

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE, INC.,
Petitioner

v.

CASALE,
Patent Owner

IPR2025-01454
Patent 11,2856,168

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Topsoe A/S (“Petitioner” or “Topsoe”) hereby objects to the admissibility of Exhibits 2007 through 2012, served by Patent Owner Casale SA (“Patent Owner” or “Casale”) on May 11, 2026, in connection with Patent Owner’s Response (Paper 33) and Patent Owner’s Motion to Amend (Paper 34). These objections are timely served within five business days of service of the evidence to which they are directed. Petitioner provides these objections with sufficient particularity to allow Patent Owner the opportunity to serve supplemental evidence under 37 C.F.R. § 42.64(b)(2). Petitioner reserves the right to raise additional objections, to move to exclude any of the identified evidence, and to supplement or amend these objections as warranted by Patent Owner’s reliance on the exhibits, the development of the record, or any supplemental evidence served by Patent Owner.

1. Exhibit 2007 (Declaration of Colin A. Wolden, Ph.D.)

Petitioner objects to Exhibit 2007 under Federal Rules of Evidence 401, 402, 403, 602, 701, 702, 703, and 802, and to the extent it incorporates, relies upon, summarizes, paraphrases, or repeats the contents of Exhibit 2009 (the EPO Opposition Division decision, citation list, and minutes of oral proceedings) or other inadmissible material. Specifically, Petitioner objects to those portions of Dr. Wolden’s declaration that (i) recite, characterize, or rely on the conclusions, findings, or reasoning of the EPO Opposition Division, including conclusions

regarding novelty, inventive step, priority entitlement, the disclosure of any cited reference, or the perspective of a person of ordinary skill in the art; (ii) opine on what a person of ordinary skill in the art would have understood by reference to foreign tribunal determinations applying legal standards (including EPC Articles 54, 56, 87, and 100) that differ from 35 U.S.C. §§ 102 and 103 and governing Federal Circuit precedent; or (iii) lack adequate factual foundation, technical underpinning, or disclosure of underlying facts and data as required by Federal Rule of Evidence 702 and 705. Petitioner further objects to the extent Exhibit 2007 contains improper legal conclusions, attorney argument, or testimony beyond the scope of Dr. Wolden's qualifications. The remainder of these objections to Exhibit 2007 is reserved pending cross-examination.

2. Exhibit 2008 (Deposition Transcript of James Ritter, Ph.D.)

Petitioner objects to Exhibit 2008 to the extent any designated testimony is offered for purposes other than impeachment or for purposes inconsistent with the scope permitted under 37 C.F.R. § 42.53 and the Office Patent Trial Practice Guide, and to the extent any portion is incomplete, taken out of context, or relied upon in a manner that violates Federal Rules of Evidence 106, 401, 402, 403, 602, 701, 702, or 802. Petitioner reserves the right to counter-designate testimony and to object to specific designations as Patent Owner identifies the portions on which it intends to rely.

**3. Exhibit 2009 (EPO Opposition Division Decision Dated April 1, 2026
(with Citation List and Minutes of March 5, 2026 Oral Proceedings))**

Petitioner objects to Exhibit 2009 in its entirety on the following grounds.

Relevance—FRE 401 and 402. The EPO Opposition Division decision applies substantive legal standards under the European Patent Convention, including Articles 54 (novelty), 56 (inventive step), 87 (priority), and 100 (grounds of opposition), that differ materially from the patentability standards governing this proceeding under 35 U.S.C. §§ 102 and 103, the *Graham* factors, and *KSR International Co. v. Teleflex Inc.* The EPO’s analysis of priority entitlement under EPC Article 87 has no analog in the instituted grounds in this proceeding, and the EPO’s “could-would” approach to inventive step is not the standard the Board must apply. The decision is therefore not probative of any fact of consequence in determining the unpatentability of the challenged claims under U.S. law.

Unfair Prejudice, Confusion of the Issues, Misleading the Tribunal, and Cumulativeness—FRE 403. Even if marginally relevant, the probative value of Exhibit 2009 is substantially outweighed by the danger of unfair prejudice to Petitioner, confusion of the issues, misleading the Board, undue delay, and the needless presentation of cumulative evidence. The exhibit invites the Board to defer to the conclusions of a foreign tribunal that applied different substantive legal standards to different claims on a different evidentiary record, developed by different parties (Linde AG and Thyssenkrupp Industrial Solutions AG), against different

combinations of references, and under different procedural rules. Topsoe was not a party to the EPO opposition and had no opportunity to select the prior art combinations presented, to cross-examine Patent Owner's witnesses before the Opposition Division, to present its own expert testimony, or to be heard on the issues the EPO addressed. Admission of Exhibit 2009 thus presents serious fundamental fairness and due process concerns.

Hearsay—FRE 801 and 802. Exhibit 2009 consists of out-of-court statements by the EPO Opposition Division and, in the minutes, by counsel and witnesses for Linde, Thyssenkrupp, Casale, and other attendees, offered for the truth of the matters asserted, including the truth of the Opposition Division's findings about prior art disclosures, the perspective of a person skilled in the art, and inventive step. The exhibit constitutes multiple layers of hearsay within hearsay under Federal Rule of Evidence 805, and no exception applies. The public records exception under Federal Rule of Evidence 803(8) does not apply because the exhibit contains evaluative opinions and contested adjudicative determinations on technical and legal questions, and because the circumstances indicate a lack of trustworthiness for the purpose for which Patent Owner offers the exhibit.

