

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

DH INTERNATIONAL LTD.
Patent Owner

Case No. IPR2025-00172
U.S. Patent No. 9,022,294

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

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	EXHIBIT 1005 AND EXHIBIT 1017 – THE SUGA EXHIBITS.....	2
A.	THE BOARD REGULARLY ALLOWS SUBMISSION OF COMPLIANT TRANSLATOR’S AFFIDAVITS WHERE THE FIRST AFFIDAVIT IS DEFECTIVE OR MISSING, AND PO CANNOT IDENTIFY ANY PREJUDICE FROM ALLOWING THE REPLACEMENT AFFIDAVIT	2
B.	PO IMPROPERLY USES ITS MOTION TO EXCLUDE AS AN ATTACK ON THE SUFFICIENCY OF THE EVIDENCE ITSELF.....	5
III.	EXHIBIT 1022	6
A.	PO MAKES AN IMPROPER LACK OF FOUNDATION ARGUMENT THAT IS EXPRESSLY REJECTED BY FED. R. EVID. 602	7
B.	PO IMPROPERLY APPLIES FRE 401 AND 403 IN ITS MOTION TO EXCLUDE	8
C.	EXHIBIT 1021.....	10
IV.	CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES

<i>Corning Inc. v. DSM IP Assets B.V.</i> , IPR2013- 00053, Paper 66 (PTAB May 1, 2014)	10
<i>Donnelly Garment Co. v. NLRB</i> , 123 F.2d 215 (8th Cir. 1941).....	10
<i>Google LLC v. DH International LTD.</i> , IPR2024-01322, Paper 33 (PTAB Feb. 10, 2026)	6
<i>Handiquilter v. Bernina Int’l</i> , IPR2013-00364, Paper 10 (PTAB Sep. 13, 2013), Ex. 1005 (June 17, 2013).....	3
<i>Hengdian Group DMEGC Magn. Co. v. Hitachi Metals, Ltd.</i> , IPR2017-01312, Paper 14 (PTAB Jan. 3, 2018).....	2
<i>Medtronic v. Nuvasive</i> , IPR2014-00074, Paper 14 (PTAB Apr. 1, 2014)	3
<i>Norman Int’l v. Andrew J. Testamentary Trust</i> , IPR2014-00283, Paper 52 (PTAB June 18, 2015).....	4
<i>TSMC v. DSS Tech. Mgmt</i> , IPR2014-01030, Paper 11 (PTAB Feb. 3, 2015).....	3
<i>Volkswagen Group of America, INC. v. Emerachem Holdings, LLC</i> , IPR2014-01555, Paper 20 (PTAB Mar. 16, 2015)	4

OTHER AUTHORITIES

<i>Consolidated Trial Practice Guide</i> at 79 (Nov. 2019)	1, 9
--	------

I. INTRODUCTION

The Board should deny PO's Motion to Exclude. "A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay) but may not be used to challenge the sufficiency of the evidence to prove a particular fact." *Consolidated Trial Practice Guide* at 79 (Nov. 2019). "The moving party has the burden of proof to establish that it is entitled to the requested relief." 37 CFR § 42.20(c). PO's Motion fails on all aspects. Other than paying lip service to the evidentiary rules, it does not explain why the evidence is inadmissible under those rules. PO's motion confuses various evidentiary standards and seeks to apply rules that prevent prejudice to juries, notwithstanding that this proceeding is before the Board. And PO ultimately fails to meet the required burden of proof.

As set forth below, PO's motion regarding Exhibits 1005 and 1017 (the "Suga Exhibits") should be denied, as permitting a new or corrected affidavit is common practice, and because PO fails to address the evidence's admissibility in its motion. PO's motion is nothing more than an attack on the sufficiency of the evidence itself, which it may raise during the Oral Argument in this proceeding. PO's motion regarding Exhibits 1021 and 1022 fares no better and should be denied because PO fails to provide an analysis under the proper evidentiary rules.

II. EXHIBIT 1005 AND EXHIBIT 1017 – THE SUGA EXHIBITS

PO asks the Board to exclude the Suga Exhibits for failing to meet the requirements of 35 C.F.R. § 42.63. However, PO ignores the Board's longstanding practice of allowing compliant translator's affidavits to be submitted where the initial affidavit is non-compliant or missing. Additionally, PO uses this Motion to argue the merits of whether the Suga Exhibits prove the foreign priority date, which is an improper substantive argument for a motion to exclude.

