

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3D SYSTEMS CORPORATION AND 3D SYSTEMS, INC.,

Petitioner,

v.

INTREPID AUTOMATION, INC.,

Patent Owner

IPR2025-01241

U.S. Patent No. 11,014,301

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

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I. INTRODUCTION

Patent Owner’s motion conflates evidentiary weight with admissibility. The motion seeks to exclude EX1032—a report prepared by Patent Owner’s own expert in related trade secret litigation (“Trade Secrets Case”)—that directly contradicts positions Patent Owner advances in this proceeding regarding what a person of ordinary skill in the art (“POSITA”) would have known.

Patent Owner contends that EX1032 is irrelevant because it does not “discuss, interpret, or even mention Shkolnik in connection with an irradiance mask” and Dr. Allen “never states or suggests that Shkolnik describes an irradiance mask.” Motion at 4. This argument misses the point. EX1032 is not offered to prove what Shkolnik teaches—Shkolnik speaks for itself. Rather, EX1032 is offered to: (1) rebut Patent Owner’s contention that “Shkolnik does not teach how irradiance normalization can be carried out, such that a POSITA reading Shkolnik would not arrive at the claimed irradiance normalization,” Reply at 11; and (2) demonstrate the inconsistency between Patent Owner’s positions here and in parallel district court proceedings. Patent Owner cannot have it both ways—asserting here that Shkolnik’s explicit teachings are insufficient to enable a POSITA to carry out irradiance normalization, while alleging in the Trade Secrets Case that irradiance normalization was “well-familiar” and described in “prior art patents” before the ’301 Patent’s priority

date. This evidence has a direct bearing on factual issues before the Board and a “tendency to make [those] fact[s] more or less probable than [they] would be without the evidence.” Fed. R. Evid. 401.¹

Patent Owner’s remaining arguments are creative but unavailing. The record indisputably shows that Petitioner offers EX1032 to highlight inconsistencies in Patent Owner’s position—not to supply a missing claim limitation or construct a *de facto* obviousness theory. Ample evidence supports Petitioner’s invalidity grounds independent of EX1032, including deposition testimony from Patent Owner’s own expert, Dr. Rosen. Because EX1032 is relevant to Patent Owner’s inconsistent statements—and Patent Owner’s objections go, at most, to evidentiary weight—the Board should admit EX1032 and deny the motion.

¹ The Federal Rules of Evidence 401 provide that “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” The Advisory Committee explained that “[t]he standard of probability under the rule is ‘more probable than it would be without the evidence.’ Any more stringent requirement is unworkable and unrealistic.” Fed. R. Evid. 401 advisory committee’s note to 2011 amendment.

II. ARGUMENT

A. Exhibit 1032 Is Relevant to This Proceeding Under FRE 401

FRE 401 sets a low bar for relevance, and arguments concerning the sufficiency or weight of evidence are not grounds for exclusion. *See Arris Int'l PLC v. Sony Corp.*, IPR2016-00834, Paper 54 (PTAB September 28, 2017). Though Patent Owner frames its motion as a relevance challenge, the motion is fundamentally a disguised attack on evidentiary weight. The Board has consistently recognized that evidentiary weight is not a proper basis for exclusion. *Id.* Patent Owner's arguments that EX1032 supplies a missing claim limitation or advances a *de facto* post-institution obviousness theory are nonsensical and not argued by Petitioner. As Petitioner has made clear, EX1032 is offered to rebut Patent Owner's mischaracterizations to the Board—nothing more.

Petitioner argued that Shkolnik teaches the well-known step of irradiance normalization. *See, e.g.*, EX1003 ¶¶ 144-47; EX1004 (Shkolnik) at 5:38-49; EX2015 ¶¶ 65-73. In response, Patent Owner argued that “Shkolnik does not teach *how irradiance normalization can be carried out*, such that a POSITA reading Shkolnik would not arrive at the claimed irradiance

normalization.” Reply at 11.²

Petitioner’s Reply rebutted Patent Owner’s Response on three levels. *First*, Petitioner cited the process Shkolnik expressly teaches for carrying out irradiance normalization. Reply at 11 (quoting EX1004 (Shkolnik) at 5:38-49). *Second*, Petitioner cited Dr. Chen’s deposition testimony that the “camera-based irradiance normalization process” taught by Shkolnik is consistent with “standard practice in the field” going back decades. EX2016 at 130:1-2 (“That’s exactly what we are doing in the field for 20 years.”). *Third*—and most relevant here—Petitioner quoted EX1032 to demonstrate Patent Owner’s inconsistent positions (emphasis removed):

In addition, PO’s own expert [Dr. Allen] in the related Trade Secrets Case testified that it was well known to a POSITA how to carry out irradiance normalization before the priority date of the ’301 Patent: “Practitioners within the digital display and projection community *would be well-familiar with the concept* of irradiance/irradiance

² Patent Owner specifically argued: “The reference to ‘may also provide for intensity compensation’ is an add-on; Shkolnik does not disclose what type of intensity adjustments can be performed or *how one can use a pattern correction map to make those adjustments.*” Response at 9.

uniformity/irradiance characterization, and would have access to prior art patents and publications that disclose irradiance/irradiance uniformity/irradiance characterization generally as well as providing specific methods, techniques, and algorithms that *would enable one to perform* irradiance/irradiance uniformity/irradiance characterization.”

EX1032, 32. Notably, PO’s expert William Allen reviewed and cited Shkolnik itself at least six times in his report. EX1032, 17-18, 26.

Reply at 12.

