

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUMIO CORP.,
Petitioner

v.

FACETEC, INC.,
Patent Owner

Case IPR2025-00106
U.S. Patent No. 10,776,471

PATENT OWNER'S MOTION TO EXCLUDE

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Legal Standard	4
III.	Argument	6
	A. The Pertinent Art Requires Facial Authentication and Three- Dimensional Computer Vision.....	6
	B. Dr. Daft Lacks Ordinary Skill in the Pertinent Art	7
	C. Petitioner’s Reply Does Not Salvage Dr. Daft’s Testimony	11
IV.	Conclusion	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Billerud Aktiebolag (Publ) v. Westrock MWV, LLC</i> , IPR2023-01206, Paper 60, 10, 60-61 (P.T.A.B. Mar. 12, 2025)	4
<i>Hirata v. S. Nevada Health Dist.</i> , No. 2:13-cv-2302-LDG-VCF, 2016 WL 10706085 (D. Nev. May 31, 2016)	5
<i>Interactive Commc'ns Int'l v. Blackhawk Network</i> , IPR2024-00465, Paper 40, 2-4 (Director Oct. 9, 2025)	4
<i>Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n</i> , 22 F.4th 1369 (Fed. Cir. 2022)	<i>passim</i>
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005)	4
Other Authorities	
37 C.F.R. § 42.64(c).....	1
FED. R. EVID. 702	1, 2, 12

Under 37 C.F.R. § 42.64(c), Patent Owner moves to exclude Exhibits 1003 and 1060, the expert declarations of Dr. Daft, which were filed by Petitioner with its Petition (Paper 1) and its Reply to Patent Owner's Response (Paper 52), under Federal Rule of Evidence ("FRE") 702. Patent Owner timely objected to these exhibits on June 23, 2025 (*see* Paper 21) and January 28, 2026 (*see* Paper 53), respectively. In each instance, Patent Owner objected to Dr. Daft's opinion under FRE 702 as failing to offer the opinion of an expert with requisite scientific, technical, or specialized knowledge. Paper 21, 3; Paper 53, 1-2. Petitioner has not demonstrated that Dr. Daft is qualified to provide relevant testimony from the perspective of a POSITA at the relevant time. *Id.* Accordingly, because Dr. Daft is not a POSITA under either party's proposed definition, his declarations fail to meet the requirements of FRE 702 and must be excluded.

I. Introduction

Petitioner's expert, Dr. Daft, is not qualified to offer expert testimony in this case. He lacks the requisite experience and training with facial biometric security and three-dimensional computer vision systems. Instead of retaining a qualified expert, Petitioner attempts to qualify Dr. Daft by broadly defining the level of ordinary skill. But in doing so, it proposes a level that covers tenuously related expertise, like experience with fingerprint readers and ultrasonic imaging, that have nothing to do with the present technology: systems and methods for

authenticating the three-dimensionality and liveness of a user by analyzing expected differences or distortions across multiple images captured at different distances. Paper 43 (POR), 27-29.

This should not reasonably be in dispute given Petitioner’s explanation of the technology in the Petition. For example, Petitioner agreed that the challenged patent relates to “facial-authentication systems and methods to distinguish a three-dimensional face from a two-dimensional picture of a face by looking for well-known optical effects—such as a ‘fish-eye’ effect—that naturally occur in images to different degrees due to the three-dimensionality of a face and the distance between the face and the camera. . . . If the face is three-dimensional, the ‘close’ image should exhibit known effects (perspective, fish-eye, or barrel distortion), but the ‘far’ image should have much less. . . . If both images lack such ‘expected’ (perspective, fish-eye, or barrel) effects, however, it likely indicates a spoofing attempt using a two-dimensional picture.” Paper 1, 4.

Thus, the pertinent art is not the generic and overly-broad fields of “biometrics” or “optics,” but is instead authentication based on facial three-dimensionality and liveness. It requires expertise in facial biometric security, facial authentication, and three-dimensional computer vision.

Dr. Daft lacks ordinary skill in this art and his opinions are therefore irrelevant and unreliable. FRE 702; *see also Kyocera Senco Indus. Tools Inc. v.*

Int'l Trade Comm'n, 22 F.4th 1369, 1377-78 (Fed. Cir. 2022). Dr. Daft has not worked on facial liveness detection and did not have two years of experience in facial authentication, as is required to meet the appropriate level of skill. Ex. 2082 (Daft Dep.), 14:3-6; 24:2-25:17; 68:21-24. These qualification gaps translate into an unreliable opinion that must be excluded. *Kyocera*, 22 F.4th at 1378.

