Filed on behalf of: CMS Cepcor Ltd. and
CMS Cepcor Americas LLC

By: Terry M. Sanks (tsanks@firstiniplaw.com) (litigation@firstiniplaw.com)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CMS CEPCOR LTD. and
CMS CEPCOR AMERICAS LLC,
Petitioners,

v.

SANDVIK INTELLECTUAL PROPERTY AB,
Patent Owner.

Case No. IPR2024-01381
Patent No. 11,014,090

PETITIONERS' RESPONSE TO PATENT OWNER'S OBJECTIONS TO EVIDENCE

TABLE OF CONTENTS

1. INTRODUCTION 1
2. REPLY PERMITTED AS A MATTER OF RIGHT 1
3. PATENT OWNER'S OBJECTIONS DO NOT COMPLY WITH THE REQUIREMENTS OF 37 C.F.R. § 42.64(B)(1) AND 37 C.F.R. § 42.64(C) 1
4. EXHIBIT 1044 (DECLARATION 2 OF DAVID SMITH) 4
   - 4.1.1. The Objections Aimed at Ex. 1044 Fail Under 37 C.F.R. § 42.23(b)(1) 5
   - 4.1.2. Ex. 1044 Is Proper Expert Testimony Pursuant to FRE 702 6
   - 4.1.3. The Substance of Ex. 1044 Is Relevant and Directly Relates to the Proceedings Under FRE 401 and 402 8
5. EXHIBIT 1046 (SHIGLEY) 9
6. EXHIBIT 1046 OR 1047 (MUNSON) 11
   - 6.1.1. Patent Owner Repeats Objections to Ex. 1046 12
   - 6.1.2. The Objections Aimed at Ex. 1046 and 1047 Fail Under 37 C.F.R. § 42.23(b)(1) 12
   - 6.1.3. The Information Presented Within Ex. 1046 and 1047 Does Not Constitute Hearsay 14
   - 6.1.4. The Substance of Ex. 1047 Is Relevant, Directly Relating to the Proceedings Under FRE 401 and 402 15
7. CONCLUSION 16
8. CERTIFICATE OF COMPLIANCE 17

TABLE OF AUTHORITIES

CASE LAW:

Abbott Diabetes Care Inc. v. Dexcom, Inc., 2023 Pat. App. LEXIS 3701 (P.T.A.B. Nov. 2, 2023)……..3, 5, 13

Activision Blizzard, Inc. v. Acceleration Bay, LLC, No. IPR2015-01951, Paper 16 (P.T.A.B. May 4, 2016)……..…….1

Altaire Pharms., Inc. v. Paragon Bioteck, Inc., No. 17-1487, slip op. (Fed. Cir. Apr. 25, 2018)……..…8

Beable Educ., Inc. v. Achieve3000, Inc., 2023 Pat. App. LEXIS 37 (P.T.A.B. Jan. 3, 2023)……3

Belden Inc. v. Berk-Tek LLC, 805 F.3d 1064 (Fed. Cir. 2015)……6

Biomarin Pharm. Inc. v. Genzyme Therapeutic Prods. Ltd. P'ship, 2015 Pat. App. LEXIS 2306 (P.T.A.B. Feb. 23, 2015)…….3, 8

Costar Realty Info., Inc. and Duolingo, Inc. v. Clantech, Inc., 2023 Pat. App. LEXIS 3837 (P.T.A.B. Nov. 16, 2023)……....2, 5, 13

Ericsson Inc. v. Intell. Ventures I, LLC, No. IPR2014-00527, Paper 41 (P.T.A.B. May 18, 2015)……15

In re Public Offering PLE Antitrust Litig., 233 F.R.D. 70 (D. Mass. 2006)……...8

Valmont Indus. v. Lindsay Corp., 730 Fed. App'x. 918 (Fed. Cir. 2018) ……..7, 9, 10, 16

STATUTE:

37 C.F.R. § 42.23(b)……...1
37 C.F.R. § 42.23(b)(1)……..5, 6, 12. 13
37 C.F.R. § 42.64(b)(2)……..1–5, 13, 16
37 C.F.R. § 42.64(c)……..….2–4

RULES:

FEDERAL RULES OF EVIDENCE
401……8 – 11, 15, 16

402……8 – 11, 15, 16
602……...4
702……...…4, 6, 8
703……...4, 6
801……...11, 14
802……...11, 14
803……14

