UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUMIO CORPORATION,
Petitioner

v.

FACETEC, INC.,
Patent Owner

Case IPR2025-00109

U.S. Patent No. 11,874,910

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE

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I. Introduction

Petitioner's opposition confirms that Petitioner chose an expert who lacks ordinary skill in the pertinent field (three-dimensional facial liveness authentication) and attempted to salvage that decision by diluting the relevant skill level to include unrelated biometric modalities (fingerprinting) and unrelated physics (ultrasound). It now encourages this Board to treat Dr. Daft's qualification defects as mere "credibility and weight" issues. But they are much more than that.

This is not a routine dispute over the strength of an expert's resume. Rather, this is the exceptional circumstance addressed by the Federal Circuit in *Kyocera*, where a witness who lacks ordinary skill in the relevant *subfield* may not provide testimony from the vantage of a POSITA. *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1377-78 (Fed. Cir. 2022). As *Kyocera* held, without ordinary skill "the witness' opinions are neither relevant nor reliable," and admitting such testimony is error. *Id.* The same is true here. Indeed, Dr. Daft admitted he has not worked on facial liveness and did not have the requisite facial authentication experience. Dr. Daft even attempted to create the false impression that courts had "qualified" him in biometric security when they had not.

Petitioner's opposition does not cure these defects. The Board should therefore grant Patent Owner's Motion and exclude Dr. Daft's declarations.

II. Argument

a. *Kyocera* Applies Even Where the Parties Dispute the Level of Skill

Kyocera held that "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 1376-77. Whether parties agree on the level of skill is beside the point. Under Petitioner's view, any party could avoid *Kyocera* simply by refuting the proposed skill level and then proffering a witness lacking the requisite specialized experience. That cannot be the law. Instead, if the tribunal's adopted level requires skill in a specific field, then testimony from someone who lacks that skill is inadmissible.

Patent Owner's Motion acknowledged the Board's general practice to weigh, as opposed to exclude, entire declarations from the record. Paper 61 ("Mot.") at 3. But that general practice does not apply when, as here, the witness lacks the threshold competence to offer testimony through the lens of a POSITA.

b. Petitioner's POSITA Definition is Overly Broad and Encompasses Irrelevant Art

Petitioner errs in arguing that the challenged patent "is not limited to facial authentication." Paper 66 ("Opp.") at 6. Petitioner relies on the challenged patent's specification, contending that it does not limit itself to facial authentication systems and instead identifies "non-facial authentication systems, such as 'an optical reader' and 'fingerprint systems' as related art." *Id.* This ignores the

patent's context. This portion of the specification is describing prior biometric systems and their shortcomings, explaining why the facial recognition authentication systems are superior. Citing fingerprint systems as "Related Art" does not convert the patent to one about fingerprinting, nor does it make fingerprint scanner experience relevant to the patent's three-dimensionality and liveness authentication techniques using multiple images at different distances. Mot. at 1-3, 6-7; *see also* Ex. 1001, 1:9-10.

The relevant art requires facial authentication and three-dimensional computer vision. Petitioner cannot evade its own explanation of the technology (Mot. at 2 (describing "facial authentication systems")) or the fact that the claims require capturing images of the user's head or face at different distances and determining expected distortions or differences. Mot. at 6. Petitioner's categorical "biometrics" and "optics" are not enough. While Patent Owner's point is not that those general categories are irrelevant to the field; it is that those are broad categories and the correct level of skill must include the right "biometrics" and "optics" in context. Here, that is facial biometric security and three-dimensional computer vision systems, not ultrasound wave propagation for fingerprint sensing.

Finally, Petitioner argues that because the concepts of distortion and fish-eye lens were generally known, a lower level of skill will suffice. Opp. at 11. Not so. This ignores the patent's use of the concepts of expected differences and expected

distortions for three-dimensional authentication. Regardless, even if Petitioner was right that these general concepts of optics had been known for centuries, that does not mean a person with ultrasound and fingerprint experience qualifies to opine on camera-based facial expected-distortion systems.

c. Dr. Daft Lacks the Requisite Experience and Training

Petitioner contends that Dr. Daft's GE and Qualcomm experience adds up to two years (*see* Opp. at 7-8, n.3), but when questioned on this, Dr. Daft testified that his "GE fingerprint work" was in fact tied to a military fingerprint application through Lockheed and lasted only a few weeks. Ex. 2082, 12:9-15, 13:19-23, 68:13-19, 71:1-11. Regardless, the larger point remains undisputed: Dr. Daft's "biometrics" experience is fingerprinting, not facial authentication.

Likewise, Petitioner claims Dr. Daft has "computer vision" experience because ultrasound imaging relates to computer vision and optics. Opp. at 8. But this again is not camera-based three-dimensional facial computer vision, and it does not qualify him to opine on expected facial perspective distortions or differences across multiple camera images taken at different distances.

Thus, the problem remains that he lacks the necessary skill in the pertinent art of facial biometrics and computer vision.

d. Petitioner Misses the Point About Dr. Daft's Prior Cases

Petitioner devotes a section to asserting that the district court rulings do not

show Daft was "disqualified." Opp. at 9-11. But this ignores Patent Owner's actual argument. Dr. Daft affirmatively claimed in his declaration that he had been qualified as an expert in biometric security. Ex. 1003, ¶17. That is false.

Petitioner improperly attempts to place the burden on Patent Owner to provide evidence that Dr. Daft has been disqualified. Opp. at 9-10. This is backwards. It was Dr. Daft's claim, and it is his burden to have support for it. Yet, neither he nor Petitioner provide the necessary support because none exists. And his deposition confirmed it. Ex. 2082, 48:2-51:14, 55:16-25, 59:16-25.

e. Patent Owner Objected with the Required Particularity

Patent Owner properly objected under 37 C.F.R. § 42.64(b)(1), providing "sufficient particularity to allow correction in the form of supplemental evidence." Patent Owner objected to Dr. Daft's experience under FRE 702, stating that his experience does not allow him "to reliably opine on these issues." *See* Paper 21 at 3. Petitioner could have corrected this defect by providing a qualified expert or evidence showing Dr. Daft had the appropriate experience. It did neither, choosing instead to ask the Board to treat the defect as a "credibility and weight" issue.

III. 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: March 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing **PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE** was served on March 10, 2026, via email directed to counsel of record for Petitioner at the following:

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Dated: March 10, 2026

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