Patent Owner recognizes that the Board does not routinely exclude expert declarations in their entirety, resolving credibility and weight in a Final Written Decision. But the Federal Circuit has held that exclusion is necessary where, as here, a proffered expert lacks ordinary skill in the pertinent art. *Id.* at 1377-78 (finding that “the ALJ abused his discretion by admitting [the expert’s] testimony on any issue that is analyzed through the lens of an ordinary skilled artisan”). The present case presents the same misalignment between the expert’s background and the pertinent art as *Kyocera*.

But to make matters worse, Dr. Daft attempted to affirmatively create the false impression that he has been “qualified” by prior courts as an expert in “biometric security.” Ex. 1003, ¶17. The record proves otherwise. Indeed, Dr. Daft considered *himself* an expert in “biosensing” but has not worked on a case related to facial biometric security. Ex. 2082 (Daft Dep.), 53:5-11; 56:16-57:7; 59:14-25; 60:16-21. Under scrutiny, Dr. Daft walked back his statements to the Board about

his prior qualifications and confirmed that he has no experience or training in facial biometric security and three-dimensional computer vision. *Infra* Section III.B.

II. Legal Standard

“The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, to those skilled in the art to which the invention pertains or with which it is most nearly connected.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Thus, “to be qualified to offer expert testimony on issues from the vantage point of an ordinarily skilled artisan in a patent case, an expert must at a minimum possess ordinary skill in the art.” *Kyocera*, 22 F.4th at 1377-78. Without the requisite experience, “the witness’ opinions are neither relevant nor reliable.” *Id.* at 1376-77.

It is an abuse of discretion to credit unreliable expert testimony. *Interactive Commc’ns Int’l v. Blackhawk Network*, IPR2024-00465, Paper 40, 2-4 (Director Oct. 9, 2025) (terminating the proceeding, without remand, based on the Board improperly crediting an unreliable expert witness); *see also Billerud Aktiebolag (Publ) v. Westrock MWV, LLC*, IPR2023-01206, Paper 60, 10, 60-61 (P.T.A.B. Mar. 12, 2025) (excluding expert testimony because the witness was “not a person of ordinary skill in the relevant art”). In *Blackhawk*, the Director found that a lack of credibility from an expert on some aspects led to an exclusion of his entire opinion. *Blackhawk*, IPR2024-00465, Paper 40, 4 (“Having determined [the

expert] is not credible as to multiple material aspects of his testimony, it would be inappropriate in this instance to rely on this testimony for the other grounds.”).

Similarly, it is an abuse of discretion to admit testimony from an expert who does not have ordinary skill in the particular subfield relevant to the challenged patent. *Kyocera*, 22 F.4th at 1377-78. Indeed, in *Kyocera*, the adopted level of ordinary skill in the art required “experience in power nailer design,” a subfield within fastener driving tools. *Id.* at 1375-76. A proffered expert had “advanced degrees in engineering and extensive experience in the design and manufacture of fastener driving tools,” but lacked specific experience in “powered nailer design.” *Id.* at 1376. The Federal Circuit held it was an abuse of discretion to admit testimony from the proffered expert “on any issue that is analyzed through the lens of an ordinarily skilled artisan” because he did not have experience in the relevant subfield of powered nailers. *Id.* at 1376-78; *see also Hirata v. S. Nevada Health Dist.*, No. 2:13-cv-2302-LDG-VCF, 2016 WL 10706085, at *2 (D. Nev. May 31, 2016), report and recommendation adopted in part, No. 2:13-cv-2302-LDG-VCF, 2017 WL 1073358 (D. Nev. Mar. 21, 2017) (striking expert testimony and noting that “[a]n expert’s general expertise in a subject area however will not automatically qualify the expert to testify on a specific sub-category within that subject area”).

III. Argument

A. The Pertinent Art Requires Facial Authentication and Three-Dimensional Computer Vision

Here, a POSITA requires industry experience with facial authentication and three-dimensional computer vision, not just generic “optics” or non-facial biometrics. *See* Paper 43 (POR), 28-29. But recognizing Dr. Daft’s deficiencies, Petitioner contends that the relevant field is just “biometric security” and “optics” generally, asserting the specification does not “mention” three-dimensional computer vision. Paper 52 (Reply), 21. But this sidesteps the claimed technology and attempts to broaden the scope such that experience in fingerprinting and general optics will suffice for expertise in three-dimensional facial authentication. Under *Kyocera*, Dr. Daft’s training and education are not enough.