PUBLICATIONS:

Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012)……1

PETITIONER'S EXHIBIT LIST

Exhibit	Description
Ex. 1049	Complete copy of RICHARD G. BUDYNAS AND J. KEITH NISBETT, SHIGLEY'S MECHANICAL ENGINEERING DESIGN (9th ed. 2011).
Ex. 1050	Complete copy of BRUCE R. MUNSON, ET. AL., FUNDAMENTALS OF FLUID MECHANICS (6th ed. 2009)

1. INTRODUCTION

Petitioners, CMS Cepcor Limited and CMS Cepcor America LLC ("CMS Cepcor" or "Petitioner"), replies to Patent Owner's, Sandvik Mining and Construction USA LLC's ("Sandvik or "Patent Owner"), Objections to Evidence ("Objection," Paper 19) accompanying Petitioner's Opposition to Patent Owner's contingent Motion to Amend ("Opposition," Paper 19) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(2), these responses are being timely filed and served within ten (10) business days of the service of the Objection.

2. REPLY PERMITTED AS A MATTER OF RIGHT

The Board has noted that, if a patent owner proceeds to address its objections to a declaration or other evidence accompanying a petitioner's submission, the petitioner is, as a matter of right, entitled to file a response, and to include supplemental evidence or further declaration, as well as other evidence responsive to issues raised by the patent owner. *See Activision Blizzard, Inc. v. Acceleration Bay, LLC*, No. IPR2015-01951, Paper 16 at 6–7 (P.T.A.B. May 4, 2016); *see also* 37 C.F.R. § 42.23(b); *see also Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012). As such, this Reply is proper.

3. PATENT OWNER'S OBJECTIONS DO NOT COMPLY WITH THE REQUIREMENTS OF 37 C.F.R. § 42.64(B)(1) AND 37 C.F.R. § 42.64(C)

Patent Owner has the responsibility to make specific objections in connection with 37 C.F.R. § 42.64(b)(1) must be specific; "specificity" refers to a clear

identification in the record the objection was initially made and where the challenged evidence is relied upon. 37 C.F.R. § 42.64(b)(1); *Costar Realty Info., Inc. and Duolingo, Inc. v. Clantech, Inc.*, 2023 Pat. App. LEXIS 3837, at *1, *59 (P.T.A.B. Nov. 16, 2023). Each objection must be explained and provide a clear rationale for why the evidence is inadmissible. That is because the intended use of the supplemental evidence process is to provide an opportunity for a party to cure an evidentiary objection. *See* 37 C.F.R. § 42.64(b)(2).

As described in detail below, Patent Owner's Objection fails to address the alleged deficiencies in Exhibit 1044, Exhibit 1046, and Exhibit 1047 (collectively the "Exhibits") with any detail. *See* Objection, p, 2–5. Instead, the presented Objection relies on boilerplate challenges featuring vague and generic statements that do not pinpoint to what portions of the challenged evidence "fail" or to what areas Petitioner may address with supplemental evidence. It is unclear what areas of Petitioner's evidence are deemed "insufficient" by Patent Owner. Thus, the challenges presented by Patent Owner's Objection do not comply with the bare minimum requirements of 37 C.F.R. § 42.64(b)(1).

To preserve any objection, a formal motion to exclude must be filed. 37 C.F.R. § 42.64(c) ("A motion to exclude evidence must be filed to preserve any objection."). Given the vague nature of Patent Owner's Objection, it is unclear whether Patent Owner is merely challenging sufficiency of Petitioner's evidence or objecting to the

admissibility of the cited evidence in the form of a motion to exclude under 37 C.F.R. § 42.64(c). Regardless, similar to a sufficiency challenge, a motion to exclude must clearly identify where in the record Patent Owner's objection refers and where the challenged evidence is relied upon. 37 C.F.R. § 42.64(b)(1). As discussed previously, Patent Owner fails to make the requisite cites to the record and explanation as to the application of its objections in conformity with 37 C.F.R. § 42.64(b)(1); as such, any attempt for Patent Owner to prematurely seek to exclude the Exhibits should be denied. *See Abbott Diabetes Care Inc. v. Dexcom, Inc.*, 2023 Pat. App. LEXIS 3701, at *1, *44–45 (P.T.A.B. Nov. 2, 2023) ("The lack of an effective objection is sufficient basis to deny a Motion to Exclude.") (internal citation omitted).

