**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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JUMIO CORPORATION,
Petitioner,

v.

FACETEC, INC.,
Patent Owner.

Patent No. 11,157,606

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*Inter Partes* Review No. IPR2025-00107

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# PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE

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## I. INTRODUCTION

PO's Motion to Exclude (Paper 61) asks the Board for extraordinary relief: the exclusion of both of Petitioner's expert declarations (EX1003 and EX1060) in their entirety. (Mot., 1.) But PO has no basis for the extreme relief it seeks. Its entire Motion is predicated on an improperly high level of ordinary skill in the art (POSITA) that is not supported by the claims, the specification, or the relevant prior art. Under the proper level of a POSITA, Dr. Daft satisfies the requirements of at least a person of ordinary skill in the art, thereby undercutting the basis for the Motion. Further, PO's reliance on *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369 (Fed. Cir. 2022) is misplaced, because the parties had, unlike this proceeding, accepted and applied the same level of a POSITA.

In any event, PO's challenges to Dr. Daft's experience go to the credibility and weight of his testimony—not its admissibility. Because the Board has broad discretion to assess and weigh expert testimony, and because wholesale exclusion is disfavored, PO's Motion should be denied.

## II. LEGAL STANDARDS

Federal Rule of Evidence (FRE) 702 requires only that the expert possess "knowledge, skill, experience, training, or education." FRE 702. "All that is required 'to be qualified to offer expert testimony on issues from the vantage point of an ordinarily skilled artisan in a patent case' is that 'an expert must at a

minimum possess ordinary skill in the art.'" *Osseo Imaging, LLC, v. Planmeca USA Inc.*, 116 F.4th 1335, 1340 (Fed. Cir. 2024) (citing *Kyocera* at 1377). It does not require that the expert's knowledge or experience be in perfect alignment with every potential subfield relevant to the challenged patent.

Furthermore, the Board has broad discretion in evaluating expert testimony. *Consolidated Trial Practice Guide* (CPTG) at 35. The CPTG explains that a "motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents." *Consolidated Trial Practice Guide* at 79. Indeed, the Board "is well-positioned to determine and assign appropriate weight to evidence presented." *Corning Inc. v. DSM IP Assets B.V.*, IPR2013-00053, Paper 66 at 19 (PTAB May 1, 2014) (citing *Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) ("One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received. . ."). And the Federal Circuit has repeatedly confirmed that the PTAB is entitled to assess credibility and weigh expert testimony, including relying on certain portions of an expert's declaration while disregarding others. *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1358 (Fed. Cir. 2018) ("The [PTAB] [i]s entitled to weigh the credibility of the witnesses." (citation omitted)); *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1041 (Fed. Cir. 2017) ("To the extent [a party]

challenges the PTAB's factual findings, . . . the PTAB is permitted to weigh expert testimony and other record evidence and, in so doing, rely on certain portions of an expert's declaration while disregarding others.").

Rather than exclude expert testimony at the PTAB, the Board has consistently indicated its preference for maintaining a complete evidentiary record. *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00010, Paper 59 at 40 (PTAB Feb. 24, 2014); *Corning,* Paper 66 at 19 (PTAB May 1, 2014) ("the better course is to have a complete record of the evidence to facilitate public access as well as appellate review" (citing *Donnelly Garment Co.*, 123 F.2d at 224)). As the Board has explained, "[t]he nature of our proceedings, in which the same panel that decides admissibility also serves as the fact-finder, disfavors exclusion [of expert testimony] in these circumstances." *New World Med., Inc. v. MicroSurgical Tech., Inc.*, IPR2020-01573, Paper 63 at 12 (PTAB Feb. 16, 2022).

## III. ARGUMENTS

### A. The Board Should Deny PO's Motion Under 37 C.F.R. § 42.64(b)(1)

As a preliminary matter, PO's Motion should be denied for failing to meet the requirements of a proper objection with "sufficient particularity" under § 42.64(b)(1). Dr. Daft's declarations (Exhibits 1003 and 1060) are 481 pages and 213 pages, respectively, yet PO objected to each declaration with at most two

