UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STRAUMANN USA, LLC,
Petitioner,

v.

SMART DENTURE CONVERSIONS, LLC,
Patent Owner.

IPR2025-00956
Patent 11,937,992

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE

August 7, 2026

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I. INTRODUCTION

The Board should deny Petitioner's Motion to Exclude (the "Motion") in its entirety.

Petitioner seeks to exclude the declarations of Patent Owner's technical expert, Karl Leinsing (Ex. 2010 and Ex. 2021), based on Petitioner's disputed view of the ordinary skill in the art (*i.e.*, the POSA definition). At institution, the Board found the parties' respective witnesses' "qualifications ... to testify as to the subject matter of their declarations" to be "uncontested, on this record," and adopted Petitioner's proposed POSA definition only "at this stage," inviting the parties to "further develop[] this issue at trial." Inst. Dec. (Paper 12) at 10, 13. The parties fully briefed POSA definition issue.

Exclusion is inappropriate because Mr. Leinsing qualifies as a POSA under both parties' definitions. He holds bachelor's and master's degrees in mechanical engineering, is a licensed Professional Engineer, and has decades of experience with medical devices, bone anchors, bone screws, bone plates, tissue anchors, and implantable fixation systems. *See generally* Ex. 2019 (Leinsing CV).

The Motion is really an unauthorized sur-sur-reply asking the Board to resolve a merits dispute via evidentiary ruling. Arguing that dental-specific experience is necessary is a challenge that, at most, goes to weight. Nothing

Petitioner argues merits excluding or discounting the weight of Leinsing's declarations.

Petitioner's podcast challenges do not warrant exclusion either. The Board need not even reach objective indicia because Petitioner failed to establish a prima facie case of obviousness. POR at 64–73; Sur-Reply at 28–32. And Petitioner's authentication argument also fails to grapple with the low bar Rule 901(a) sets or the Board's preference for weighing contested evidence rather than striking it.

II. PETITIONER'S MOTION ASKS THE BOARD TO RESOLVE A MERITS DISPUTE

A motion to exclude is not a chance for Petitioner to reargue its case. It cannot "address[] the weight to be given evidence," "challenge the sufficiency of the evidence to prove a particular fact," or "present arguments that should have been presented in responses and replies." Trial Practice Guide ("TPG") at 79. Rather, a motion to exclude may only "challenge admissibility under the applicable rules of evidence." 37 C.F.R. §§ 42.62, 42.64.

These limitations apply with particular force here, where Petitioner challenges only the expert's qualifications rather than the relevance or reasoning of specific portions. "[T]here is ... ***no requirement of a perfect match between the expert's experience and the relevant field***." TPG at 3 (citing *SEB v. Montgomery*

Ward, 594 F.3d 1360, 1373 (Fed. Cir. 2010)).[1] In fact, "[a] person may not need to be a person of ordinary skill in the art in order to testify as an expert under Rule 702" and "rather must be 'qualified in the pertinent art.'" *Id.* (citing *Sundance v. DeMonte Fabricating*, 550 F.3d 1356, 1363–64 (Fed. Cir. 2008)).

Thus, the Board has repeatedly held that challenges to expert qualifications—including whether the expert satisfies a proposed POSA definition—go to weight, rather than admissibility. *See, e.g.*, *MindGeek v. Skky*, 2016 WL 763036, at *10 (PTAB Jan. 29, 2016) ("Most of Petitioner's arguments in support of the motion [to exclude] appear to address the weight to be given the testimony, as opposed to its admissibility."). The Board is "capable of discerning from the testimony, and the evidence presented, whether the witness' testimony should be entitled to any weight, either as a whole or with regard to specific issues." *Daiichi v. Alethia*, 2016 WL 4375259, at *12 (PTAB June 14, 2016). Because it can do so here as well, it should deny the Motion.

[1] All emphasis in quoted text is added.