Moreover, any attempt by Patent Owner to seek exclusion through challenging the sufficiency of the Exhibits is inappropriate at this stage. *See, e.g.*, *Biomarin Pharm. Inc. v. Genzyme Therapeutic Prods. Ltd. P'ship*, 2015 Pat. App. LEXIS 2306, at *1, *37 (P.T.A.B. Feb. 23, 2015); *Beable Educ., Inc. v. Achieve3000, Inc.*, 2023 Pat. App. LEXIS 37, at *1, *100 (P.T.A.B. Jan. 3, 2023) ("[A] motion to exclude is not the proper mechanism to challenge the prior art or printed publication status of an exhibit."). There is a concern that Patent Owner's failure to properly outline its objections serves solely to circumvent the word-count limits of a potential Motion to Exclude by combining its sufficiency and admissibility arguments improperly into one document at an earlier stage. *See, e.g.*, *Abbott Diabetes Care*

Inc., 2023 Pat. App. LEXIS 3701, at *69 ("In short, Petitioner's arguments go to the weight to be afforded Dr. Baura's testimony, not to its admissibility, and are, therefore, an improper basis for seeking the exclusion of hundreds of paragraphs Dr. Baura's declaration."). Thus, the challenges presented by Patent Owner's Objection do not comply with 37 C.F.R. § 42.64(c).

Accordingly, Patent Owner has failed to comply with the requirements of bringing an objection under 37 C.F.R. § 42.64(b)(1), and, to the extent applicable, failed to comply with the requirements of bringing a motion to exclude under 37 C.F.R. § 42.64(b)(1).

4. EXHIBIT 1044 (DECLARATION 2 OF DAVID SMITH)

Patent Owner objects to Exhibit 1044 ("Ex. 1044" or the "Declaration") on the basis that it is "lacking foundation, assuming fact not in evidence, calling for legal conclusions, and mischaracterizing evidence," "includes expert opinions for which the factual bases have not been disclosed [and] for which Mr. Smith does not have personal knowledge under Fed. R. Evid. ("FRE") 602," and "to the extent Mr. Smith's opinions constitute unreliable expert testimony under FRE 702 and 703." *See* Objection, p. 2. Patent Owner also provides catch-all objections to those portions of Ex. 1044 "not discussed or cited in the Reply and/or Opposition as not being relevant to the Reply and/or Opposition" due to Patent Owner's position that is has

not been presented a "fair opportunity to respond to Petitioner's unstated contentions (if any) regarding the same," irrelevance, and prejudice. *See* Objection, p. 3.

4.1.1. The Objections Aimed at Ex. 1044 Fail Under 37 C.F.R. § 42.23(b)(1)

Patent Owner's claimed objections do not specify what opinions presented within Ex. 1044 lack proper support. *See* Objection, p. 2–3. Similarly, the claimed objections fail to reference paragraphs alleged to "mischaracterize" evidence, allegedly "call" for legal conclusions, or lacks "foundation." *See, e.g.*, *Costar Realty Info., Inc. and Duolingo, Inc.*, 2023 Pat. App. LEXIS 3837, at *58 ("A listing of paragraphs that are alleged to be beyond the scope does not establish that the Reply Declaration exceeded the scope.") Not only do these types of objections fail under 37 C.F.R. § 42.23(b)(1) but they also do not provide guidance for Petitioner to remedy/correct any deficiency as required 7 C.F.R. § 42.64(b)(2). *See, e.g.*, *Abbott Diabetes Care Inc.*, 2023 Pat. App. LEXIS 3701, at *68–69 ("Petitioner's objection to Dr. Baura's testimony identifies hundreds of paragraphs from her declaration followed by an objection stating her 'testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the fact of the case.' Petitioner's boilerplate objection is woefully insufficient to show that Petitioner objected with sufficiently particularity to allow correction in the form of supplemental information, as our Rule requires.").

As such, the Objection as it relates to Ex. 1044 (Objection, p. 2–3) fails under 37 C.F.R. § 42.23(b)(1). However, Petitioner does its best to address the substance of Patent Owner's other objections based on a good faith interpretation of the challenges related to Ex. 1044.