The claims themselves require image capture of the face at different distances and a determination of expected distortions or differences, which necessarily invokes three-dimensional computer vision applied to faces. *See* POR, 27-29. Expanding the field to “biometrics” at large (covering fingerprints, gait, DNA analysis) or to generic optics (covering optometrists or Optical Character Recognition systems) ignores the facial analysis using three-dimensional computer vision systems that is at the heart of the challenged patent. *Id.*

A generic biometrics and optics background is not an adequate substitute for facial biometric authentication with three-dimensional computer vision

competence. That is because facial authentication systems pose unique challenges not found in other subfields of biometrics. Ex. 2061 (Turk), ¶¶38-44. For instance, understanding facial authentication and three-dimensional vision systems encompasses a range of problems, including the mathematics and science to understand expected differences and expected distortion of faces in images captured at different distances from a camera, that would not generally arise in the broad field of biometrics, optics, or two-dimensional computer vision. *Id.*

Accordingly, for the challenged patent, a POSITA would have “a Bachelor’s degree in electrical engineering, computer engineering, computer science, physics, or a related field, and two years’ work experience related to biometric security, facial authentication, and three-dimensional computer vision such that they would have had significant academic and/or work experience in both facial biometrics and computer vision.” POR, 28-29.

B. Dr. Daft Lacks Ordinary Skill in the Pertinent Art

Dr. Daft admits he is “a physics-and-waves kind of guy.” Daft Dep., 40:5-8. He has no training or work experience in facial biometrics and computer vision. He admits he has “not worked on systems for facial liveness detection in a technical capacity” and has “not worked on facial image capture systems for the purposes of biometric security.” Daft Dep., 25:15-17; 24:21-25:7. These concessions alone

disqualify him from opining from the perspective of a POSITA regarding the challenged patent.

He further conceded that, as of August 2014, he did not have two years of work experience in facial authentication “specifically.” Daft Dep., 68:21-24 (“I have not had, at that date, the work experience in facial authentication specifically”); *see also id.*, 22:1-23:23 (failing to identify any work in biometric security work at the relevant time). Instead, he hoped to fill these fatal holes with generic “biometric” work. Daft Dep., 68:8-23 (contending that he has experience in biometrics by “[p]utting together my experience at GE and my work at Qualcomm”—both of which related only to fingerprint identification); *see also id.*, 74:1-75:4.

But Dr. Daft’s generalized experience with fingerprint scanners cannot bridge the gap to facial authentication. His cited “biometric” work centers on fingerprints—not faces—and ultrasounds—not camera images. His testimony confirmed that at Qualcomm, he consulted on a project involving ultrasonic fingerprint sensing; at GE/Lockheed, he worked on a fingerprint effort that lasted only “a few weeks” and was not even listed on his CV. Daft Dep., 11:21-12:4; 13:13-23. None of this equips him to understand or apply three-dimensional computer vision to facial images or evaluate systems for facial authentication and liveness detection.

Dr. Daft's involvement in other biosensing matters does not change this. Dr. Daft would have the Board believe that he has been previously "qualified by courts" in biometric security. Ex. 1003, ¶17. The record refutes this. In *Howe v. Speedway* (Ex. 1004, 9, case no. 7), the district court recited that Daft "considers *himself* an expert in 'biosensing' technology," not biometric security. Daft Dep., 52:20-53:25 (emphasis added). And it turned out that the court later barred him from opining on whether the information at issue was "biometric information" under the relevant statute. Daft Dep., 52:1-56:25; 56:16-21; 56:23-57:7. Daft offers no order from the court qualifying him as an expert in biometric security, and he concedes that he gave no trial testimony. Daft Dep., 55:16-25, 59:16-25.

In *CPC Patent Techs. v. HMD Global* (Ex. 1004, 9, case no. 9), the court did not qualify him as a biometric security expert, he did not take the stand, and he acknowledged that the case did not concern facial liveness or facial biometric security at all. Daft Dep., 59:14-25; 60:16-21. Dr. Daft could point to no instances where any court has qualified him in the art pertinent here. Daft Dep., 48:2-18; 49:5-13; 50:5-10; 50:19-25; 51:9-17; 59:1-6; 60:16-21 (confirming that his other case work did not relate to biometric security).

