-7 and 592:2-8. This is highly probative to the question of validity at issue in this IPR, as Dr. Jokerst wrongly contends that a POSITA would not be capable of producing uniform illumination of a treatment surface using LEDs. See *supra*

Section II (discussing how this challenged evidence rebuts Dr. Jokerst’s testimony).

Moreover, Patent Owner’s conclusory assertion of prejudice is without merit. The risk of “prejudice” as contemplated by FRE 403 is either eliminated or diminished in IPR trials as the fact finder is the Board and not a jury. *Neste Oil Oyj v. Reg Synthetic Fuels, LLC.*, IPR2013-00578, Paper No. 53 at 10 (PTAB Mar. 12, 2015) (“Proceedings before the Board are not jury trials; in the absence of a jury, the risk of unfair prejudice against which Rule 403 guards is diminished, if not eliminated entirely.”); *Trend Micro Inc. v Cupp Computing AS*, IPR2019-00764, Paper No. 32 at 5 (PTAB Aug. 25, 2020) (“Here, where the Board is acting as factfinder, the risk of unfair prejudice is diminished”); *see also Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) (“in the context of a bench trial, evidence should not be excluded under 403 on the ground that it is unfairly prejudicial”).

To the extent there can be “unfair prejudice” as contemplated by FRE 403 in an IPR proceeding, it is not present in this case. At most, Patent Owner asserts that the challenged evidence “introduce new obviousness theories that could have been included in the Petition, but were not.” PO Mot. to Exclude at 10. Yet, Patent Owner was allowed to depose Dr. Grove a second time, and had a full and fair opportunity to question him on these supposed “new” theories. Ex. 2087 at 17:16-24:20 (questioning Dr. Grove on exhibits 1026 and 1031). Patent Owner also filed a sur-reply where it addressed these exhibits. *See* PO Sur-Reply, Paper No. 35. In

substantially similar circumstances, the Federal Circuit has not found any basis to exclude under FRE 403. *Provisur Techs., Inc. v. Weber, Inc.*, 50 F.4th 117, 123 (Fed. Cir. 2022) (supplemental expert testimony not excluded under FRE 403 where Patent Owner “had an opportunity to respond both by cross-examining [Petitioner’s] expert and in a sur-reply to the Board.”).

Therefore, the Board should deny the Motion to Exclude because it fails to demonstrate any prejudice, let alone explain how the alleged prejudice “substantially outweighs” the highly probative value of Dr. Grove’s testimony in this proceeding.

IV. PATENT OWNER’S UNAUTHORIZED MOTION TO STRIKE SHOULD BE DENIED

A. Motion to Exclude is Not the Proper Vehicle for Patent Owner’s Arguments

Patent Owner’s motion here is premised on the argument that Dr. Grove’s supplemental testimony provided in Exhibits 1026 and 1031 “introduce new theories and opinions that were not included in the Petition.” PO Mot. to Exclude at 1. Yet, numerous Board decisions and the Trial Practice Guide all inform practitioners that the proper procedure to challenge alleged “new theories” raised for the first time in a reply is a Motion to Strike and not a Motion to Exclude. The Board’s decision in *Apple v. Parus* explains this in detail and the same analysis is applicable here:

A motion to exclude should be directed to the admissibility of evidence. *See* 37 C.F.R. § 42.64; TPG 79. According to the Trial Practice Guide, a motion to exclude is not a vehicle to “address arguments or evidence

that a party believes exceeds the proper scope of reply or sur-reply.” TPG 79. Rather, “[i]f a party believes that a brief filed by the opposing party raises new issues, is accompanied by belatedly presented evidence, or otherwise exceeds the proper scope of reply or sur-reply, it may request authorization to file a motion to strike.” *Id.* at 80. Patent Owner did not file a motion to strike.

