

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

IPR2025-00232
U.S. Patent No. 10,276,207

Patent Owner's Reply to
Petitioners' Opposition to 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
“IPR”	Inter Partes Review
“Motion”	Petitioners’ Motion to Exclude, IPR2025-00230, Paper 65 (PTAB Feb. 23, 2026)
“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.
“POSA”	Person of Ordinary Skill in the Art at the Time of the Invention

I. FRE 106 (Exs. 1058-1060)

Ex-1058 is not properly admitted under FRE 106 to define “pack.” The disputed claim term is “bodypack.” Petitioners provide no dictionary definition or contextual explanation for “body,” and the exhibit is incomplete and potentially misleading. FRE 106 is not a rule of permitting selective excerpts to be admitted while withholding necessary context. If Petitioners wish to rely on definitions for this term, fairness requires providing definitions for both “body” and “pack.”

Exs-1059–1060 similarly purport to define “bodypack” using consumer-facing Sweetwater materials. Petitioners argue that exclusion is unnecessary, but they have not introduced any supporting portions or context that would satisfy FRE 106. Because Petitioners provide only a partial excerpt that risks misleading the record, exclusion or supplementation is warranted.

II. FRE 401-403 (Exs. 1039-1073)

Petitioners claim relevancy because they were relied on in Mr. Kyriakakis’ expert declaration. Reliance in **an expert declaration alone** does not satisfy relevance under FRE 401-403. Petitioners fail to identify any **specific passage in the Petition or Reply** where these exhibits are relied upon, instead pointing only to citations in Mr. Kyriakakis’ declaration. This is distinguishable from *Grp. III Int’l, Inc. v. Targus Int’l LLC*, IPR2021-00371, Paper 43 at 3-4 (PTAB Oct. 21, 2021) which involved “added claim charts” incorporated into substantive

argument. Where exhibits are never tied to substantive arguments in the Petition or Reply, they lack independent probative value and should be properly excluded. Here, Petitioners rely solely on expert citations without substantive discussion, which is insufficient. See *3M Co. v. Evergreen Adhesives, Inc.*, 860 F. App'x 724, 725–26 (Fed. Cir. 2021) (finding that the Board did not abuse its discretion in declining to consider arguments presented only through incorporation by reference in an expert declaration). “The rules governing the conduct of AIA trial proceedings were designed to promote fairness and efficiency....37 C.F.R. § 42.24(a) sets word limits for petitions, motions, and replies, and § 42.6(a)(3) prohibits incorporating arguments by reference from one document into another. Thus, parties that incorporate expert testimony by reference in their petitions, motions, or replies ... risk having the testimony not considered by the Board. See *Cisco Systems, Inc. v. C-Cation Techs., LLC*, Case IPR2014-00454 (PTAB Aug. 29, 2014) (Paper 12) (informative).” CTPG at 35-36.

Petitioners further assert that Exs-1039 and 1053 are relevant. However, this relevance completely rests on expert interpretation rather than direct evidentiary support. Exhibits that only serve to support an expert's conclusory assertions, without independent probative value, are properly excluded under FRE 401/403.

Finally, Petitioners' reliance on Exs-1062-1065, 1070–1072 for generalized background is misplaced. FRE 401 requires evidence to be relevant - these are not.

III. FRE 702, 703, and 705 (Ex. 1073)

Petitioners state that PO identifies “no specific deficiencies and cannot serve as the basis for exclusion.” Paper 66 at 6. PO argued that Ex-1073 “offers conclusory assertions, unsupported interpretations of technical materials, and selectively cites evidence.” Paper 65 at 9. PO specified these deficiencies in its Sur Reply. *See* Paper 59 at 1-5. Petitioners attempt to further rebut that Petitioners’ expert relies on unidentified and undisclosed materials, by stating that it was a “reservation of rights.” Paper 66 at 6. Petitioners omit Mr. Kyriakakis’ deposition where he confirmed that he may be relying on additional documents/background knowledge for his preparation of his declaration. *See* Ex-2030 at 34. This declaration offers opinions based on materials neither cited nor authenticated.