paragraphs. (Mot., 1; Paper 21, 3; Paper 53, 2-3.) Under no reasonable interpretation of "sufficient particularity" can two paragraphs suffice to exclude about 700 pages of testimony. Even if one were to consider the objections, they are lacking. PO objects generally to Dr. Daft's opinions because "Petitioner has not demonstrated that Dr. Daft is qualified to provide relevant testimony from the perspective of a person of ordinary skill in the art at the relevant time," his "testimony [] is not the product of reliable principles and methods," and "Dr. Daft offers opinions on the background technology, claim construction, disclosures in the prior art, and motivations to combine the prior art without demonstrating that Dr. Daft's experience allows him to reliably opine on these issues." (Paper 21, 3; Paper 53, 2-3.) These are just boilerplate objections. PO's objections are not sufficiently particular, leaving Petitioner guessing as to, *e.g.*, the "reliable principles and methods," and how to address them. 37 C.F.R. § 42.64(b)(1) ("[t]he objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence."); *Hunter's Mfg. Co., Inc. v. Ravin Crossbows, LLC*, IPR2023-00407, Paper 53 at 40-41 (PTAB July 9, 2024) (Board denying Motion to Exclude for failing to identify allegedly offending paragraphs or specific parts of expert's declaration). The Board should thus deny PO's Motion for failure to properly object.

### B. Petitioner's Proposed POSITA Level Is Proper

Petitioner proposes that a POSITA, at the time of the purported invention, would have had (Petition, 5):

> "a Bachelor's degree in electrical engineering, computer engineering, computer science, physics, or a related field, and two years' work experience related to biometrics, facial authentication, computer vision, and/or optics, such that they would have had significant academic and/or work experience in both software development and optics. *Daft,* ¶¶129-31. Formal education can substitute for work experience and relevant work experience could substitute for formal education. *Id.*"

PO challenges the above POSITA level as "*broadly* defining the level of ordinary skill." (Mot., 1.)[1] But the broad breadth, particularly experience related to "biometrics, facial authentication, computer vision, and/or optics," is supported by the intrinsic record and the relevant prior art. With respect to the definition's inclusion of "facial authentication" and "computer vision," the '606 patent is titled "***Facial Recognition Authentication System*** Including Path Parameters." (EX1001, Title.) As Dr. Daft explains, computer vision is typically incorporated in biometric systems, such as facial recognition authentication systems. (EX1003, ¶41.)

[1] Emphasis added throughout, unless otherwise noted.

With respect to the definition's reference to "biometrics" and "optics," the '606 patent also describes non-facial authentication systems. For example, the Abstract refers to an authentication system more generally: "authenticating a user in an ***authentication system*** via a user's camera of camera equipped mobile device." (EX1001, Abstract.) The specification also identifies non-facial authentication systems, such as "an optical reader" and "fingerprint systems" as related art. (EX1001, 1:52-59.) Further, at least some of the challenged claims are directed to "authenticating three-dimensionality of a user," and are not limited to facial authentication. (*See, e.g.*, EX1001 ('471 Patent), Claim 1; Reply, 1.)

Indeed, the '606 specification further discusses "biometrics" generally. (EX1001, 1:52-59.) It also provides explanations about how optics in mobile devices and associated optical effects (*e.g.*, fish-eye distortion) may be used to increase the security of an authentication system. (EX1001, 29:10-30:23.)

The prior art confirms. For example, Derakhshani is titled "Spoof Detection For ***Biometric Authentication***." (EX1005, Title.) It relates to "biometric authentication" and "[b]iometric systems [] used to authenticate the identity of an individual . . . For example, iris scanners . . ." (EX1005, 1:6-16.) Derakhshani

also teaches a system that accounts for "optical effects." (EX1005, 15:57-60.) PO does not dispute that Derakhshani is pertinent art.[2]

Accordingly, Petitioner's POSITA level properly reflects the '606 patent and relevant prior art.

### C. Dr. Daft Meets Petitioner's POSITA Level

Given the proper POSITA level as discussed above, Dr. Daft qualifies as a POSITA for the '606 patent. He holds a Bachelor's and Master's degree in Physics and a Ph.D. in Materials Science. (EX1004, 1.) He has over two years of experience in biometrics and user authentication. (EX2082, 7:12-8:3 (describing his work at Qualcomm and General Electric (GE)[3] involving fingerprint

[2] PO's assertions that the pertinent art relates to facial three-dimensionality (Mot., 2) conflicts with its argument that Derakhshani does not teach facial authentication (Sur-reply, 16-17).

[3] PO contentions that Dr. Daft's GE work consisted of only a "few-week project" is incorrect. (Mot., 11 (citing EX2082, 68:13-19).) The "few weeks" in his testimony refers to a separate project at Lockhead Martin. (EX2082, 13:8-23.) As Dr. Daft clarified, "[p]utting together my experience at GE and my work at Qualcomm, that would be the two years work experience [in the field of biometrics]." (EX2082, 68:13-19.)

authentication systems), 73:21-75:8 (same); EX1004, 8; EX1003, ¶17; EX1060, ¶7.)