Apple. v. Parus, IPR2020-00686, Paper No. 37 at 41-42 (parenthetical omitted); see also *Palo Alto v. Finjan*, IPR2015-01979, Paper No. 62 at 66-67 (“we have stated repeatedly that a motion to exclude is not a vehicle for arguing that Petitioner’s arguments and supporting evidence are outside the proper scope of a reply”).

Unsurprisingly, the Board routinely denies Motions to Exclude that are grounded on arguments that the evidence exceeds the proper scope of a reply (e.g., new obviousness theories raised for the first time in a reply). See *Apple. v. Parus*, IPR2020-00686, Paper No. 37 at 42 (“Patent Owner’s Motion to Exclude does not address the admissibility of Dr. Terveen’s testimony. Rather, it argues that the testimony exceeds the proper scope of reply evidence,...Thus, we agree with Petitioner that Patent Owner’s Motion to Exclude does not state a proper basis for excluding evidence and, therefore, we deny the motion for that reason.”).

Although Patent Owner’s allegation that Dr. Grove presents new theories of obviousness is incorrect, this is precisely the type of issue that is to be resolved by a Motion to Strike. However, the time period for requesting a Motion to Strike has long expired given that Exhibits 1026 and 1031 were submitted into the record with

Petitioner’s Reply on August 13, 2025. See Consolidated Trial Practice Guide at 81 (Nov. 2019) (“Generally, authorization to file a motion to strike should be requested within one week of the allegedly improper submission.”).

Patent Owner’s transparent attempt to circumvent the rules by characterizing its late and unauthorized Motion to Strike as a Motion to Exclude should be denied.

B. Exhibits 1026 and 1031 Do Not Introduce New Legal Theories

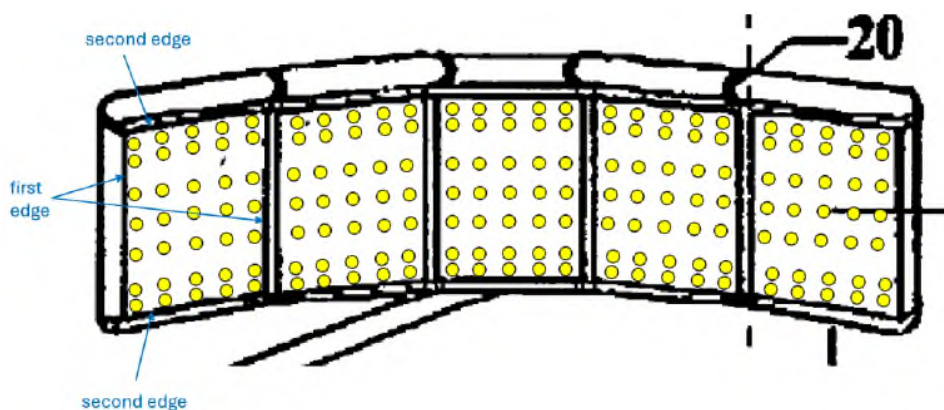
To the extent the Board feels compelled to consider Patent Owner’s contention that Exhibits 1026 and 1031 “introduce new theories and opinions that were not included in the Petition,” then this argument also fails. PO Mot. to Exclude at 1. Patent Owner relies on a line of cases that have found new arguments exist where the Petitioner raises “an entirely new theory of *prima facie* obviousness,” which is not the case here. *Id.* at 2-3 (citing cases).

Yet, a Petitioner is free to provide additional explanation of their arguments in a reply so long as it maintains “the same legal argument.” *Apple v. Andrea Elecs.*, 949 F.3d at 705-06. Dr. Grove’s testimony in exhibits 1026 and 1031 maintains the same legal argument in the Petition that the claims are obvious over Lundahl in view of Larsen and merely elaborates on this argument. *Chamberlain Grp., Inc. v. One World Techs., Inc.*, 944 F.3d 919, 925 (Fed. Cir. 2019) (“Parties are not barred from elaborating on their arguments on issues previously raised.”); *Apple v. Gesture Tech*, 127 F.4th at 372 (“Apple’s expert’s testimony was sufficiently confined to the

argument made in Apple’s IPR petition to warrant consideration by the Board”).