A. The Board Regularly Allows Submission of Compliant Translator's Affidavits Where the First Affidavit is Defective or Missing, and PO Cannot Identify Any Prejudice from Allowing the Replacement Affidavit

It has long been the Board's common practice to allow corrected translator's affidavits to be submitted in the case of faulty or missing affidavits. *Hengdian*, cited by the Board (allowing Petitioner to file an affidavit pursuant to 37 C.F.R. §§ 1.68 and 42.63(b) after the institution decision), is just one such example. *Hengdian Group DMEGC Magn. Co. v. Hitachi Metals, Ltd.*, IPR2017-01312, Paper 14 at 2 (PTAB Jan. 3, 2018); *Decision to Institute* ("DI"), Paper 8, 18 n.6, 38; *Patent Owner's Motion to Exclude*, Paper 24, 3-6.

The Board has routinely allowed parties to submit supplemental affidavits to correct affidavits that were not compliant with 37 C.F.R. § 42.63(b). In fact, the Board has consistently allowed parties to submit corrected affidavits with changed declarants in instances where the translator did not sign the original affidavit. *See*

TSMC v. DSS Tech. Mgmt, IPR2014-01030, Paper 11 at 3 (PTAB Feb. 3, 2015), Ex. 1004, Ex. 2012 (substituting Japanese-speaking attorney's declaration for manager's declaration); *see also Handiquilter v. Bernina Int'l*, IPR2013-00364, Paper 10 at 2 (PTAB Sep. 13, 2013), Ex. 1005 (June 17, 2013), Sub. Ex. 1005 (Sep. 18, 2013) (substituting translator declaration for manager's declaration); *see also Medtronic v. Nuvasive*, IPR2014-00074, Paper 14 at 2 (PTAB Apr. 1, 2014) (original affidavit was a declaration from an organization). That is precisely what happened here. In its Preliminary Response, PO asserted deficiencies in the original affidavit, including that the affidavit was made by a project manager. Paper 6, 3-4. The Board's Institution Decision analyzed PO's objections and, instead of striking the exhibit, expressly authorized Petitioner to "file a translation 'affidavit' or sworn declaration" correcting the issues. DI, 18, n.6. Petitioner did precisely this and submitted an updated Translator's Affidavit. Ex. 1017. No changes or corrections were made to the translation of Suga itself. Instead, Petitioner simply provided an updated Translator's Affidavit. Because the Board already authorized this corrected Affidavit, PO's motion should be denied.

PO does not now identify any other substantive defects with the corrected affidavit (Ex. 1017) or with the translation itself. Instead, PO argues that the affidavit with a different signatory is a *replacement*, not a *correction*, and should have been filed before institution. Paper 24, 2. PO does not cite any authority for its position

because there is none. After a search, Petitioner is unaware of *any* case, statute, or rule supporting PO's argument. But even if PO were correct that changing the signatory causes the new affidavit to be "[a] replacement, rather than a corrected affidavit[.]" the Board has allowed affidavits to be submitted when a foreign reference translation was originally filed without an affidavit. Paper 24, 2; *see Norman Int'l v. Andrew J. Testamentary Trust*, IPR2014-00283, Paper 52 at 14 (PTAB June 18, 2015), Ex. 1002, Ex. 1021 (ordering petitioner to file a new, compliant affidavit after oral argument); *see also Volkswagen Group of America, INC. v. Emerachem Holdings, LLC*, IPR2014-01555, Paper 20 at 4-7 (PTAB Mar. 16, 2015) (Petitioner authorized to file exhibits with translator's affidavit when initial translation was not filed with an affidavit).

Even if the Board agreed that the updated Translator's Affidavit is a replacement and not the expressly authorized correction, allowing the Affidavit is the simplest course of action that presents the least prejudice to all the parties. Indeed, PO does not identify any prejudice that it would suffer from permitting the affidavit. This is because the substance of the translation and the affidavit *remains unchanged* and has remained unchanged *since the filing of the Petition*. PO was provided the translation and an affidavit with the original Petition. After express authorization from the Board, a corrected affidavit was provided that merely changed the signatory—the translation itself remained unchanged. PO has had more

than an ample opportunity to address the substance of the translation and would suffer no prejudice from the Board allowing the affidavit to be a “replacement” should the Board decide it is not a simple “correction.”

B. PO Improperly Uses Its Motion to Exclude as an Attack on the Sufficiency of the Evidence Itself

“A motion to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay) but may not be used to challenge the sufficiency of the evidence to prove a particular fact.” *Consolidated Trial Practice Guide* at 79.