4.1.2. Ex. 1044 Is Proper Expert Testimony Pursuant to FRE 702

Patent Owner fails to point to where Ex. 1044 reflections "expert opinions for which the factual bases have not been disclosed" or what portions of the Declaration "constitute unreliable expert testimony under FRE 702 and 703." (Objection, p. 2–3). As such, Petitioner assumes that Patent Owner objects to Ex. 1044 in its entirety.

It is well established that a petitioner may submit a new expert declaration with a reply or opposition to a motion. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015) (holding that "a patent owner ha[d] not established that it was denied its procedural rights' when a petitioner submitted a new declaration with its reply"). Expert testimony is based on a qualified expert's knowledge, skill, experience, training, or education applied to facts or data, and an expert may offer opinion testimony within the expert's area of expertise. FRE 702. To that end, Petitioner re-engaged Mr. David G. Smith, whose qualifications, compensation, and preliminary opinions were provided in his First Declaration regarding the Petition for Inter Partes Review of the 090 Patent. (Ex. 1044, ¶ 2).

Patent Owner has not identified with any specificity any facts or items to question this foundation of Mr. Smith and his testimony. (Objection, p. 2–3). Mr. Smith's testimony was developed through his review of the changes proposed by Patent Owner, the new claims 15–26, the opinions of Sandvick's Expert Dr. Kyötamaa, the 090 patent, the prior art, relevant background technology, Patent Owner's motion to amend and accompanying exhibits along with his own education and experience. (Ex. 1044, ¶ 3). Mr. Smith then engaged in claim construction as proposed by Patent Owner's own Expert (Ex. 1044, ¶ 4–24), evaluated Patent Owner's previously submitted documentation (Ex. 1044, ¶ 44–45), and utilized his analysis of references and experience to invalidate the substitute claims (Ex. 1044, ¶ 46–59).

Given the circumstances, Mr. Smith directly responded to Patent Owner's own arguments, responses, and declaration, which is allowed by the Board. *Valmont Indus. v. Lindsay Corp.*, 730 Fed. App'x. 918, 922–23 (Fed. Cir. 2018) ("Thus, the Board did not violate its rules or due process requirements in concluding that the second Rosenberg declaration fairly responds only to arguments made in Dr. Mercer's declaration and Valmont's response."). By contrast, Patent Owner's Objections identify no allegedly deficient parts of Mr. Smith's background or methodology that would call into question Mr. Smith's specialized knowledge, data, or application. As such, Ex. 1044 remains proper expert witness testimony under

FRE 702. *See. e.g.*, *In re Public Offering PLE Antitrust Litig.*, 233 F.R.D. 70, 77–78 (D. Mass. 2006).

4.1.3. The Substance of Ex. 1044 Is Relevant and Directly Relates to the Proceedings Under FRE 401 and 402

FRE 401 and 402 establish the broad principle that relevant evidence—evidence that makes the existence of any fact at issue more or less probable—is admissible unless the Federal Rules of Evidence provide otherwise. Patent Owner fails to indicate how the undiscussed or uncited portions of Ex. 1044 are not relevant to this matter. Here, Petitioner's Ex. 1044 directly responds to the arguments raised by Patent Owner within its Moton to Amend by directly refuting the evidence raised by Patent Owner's expert, addressing the scope of knowledge a person of ordinary skill in the art ("POSITA") would possess, and refuting Patent Owner's claim construction. (Opposition, p. 1–4, 6–9). *See, e.g.*, *Biomarin Pharm. Inc.*, 825 F.3d at 1364–69 (finding it permissible for the petitioner to cite two references in the reply that were not cited in the petition to show the state of the art at the time). Absent evidence to the contrary, Ex. 1044 complies with FRE 401 and 402. Considering the circumstances, it would be an abuse of discretion for the Board to fail to consider the items raised by Ex. 1044. *Altaire Pharms., Inc. v. Paragon Bioteck, Inc.*, No. 17-1487, slip op. at 14–17 (Fed. Cir. Apr. 25, 2018) (finding an abuse of discretion when the Board failed to consider a second declaration submitted with a reply that responded to arguments raised in the corresponding patent owner response).