III. THE BOARD SHOULD NOT EXCLUDE LEINSING'S TESTIMONY

A. Leinsing's Qualifications Satisfy Both Proposed Parties' POSA Definitions

The Board cannot exclude Leinsing's opinions because he is a POSA under both parties' proposed definition[2]. A POSA, according to Petitioner, must have a bachelor's degree in mechanical engineering and five years' experience working with dental implants and prostheses. Pet. at 31. But critically, "[a] POSA could also have less formal education but commensurately more practical experience, or vice versa." *Id.*

Leinsing is a POSA under both definitions. He holds bachelor's ***and*** master's degrees in mechanical engineering and is a licensed Professional Engineer. His CV lists ***decades*** of medical-device experience involving bone anchors, bone plates and screws, tissue anchors and anchoring systems, and other implantable fixation devices. He has been granted multiple patents specifically directed to tissue anchors and anchoring systems. He has worked with dental veneers, laminates, and forming spoons and has litigation-specific experience involving bone plates (*OsteoMed*) and bone anchors, guides, drills, and inserters (*Dr. Augé*). Ex. 2019 at

[2] The Motion never asserts that Leinsing would not be a POSA under Patent Owner's definition. He is. POPR at 9–10; POR at 19–23; 2Leinsing ¶¶ 46–53.

1–4, 6–8; Ex. 2010 ¶¶ 5–11. This work, Leinsing testified, substantively overlaps with the technology here. *See* Leinsing Dep. at 64:11–65:2.

Leinsing is qualified as a POSA even without significant work specifically with dental implants. Pet. at 31. Petitioner does not suggest, for example, that implants in jawbones are meaningfully different from implants in any other bone. And Petitioner's own definition recognizes that "[a] POSA could also have less formal education but commensurately more practical experience, or vice versa." *Id.*

Leinsing's master's degree, by itself, more than adequately substitutes for any shortage of dental-specific experience; it is "commensurately more" formal education which substitutes for inconsequential differences in practical experience. That is especially true in combination with his ***decades*** of experience inventing and designing bone anchors, bone screws, bone plates, and other implantable fixation and attachment systems—which present overlapping mechanical, biomechanical, and materials-science design challenges to the systems taught in the '992 Patent. This expertise qualifies Leinsing as an expert, not a mere POSA, and well within the range Rule 702 and the TPG require, "qualified in the pertinent art."

The Motion hangs on the invalid notion that Leinsing is not a POSA merely because he does not "ha[ve] the required experience working with dental implants and prostheses." Mot. at 4. But whether Petitioner's definition is even correct is a live disagreement that the Board has not resolved. Thus, the Motion thus does not

apply a settled definition; it asks the Board instead to adopt Petitioner's position on a live, disputed merits question and then exclude Leinsing's testimony. That is improper. TPG at 79. The Board should resolve this fully briefed dispute in its final written decision in light of the complete record—not by evidentiary ruling.

B. Brunski's Deposition Demonstrated He Is Less Qualified Than Leinsing

Petitioner's own expert, Brunski, undermines any suggestion that a POSA must have worked with dental implants specifically. Brunski's deposition demonstrated that nothing in his work offers him any special insight or expertise relevant to this technology.

Brunski admitted, for example:

- He had no direct experience with denture conversions and was merely "familiar with general impression taking;"
- He "was not specifically involved in that space," except to the extent "there's some overlap between dentistry and impression methods'"
- His closest related work was a project "25 years ago," involving a permanent "snap on mechanism" that "didn't really have anything to do with impression taking;"
- He could not recall specific products used in traditional conversion techniques as of 2000;

- He had no idea whether Nobel Biocare commercialized a product using Bernhard's technology;
- Open-tray versus closed-tray techniques were not "top of mind" for him and he couldn't "answer … one way or the other" whether these were "top of mind in the field" at the time either; and
- He never heard of Patent Owner, its products, or the accused NeoConvert product before this engagement.