PO does not allege that the Suga Exhibits lack relevance, are hearsay, or fail to comply with any other evidentiary rules. Instead, PO simply attacks the procedural mechanism of the corrected affidavit, argues that Exhibit 1005 is not entitled to its foreign filing date, and asks this Board to conclude that it is not prior art. Paper 24, 3 (“There is no evidence in the IPR that Exhibit 1005 is prior art because it fails to comply with 37 C.F.R. § 42.63.”), 7 (“The Board improperly relied on a reference (Exhibit 1005) that was not prior art when it made its decision to institute this proceeding.” “Exclusion of Exhibit 1005 is also required from this IPR since it cannot be relied upon as non-prior art.”). Essentially, PO argues that the Suga Exhibits fail to substantively prove the foreign priority date of Exhibit 1005, an argument specifically prohibited in a Motion to Exclude. *See Consolidated Trial Practice Guide* at 79 (“A motion to exclude ... may not be used to challenge the sufficiency of the evidence to prove a particular fact.”). Proper vehicles exist for the

PO to advance this argument, including in the POPR, POR, PO's Sur-Reply, and Oral Argument, and, indeed, PO took advantage of these opportunities. *Patent Owner's Preliminary Response*, Paper 6, 3-4; *Patent Owner's Response*, Paper 15, 2; *Patent Owner's Sur-Reply*, Paper 20, 1-4. But raising this argument in the context of an evidentiary motion to exclude is improper and should be denied.

PO should be well aware of the limitations of making such substantive arguments in the context of a motion to exclude. Indeed, PO was previously informed about the appropriate use of a motion to exclude by the Board in another Final Written Decision addressing the '294 Patent. *See Google LLC v. DH International LTD.*, IPR2024-01322, Paper 33 at 70-74 (PTAB Feb. 10, 2026). Specifically, the Board found that PO's request to exclude expert testimony was "an improper use of a motion to exclude[.]" *Id.* at 72 n.19. The Board should reach the same conclusion here because PO, again, improperly advances substantive arguments in a Motion to Exclude.

III. EXHIBIT 1022

PO also asks to exclude Exhibit 1022 (Excerpt from McGraw-Hill Illustrated Telecom Dictionary) for lack of foundation. This exhibit consists of screenshots from an electronic version of a technical dictionary. The Motion should be denied because PO fails to cite to and perform an analysis under the relevant evidentiary rules.

A. PO Makes an Improper Lack of Foundation Argument That Is Expressly Rejected by Fed. R. Evid. 602

PO's heading for the relevant section of the Motion is "Petitioner's Exhibit 1022 Lacks Foundation." Paper 24, 7. However, PO fails to cite the relevant rules governing lack of foundation and instead appears to confusingly rely on Fed. R. Evid. 401 and 403 in support of its argument on foundation. Paper 24, 7. Lack of foundation, however, is generally governed by FRE 602, which requires a witness to have personal knowledge of a matter. FRE 401 and FRE 403 govern relevance and prejudice, issues that are mostly inapplicable to an administrative proceeding in the absence of a jury. In any event, application of FRE 602 to Exhibit 1022, a technical dictionary excerpt, is nonsensical and expressly excluded in this scenario by the rule itself. *See* Fed. R. Evid. 602.

Exhibit 1022 is an excerpt from the McGraw-Hill Illustrated Telecom Dictionary from 2000. *Petitioner's Reply*, Paper 18, at 26 (Appendix of Exhibits). Exhibit 1022 is used by Petitioner's Declarant, Dr. Michael Buehrer, in his Supplemental Declaration to support his opinion that a POSITA would have understood Suga's W-LAN access point and its cellular base station qualify as "devices or nodes on a network." Ex. 1021, pp. 6-7, ¶ 8. Dr. Buehrer cites to the McGraw-Hill dictionary to show how the basic definition of "node" supports his opinion on what a POSITA would have understood "data exchange device" to mean.

Id. This is the precise scenario **excluded** from foundational objections under Rule 602:

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. **This rule does not apply to a witness's expert testimony under Rule 703.**

Fed. R. Evid. 602 (emphasis added). PO provides no further explanation or authority for why Dr. Buehrer's reliance on the McGraw-Hill dictionary is somehow improper, and no argument for why it falls outside of the clear exception in Rule 602. The proper path would have been for PO to cross-examine Dr. Buehrer and seek to show why his testimony lacks credibility or is entitled to little weight. But PO did not. Instead, it declined to cross examine Dr. Buehrer in this proceeding, forfeiting its opportunity to explore any perceived deficiencies in Dr. Buehrer's reliance on Ex. 1022. Thus, given the clear exception for expert testimony, the Board should deny PO's request to exclude Ex. 1022 for lack of foundation.