1. Exhibit 1026

For Exhibit 1026, Patent Owner argues that Dr. Grove’s changed theories from an “uneven spacing” of rows of light sources to achieve uniform illumination, to a theory where a POSITA would be able to “modify the spacing of LEDs in any manner to achieve the claimed uniformity.” PO Mot. to Exclude at 7. This is simply untrue, as Dr. Grove has not wavered from his position that the combined device of Lundahl and Larsen would utilize the same uneven spacing of rows (i.e., uneven vertical spacing of rows from top to bottom) utilized in Lundahl, as discussed and illustrated in his declaration and discussed in the Petition:



Ex. 1015 at ¶¶178-179; Petition at 49. The above illustration still represents Petitioner and Dr. Grove’s theory of obviousness as explained in Petitioner’s Reply. Petitioner Reply at 21 (citing Ex. 1015 at ¶¶178-179 and reproducing above illustration). The discussion provided in Dr. Grove’s Supplemental Declaration simply explains the well-established knowledge of a POSITA regarding the lateral

spacing of LEDs. See EX1026 at ¶¶12-17 and 19.

For each of paragraphs 12-17 and 19, Patent Owner generally argues that this testimony “could have been presented in Dr. Grove’s original declaration,” but was not. PO Mot. to Exclude at 8-10. Yet, capability to submit earlier is irrelevant because there is no requirement for Petitioner to submit every conceivable piece of evidence with a petition. *Provisur Techs., Inc. v. Weber, Inc.*, 50 F.4th 117, 122 (Fed. Cir. 2022) (denying exclusion as “[Patent Owner’s] argument conflates capability with obligation: [Petitioner] could have submitted the ELECTRIM evidence with its petition, but nothing obligated it to.”).

Importantly, Patent Owner fails to show how any of paragraphs 12-17 and 19 present a different legal theory than the one presented in Dr. Grove’s original declaration that combines Lundahl and Larsen as shown in the exemplary illustration above. Ex. 1015 at ¶¶178-179. For instance, Patent Owner does not point to any new embodiment being relied on in Lundahl or Larson, any new claim construction advanced by Dr. Grove, or any new combination of references. Instead, Patent Owner’s Motion to Exclude merely confirms that all of the challenged paragraphs provide further factual elaboration as to why a POSITA would find the combination of Lundahl and Larsen renders the claims obvious. PO Motion to Exclude at 8-10.

Therefore, the Board should not exclude any paragraphs of Exhibit 1026.

2. Exhibit 1031

Patent Owner acknowledges that Dr. Grove's original declaration asserts that hinges on an inside panel "involved nothing more than the use of a known prior art element according to known methods to yield predictable results," but inexplicably argues to exclude Dr. Grove's ITC testimony providing an example of a known prior art hinge being a "butt hinge," which is the "most common option for connecting panels with hinges." PO Mot. to Exclude at 11-12; Ex. 1031 at 592:2-5. It is harder to imagine a clearer instance of elaborating on a previous argument than giving an example that fits within the previous argument.

Similarly, Patent Owner acknowledges that Dr. Grove's original declaration opined that there are a "finite number" of ways to connect hinges to Larsen's panels but now asks the Board to exclude Dr. Grove's ITC testimony that there are "three locations" to connect hinges to Larsen's panel. PO Mot. to Exclude at 11-12; Ex. 1031 at 592:2-5. Yet, Dr. Grove is still relying on a theory of a "finite number" but has simply elaborated that the finite number of locations is three.

Therefore, the Board should not exclude portions 591:5-7 and 592:2-8 of Exhibit 1031.

V. CONCLUSION

For the reasons above, the Board should deny Patent Owner's Motion to Exclude in full.

Dated: November 12, 2025

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CERTIFICATE OF SERVICE

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