Brunski Dep. 9:15–10:15, 12:20–13:3, 13:21–14:14, 15:17–16:4, 17:17–18:5, 18:6–19:9, 134:89–13.

But if Brunski showed little familiarity with impression-taking generally, he showed even ***less*** command of the discrete fastener features at issue. Asked if a POSA could design a reverse buttress thread to screw into symmetric fasteners—as the specification discloses—Brunski shrugged that he "ha[d]n't sort of considered that idea in depth" because "it's ***not immediately obvious to me that it would work***." Brunski Dep. 48:4–49:11. Yet he later conceded a POSA could design such a thread. *Id.* at 51:14–22, 114:3–5.

Brunski similarly didn't "know off the top of [his] head" and couldn't "specify" "other asymmetric threads that are not buttress or reverse buttress threads." Brunski Dep. 39:24–40:7. His superficial grasp of and attention to the subject matter manifested itself repeatedly. *E.g.*, *id.* at 63:22–23 ("I'm not sure

about that. I don't know if there's a special name."); 76:14–18 ("Q. And you could have a temporary retention feature that doesn't include a split post, correct? … A. I don't know what it is, though."); 100:10–16 ("Q. Did you think through these possibilities as you wrote your report? A. Not in detail, no."); 100:22–25 ("Q. Don't you think you should have thought through these in more detail? … A. Sure, that would help."); 102:17–18 ("I don't know what two sho[t] molding is."); 157:18–25 ("Q. In Bernhard whenever it's talking about the temporary fastener, it uses the words provisional connection, doesn't it? … A. That I'm not sure about. Q. Isn't that something that you would have learned from reading it? A. Well, I'm not sure."); 167:13–20 ("Q. So my question is: When anywhere in Bernhard does it refer to using a threaded fastener for a provisional connection feature rather than the second connection feature? A. I don't know the answer to that. Q. It doesn't, correct? A. I don't know."); 165:14–15 ("I'm not sure what you mean by provisional connection feature."); 182:13–16 ("Q. What other applications is heat-labile plastic used …? A. I can't think of anything offhand. I don't know the specific example for you."); 229:22–230:2 ("I don't know exactly when [closed-tray techniques] sort of took over. It's a good question.").

Finally, Brunski testified that his background on one project mirrored exactly the kind of consultative division of labor that Patent Owner's proposed

POSA definition contemplates. He described working alongside a colleague who was "more of a bone expert." *Id.* at 11:3–13.

In short, nothing about Brunski's experience gave him any special insights into the mechanical fastener technology at issue. POR at 19. Simply comparing the deposition transcripts (Ex. 2022 and Ex. 1033) demonstrates that Leinsing has superior understanding of the technology; not Brunski. The Court should deny the Motion. Not only is Leinsing qualified to testify, he is more qualified than Petitioner's expert.

C. Petitioner's Cases Do Not Require Or Support Exclusion

Petitioner's reliance on *Kyocera v. ITC*, 22 F.4th 1369 (Fed. Cir. 2022), is misplaced because *Kyocera's* posture is fundamentally different from this case. There, the proffered expert accepted and applied the tribunal's proposed POSA definition, and Kyocera "failed to preserve any challenge to the level of ordinary skill in the art." *Id.* at 1375–76. The Federal Circuit therefore simply reviewed whether the ITC abused its discretion in admitting an expert without the specific experience required by an undisputed POSA definition. *Id.* at 1377–78.

Here, on the other hand, the POSA definition ***is*** disputed and Leinsing has not conceded that he is unqualified under either definition. If anything, *Kyocera* underscores the principle that exclusion is inappropriate here, where the applicable POSA definition has not been settled.

Sierra Wireless v. Sisvel, 130 F.4th 1019 (Fed. Cir. 2025), is similarly unhelpful to Petitioner. There, the Federal Circuit faulted the Board for relying on an expert's testimony "absent a finding that he is qualified as an ordinarily skilled artisan"—that is, for failing to make any qualification finding at all. *Id.* at 1024–25.