B. PO Improperly Applies FRE 401 and 403 in its Motion to Exclude

PO appears to try to support its foundational argument for Exhibit 1022 with a citation to FRE 401 and 403. Paper 24, 7. Because PO does not make any specific arguments about why FRE 401/403 would be applicable, these arguments should be deemed waived. *Consolidated Trial Practice Guide* at 79 (Nov. 2019) ("A motion

to exclude must explain why the evidence is not admissible (e.g., relevance or hearsay)....”). Nonetheless, Exhibit 1022 is properly admitted under these rules.

FRE 401 sets the standard for relevancy and is permissive. Under the Rule, evidence is deemed relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence.” Exhibit 1022 clearly meets this bar because Dr. Buehrer uses the exhibit to support his take on the knowledge of a POSITA as of the priority date. The dictionary, which is from 2000 during the relevant time period, supports Dr. Buehrer’s opinion and makes it more probable that his opinion as to what a POSITA would have understood of the term “node” is correct. *See* Exhibit 1021, ¶ 8. PO is free to use its own expert testimony to disprove this fact, or its cross examination testimony to show how Dr. Buehrer’s opinion is incorrect. But Exhibit 1022 should not be excluded under the broad definition of relevancy set forth by FRE 401.

PO’s citation to FRE 403 does not fare any better. FRE 403 allows a court to exclude evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. In this administrative proceeding, in which there is no jury, there is no risk of prejudice. Unlike a jury of laypeople, the Board has legal and technical expertise, and “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). *See, e.g., 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”).

Finally, PO seems confused about the purpose of Exhibit 1022 as far as it relates to the Supplemental Declaration (Exhibit 1021), raising arguments about whether the dictionary is a printed publication or a patent. Paper 26, 8. But Petitioner has not relied on Exhibit 1022 for purposes of prior art. Instead, Dr. Buehrer only uses it to support his testimony on the understanding of the term “node” that a POSITA would have had. Exhibit 1021, ¶ 8. Exhibit 1022 only speaks to the understanding of a POSITA. Thus, whether the exhibit was presented in printed or electronic-book form, the information accurately represents the knowledge of a POSITA as of the priority date and presents no risk of prejudice to the proceedings under FRE 403. For the reasons above, the Motion regarding Exhibit 1022 should be denied.

C. Exhibit 1021

Regarding Exhibit 1021 (the Supplemental Declaration), PO asks the Board to exclude the entirety of the declaration, as it relies on Exhibit 1022. Paper 24, 8. However, Exhibit 1022 is cited a single time in ¶ 8 of the Declaration to support a

POSITA's understanding of the term "node." PO does not dispute the definition of "node" provided by Exhibit 1022, or the testimony regarding a "node" in Exhibit 1021. *See generally* Paper 20. Moreover, the Supplemental Declaration contains relevant testimony on multiple other topics. Nonetheless, PO asks the Board to discard the entirety of the Supplemental Declaration, which is improper. Requesting that ten pages of expert testimony be excluded because of a single citation is the very definition of overbroad, especially when there is no viable objection to Exhibit 1022. PO fails to articulate any reason that the entirety of the Supplemental Declaration should be excluded under any evidentiary rules, nor does it perform any analysis to support its request. Therefore, the motion to exclude Exhibit 1021 should be denied.

IV. CONCLUSION

PO's Motion to Exclude is nothing more than a procedural "side show." *See Volkswagen*, IPR2014-01555, Paper 20 at 5 ("Procedural 'side shows' not affecting the merits, such as a patent owner's disagreement prior to the time a preliminary response is due over improperly verified translations result in unnecessary expenses on the part of the parties and burden the Board."). Denying the Motion to Exclude is consistent with the policy rule "that Part 42 of 37 C.F.R. 'shall be construed to secure the just, speedy and inexpensive resolution of every proceeding.'" *Volkswagen*, IPR2014-01555, Paper 20 at 4 (citing 37 C.F.R. § 42.1(b)).

For the above reasons, and because it is a “side show,” Petitioner requests that the Motion to Exclude be denied.

Respectfully submitted,
BY: /s/ Paul R. Hart
Paul R. Hart, Reg. No. 59,646
Adam P. Seitz, Reg. No. 52,206
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that, on March 11, 2026, Petitioner's Opposition to Patent Owner's Motion to Exclude was served on Patent Owner's counsel of record:

Robert P. Hart (robert@addyhart.com)
Meredith Martin Addy (meredith@addyhart.com)
Gregory B. Gulliver (gbgulliver@addyhart.com)
litigation-dkt@addyhart

By: /s/ Paul R. Hart
Paul R. Hart, Reg. No. 59,646

COUNSEL FOR PETITIONER