IV. FRE 801-802 (Exs. 1039-1041, 1043-1047, 1049-1057, 1059-1061, 1063, 1065, 1067-1069, and 1073)

Petitioners claim that Exs 1039-1041, 1043, and 1056 all fall under FRE 803(16) (ancient documents exception). However, this exception states that “[a] statement in a document that was prepared before January 1, 1998, and whose authenticity is established” is admissible. Petitioners fail to establish any authenticity in any of the above-mentioned exhibits.

Next, Petitioners claim “[m]any of the remaining documents are... not quite ancient documents but are relied on to corroborate Mr. Kyriakakis’ opinions ... and

thus admissible under the residual exception, FRE 807.” Paper 66 at 7. Petitioners effectively concede that these materials constitute hearsay and could not find an exception that would apply to these exhibits. Petitioners thus include Exs-1044-1047, 1049-1052, 1054-1055, 1057, 1061, and 1067-1069 into the residual exception without demonstrating the required guarantees of trustworthiness. Petitioners then erroneously conclude that “because these patents and patent application publications are being used as evidence of the knowledge and understanding of POSAs at the relevant time ... they are not being used for hearsay purposes.” Paper 66 at 8. Petitioners cite *Mylan Pharms., Inc. v. Sanofi-Aventis Deutschland GmbH*, IPR2019-00122, Paper 83 at 61-62 (PTAB May 29, 2020), however, misstate the conclusion. The Board held that *dictionary* definition excerpts were “offered to show how a person of ordinary skill in the art would have understood a claim term.” The Board in *Mylan* then cites *Phillips* stating that “the court has observed that dictionaries ... can be used in claim construction.” *Id.* This is not the case here.

Lastly, Petitioners state Exs-1060 and 1065 are “old industry publications that similarly exhibit sufficient guarantees of trustworthiness for the purposes for which they are used.” Paper 66 at 8. Petitioners offer no evidence that Sweetwater constitutes a reliable technical authority relied upon by a POSA, nor any testimony establishing that these materials qualify as learned treatises. Ex. 1065 contains

statements regarding the capabilities, performance, and technical characteristics of the referenced product, which are relied upon for the truth of the matters asserted.

V. FRE 901-902 (Exs. 1065 and 1070-1072)

Petitioners claim authentication under FRE 901(b)(8) for Exs-1065 and 1070-1072/1089-1091. However, in full, FRE 901(b)(8) requires the document to be “in a condition that creates no suspicion about its authenticity; was in a place where, if authentic, it would likely be; and is at least 20 years old when offered.” FRE 901(b)(8). Petitioners fail to prove that these exhibits meet the 20-year requirement and that the documents were found in a place where authentic documents of that type would likely be located. Without satisfying these conditions, these exhibits are not authenticated and fail under FRE 902.

VI. FRE 1006 (Ex. 1073)

Petitioners fail to provide an evidentiary foundation for Mr. Kyriakakis’ summaries of other expert declarations/technical materials. Ex-1073 characterizes materials without making them independently admissible or summarizable.

VII. 37 C.F.R. § 42.6(a)(3) (Exs. 1062 and 1073)

Petitioners assert Ex. 1062 shows PTAB conclusions regarding Woo, but fail to cite any specific portion, relying on the exhibit as a whole. Ex-1073 suffers from the same flaw, incorporating arguments and citations without specificity. PO has already detailed the deficiencies (*see* Paper 59 at 1-5; *supra* § III). These exhibits should be excluded.

Date: March 9, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 9, 2026, a complete and entire copy of the foregoing “PATENT OWNER’S REPLY TO PETITIONERS’ OPPOSITION TO PATENT OWNER’S MOTION TO EXCLUDE” is being served on the petitioners at the electronic addresses shown below per consent:

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