Nor does *Extreme Networks v. Enterasys Networks*, 395 F. App'x 709 (Fed. Cir. 2010), support exclusion. In that case the Federal Circuit observed only that "[g]eneral experience in a related field may not suffice when experience and skill in specific product design are necessary to resolve patent issues." *Id.* at 715. But there is nothing specific to dental implants that is "necessary to resolve" the issues in this case about screw design. *Id.* Leinsing has adequately "established an adequate relationship between his experience and the claimed invention," *SEB*, 594 F.3d at 1372–73, and shown he is "an expert in the relevant art." *Sundance*, 550 F.3d at 1363–64.

D. Petitioner Cannot Demonstrate Prejudice From Admission

Finally, the Board should not exclude Leinsing's declarations because Petitioner cannot show any prejudice from their admission. (The Motion never even tries.)

Patent Owner timely disclosed Leinsing's declarations, Leinsing's CV, and the materials considered. Ex. 2010; Ex. 2021; Ex. 2019. At deposition, Petitioner's counsel questioned Leinsing at length about his background, experience, and the

lack of dental-implant specific experience which Petitioner now highlights. Leinsing Dep. 62:11–70:13, 72:1–88:15. There has been no unfair surprise or concealment, and ample opportunity to test the challenged testimony. The Board has a complete record to assess Leinsing's testimony in light of his qualifications. His declarations should not be discounted, much less excluded.

IV. THE BOARD SHOULD NOT EXCLUDE THE PODCASTS

A. The Board Need Not Reach Petitioner's Challenge To The Podcasts Because The Obviousness Grounds Fail Regardless

Patent Owner's Response cites two podcast episodes—*Voices from the Bench*, Episode 280 (Aug. 7, 2023), and *Product Talk*, Season 18 Episode 3 (July 1, 2024)—as evidence of industry praise and public statements supporting non-obviousness. POR at 12–13, 76–77. As Patent Owner's Sur-Reply explains, the Board need not even reach objective indicia to reject Petitioner's obviousness grounds because Petitioner failed to establish a prima facie case of obviousness. None of Petitioner's proposed prior-art combinations discloses or suggests a temporary screw with a thread profile that mismatches the definitive screw while still engaging the same abutment threads. Sur-Reply at 27–29. Objective indicia, including the podcasts, are therefore backstop evidence supporting an already-proven case of non-obviousness, not evidence on which that case depends. Excluding the podcasts would be immaterial to the outcome.

In any event, these podcasts are not the only evidence in the Response showing industry praise and other objective indicia. Patent Owner's Response separately documents industry praise and commercial success through Petitioner's own marketing statements calling NeoConvert a "significant innovation compared to the conventional technique" and "game-changing," a third-party clinical case report describing NeoConvert as "a novel, more precise, and time-saving denture conversion technique," and evidence of Petitioner's copying of Patent Owner's patented technology through its introduction of a directly competing product shortly after Patent Owner's commercial success became apparent. POR at 75–78 (discussing Exs. 2025–2029, 1028).

B. Any Defects Go To Persuasive Value, Not Admissibility

Patent Owner does not dispute that the better practice is to file such materials as exhibits, and 37 C.F.R. § 42.63(a) requires that "[a]ll evidence must be filed in the form of an exhibit." But exclusion is discretionary, and the Board consistently exercises that discretion in favor of preserving a complete record and weighing, rather than striking, evidence with arguable shortcomings. "[T]he Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to evidence presented." *Laird Techs. v. GrafTech*, 2015 WL 1385392, at *25 (PTAB Mar. 25, 2015). This is most consistent with the "strong public policy for making all information filed in a

nonjury, quasi-judicial administrative proceeding available to the public." *Nichia v. Emcore*, 2014 WL 574596, at *32 (PTAB Feb. 11, 2014).[3]

