

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AJINOMOTO CO., INC.

Petitioner,

v.

ABTIS CO., LTD.

Patent Owner.

CASE: IPR2025-00283

U.S. PATENT NO. 11,896,675

**PATENT OWNER'S MOTION TO
SUBMIT SUPPLEMENTAL EVIDENCE**

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Patent Owner AbTis Co., Ltd. (“AbTis”) respectfully moves pursuant to the Board’s discretionary authority under 37 C.F.R. § 42.5(b) for leave to submit supplemental evidence in the form of a corrected declaration of its expert.

I. INTRODUCTION & BACKGROUND

AbTis’s expert Dr. Zhaohui Sunny Zhou’s corrected declaration (“Corrected Declaration”) (Ex. 2012) is substantively identical to his original second declaration (Ex. 2008) and addresses only a procedural, non-substantive deficiency: the absence of explicit perjury oath language. *See* 28 U.S.C. § 1746. This deficiency was first identified by Petitioner in its Motion to Exclude filed April 17, 2026 (Paper 34). AbTis seeks leave now because Petitioner’s March 13, 2026 Objections did not specifically identify the statutory oath deficiency as a ground of objection. *See* Paper 29. Because AbTis did not have proper notice of the deficiency, AbTis was deprived of a meaningful opportunity to cure during the allotted time provided by 37 C.F.R. § 42.64(b)(2) and was unable to serve Ex. 2012. The Board should grant leave in the interest of maintaining a complete and accurate record.

AbTis filed its Motion to Amend accompanied by Dr. Zhou’s first declaration (Ex. 2004) containing the requisite statutory oath. *See* Paper 23. AbTis subsequently filed its Reply to Petitioner’s Opposition to the Motion to Amend on March 6, 2026, accompanied by Dr. Zhou’s second declaration (Ex. 2008). *See* Paper 28. Dr. Zhou’s second declaration addressed Petitioner’s and Petitioner’s

expert's arguments and inadvertently did not include the specific perjury oath language contained in Dr. Zhou's first declaration.

II. LEGAL STANDARD

The Board may waive or suspend any requirement of Part 42 for good cause. 37 C.F.R. § 42.5(b). The Board also has discretion to order supplemental evidence in the interests of justice, and in so doing considers factors including whether the moving party acted diligently, the opposing party would suffer prejudice, and the evidence is important to the resolution of the proceeding, as well as the nature of the deficiency sought to be cured. Under 37 C.F.R. § 42.64(b)(1), written objections to evidence must “identify the grounds for the objection with sufficient particularity.” The purpose of the written objection requirement is to give the proponent of the evidence notice of the deficiency and a meaningful opportunity to cure during the supplemental evidence window. An objection that does not identify a specific deficiency with sufficient particularity fails to serve this purpose. *See Hunter's Mfg. Co. v. Ravin Crossbows, LLC*, IPR2023-00407, Paper 53 at 41 (P.T.A.B. July 9, 2024) (denying motion to exclude where movant's “[o]bjections identif[ied] no allegedly offending paragraphs or any other specific parts of [expert's] Reply Declaration[,]” leaving non-movant “without any meaningful sense of the alleged evidentiary flaws in [expert's] Reply Declaration”).

III. ARGUMENT

A. Petitioner's Objections Lacked Specificity, Depriving AbTis of the Opportunity to Cure

Petitioner's objection to Exhibit 2008 under FRE 901–902 stated only that the exhibit “lacks sufficient indicia that the exhibit is what it purports to be.” Paper 29, 2. This language does not identify a missing perjury oath. It is the type of generic, conclusory objection that fails to give the opposing party fair notice of what it needs to correct. Petitioner's complaint that Exhibit 2008 lacks a statutory oath under 35 U.S.C. § 25 is a new objection, first appearing in Petitioner's Motion to Exclude (Paper 34). Petitioner did not sufficiently articulate this objection in Paper 29. Written objections must be made with specificity because the supplemental evidence mechanism of § 42.64(b)(2) is only meaningful if the proponent knows precisely what deficiency must be cured. AbTis could not cure Petitioner's complaint as it did not know if the alleged defect was a missing perjury oath, as opposed to a missing signature, missing exhibit list, or other “authentication” concerns.

Contrasting Petitioner's objection to Exhibit 2008 with the objection to Exhibit 2010 is instructive. Petitioner objected to Exhibit 2010 “under 37 C.F.R. § 42.63(b) because the rule requires a translation and an affidavit attesting to accuracy for foreign language publications.” *See* Paper 29, 3. That objection cited a specific regulation and explained exactly why it believed the exhibit was deficient. AbTis understood the objection, and timely served supplemental evidence. Notably,

Petitioner has not moved to exclude Exhibit 2010, based on the served supplemental evidence. Had Petitioner objected to Exhibit 2008 with equivalent specificity, AbTis would have promptly served a corrected declaration.

B. Good Cause Exists to Grant Leave Under 37 C.F.R. § 42.5(b)

Even if the Board were to conclude that Petitioner's Objections were sufficiently specific, good cause exists to grant leave here. First, the deficiency is technical and non-substantive. Exhibit 2012 is substantively identical to the originally-filed second declaration, Exhibit 2008. The sole change is the addition of the statutory perjury oath language. *See* Ex. 2012, ¶ 52. The deficiency is the kind of formal, technical error that courts and the Board routinely permit to be cured.

Second, on April 17, 2026, the same day Petitioner served its Motion to Exclude, AbTis promptly contacted Petitioner to determine its position on leave, while simultaneously obtaining the Corrected Declaration from Dr. Zhou, which was served on April 20, 2026. AbTis's response demonstrates diligence.

Third, Petitioner will not suffer any cognizable prejudice from admission of the Corrected Declaration because Petitioner has had the substance of the second declaration since March 6, 2026. Petitioner has had ample time to review it, respond to it, and prepare its motion to exclude. Petitioner could have, but chose not to, depose Dr. Zhou to inquire about the missing oath via cross-examination. There is no new information in Exhibit 2012 that Petitioner has not already had the

opportunity to address. By contrast, the prejudice to AbTis by excluding Exhibit 2008 is severe and disproportionate to the nature of the deficiency. Exclusion of Exhibit 2008 would strip AbTis of its technical expert's testimony on critical patentability questions at a proceeding in which AbTis had no notice of the specific deficiency during the cure window. This exclusion would be based solely on the omission of a few words from a procedural paragraph. Such a result would be inequitable. *Sony Corp. v. Fujifilm Corp.*, IPR2018-00876, Paper 26 at 4 (P.T.A.B. April 2, 2019) (granting motion to submit corrected expert declaration previously omitting oath, explaining "unintentional, easily and quickly corrected mistakes are not a basis for what is essentially a request to exclude the [expert's] declarations").

Fourth, IPR proceedings are intended to resolve patentability questions on the merits, based on a complete and accurate evidentiary record. Exclusion of Exhibit 2008—and by extension, the corresponding portions of AbTis's Reply—would not serve the interests of justice. It would result in a materially incomplete record based on a technical formality that AbTis never had the opportunity to cure. The Board's discretionary authority exists precisely to prevent procedural technicalities from producing unjust outcomes.

IV. CONCLUSION

AbTis respectfully requests that the Board grant its motion for leave to submit the Corrected Declaration, Exhibit 2012, as supplemental evidence.

Dated: April 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2026, a true and correct copy of the foregoing was caused to be served on the following counsel of record for Petitioner by electronic mail at the following address:

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