He also has over two years of experience in computer vision and imaging systems. (EX2082, 73:8-20 (describing work at Siemens involving imaging systems); EX1004, 7-8; EX1003, ¶14; EX1060, ¶7.) In addition, he has more than 25 years of experience in optics. (EX2082, 71:2-16; 72:18-73:7; EX1003, ¶¶13, 17.)

PO's arguments that this experience is "tenuously related" is incorrect, because PO fails to account for the breadth of the POSITA level as discussed above. (Mot., 1.) The '606 specification itself identifies fingerprint systems as related art. (EX1001, 1:52-59.) Moreover, ultrasound imaging relates to computer vision and optics. (EX1060, ¶¶7-8.) The fundamental physics concepts involved in fingerprinting and ultrasound imaging apply to facial biometrics and facial authentication systems, and so does expert experience. (EX1060, ¶8; EX1003, ¶¶38-39.)

And PO's criticism that Dr. Daft lacks experience building, analyzing, or deploying biometric facial authentication systems or "systems that determine three-dimensionality or liveness based on expected distortions or differences across multiple images" should be rejected. (Mot., 10.) Neither party's POSITA level imposes such a requirement. Further, the Board has rejected similar arguments.

*Rassini Suspensiones, S.A. de C.V. v. Muhr Und Bender KG*, IPR2022-00278, Paper 39 at 14 (PTAB July 5, 2023) (Board rejecting PO's argument that the expert must have "specifically ***designed*** a complete automotive suspension").

Finally, PO's assertions that Dr. Daft does not meet Petitioner's POSITA level is without merit. For example, PO says that Dr. Daft's computer vision and optics experience is "unrelated to image-based analysis of *facial photographs for authentication,*" or that his engagements cannot satisfy the requirements of "verifying *the three-dimensionality of a face*." (Mot., 11-12.) These are not deficiencies under Petitioner's level as set forth above. Instead, PO is merely injecting its own requirements into Petitioner's POSITA definition and asserting that Dr. Daft does not qualify under "Petitioner's" level.

### D. Dr. Daft Involvement In Certain District Court Cases Is Irrelevant

PO also tries to challenge Dr. Daft's qualifications based on district court case findings that are not relevant. (Mot., 8-9.) In *Howe v. Speedway*, the court precluded Dr. Daft from offering a *legal* conclusion as a technical expert—not from providing technical opinions or analysis within his expertise. (EX2034, 2 ("[Dr.] Daft is precluded from offering his opinion that Speedway collected biometric information as defined by BIPA, because that is just a legal conclusion. Daft's remaining opinions and testimony are allowed."), 10-12 ("Daft cannot offer

a legal conclusion about the terms 'biometric identifiers' and 'biometric information' as they are used in BIPA . . . The Court will decide any issues of statutory interpretation.").) Aside from being distinguishable, that ruling has no bearing here because nothing in that district court decision establishes that Dr. Daft lacks ordinary skill in the art relevant to the '606 patent.

With respect to *CPC Patent Techs. V. HMD Global*, PO fails to explain or provide any evidence that the district court disqualified Dr. Daft. According to Dr. Daft, the case settled before he gave testimony in court. (EX2082, 55:16-25.) By thus stating that "the court did not qualify him," PO is overreaching. (Mot., 9.)

**E. PO Improperly Narrows The POSITA Level**

The entire Motion is premised on PO's higher POSITA level. PO demands "work experience related to biometric ***security***, facial authentication, ***and*** ***three-dimensional*** computer vision such that they would have had significant academic experience and/or work experience in both facial biometrics and computer vision." (Mot., 7; POR, 28-29, Sur-reply, 24-25.) This is yet another attempt—after the POR and Sur-reply—to insert an incorrect POSITA level into the proceeding. As with those attempts, this newest attempt should be rejected. PO's own specification defines the "related art" to include biometrics, such as fingerprinting. (EX1001, 1:52-59.) The art at issue can help define the level of skill. *See*, *e.g.*, *Env't Designs, Ltd. V. Union Oil Co. of California*, 713 F.2d 693, 696-97 (Fed.

Cir. 1983) (defining level based on the "types of problems encountered in the art" and the "prior art solutions to those problems"). PO has no response to this, other than deflecting away from its own specification to its "claimed technology" even though some of its claims are not limited to facial authentication. (Mot., 6, 10.)

