

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC AND
FREEDMAN ELECTRONICS PTY LTD,
Petitioners

v.

ZAXCOM, INC.,
Patent Owner

IPR2025-00230
U.S. Patent No. 7,711,443

Patent Owner's Motion to Exclude

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GLOSSARY OF TERMS

Term	Definition
“Board”	USPTO Patent Trial and Appeal Board
“CTPG”	Consolidated Trial Practice Guide
“FRE”	Federal Rules of Evidence
“FWD”	Final Written Decision
“IPR”	Inter Partes Review
“Petition”	Petitioners’ Petition, IPR2025-00230, Paper 1 (PTAB Dec. 4, 2024)
“Petitioners”	RØDE Microphones, LLC and Freedman Electronics Pty Ltd.
“PO”, “Patent Owner”, or “Zaxcom”	Patent Owner, Zaxcom, Inc.
“POR” or “Response”	Patent Owner’s Response, IPR2025-00230, Paper 23 (PTAB Sep. 8, 2025)
“POSA”	Person of Ordinary Skill in the Art at the Time of the Invention
“Reply” or “Petitioners’ Reply”	Petitioners’ Reply, IPR2025-00230, Paper 43 (PTAB Dec. 1, 2025)
“Supplemental Expert Declaration”	Mr. Kyriakakis’ Declaration, IPR2025-00230, Exhibit 1073 (PTAB Dec. 1, 2025)

Pursuant to 37 C.F.R. §§ 42.23, 42.5, 42.64, the CTPG, and the FRE, PO hereby moves to exclude Exs-1039-1073, which were presented with Petitioner's Reply (Paper 43). Paper 45 timely preserved PO's objections thereto.

I. Federal Rules of Evidence 106

PO moves to exclude Exs-1058-1060 as they're incomplete. If "a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part ... that in fairness ought to be considered at the same time." FRE 106. Pages 4-5 and 7-10 of Ex-1058 are pages from an alleged Merriam-Webster's Collegiate Dictionary that are never referenced in the Reply or its Supplemental Expert Declaration. Page 6 shows multiple definitions of "pack" to construe "bodypack" but fails to show the page corresponding to "body," which ought to be considered simultaneously. For Exs-1059-1060, Petitioners rely on excerpts from Sweetwater's consumer glossary webpage defining the term "body pack." However, this glossary is part of a consumer-oriented retail and marketing website directed to musicians and consumers rather than technical instruction directed to engineers or a POSA. Without establishing the full technical context or reliability of these consumer materials, Petitioners' reliance on these exhibits risks misleading the record regarding understanding of wireless microphone system components by a POSA. The incompleteness of the exhibits also presents a misleading or distorted view of source.

II. Federal Rules of Evidence 401-403

PO moves to exclude Exs-1039-1073 as irrelevant. Evidence is relevant only if “(a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” FRE 401. FRE 402 provides that, unless an exception applies, irrelevant evidence is inadmissible. The “court may exclude relevant 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.” FRE 403.

Exs-1039–1057, 1061, and 1067–1069 are not relied upon to establish any specific claim limitation, supply any missing disclosure in the asserted prior art, or provide any evidentiary basis for a motivation to combine or reasonable expectation of success. Petitioners cite these exhibits only for generalized background propositions or generic technical concepts that do not materially advance any asserted ground of unpatentability. *See*, e.g., Paper 43 at 8, 10, 12, 14, 15, 17, 18, 25. Such conclusory or background references do not establish any fact of consequence relevant to patentability of the challenged claims. Petitioners’ improper reliance is particularly evident with respect to Ex-1053, which Petitioners did not rely upon in their Petition or Reply and introduced solely through its Supplemental Expert Declaration, the latter of which cannot introduce new

evidence or supply substantive support that was not previously relied upon.

Petitioners have failed to articulate any nexus between Exs-1039–1057, 1061, and 1067–1069 and any claim limitation, prior art disclosure, or obviousness rationale at issue. Nor do these exhibits remedy any alleged deficiency in the asserted prior art or render any disputed fact more or less probable. Because Petitioners have not demonstrated relevance to patentability of the challenged claims, these exhibits are irrelevant and inadmissible under FRE 401/402. *See* 37 C.F.R. § 42.62(a).

