

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AROMA360, LLC,

Petitioner,

v.

AIR ESSSENTIALS, INC.,

Patent Owner.

Case IPR 2025-00707
U.S. Patent No. 10,092,918

**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 opinions, including his understanding of the ’918 Patent and its claimed structures. 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, did not consider Figure 6 of the ’918 Patent, and admitted that the claimed fluid dispersion need not be present in 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 under FRE 702(d) and 703.

Petitioner’s assertion that FRE 702–703 are “perplexing” 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.

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, 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, 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").

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 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, 115:15–18 — Claim Constructions

Petitioner continues to treat Exhibit 1046 at 115:15–18 as an admission that 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. The cited testimony arose from a generalized question that conflated independently formulating a legal construction with applying engineering principles. Micklow's answer reflects his role as a technical expert addressing the issues identified in his declaration. It does not establish that he rejected or disregarded any governing construction. Petitioner's use of the answer is therefore misleading. PO did not offer Micklow as a freestanding claim-construction expert. His declaration identified specified technical disagreements with White's analysis. Exhibit 1046 at 115:15–18 should therefore be excluded or, at minimum, given no weight as alleged proof that Micklow applied an incorrect claim scope.

B. 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.”) Micklow's only direct testimony consists of his Declarations, Ex. 2003 and 2016, and neither Declaration discusses "upper" or "lower" chambers.

Petitioner nonetheless spends **twenty-seven (27) pages, or roughly ten percent**, of the 284-page deposition transcript asking Micklow about the existence of the purported upper and lower chambers. Ex. 1046, 185:16-214:24. Petitioner then attempts to use that testimony, which does **not** pertain to **any** direct testimony in **any** of the ongoing IPRs, to attack Micklow's consideration of the Patent materials **at large**. Paper 20, 1-2. The testimony in the Reply as to Fig. 6 is inadmissible.

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

Petitioner offers in defense of its objected-to questions regarding downstream dispersion 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 adequately explained in its Motion its reasons for objecting to Petitioner's inquiry. Paper 34, 12-13. Petitioner's argument that PO should have simply carried Petitioner's burden for it at deposition must fail.

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. In fact, Petitioner's own line of questioning and Micklow's testimony directly contradicts this: "Q. . . . [D]o you agree that fluid dispersion is formed in the mixing chamber, correct? A. Otherwise, it wouldn't be a mixing chamber. So the answer is yes, it has to happen in the mixing chamber." Ex. 1046, 145:12-16. Petitioner's attempts to mischaracterize or corrupt Micklow's testimony beyond his own words or the substance of the questioning make its citation improper and beyond the scope of Micklow's direct testimony.

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

Petitioner's "improper additional briefing" argument should be rejected. 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 therefore explained Petitioner's characterization of the challenged testimony and why the cited answers do not support the propositions asserted in the Reply. That is not a further sur-reply on patentability; it is the required evidentiary showing under 37 C.F.R. § 42.64(c). Likewise, PO's alternative request under FRE 106 necessarily requires discussion of the surrounding 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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