Similarly, Patent Owner's vague contention that it has not had a "fair opportunity to respond to Petitioner's unstated contentions" is unfounded. Patent Owner has a variety of ways it may address the Second Declaration as allowed by the proceedings and process. *Valmont Indus.*, 730 Fed. App'x. at 923. Specifically, Patent Owner has the opportunity to address Ex. 1044 in its entirety during the upcoming proceedings because, pursuant to the Docket Calendar, Patent Owner is still allowed to submit its sur-reply to Petitioner's Opposition.

5. EXHIBIT 1046 (SHIGLEY)

Patent Owner objects to Exhibit 1046 ("Ex. 1046" or "Shigley") on the basis that it is "incomplete" resulting in a "misleading impression created by taking matters out of context." (Objection, p. 3) Patent Owner also provides catch-all objections to those potions of Ex. 1046 "not discussed or cited in the Reply and/or Opposition as not being relevant to the Reply and/or Opposition" due to Patent Owner's position that is has not been presented a "fair opportunity to respond to Petitioner's unstated contentions (if any) regarding the same," irrelevance, and prejudice. *See* Objection, p. 3.

FRE 401 and 402 establish the broad principle that relevant evidence—evidence that makes the existence of any fact at issue more or less probable—is admissible unless the Federal Rules of Evidence provide otherwise. Importantly, Patent Owner fails to point to what portions of Ex. 1046 are "incomplete" or what

portions of Shigley create a "misleading impression" by taking "matters out of context." As such, Petitioner assumes that Patent Owner objects to Ex. 1046 in its entirety.

Nevertheless, Ex. 1046 remains relevant. Petitioner uses Ex. 1046 to directly respond to the arguments raised by Patent Owner within its Moton to Amend by directly refuting the evidence raised by Patent Owner's expert and addressing the scope of knowledge a POSITA would possess in the circumstances. (Opposition, p. 3). The Board may only exclude evidence that is actually irrelevant; however, Patent Owner has not presented any circumstances in which Ex. 1046 does not tend to prove or disprove a POSITA's perspective or how it would not impact claim construction. *Valmont Indus.*, 730 Fed. App'x. at 922. Absent any such evidence to the contrary, Ex. 1046 complies with FRE 401 and 402.

Similarly, Patent Owner's vague contention that it has not had a "fair opportunity to respond to Petitioner's unstated contentions" is unfounded. Patent Owner has a variety of ways it may address the Shigley reference as allowed by the proceedings and process. *Valmont Indus.*, 730 Fed. App'x. at 923. Specifically, Patent Owner has the opportunity to address Ex. 1046 in its entirety during the upcoming proceedings because, pursuant to the Docket Calendar, Patent Owner is still allowed to submit its sur-reply to Petitioner's Opposition.

Finally, given the vague and generic nature of the presented challenges, Patent Owner's objections related to Ex. 1046 fail to comply with 37 C.F.R. § 42.64(b)(1) since they do not point to specific areas for clarity from Petitioner. Patent Owner's objection with respect to completeness is also disingenuous considering that Patent Owner similarly filed a single chapter of Shigley in support of its position. Nevertheless, in an abundance of caution, Petitioner submits a full copy of Shigley in an attempt to resolve Patent Owner's challenge as it relates to completeness. *See* attached as **Ex. 1049** a true and correct copy of RICHARD G. BUDYNAS AND J. KEITH NISBETT, SHIGLEY'S MECHANICAL ENGINEERING DESIGN (9th ed. 2011).

6. EXHIBIT 1046 OR 1047 (MUNSON)

Patent Owner objects to Ex. 1046 or Exhibit 1047 ("Ex. 1047" or "Munson") on the basis that they are irrelevant and/or unduly prejudicial (FRE 401–403), lacking foundation and lacking authentication (FRE 901), "incomplete" which resulting in a "misleading impression created by taking matters out of context" (Objection, p. 4–5). Patent Owner also objects to Ex. 1046 or 1047 on the basis of "hearsay" pursuant to FRE 801 and 802, to the extent Petitioner "fail[ed] to offer sufficient evidence that Exhibit 1046 or 1047 was publicly accessible in its present form," and to the extent Petitioner "fail[ed] to offer any evidence that Exhibit 1046 is what Petitioner claims it to be." Objection, p. 4). Patent Owner further provides catch-all objections to those portions of Ex. 1046 or Ex. 1047 "not discussed or cited

in the Reply and/or Opposition as not being relevant to the Reply and/or Opposition" due to Patent Owner's position that is has not been presented a "fair opportunity to respond to Petitioner's unstated contentions (if any) regarding the same," irrelevance, and prejudice. (Objection, p. 3).