PO also attempts to justify its higher POSITA level by arguing that the "mathematics and science to understand expected differences and expected distortion of faces in images captured at different distances from a camera" is complex and does not "arise in the broad field of biometrics, optics, or two-dimensional computer vision." (Mot., 6.) Not so. PO's own expert testified that the "expected differences" of the FaceTec patents involve concepts of optics that "in general has been known for centuries." (EX1059, 58:3-61:10.) Likewise, the prior art Tanii states that technologies involving "fish-eye lens, i.e., 'distortion', are conventionally known." (EX1007, [0005].) And Tanii is able to depict and explain such optical effects using two short paragraphs and a simple line drawing. (EX1007, [0048]-[0049], Fig. 5.)

**F. The Facts Here Are Distinct From Those Of PO's Cited Cases**

PO suggests that admitting Dr. Daft's testimony would constitute an abuse of discretion. (Mot., 4.) But PO's cited cases are misplaced. In *Kyocera*, the parties accepted and applied the *same* POSITA level. *Kyocera,* 22 F.4th at 1377 n. 5 ("During claim construction, Kyocera accepted and applied Koki's definition of

ordinary skill"); *see also* 1376. That accepted definition expressly required specific experience in powered nailer design:

> "A person of ordinary skill in the art relevant to the Asserted Patents would have either (i) a Master's Degree in mechanical engineering with at least two years of experience in ***power nailer design***; (ii) a Bachelor's Degree in mechanical engineering with at least five years of experience in ***powered nailer design***; or, (iii) ten or more years of experience in ***powered nailer design***. This ***experience in powered nailer design*** would include mechanical design, tool design, manufacturing, mechanics of materials, stress analysis, ergonomics, and human factors."

*Kyocera*, 22 F.4th at 1376. The Federal Circuit held that admitting an expert's testimony was an abuse of discretion because the expert had no experience in powered nailer design—the very subfield required by the POSITA level and *accepted* by the parties.

Here, by contrast, the parties dispute whether the POSITA level requires experience specifically in "facial biometric security" and "three-dimensional computer vision." Because the alleged subfield is not an undisputed requirement for the POSITA level, admitting Dr. Daft's testimony would not constitute an abuse of discretion under *Kyocera*.

PO's remaining cited cases are also distinguishable. In *Interactive Commc'ns Int'l, Inc. v. Blackhawk Network, Inc.*, the Director excluded the expert's testimony due to material contradictions that undermined his credibility. IPR2024-00465, Paper 40, 2-4 (Director Oct. 9, 2025). For example, the expert

flip-flopped on how a reference would have been modified. *Id*. Here, PO's Motion does not identify or allege any specific back-tracking testimony by Dr. Daft.

In *Hirata v. S. Nevada Health Distr.*, there was minimal overlap between the expert's general expertise in *pool and spa design* and the subfield of the Health District's *management and human resources problems*. No. 2:13-cv-2302-LDG-VCF, 2016 WL 10706085, at *3 (D. Nev. May 31, 2016). Here, there is substantial overlap between Dr. Daft's general expertise in biometrics and optics, the patent at issue, and even PO's proposed subfield of biometric security, facial authentication, and three-dimensional computer vision.

Finally, *Billerud Aktiebolag (Publ) v. Westrock MWV, LLC* is analogous to *Kyocera*. The parties generally agreed to a POSITA level in *Billerud.* That level required experience in paperboard manufacturing, which the expert did not possess. IPR2023-01206, Paper 60 at 10, 60-61 (PTAB Mar. 12, 2025).

**G. PO's Request Is Too Broad**

PO's Motion improperly seeks to exclude both of Dr. Daft's declarations in their entirety. Because Dr. Daft's testimony is helpful to the trier of fact, excluding Dr. Daft's analysis entirely is unwarranted. The Board is well-equipped to give the proper weight to Dr. Daft's declarations in whole or in part, without excluding the declarations wholesale.

## IV. CONCLUSION

Because Petitioner's POSITA level is proper, because Dr. Daft meets that level, and because any disputes regarding the scope of his experience go towards weight rather than admissibility, PO's Motion to Exclude Dr. Daft's declarations (EX1003 and EX1060) should be denied.

Dated: March 3, 2026

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**Certificate of Service (37 C.F.R. § 42.6(e)(4))**

I hereby certify that the attached PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE was served on the below date via e-mail (by consent) to the following counsel of record for Patent Owner:

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