

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

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SANDVIK INTELLECTUAL PROPERTY AB,
Patent Owner.

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

**PETITIONERS' REPLY IN SUPPORT OF PETITIONERS' MOTION TO
EXCLUDE EVIDENCE**

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Petitioners, CMS CEP COR LTD., and CMS CEP COR AMERICAS LLC (“Petitioners”), submit this Reply in support of their Motion to Exclude Evidence (Paper 44, “Motion”) and in response to Patent Owner’s, SANDVIK INTELLECTUAL PROPERTY AB’s (“Patent Owner” or “PO”), Opposition (Paper 45, “Opposition” or “Opp.”), which fails to cure the evidentiary defects under the Federal Rules of Evidence (“FRE”) and the Board’s rules.

I. THE CHALLENGED TESTIMONY IN PARAGRAPHS 17-21 AND 29-33 IS INADMISSIBLE DUE TO HEARSAY AND LACK OF FOUNDATION

Patent Owner’s Opposition does not remedy the defects in paragraphs 17-21 and 29-33 of Dr. Kytömaa’s declaration. These paragraphs should be excluded because they rely on hearsay for the truth of asserted technical facts and lack foundation or personal knowledge. Patent Owner opposes exclusion as these paragraphs supply the sole evidentiary basis for its asserted distinctions between coal pulverizers and gyratory crushers.

A. Paragraphs 17-18 Improperly Rely on Ex. 2024

Patent Owner’s attempt to distinguish “ideal” from “optimum” is immaterial. (Opp., 2). Regardless of terminology, paragraphs 17-18 rely entirely on Ex. 2024 for operating parameters, functions, and structural characteristics of a coal pulverizer in relation to Piepho. (Ex. 2022 ¶¶ 17-18.). These assertions are offered for their truth and are unsupported by testing, measurements, or firsthand experience described in

the declaration. Dr. Kytömaa does not explain why experts reasonably rely on Ex. 2024 nor does he apply independent technical analysis. Instead, he treats as equivalent to Piepho itself. (Ex. 2022 ¶¶ 17-18.). This is classic hearsay under FRE 801.

B. Paragraphs 19-21 Improperly Rely on Ex. 2025

Paragraphs 19-21 present the same defect. Dr. Kytömaa's discussion of gyratory crusher structure and function is drawn directly from Ex. 2025 (Ex. 2022 ¶ 19) with no foundation, no showing of personal knowledge, and no analysis beyond restating the third-party descriptions of intended input and output sizes. As used, the testimony functions as a conduit for hearsay rather than admissible expert opinion.

C. Paragraphs 29-33 Improperly Rely on Ex. 2026 and 2027

Paragraphs 29-33 likewise rely wholesale on materials produced by Patent Owner itself. Dr. Kytömaa's statements regarding the "recommended" replacement schedules are taken from Ex. 2026 (Ex. 2022 ¶ 29) and assertions regarding safety and efficiency characteristics are taken from Ex. 2027 (Ex. 2022 ¶¶ 32-33). In each instance, he assumes the truth of the cited materials without explaining their reliability or applying any independent engineering judgment.

These defects are central. Patent Owner relies on this testimony to argue that a coal pulverizer and a gyratory crusher are "functionally and structurally" different

and to advance its novel argument that Piepho is non-analogous art.¹ See Paper 38 at 3 (citing Ex. 2022 ¶¶ 14-31). Because those arguments rest entirely on inadmissible testimony, the challenged paragraphs or at a minimum, accorded reduced weight.

II. DR. KYTÖMAA'S OPINIONS FAIL UNDER FRE 602 AND FRE 703

Patent Owner's reliance on FRE 602's expert carve-out is misplaced. While an expert need not have personal knowledge of every underlying fact, neither FRE 602 nor FRE 703 permits an expert to offer opinions outside the scope of demonstrated expertise or to adopt third-party assertions without independent analysis.

Although Dr. Kytömaa's experience spans general mechanical systems and consulting across multiple industries (Ex. 2001 ¶¶ 3-14), his experience with coal pulverizers is limited to coal-fired power plants and does not establish expertise in operational parameters, output capacities, maintenance schedules - the very topics of paragraphs 17-21 and 29-33. (Ex. 2030 8:23 – 9:11). Patent Owner's reliance on Dr. Kytömaa's testimony regarding his "experience working with crushers" and "experience with rock crushers" (Ex. 2029 4:20–5:13; Ex. 2007 ¶¶ 16-17) highlights an internal inconsistency (Opp. p. 11): Patent Owner simultaneously argues that coal pulverizers and gyratory crushers are technologically distinct (Paper 38 at 3-5) while

¹ PO's submission of its Reply to Petitioners Opp. to Revised Contingent Motion to Amend (Paper 38) was the first instance in which it challenged Piepho as non-analogous art since its introduction as Ex. 1018 on September 6, 2024.

attempting to apply experience with one to the other. If the machines are analogous, Dr. Kytömaa's opinions undermine Patent Owner's position; if they are distinct, he lacks expertise to opine on both. Either way, the testimony falls outside the scope permitted by either FRE 602 or FRE 703.

Moreover, the challenged paragraphs also fail because Dr. Kytömaa relies extensively on Ex. 2024-2027 without showing they are a type reasonably relied upon by experts or providing any independent testing, measurements, or engineering analysis. He merely parrots these materials; the Board routinely excludes when an expert acts as a conduit for third-party assertions rather than applying technical judgment.

Finally, Patent Owner's comparison to Mr. Smith's reliance on "websites" and "videos" is unpersuasive. Unlike Dr. Kytömaa, whose testimony treats Exhibits 2024–2027 as authoritative facts for output capacities, maintenance schedules, and operational characteristics, Mr. Smith merely referenced publicly available sources to explain what would be available to a POSITA and to opine on expressly identified gaps requiring expert interpretation. (Ex. 2021, 74:2-21; Ex. 2011, 57:24 - 58:7). Proper expert reliance by one witness does not cure conclusory, unsupported testimony by another.

III. EXHIBITS 2024-2027 ARE INADMISSIBLE HEARSAY

Patent Owner claims that Ex. 2024-2026 serve a “non-hearsay purpose of reflecting what a POSITA would have known” (Opp., 12) mischaracterizes the record. Ex. 2024 and 2025 are cited for input and output sizes, Ex. 2026 is cited for the main shaft sleeve “replacement” expectations, and Ex. 2027 is cited for safety and efficiency. (Ex. 2022 ¶¶ 17-19, 29). They are not used merely as background but as substantive proof of operational and maintenance distinctions – facts Mr. Smith did not reference in Ex. 2021, 65:5–16. Then, Patent Owner’s attempt to distinguish between “see” and “see also” citations to Mr. Smith’s testimony (Opp., p. 15) is vague, confusing, and immaterial, as it does not clarify the non-existent references or how Ex. 2024-2027 are offered for anything other than their truth.

FRE 803(17) and FRE 807 are inapplicable. These exhibits are technical specifications and operational guidance, not general compilations “generally relied on” by practitioners. Patent Owner has not shown sufficient indicia of trustworthiness or necessity. Supplemental authentication evidence does not cure these underlying defects.

Finally, the exclusion of these materials does not offend the interests of justice: Petitioners’ challenges only these specific exhibits and paragraphs - not the broader record of which Patent Owner may utilize.

IV. CONCLUSION

For the foregoing reasons, the challenged testimony and Ex. 2024-2027 should be excluded from the record.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 7, 2026, a true and correct copy of the foregoing Motion was served on the Patent Owner via electronic means (by agreement of the parties) at the address listed below:

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