Ex-1039 is solely relied upon for the alleged ordinary meaning of “jam sync,” without establishing that Ex-1039 reflects the understanding of a POSA or that a POSA would rely on this patent to determine the term’s ordinary meaning. Reliance on a single prior art patent for this purpose carries minimal probative value and risks misleading the record, warranting exclusion under FRE 403.

Ex-1058 is irrelevant because pages 4-5 and 7-10 are never referenced in the Reply or its Supplemental Expert Declaration, and the referenced page includes the dictionary excerpt for “pack,” but does not define or address the disputed term “body” or “body pack,” rendering Ex-1058 irrelevant under FRE 401/402.

Petitioners have failed to establish that Exs-1059-1060 reflect the understanding of a POSA or otherwise have relevance under FRE 401/402. These exhibits originate from consumer-oriented retail and marketing webpages from Sweetwater, a commercial retailer of audio equipment, and do not constitute

technical references, industry standards, technical dictionaries, or other authoritative sources regarding the meaning of claim terms or the technical operation of wireless microphone systems. Petitioners have not established that Sweetwater is a technical authority, standards organization, or other reliable source whose consumer glossary or marketing content reflects POSA understanding. Ex-1060 purports to define “body pack,” but Petitioners have failed to establish that this definition reflects technical usage or would be relied upon by a POSA. Unsupported excerpts from a commercial retail website lacking technical foundation do not establish the technical meaning of a claim term and do not make any fact of consequence more or less probable under FRE 401/ 402.

Ex-1062 (resubmitted as Ex-1092 and hereinafter referred to as Ex-1062/1092) should be excluded under FRE 401/402 because it is a FWD issued in a *different* IPR involving a *different* patent (U.S. Patent No. 7,929,902), claims, prior art, grounds of unpatentability, expert testimony, and evidentiary record. The Board’s findings in that separate proceeding do not establish any fact regarding the teachings of the prior art, the scope and content of the asserted references, or the knowledge of a POSA as applied to this IPR. Because the Board’s findings in that IPR were based on the record and arguments presented there, they do not make any fact of consequence more or less probable in this IPR.

Ex-1063 (resubmitted as Ex-1093 and hereinafter referred to as Ex-1062/1093) is a press release announcing PO's receipt of a Technical Achievement Award which consists of marketing and promotional statements created for public relations purposes. This exhibit is not a technical disclosure, prior art reference, or reliable evidence of a POSA's understanding. Promotional materials are inherently advocacy-driven and do not establish any claim limitation, prior art teaching, motivation to combine, or other fact of consequence relevant to the instituted grounds. Ex-1063/1093 does not make any fact of consequence more or less probable in this proceeding, and is irrelevant and inadmissible under FRE 401/402.

PO moves to exclude Ex-1064 as Petitioners have not established its relevance to any unpatentability ground properly presented in their Petition or Reply, and it does not make any fact of consequence more or less probable in this proceeding. Ex-1064 is a Texas Instruments "TMS320C5x User's Guide," which does not disclose any limitation of the challenged claims, support any asserted prior art combination, or establish any motivation to combine. Nor have Petitioners established that this document reflects the understanding of a POSA with respect to the specific claim limitations or prior art references at issue here.

PO moves to exclude Ex-1065 as Petitioners have not established the relevance of Ex-1065 to any unpatentability ground properly presented in their Petition or Reply, and it is irrelevant to any issue properly before the Board. Ex-

1065 is a press release that consists of promotional and marketing statements regarding product capabilities and industry positioning and does not establish any claim limitation, prior art teaching, motivation to combine, or other fact of consequence relevant to the instituted grounds. Because Ex-1065 does not make any fact of consequence more or less probable in this proceeding, it is irrelevant and inadmissible under FRE 401/402. PO further moves to exclude Ex-1065 under FRE 403 because Ex-1065 is a promotional press release containing advocacy-driven statements intended for marketing and public relations purposes. Such statements carry minimal probative value with respect to the scope and content of the prior art, the understanding of a POSA, or any motivation to combine the asserted references, and its admission risks misleading the record by presenting unverified promotional claims as technical evidence.