Patent Owner now contends that EX1032 is inadmissible because Dr. Allen does not “discuss, interpret, or even mention Shkolnik in connection with an irradiance mask” and “never states or suggests that Shkolnik describes an irradiance mask.” Motion at 4. But EX1032 is not offered as evidence of what Shkolnik discloses—Shkolnik speaks for itself. EX1032 is offered to (1) rebut Patent Owner’s contention that a POSITA reading Shkolnik would not arrive at the claimed irradiance normalization, and (2) demonstrate Patent Owner’s inconsistent litigation positions. Reply at 11.³ Patent Owner fails to address these rationales despite their prominence in the Reply. Properly characterized,

³ Regarding Shkolnik’s teachings, Patent Owner argues as indicated above in note 2.

EX1032 is relevant because it tends to make these factual issues “more or less probable than [they] would be without the evidence.” Fed. R. Evid. 401.

The motion should be denied, particularly given the “low threshold for relevancy.” *Laird Techs., Inc. v. GrafTech Int’l Holdings, Inc.*, IPR2014-00025, Paper 45, at 44 (PTAB Mar. 25, 2015) (citing *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1407 (Fed. Cir. 1997)).

Two additional points reinforce this conclusion. *First*, Patent Owner’s principal authority—*Samsung Elecs. Co. v. Huawei Techs. Co.*, IPR2017-01487, Paper 45, at 25 (PTAB Dec. 10, 2018)—is distinguishable. There, Samsung did not cite the challenged exhibit in any briefing or expert report, failing to establish any relevance in the first instance. Moreover, Samsung withdrew the exhibit in response to the motion to exclude, leaving the admissibility issue uncontested. Neither circumstance applies here.

Second, Patent Owner’s arguments are properly directed at evidentiary weight, not admissibility—and weight is not a proper basis for exclusion. *Arris*, IPR2016-00834, Paper 54. Patent Owner effectively concedes as much, stating that “at minimum, if the Board declines to exclude EX1032, it should afford the exhibit *no weight* given that Dr. Allen did not address Shkolnik or apply any standard relevant to patent invalidity.” Motion at 4-5. A motion to exclude is not the proper vehicle for challenging the weight or persuasiveness

of evidence, and Patent Owner cites no authority supporting such use.

Disputes regarding the significance of EX1032, the scope of any alleged inconsistency, or the impact of the evidence on the issues before the Board go to weight—matters for consideration on the merits, not grounds for exclusion.

Accordingly, the motion should be denied.

B. EX1032 Does Not Supply a Missing Limitation

Patent Owner argues that Petitioner cites EX1032 to supply a missing claim limitation in violation of 37 C.F.R. § 42.104(b)(4). This allegation defies the written record. Not only did Petitioner’s expert, Dr. Chen, opine that Shkolnik discloses an additive manufacturing system comprising an irradiance mask configured to normalize irradiance—Patent Owner’s own expert, Dr. Rosen, confirmed as much during deposition, admitting that “intensity compensation” (as disclosed in Shkolnik) could mean normalized irradiance. *See* EX1033 at 66:5-9 (“It’s possible that you can find some references where my use of the term . . . ‘intensity compensation’ or ‘irradiance compensation’ would be the same as normalization.”); *id.* at 75:15-22 (“Intensity compensation” in additive manufacturing “could mean normalized irradiance”).

Patent Owner’s position is not only contradicted by the record but undermined by the authority on which it relies. Patent Owner argues that “while not all evidence must qualify as a prior art patent or printed publication to enter

the record, the Federal Circuit has limited such evidence only to support a motivation to combine *or to demonstrate the knowledge of a person having ordinary skill in the art.*” Motion at 6 (citing *Unification Techs. LLC v. Micron Tech., Inc.*, No. 2023-1348, 2024 WL 3738401, at *7 (Fed. Cir. Aug. 9, 2024)). That authority supports *admission* of EX1032, not its exclusion.

In *Unification Technologies*, the Federal Circuit explained that evidence outside the asserted prior art references may properly inform the Board’s understanding of how a POSITA would have understood the relevant disclosure. The court approved the Board’s reliance on expert analysis not to supply missing claim limitations, but to inform “how an ordinarily skilled artisan would have understood” the prior-art reference. *Id.* at *6.

Here, Petitioner offers EX1032 precisely for that purpose—to rebut Patent Owner’s contention concerning the *knowledge of the POSITA*. Reply at 11. There is no basis to exclude the evidence under 37 C.F.R. § 42.104(b)(4), and the case law Patent Owner cites confirms the motion should be denied.

C. EX1032 Does Not Change Invalidity Grounds Post-Institution

Patent Owner’s third argument is merely an extension of its second. Patent Owner contends that Petitioner’s reliance on EX1032 constitutes an attempt to advance a new obviousness theory after institution. Not so. EX1032 is not offered to supply a (purportedly) missing claim limitation, nor is it offered to advance a

new theory of obviousness. EX1032 is offered to rebut Patent Owner's contentions about the knowledge of the POSITA and to show that Patent Owner is taking inconsistent positions in these proceedings compared to the Trade Secrets Case, now that Dr. Allen's testimony is no longer convenient. The basis for its submission has been addressed repeatedly, and Patent Owner's failure to appreciate that purpose does not provide a basis for exclusion. At most, Patent Owner's disagreement concerns the significance or probative value of the evidence, which goes to weight—not admissibility.⁴

Accordingly, the Motion to Exclude should be denied.

Dated: September 3, 2026

Respectfully submitted,

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⁴ Notably, Patent Owner does not object to the evidence on FRE 403 grounds; nor FRE 901 authentication.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition to Patent Owner's Motion to Exclude was served on September 3, 2026, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via electronic mail upon counsel of record for the Patent Owner as follows:

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