Authentication and Foundation—FRE 901, 902, and 1002. Patent Owner has not properly authenticated Exhibit 2009 as a foreign public document. Patent Owner has not provided the certification required under Federal Rule of Evidence 902(3)

for foreign public documents, nor has Patent Owner laid foundation under Federal Rule of Evidence 901 establishing that the document is what Patent Owner claims it to be. Petitioner further objects to the extent the exhibit is offered to prove the content of a writing without compliance with the original-document requirements of Federal Rules of Evidence 1002, 1003, and 1005.

Improper Expert and Legal Opinion—FRE 701, 702, and 704. To the extent Exhibit 2009 is offered to prove the perspective of a person of ordinary skill in the art, the scope and content of the prior art, the existence of a motivation to combine, or any other matter requiring expert opinion under U.S. law, the exhibit is inadmissible because the EPO Opposition Division has not been qualified as an expert in this proceeding, has not been disclosed under 37 C.F.R. § 42.65, and is not subject to cross-examination under 37 C.F.R. § 42.53. The exhibit also contains improper legal conclusions on the ultimate issues to be decided by the Board.

4. Exhibit 2010 (International Application WO 2018/149641 (with RP 3 583 067 Bibliography))

Petitioner objects to Exhibit 2010 under Federal Rules of Evidence 401, 402, 403, 801, 802, 805, 901, and 902.

The exhibit is cumulative of the intrinsic record already before the Board, including the challenged patent's specification and prosecution history, and adds no probative value to any fact of consequence under the instituted grounds. To the extent Patent Owner offers Exhibit 2010 in tandem with Exhibit 2009 to import the

EPO Opposition Division’s reasoning into this proceeding, as Patent Owner does in the Patent Owner Response by citing “EX2009 at 12; EX2010” immediately following a block quotation of the EPO’s substantive analysis, the exhibit is objectionable for the same reasons set forth above with respect to Exhibit 2009. Petitioner further objects under Federal Rule of Evidence 403 because the exhibit incorporates an International Search Report prepared by the EPO as International Searching Authority that contains “X” and “Y” relevance categorizations, which create an unacceptable risk that the Board will be invited to treat foreign search report classifications as quasi-adjudicative determinations of patentability under U.S. law. Petitioner objects on hearsay grounds under Federal Rules of Evidence 801, 802, and 805 to the extent any portion of Exhibit 2010, including the International Search Report and bibliographic data, is offered for the truth of the matters asserted. Petitioner objects on authentication grounds under Federal Rules of Evidence 901 and 902 to the extent Patent Owner has not properly established the foundation for any portion of the exhibit not self-authenticating under Federal Rule of Evidence 902(6).

5. Exhibit 2011 (U.S. Patent Application Publication No. 2024/0208808)

Petitioner objects to Exhibit 2011 under Federal Rules of Evidence 401, 402, 403, 801, and 802 to the extent the exhibit is offered for any purpose beyond the fact of its publication and the content of its disclosure as a printed publication. Petitioner

objects under Federal Rules of Evidence 801 and 802 to the extent any portion is offered for the truth of the matters asserted therein. Petitioner does not, by these objections, concede the relevance of Exhibit 2011 to any issue in this proceeding.

6. Exhibit 2012 (European Patent Application Publication EP 3 363 770 A1)

Petitioner objects to Exhibit 2012 under Federal Rules of Evidence 401, 402, 403, 801, 802, 805, 901, and 902.

The exhibit's relevance is limited, at most, to written description support for proposed substitute claims in Patent Owner's Motion to Amend, but Patent Owner's Motion to Amend acknowledges that priority entitlement is "immaterial for the Grounds" because all asserted prior art references predate the European priority applications, and the Motion provides parallel written description support from the challenged patent itself. Exhibit 2012 is therefore cumulative under Federal Rule of Evidence 403. Petitioner further objects under Federal Rule of Evidence 403 because Exhibit 2012 contains an EPO European Search Report and annex that include "X" and "Y" relevance categorizations of cited documents, creating an unacceptable risk of confusion of the issues, misleading the Board, and undue prejudice by inviting the Board to treat foreign examiner classifications as adjudicative determinations on the patentability of Casale's disclosure or proposed claim amendments under U.S. law. Petitioner objects on hearsay grounds under Federal Rules of Evidence 801, 802, and 805 to the extent any portion of the exhibit, including the European Search

Report and any examiner annotations, is offered for the truth of the matters asserted. Petitioner objects on authentication and best evidence grounds under Federal Rules of Evidence 901, 902, 1002, 1003, and 1005 to the extent Patent Owner has not provided the certification required under Federal Rule of Evidence 902(3) for foreign public documents or otherwise laid adequate foundation for the exhibit.

Reservation of Rights

Petitioner reserves the right to (i) supplement, amend, or withdraw any of the foregoing objections; (ii) raise additional objections to any portion of Exhibits 2007-2012 as Patent Owner's reliance on those exhibits is further developed; (iii) object to any supplemental evidence served by Patent Owner under 37 C.F.R. § 42.64(b)(2); (iv) object to any new exhibits served by Patent Owner; (v) cross-examine Dr. Wolden and any other declarant pursuant to 37 C.F.R. § 42.53; and (vi) move to exclude any or all of the foregoing evidence pursuant to 37 C.F.R. § 42.64(c) at the time set in the Scheduling Order.

Respectfully submitted,

/ Jeffrey A. Andrews /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 18th day of May, 2026,
a true and correct copy of the foregoing Petitioner's Objections to Patent Owner's
Evidence Pursuant to 37 C.F.R. § 42.64(b)(1) was served by electronic mail on
Patent Owner's lead and backup counsel at the following email addresses:

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Date: May 18, 2026

/ Jeffrey A. Andrews /
Jeffrey A. Andrews, Reg. No. 59,022