6.1.1. Patent Owner Repeats Objections to Ex. 1046

In raising its objections directed to both Ex. 1046 and 1047, Patent Owner repeats several of its objections directed to Ex. 1046 previously. Specifically, Patent Owner repeats its objections as to "completeness" and the catch-all objections to those portions of Ex. 1046 "not discussed or cited in the Reply and/or Opposition" due to lack of opportunity to "respond to Petitioner's unstated contentions (if any) regarding the same," irrelevance, and prejudice. Patent Owner also restates its disingenuous position regarding Shigley as Patent Owner similarly cited to only a portion of Shigley to support its position. *See* Objection, p. 3–5. As a preliminary matter, Petitioner re-incorporates the arguments stated above as it relates to Ex. 1046.

6.1.2. The Objections Aimed at Ex. 1046 and 1047 Fail Under 37 C.F.R. § 42.23(b)(1)

Patent Owner's claimed objections do not specify what opinions presented within Ex. 1046 or Ex. 1047 lack proper support. *See* Objection, p. 3–5. Similarly, the claimed objections fail to reference paragraphs alleged to "mischaracterize" evidence, allegedly "call" for legal conclusions, or lacks "foundation." *See, e.g.*,

Costar Realty Info., Inc. and Duolingo, Inc., 2023 Pat. App. LEXIS 3837, at *58 ("A listing of paragraphs that are alleged to be beyond the scope does not establish that the Reply Declaration exceeded the scope.") Not only do these types of objections fail under 37 C.F.R. § 42.23(b)(1) but also, they do not provide guidance for Petitioner to remedy/correct any deficiency as required under 7 C.F.R. § 42.64(b)(2). *See, e.g.*, *Abbott Diabetes Care Inc.*, 2023 Pat. App. LEXIS 3701, at *68–69 ("Petitioner's objection to Dr. Baura's testimony identifies hundreds of paragraphs from her declaration followed by an objection stating her 'testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the fact of the case.' Petitioner's boilerplate objection is woefully insufficient to show that Petitioner objected with sufficiently particularity to allow correction in the form of supplemental information, as our Rule requires.").

As such, the Objection as it relates to Ex. 1046 or 1047 (Objection, p. 4–5) fails under 37 C.F.R. § 42.23(b)(1). However, Petitioner does its best to address the substance of Patent Owner's other objections based on a good faith interpretation of the Objection as it relates to Ex. 1046 and 1047.

6.1.3. The Information Presented Within Ex. 1046 and 1047 Does Not Constitute Hearsay

Hearsay is evidence offered to prove the truth of the matter asserted. FRE 801. Hearsay is inadmissible unless it falls within one of the available hearsay exceptions. FRE 802 and 803.

Patent Owner fails to demonstrate how either Ex. 1046 or 1047 are relied on to prove "the truth of any matter" as claimed. Instead, the circumstances demonstrate that Petitioner utilizes Ex. 1046 and 1047 in direct conjunction with evidence already presented by Patent Owner. For example, Patent Owner's expert, Dr. Kytömaa, goes on to attribute his insights regarding POSITA to the teachings of Shigley (Ex. 1046) since it is a common textbook used in undergraduate studies by Mechanical Engineering students. (Ex. 1044, ¶ 45). As a result, Petitioner similarly relies on Shigley (Ex. 1046) when discussing a POSITA in order to address every one of the complexities raised by Dr. Kytömaa. (Ex. 1044, ¶ 45); (Ex 1046). Likewise, due to Dr. Kytömaa's reliance on commonly available textbooks to support Patent Owner's view of a POSITA in the field, Petitioner raises a second textbook. As fluid mechanics is a required subject for all mechanical engineering students, Mr. Smith utilizes Munson (Ex. 1047)—another commonly used textbook in college for mechanical engineering—to explain the scope of a POSITA's knowledge. (Ex. 1044, ¶ 45); (Ex 1047).