Ex-1070 (resubmitted as Ex-1089, hereinafter referred to as Ex-1070/1089), consists of operating instructions for a consumer product. Petitioner has not established a nexus between it and the specific claim limitations, prior art combinations, or motivations to combine at issue in this proceeding. Petitioners have failed to establish that the exhibit was publicly accessible prior to December 2025. Petitioners' declaration (Paper 55, ¶ 6) establishes only that a PDF was accessed on Archive.org in December 2025. It does not establish when Archive.org captured the page, or when it was publicly accessible.

Ex-1071 (resubmitted as Ex-1090, hereinafter referred to as Ex-1071/1090)

is cited only for general background propositions and does not establish any fact of consequence relevant to the instituted grounds. Petitioners rely on it to suggest that radio and GSM technologies were well known at a particular time but have not established the date the document existed or was published. Without this information, these exhibits cannot establish the state of the art or the knowledge of a POSA at the relevant time. PO further objects to Ex-1071/1090 under FRE 402 because Petitioners did not rely on it in their Reply and have not established the exhibit's relevance to any of its Petition or Reply arguments.

PO objects to Ex-1072 (resubmitted as Ex-1091, hereinafter referred to as Ex-1072/1091) because Petitioners have failed to establish the date the document was publicly accessible. Petitioners' declaration (Paper 55, ¶ 8) establishes only that it was accessible on alldatasheet.com in December 2025, but not its source, publication, authenticity, or public accessibility. PO also objects to Ex-1072/1091 under FRE 401/402 because Petitioners did not rely on this exhibit in their Reply and have not established its relevance to any arguments properly before the Board.

Significant portions of Ex-1073 (the Supplemental Expert Reply) are irrelevant because they do not address any claim limitation, prior art disclosure, or obviousness rationale properly raised in the Petition. Instead, Mr. Kyriakakis introduces new theories, evidentiary citations, and substantive arguments that were

not in the Petition to attempt to remedy deficiencies in Petitioners' prima facie case. A reply declaration may only respond to arguments raised in the POR and may not introduce new grounds, new evidence, or new theories of unpatentability. *See* 37 C.F.R. § 42.23(b); CTPG at 73–74. Because these portions of Ex-1073 fall outside the proper scope of reply (*see*, e.g., Ex. 1073, ¶¶ 73-74, 82-83, 93-94, 104, 116-120, 154-156) and do not make any fact of consequence more or less probable, they are irrelevant and inadmissible under FRE 401/402. Admission of Ex-1073 would also unfairly prejudice PO and confuse the issues by permitting Petitioners to rely on new theories and evidence introduced after institution, thereby circumventing the statutory requirement that the Petition identify all evidence supporting unpatentability. *See* 35 U.S.C. § 312(a)(3). Such improper supplementation invites consideration of extraneous materials unrelated to the instituted grounds, wastes resources, and undermines the orderly conduct of these proceedings.

Even if the Board finds any minimal relevance in Exs-1039-1073, the exhibits should still be excluded under FRE 403 because their probative value, if any, is substantially outweighed by the dangers of unfair prejudice, confusing the issues, wasting time, and needlessly presenting cumulative evidence, as these exhibits generally exist to amend holes in Petitioners' arguments.

III. Federal Rules of Evidence 702-703, and 705

PO moves to exclude Ex-1073 under FRE 702, 703, and 705 because it constitutes inadmissible expert testimony lacking a reliable foundation, insufficient disclosure of the facts and data underlying the opinions, and proper methodology applied to the facts. FRE 702(b)–(d). Ex-1073 fails to satisfy these requirements because it offers conclusory assertions, unsupported interpretations of technical materials, and selectively cites evidence without identifying a reliable methodology or sufficient factual basis for its conclusions. The declaration does not adequately disclose the analysis, reasoning, or technical basis necessary to permit evaluation of the reliability of his opinions, as required by FRE 705.