C. Petitioner's Authentication Argument Does Not Independently Support Exclusion

Petitioner's alternative argument that the podcasts are unauthenticated and thus inadmissible under Rule 901 adds nothing. Rule 901(a) requires only that "the proponent produce evidence sufficient to support a finding that the item is what the proponent claims it is"—a threshold that is not onerous. Authenticity may be shown, for example, by "[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item" alone. Fed. R. Evid. 901(b)(4); *see Dish Network v. Fraifer*, 171 F.4th 1344, 1360 (11th Cir. 2026) (information from "publicly available, online database" "was properly authenticated by its 'distinctive characteristics,' including its domain name, date, and time, which appear on the face of the WHOIS records and identify where and when the document was obtained").

Identifying a freely available podcast episode by title, number, air date, and URL is adequate to "support a finding that" the podcast "is what" Patent Owner "claims it is." Fed. R. Evid. 901(a). The two podcasts (*Voices from the Bench* and

[3] If the Board prefers, Patent Owner is willing to submit transcripts of the cited podcast episodes.

Inside Dentistry Product Talk) are publicly available, commercially produced, professionally hosted programs discussing specific products. They are identified by name, episode number, and air date. The quoted statements are attributable to identified speakers discussing real-world experience with the relevant dental products. POR at 12–13, 76–78. Moreover, *Voices* episodes are available not only on the podcast website, but are (as the website shows) available in identical form through third-party apps like Apple Podcasts, Amazon Music, Breaker, Castbox, Castro, Overcast, Pocket Casts, Radiopublic, iHeartRadio, Spotify, and Tunein. Petitioner has not presented anything to suggest these podcasts are anything other than what they are.

Petitioner suggests that the abstract possibility that a URL's content "can be changed at any time" categorically negates authenticity. Mot. at 9. But this proves too much. The same principle would functionally bar citation to ***any*** web-hosted material regardless of actual reliability or the citation's precision. To the extent the Board reaches this argument, any defects are better addressed, consistent with Section IV.B above, by affording the cited excerpts whatever weight the Board deems appropriate rather than striking them from the record.

V. CONCLUSION

The Board should deny the Motion in its entirety and consider Exhibits 2010 and 2021, as well as Patent Owner's objective-indicia evidence.

Respectfully submitted,

Dated: August 7, 2026

By: */s/ Kelsey I. Nix*
Kelsey I. Nix (Registration No. 33,119)
Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Patent Owner's Sur-Reply contains fewer than 15 pages, which is within the limit set in 37 C.F.R. § 42.24(b)(3). This page count does not include the items excluded by 37 C.F.R. § 42.24.

Respectfully submitted,

Dated: August 7, 2026

By: */s/ Kelsey I. Nix*
Kelsey I. Nix (Registration No. 33,119)
Counsel for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, I caused a true and correct copy of the foregoing Patent Owner's Sur-Reply to be served via email on Petitioner at the following addresses:

Sheila Mortazavi (Registration No. 43,343)
HAUG PARTNERS LLP
745 Fifth Avenue, 10th Floor
New York, New York 10151
(212) 588-0800
smortavazi@haugpartners.com

George Reitboeck (pro hac vice)
Mark A. Chapman (pro hac vice)
HAUG PARTNERS LLP
745 Fifth Avenue, 10th Floor
New York, New York 10151
(212) 588-0800
greitboeck@haugpartners.com
mchapman@haugpartners.com

Christopher Gosselin (pro hac vice)
HAUG PARTNERS LLP
1717 K Street NW, Suite 9000
Washington, DC 20006
(202) 292-1530
cgosselin@haugpartners.com

Respectfully submitted,

Dated: August 7, 2026

By: */s/ Kelsey I. Nix*
Kelsey I. Nix (Registration No. 33,119)
Counsel for Patent Owner