

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AROMA360, LLC,

Petitioner,

v.

AIR ESSCENTIALS, INC.,

Patent Owner.

Case IPR 2025-00705
U.S. Patent No. 9,527,094

**PATENT OWNER’S REPLY IN SUPPORT OF
MOTION TO EXCLUDE EVIDENCE**

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I. PETITIONER MISSTATES THE BASIS FOR PO'S MOTION

Patent Owner (“PO”) does not challenge Dr. Micklow’s qualifications, competence, or the methodology underlying the opinions disclosed in his direct testimony declaration. Rather, PO challenges Petitioner’s use of isolated answers elicited through ambiguous, incomplete, or out-of-scope questions as alleged “expert proof” of propositions Dr. Micklow did not disclose and was not asked to develop.

Petitioner’s “weight, not admissibility” argument misses the point. PO does not dispute that Petitioner may cross-examine Dr. Micklow regarding his disclosed opinions. But Petitioner does more than cite the testimony for impeachment or credibility purposes; it uses the excerpts as substantive proof of claim construction, Sevy’s alleged sound-dampening operation, and the supposed predictability of modifying Sevy’s separator plate. Where the questions did not fairly elicit those opinions, omitted material technical context, or asked Dr. Micklow to opine on matters outside his report, Petitioner’s use of the answers is misleading under FRE 401–403 and insufficient as affirmative expert proof under FRE 702–703.

Petitioner’s assertion that FRE 702–703 are “perplexing” because Dr. Micklow is PO’s expert is incorrect. Petitioner cannot transform answers to materially different or incomplete questions into new affirmative opinions never disclosed by Dr. Micklow. The defect lies in Petitioner’s questions and reliance on the answers—not in Dr. Micklow’s competence or disclosed opinions.

II. PETITIONER'S WAIVER ARGUMENT SHOULD BE REJECTED

Petitioner cannot have it both ways; it may not request counsel limit its spoken objections to a specific term, then argue that counsel waived all other objections. To be clear, the request from counsel for Petitioner was as follows: “MR. RAYES: John, I’m giving you some leeway here, but the proper objections are just for form. So if you don’t mind just sticking to that.” Ex. 1046, p. 85, lines 1-4. While “scope” objections continued immediately afterwards, the first recess after that exchange is documented on page 109, which occurred from 12:56 P.M. to 1:32 P.M. During the break, the undersigned reviewed Appendix D to the November 2019 PTAB Trial Practice Guide, which lists the following as proper objections: “Objection, form”; “Objection, hearsay”; “Objection, relevance”; and “Objection, foundation.” The Appendix also indicates that an objection is not proper merely because it is limited to a single word, because Appendix D also lists “Objection, vague” as an improper objection. Appendix D does not address the term “scope.”

As such, and in an effort to be cooperative with counsel for Petitioner, the undersigned initially resolved to comply with the request, and ceased making “scope” objections for a substantial portion of the deposition. However, as the deposition progressed, the conflicting duties of fervent advocacy, on the one hand, and cooperation on the other hand, admittedly led to inconsistent application of the decision to refrain from stating “scope.” Regardless, the shortcomings of the

undersigned in this arena are a distraction from the more important issue in front of the Board. Counsel for Petitioner specifically requested that all objections be limited to “form.” It is manifestly unfair for Petitioner to now argue that PO waived other objections by failing to state a basis other than “form.” To entertain this, would be to further encourage disruptive laundry lists of objections, as well as improper speaking objections, for fear of waiving specific bases. If counsel for Petitioner had a question as to the basis for a particular objection, counsel should have asked for clarification, but counsel did not avail itself of this opportunity.

III. PETITIONER’S EXCERPT-SPECIFIC ARGUMENTS DO NOT CURE ITS MISUSE OF THE CHALLENGED TESTIMONY

A. Ex. 1046, 115:15–18 — Claim Constructions

Petitioner continues to treat Exhibit 1046 at 115:15–18 as a sweeping admission that Dr. Micklow disregarded the parties’ claim constructions, but the question did not identify any particular claim term, any stipulated or proposed construction, any conflict between that construction and a POSITA’s understanding, or any disclosed opinion allegedly affected by that supposed conflict. Petitioner’s question conflated the legal task of independently construing claims with the technical task Dr. Micklow was retained to perform: evaluating specified technical disagreements with Dr. White’s analysis. At most, the testimony shows that Dr. Micklow did not undertake a freestanding legal claim-construction analysis. PO has never offered him for that purpose.

B. Ex. 1046, 117:4–15 — “Mixing Chamber”

Petitioner’s Opposition does not change the fact that Exhibit 1046 at 117:4–15 is irrelevant to the challenged claims in this proceeding. The cited exchange arose from a generalized question regarding a “mixing chamber.” But the challenged claims in the ’094 Patent do not recite a “mixing chamber.” They recite, among other things, a diffusion chamber and a silencer assembly. Petitioner’s reliance on a generalized discussion of an unclaimed term risks importing testimony from related patents into a proceeding involving different claim language.

C. Ex. 1046, 125:24–127:3 — “Baffle”

Petitioner’s Opposition fails to justify its reliance on Exhibit 1046 at 125:24–127:3. The cited testimony was not a formal construction of “baffle.” Petitioner asked Dr. Micklow generally how he would define a baffle. Dr. Micklow responded with a generalized engineering explanation of how a baffle may function. Petitioner did not place the stipulated construction before Dr. Micklow, ask whether he disagreed with it, identify a particular prior-art structure, or tie the questioning to any opinion in his declaration. Nor did Petitioner ask whether any of Dr. Micklow’s disclosed opinions depended on rejecting the stipulated construction.

D. Ex. 1046, 179:13–181:24, 183:21–184:13 - Sevy’s Reputed Modifications

Exhibit 1046 at 179:13–181:24 and 183:21–184:13 present a clear case for exclusion, because Petitioner’s use of those excerpts does not satisfy FRE 702.

Petitioner cites pages 181-184 for the proposition that multiple apertures would alleviate noise while omitting Dr. Micklow's testimony that the result "[d]epends on how [the apertures are] designed." The testimony clearly indicates that apertures can increase noise and that factors such as temperature, fluid, and pressure must be considered. Ex. 1046, 181:184. From these conditional answers Petitioner concludes that "Sevy ... meet[s] the 'silencer assembly' limitation," Paper 21, 9, thereby substituting Micklow's capacity to redesign a structure as if they were the teachings of the reference itself. Rule 702 permits that opinion to be received only if Petitioner, as its proponent, demonstrates that the opinion reflects a reliable application of the principles and methods to the case, yet Petitioner supplied none of the facts identified as controlling, and instead relied solely on extrapolation by counsel.

E. Ex. 1046, 243:4–14 — “Designed Properly”

Petitioner once again conclusively claims "Sevy ... meet[s] the 'silencer assembly' limitation," Paper 21, 9, relying on 243:4-14, which is generalized testimony outside the scope of Dr. Micklow's declaration. It also fails to fairly cite Dr. Micklow's rejection of the premise when actually discussing Sevy. Ex. 1046 243:16-24. Petitioner, being the proponent of the deposition testimony, fails to demonstrate that it is more likely than not that the opinion reflects a reliable application of the principles and methods to the facts of the case. FRE 702(d).

Dated: July 23, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PO's Reply in Support of Motion to Exclude Evidence has been served in its entirety on July 23, 2026, via email directed to the following attorneys of record for Petitioner:

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