Ex-1073 is further inadmissible because Mr. Kyriakakis confirms that the opinions therein rely, at least in part, on unidentified and undisclosed materials that are not part of the evidentiary record and cannot be evaluated, tested, or rebutted when he states that he “may also consider additional documents and information ... including documents that may not yet have been provided.” Ex. 1073 ¶ 2.

Expert testimony must be based on disclosed facts or data sufficient to permit assessment of reliability and meaningful cross-examination. FRE 702(b); FRE 705. Because Mr. Kyriakakis relies on undisclosed materials and fails to disclose the complete factual basis and methodology underlying his opinions, Ex-1073 lacks a sufficient foundation and constitutes inadmissible expert testimony.

IV. Federal Rules of Evidence 801-802

Exs-1039-1041, 1043-1047, 1049-1057, 1059-1061, 1063, 1065, 1067-1069, and 1073 should be excluded. Hearsay is an out of court statement to prove the truth of the matter asserted (FRE 801) that is not admissible unless a federal statute, the FRE, or other Supreme Court rule applies. FRE 802. Each of these exhibits constitutes an out-of-court written statement by third parties, relied upon by Petitioner to establish the truth of technical propositions regarding the state of the art, a POSA's knowledge, or the alleged disclosure of particular features or concepts. *See* Reply, Paper 43 at 8, 10, 12, 14, 15, 17, 18, and 25. As such, they constitute hearsay under FRE 801.

Petitioners rely on Ex-1039 to assert that a POSA understands “jam sync” to mean synchronizing one time reference or clock to another time reference or clock. Petitioners' expert cites Exs-1040, 1041, and 1043 to assert that a single monophonic track cannot generate the acoustic spatial information or imaging necessary to reproduce the sonic experience of being present at a performance. Petitioners' expert cites Exs-1044, 1049, and 1052 to explain that it was allegedly well-known that a DSP is a species of, and often integrated with, a microcontroller. Petitioners' expert cites Exs-1045 and 1047 to support that Woo is allegedly analogous art in the same field as Strub since they both concern audio recording along with other common objectives. Ex-1046 is relied upon by Petitioners' expert

to support mixing multiple tracks to produce a two-track stereo file was allegedly a standard technique. Exs-1048 and 1051 are relied upon by Petitioners to support that solid state memories up to 128MB were allegedly available and suitable for storing audio. Exs-1050, 1054, and 1055 are relied upon by Petitioners' expert to support the size of flash memories allegedly available in 2004. Ex-1053 is not relied upon by Petitioners, but their expert cites Ex-1053 to support that an unrelated patent recites "remote receiver." Exs-1056 and 1057 are relied upon by Petitioners to support their definition of a master timecode generator. Exs-1061, 1067, 1068, and 1069 are relied upon by Petitioners to support their definition of body packs. Because these exhibits are relied upon for their truth and no applicable hearsay exception was established, they all constitute inadmissible hearsay.

Exs-1059 and 1060 are excerpts from a Sweetwater website. Each contains out-of-court statements authored by unidentified third parties and is offered for its truth. These statements are hearsay under FRE 801(c) and inadmissible under FRE 802. Petitioners have not established any applicable hearsay exception. Petitioners have not established that Sweetwater constitutes a reliable technical authority, nor have they presented testimony establishing these glossary materials as learned treatises relied upon by a POSA.

Ex-1063/1093 is a press release that contains out-of-court statements offered for the truth of the matters asserted, including descriptions of products, features,

and alleged capabilities and statements regarding the capabilities, design, and industry recognition of PO's wireless microphone systems. Ex-1065 is a Texas Instruments DSP products document, including statements regarding the capabilities, performance, and technical characteristics. To the extent Petitioner relies on these statements to establish technical facts or the meaning of claim terms, such reliance is hearsay. Additionally, the press release contains statements attributed to other individuals or sources, which constitutes hearsay within hearsay. Petitioners have not established that any hearsay exception applies.

Ex-1073 contains hearsay and hearsay within hearsay. Mr. Kyriakakis relies on out-of-court statements, including technical documents, third-party publications, and other materials, to establish the truth of the matters asserted therein. Petitioners have not established that any hearsay exception applies. These exhibits are not being used merely to show their existence or publication, but rather to prove the truth of the assertions contained therein.

