UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AROMA360, LLC,

Petitioner,

v.

AIR ESSCENTIALS, INC.,

Patent Owner.

Case IPR 2025-00706
U.S. Patent No. 10,583,449

PATENT OWNER'S REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE

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I. PETITIONER MISSTATES THE BASIS FOR THE 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 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 Micklow regarding his disclosed opinions. But Petitioner does more than use the testimony for impeachment or credibility purposes; it uses the excerpts as substantive proof that Micklow failed to apply the parties' claim constructions, failed to consider relevant disclosure of the '449 Patent, and admitted that formation of the claimed fluid dispersion requires downstream mixing outside the mixing chamber. Where the questions did not fairly elicit those opinions, omitted material context, or assumed disputed structural and claim-scope propositions, 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 "internally inconsistent" because Micklow is PO's expert is incorrect. Petitioner cannot transform answers to materially different or incomplete questions into new affirmative opinions never

disclosed by Micklow. The defect lies in Petitioner's questions and reliance on the answers—not in Micklow's competence or disclosed opinions.

II. PETITIONER'S WAIVER ARGUMENT SHOULD BE REJECTED

During the deposition, counsel for Petitioner made the following request: "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. During the break, the undersigned reviewed Appendix D to the November 2019 PTAB Trial Practice Guide, which does not address the term "scope," but does indicate that an objection may not be proper merely because it is a single term (e.g., "vague")

To cooperate, the undersigned initially complied with the request. 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 *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 encourage this practice would needlessly inject more discovery disputes into PTAB matters.

III. THE CHALLENGED EXCERPTS DO NOT SUPPORT PETITIONER'S OVERBROAD CHARACTERIZATIONS

A. Ex. 1046, 111:20–25 and 115:15–18 — Claim Constructions / Fluid Dispersion

The question cited at Exhibit 1046 at 111:20–25 asked whether Micklow applied the parties' agreed construction of "fluid dispersion," but it did not provide the stipulated construction, ask whether he disagreed with it, identify any inconsistent understanding, or tie the question to any opinion in his declaration. Micklow's statement that he did not recall seeing the construction is not an admission that he rejected it or applied a conflicting definition. The surrounding testimony confirms the limited nature of the answer. Micklow explained that he understood claim construction had been addressed, that he based his technical opinions on the patents, and that claim construction was a legal matter for counsel. Petitioner's Opposition improperly mischaracterizes Micklow's testimony as disregard for the stipulated construction. Petitioner's reliance on Ex. 1046 at 115:15–18 fails for the same reason. The question was generalized and untethered to any specific term, construction, or disclosed opinion. It did not identify any stipulated or proposed construction, any conflict between that construction and Micklow's analysis, or any opinion allegedly affected by that conflict. Micklow's answer that he applied engineering principles reflects his role as a technical expert. It does not establish that he rejected or disregarded the parties' constructions.

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

The cited exchange in Ex. 1046 at 117:4–15 arose from generalized discussion of a "mixing chamber." Petitioner did not present either party's proposed construction, ask whether Micklow disagreed with any construction, or tie the question to a specific opinion in his declaration. The answer, a general engineering explanation of a mixing chamber does not establish that Micklow applied an improper claim scope in analyzing any asserted reference.

C. Ex. 1046, 200:14–16 — Figure 6

Petitioner's mischaracterization of PO's argument cannot overcome the simple fact that the testimony elicited from Micklow regarding Figure 6 fell outside the permissible scope of cross-examination. *See* 37 C.F.R. § 42.53(d)(5)(ii) ("For cross-examination testimony, the scope of the examination is limited to the scope of the direct testimony.") The only "direct testimony" offered by Micklow are his Declarations, Exhibits 2003 and 2016. In **neither** Declaration does Micklow discuss "upper" or "lower" chambers. Petitioner nonetheless spends **twenty-seven (27) pages** asking Micklow about the upper and lower chambers shown in the '918 Patent. Ex. 1046, 185:16-214:24. Petitioner then attempts to use that testimony, which does **not** pertain to **any** direct testimony, or even to the **same patent**, to attack Micklow's consideration of the Patent materials **at large**. Paper 20, 1-2. Petitioner cannot be permitted to cross-examine Micklow outside the scope of his direct

testimony, as to a **different patent**, and use the resulting improper testimony to support an assertion directed against his opinions at large.

D. Ex. 1046, 157:20–159:2 — Droplet Uniformity Downstream

Petitioner argues that PO "could have sought clarification" during the deposition. Paper 35, 12. This misstates the burden of the questioner at deposition to ask questions of the deponent that are **permissible** under the Federal Rules. PO does not "speculat[e] as to Micklow's internal thought process," Paper 35, 12, nor did Micklow "agree[] forming a fluid dispersion in the '449 Patent requires that mixing occur downstream." Paper 20, 7. Rather, PO has explained its reasons for objecting to Petitioner's inquiry. Paper 34, 12-13. PO has also correctly noted that the citation should be disregarded because Micklow does **not** state, as Petitioner asserts it does, that a fluid dispersion is only formed downstream of the mixing chamber. Paper 20, 7. *See, e.g.,* Ex. 1046, 145:12-16. Petitioner's attempts to mischaracterize or corrupt Micklow's testimony beyond his own words make its citation improper.

E. Petitioner's "Improper Additional Briefing" Argument Fails

A motion to exclude must identify the evidence challenged, the purpose for which the evidence is offered, and why that use is inadmissible or misleading. PO's motion is not a further sur-reply on patentability; it is the required showing under 37 C.F.R. § 42.64(c). PO's request under FRE 106 also requires discussion of the testimony.

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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