Dr. Daft tries to downplay his lack of experience with facial biometric security by pointing to his own patent publications, specifically those involving transcranial Focused Ultrasound (tFUS) and transcranial ultrasound (TUS)

systems. Daft Dep., 32:3-34:3; 35:5-11. But Dr. Daft's publications relate to securing biometric data, that is, encrypting medical images and requiring authenticated access. *Id.* (conceding that the "thrust" of the patents is "not for biometric security" but rather "security in order to protect the privacy of the patient"); *see also id.* at 38:19-25. This is nothing more than data-security experience (securing data after the fact) and is noticeably different from using biometric measurements to authenticate a face and a user's liveness.

Conflating data security with facial biometric authentication is emblematic of his misunderstanding of the relevant subfield here, which *Kyocera* forbids the Board to overlook. 22 F.4th at 1376-78. As Patent Owner's expert Dr. Turk explained, securing biometric data (e.g., encrypting medical scans or outputs) does not inform how a POSITA in this field would design or understand systems and methods for authenticating a user's three-dimensional shape and liveness. Turk, ¶¶51-53. Indeed, experience with generic data encryption is no more relevant to the challenged patent than general cybersecurity experience, such as encrypting spreadsheets or securing electronic health records. *Id.*

His own testimony confirms that he has never built, analyzed, or deployed biometric systems that authenticate a user based on facial images, much less systems that determine three-dimensionality or liveness based on expected

distortions or differences across multiple images. And his reliance on generic encryption experience cannot rectify that deficiency.

C. Petitioner’s Reply Does Not Salvage Dr. Daft’s Testimony

Petitioner argues that the challenged patent lives within “biometric security” generally and that neither the claims nor the specification “mention” three-dimensional computer vision. Reply, 21. But this sidesteps the claimed technology and wrongly attempts to broaden the scope such that experience with “fingerprint recognition” and “interpreting medical images” will suffice for expertise in three-dimensional facial authentication. Daft Dep., 73:12-74:11. Under *Kyocera*, Dr. Daft’s training and education are not enough here, as they completely omit the subfield at the heart of the challenged patent.

Petitioner also contends that “[t]here is no dispute that Dr. Daft meets Petitioner’s level of skill.” Reply, 21. Not so. The Patent Owner’s Response includes an entire section called “Dr. Daft Does Not Qualify Under Either Definition.” See POR, 29-30. Petitioner also conflates Dr. Daft’s experience to meet its own proposed level of skill, requiring “two years’ work experience related to biometrics, facial authentication, computer vision, *and/or* optics.” Pet., 5 (emphasis added). Dr. Daft explained that his computer vision and optics experience related to transcranial ultrasounds, which is “placing a transducer on the head of a subject, producing acoustic waves that travel into the brain and

focusing those ultrasonic waves.” Daft Dep., 30:21-32:19, 68:25-69:8. This is again unrelated to image-based analysis of facial photographs for authentication and is worlds apart from computer vision when read in the pertinent art of the challenged patent, authenticating three-dimensionality by comparing distance-separated facial images for expected differences or distortions.

Dr. Daft then contends that his time at GE and Qualcomm qualify as more than two years of work experience in the field of biometrics. Daft Dep., 68:13-19. But this involved a few-week project on fingerprint recognition at GE and a fingerprint authentication system for cellphones at Qualcomm—neither of which is applicable to the biometrics at issue in this case. These fingerprint engagements do not supply the facial-specific and camera-specific knowledge the claims demand.

Even accepting Petitioner’s disjunctive “and/or” phrasing does not qualify Dr. Daft. His non-facial, short-term, and diagnostic ultrasound engagements cannot satisfy the biometrics and optics requirements when read in the context of the pertinent art at issue, that is, verifying the three-dimensionality of a face. *See Kyocera*, 22 F.4th at 1376-78 (requiring that the expert has at least ordinary skill in the pertinent art (i.e., the appropriate subfield) to offer opinions).

IV. Conclusion

For the foregoing reasons, FaceTec respectfully requests that the Board exclude the declarations of Dr. Daft (Exs. 1003 and 1060) under FRE 702.

Date: February 24, 2026

Respectfully submitted,

/Jason Stach/

Jason Stach

Reg. No. 54,464

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing
PATENT OWNER'S MOTION TO EXCLUDE was served on February 24,
2026, via email directed to counsel of record for Petitioner at the following:

Alex S. Yap
AYap@mofo.com

Mehran Arjomand
MArjomand@mofo.com

Jean Nguyen
JNguyen@mofo.com

Jumio-Facetec-IPRs@mofo.com

Dated: February 24, 2026

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