V. Federal Rules of Evidence 901-902

PO moves to exclude Exs-1065, 1070-1072/1089-1091 as they are unauthenticated. FRE 901(a) states that the "proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." FRE 901(a). FRE 901(b) provides examples of evidence that satisfies the authentication requirement. FRE 902 states a list of examples that are "self-authenticating."

Ex-1065 should be excluded because Petitioners have failed to authenticate the exhibit or establish that it is what they claim it is. Petitioners' declaration (Paper 55, ¶ 5) states only that the declarant accessed a Bing search results page and located a press release through that search. The declaration does not establish the source, origin, publisher, or authenticity of the underlying Texas Instruments press release itself, nor does it establish that Ex-1065 is a true and correct copy of an authentic publication by Texas Instruments. Authentication requires sufficient evidence to support a finding that the exhibit is what Petitioners claim it is. Nor have Petitioners established that Ex-1065 qualifies as a self-authenticating document under FRE 902. Ex-1065 has not been properly authenticated.

Regarding Ex-1070/1089, Petitioners have failed to establish the time period during which Ex-1089 was publicly accessible. Petitioners' declaration (Paper 55, ¶ 6) establishes only that a PDF was accessed on Archive.org in December 2025. It does not establish when the document was captured by archive.org, or when it was publicly accessible. Accordingly, Petitioners have failed to establish authentication of the exhibit for purposes of this proceeding.

Petitioners have failed to authenticate Ex-1071/1090 or establish when the document was publicly accessible. Petitioners state that a Bing search results page was accessed in December 2025 (Paper 55, ¶ 7) but do not establish the source, publication, authenticity, or public accessibility of the underlying document.

Ex-1072/1091 should be excluded because Petitioners have failed to establish that the exhibit is what they claim it is. Petitioners' declaration (Paper 55, ¶ 8) states only that a PDF was accessed on alldatasheet.com in December 2025 and that Ex-1091 is a true and correct copy of that PDF. The declaration does not establish the origin, authorship, or publication of the underlying document, nor does it establish that the document is an authentic Conexant publication.

Printouts from a commercial website, without proper authentication or supporting testimony, do not satisfy the authentication requirements. *See Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148, Paper 42 at 10 (PTAB April 23, 2015) (emphasis added) (“When offering a printout of a webpage into evidence to prove the website’s contents, the proponent of the evidence **must** authenticate the information from the website itself, not merely the printout.”) Accordingly, Exs-1065, 1070-1072/1089-1091 are all unauthenticated under FRE 901/902.

VI. Federal Rules of Evidence 1006

Ex-1073 should be excluded because it improperly summarizes and characterizes other expert declarations and technical materials without providing a proper evidentiary foundation or making the underlying materials properly admissible for summary purposes. This fails to satisfy the requirements for admissible summary evidence, as defined in FRE 1006.

VII. 37 C.F.R. § 42.6(a)(3)

Exs-1062/1092 and 1073 should be excluded under 37 C.F.R. § 42.6(a)(3) because Petitioner improperly attempts to incorporate arguments by reference. Petitioner cites Ex-1062/1092 as a whole (*see* Paper 43 at 14), without identifying specific portions relevant to their arguments or explaining their relevance to the instituted grounds, thereby attempting to incorporate arguments and findings by reference rather than presenting specific arguments in their briefing.

Ex-1073 should be excluded because Mr. Kyriakakis improperly attempts to cure deficiencies in the Petition by introducing new citations, new evidentiary support, and new substantive arguments by reference that were not presented in the Petition or the Reply. Such incorporation by reference is improper and renders those portions of the declaration inadmissible. Petitioners may not rely on such reply expert testimony to fill gaps in their prima facie case. *See* 37 C.F.R. § 42.23(b); *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369-70 (Fed. Cir. 2016); *see also* 37 C.F.R. § 42.23(b); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 7-10 (PTAB Aug. 29, 2014) (informative).

Date: February 23, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 23, 2026, a complete and entire copy of the foregoing “PATENT OWNER’S MOTION TO EXCLUDE” is being served on the petitioners at the electronic addresses shown below per consent:

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