Accordingly, the type of information presented by Ex. 1046 and 1047, which is documentation generally relied on by the public or people in a particular occupation like mechanical engineering, may be provided to the Board without the need for testimonial evidence. *See, e.g.*, *Ericsson Inc. v. Intellectual Ventures I, LLC*, No. IPR2014-00527, Paper 41 (P.T.A.B. May 18, 2015).

6.1.4. The Substance of Ex. 1047 Is Relevant, Directly Relating to the Proceedings Under FRE 401 and 402

FRE 401 and 402 establish the broad principle that relevant evidence—evidence that makes the existence of any fact at issue more or less probable—is admissible unless the Federal Rules of Evidence provide otherwise. Importantly, Patent Owner fails to point to what portions of Ex. 1047 are "incomplete" or what portions of Munson create a "misleading impression" by taking "matters out of context." As such, Petitioner assumes that Patent Owner objects to Ex. 1047 in its entirety.

Nevertheless, Ex. 1047 remains relevant in its entirety. Petitioner uses Ex. 1047 to directly responds to the arguments raised by Patent Owner within its Moton to Amend by directly refuting the evidence raised by Patent Owner's expert and addressing the scope of knowledge a POSITA would possess in the circumstances. (Opposition, p. 7). The Board may only exclude evidence that is actually irrelevant; however, Patent Owner has not presented any circumstances in which Ex. 1047 would not tend to prove or disprove a POSITA's perspective or how it would not

impact claim construction. *Valmont Indus.*, 730 Fed. App'x. at 922. Absent any such evidence to the contrary, Ex. 1047 complies with FRE 401 and 402.

Similarly, Patent Owner's vague contention that it has not had a "fair opportunity to respond to Petitioner's unstated contentions" is unfounded. Patent Owner has a variety of ways it may address the Munson reference as allowed by the proceedings and process. *Valmont Indus.*, 730 Fed. App'x. at 923. Specifically, Patent Owner has the opportunity to address Ex. 1047 in its entirety during the upcoming proceedings because, pursuant to the Docket Calendar, Patent Owner is still allowed to submit its sur-reply to Petitioner's Opposition.

In an abundance of caution, Petitioner submits a full copy of Munson in an attempt to resolve Patent Owner's challenge as it relates to completeness. *See* attached as **Ex. 1050** a true and correct copy of BRUCE R. MUNSON, ET. AL., FUNDAMENTALS OF FLUID MECHANICS (6th ed. 2009).

7. CONCLUSION

For all of the reasons stated above, Cepcor responds to the objections raised by Sandvik, clarifies its previously submitted evidence, and provides any supplemental evidence in accordance with 37 C.F.R. § 42.64(b)(2) to further support Petitioner's Opposition to Patent Owner's contingent Motion to Amend.

8. CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(d), the undersigned certifies that this Petition complies with the type-volume limitation of 37 C.F.R. §42.24(a). The word count application of the word processing program used to prepare this Reply indicates that the Reply contains 3785 words, excluding the parts of the Reply exempted by 37 C.F.R. §42.24(a).

Date: October 3 2025

/Terry M. Sanks/

Terry M. Sanks, Esquire
Reg. No. 45,069
BEUSSE SANKS, PLLC
612 E. Colonial Drive, Suite 250
Orlando, Florida 32803
Tel: (407) 644-8888
tsanks@firstiniplaw.com
litigation@firstiniplaw.com

Certificate of Service

I hereby certify that, on October 3, 2025, a true and correct copy of the foregoing Petition (and accompanying exhibits) was served on the Patent Owner via electronic means (by agreement of the parties) at the address listed below:

Mehran Arjomand
MArjomand@mofo.com
Alex S. Yap
AYap@mofo.com
MORRISON & FOERSTER LLP
707 Wilshire Blvd., Suite 6000 Los Angeles, CA 90017
Tel: 213-892-5200

- and –

Aaron G. Fountain
afountain@mofo.com
MORRISON & FOERSTER LLP
200 Clarendon Street, 21st Floor
Boston, MA 02116
Tel: 617-648-4700

-and-

Jeffrey G. Young
JeffreyYoung@mofo.com
MORRISON & FOERSTER LLP
2100 L Street, NW Suite 900
Washington, DC 20037
Tel: 202-877-1500

Date: October 3, 2025

/Terry M. Sanks/
Terry M. Sanks
Reg. No. 45,069