

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIMPSON STRONG-TIE COMPANY INC.
Petitioner

v.

COLUMBIA INSURANCE COMPANY
Patent Owner

Case PGR2024-00050
Patent No. 11,920,339

PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

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EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Richard Kaczowski
2002	Curriculum Vitae of Richard Kaczowski
2003	U.S. Patent No. 11,142,902
2004	U.S. Patent No. 11,225,787
2005	U.S. Publication No. 2021/0396000
2006	U.S. Publication No. 2022/0243455
2007	DGT/DGHT Fire Wall Hangers
2008	“Mass Timber and Wood Framing,” Architectural Record Magazine, McGraw Hill Construction, November 2012, pp. 165-169
2009	Top Flange Hangers LBV/BA/B/HB
2010	Merriam-Webster’s Collegiate Dictionary – Definition of Bound
2011	New Oxford American Dictionary – Definition of Bound
2012	U.S. Patent No. 11,065,667
2013	U.S. Publication No. 2019/0136520
2014	U.S. Patent No. 4,560,301
2015	U.S. Patent No. 6,112,495
2016	Simpson Strong-Tie: New Fire Wall Hangers Optimized for Power Nailers

HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY

2017	Simpson Strong-Tie: DGHT Top-Flange Fire Wall Hanger
2018	Simpson Strong-Tie: DGT Top-Flange Fire Wall Hanger
2019	Simpson Strong Tie Co., Inc. Design No. SST/WPCF 120-01 Fire Resistant Joist Hanger DG Series Fire Wall Hanger
2020	Simpson Strong-Tie: Your Go-To, Load-Rated Fire Wall Hanger
2021	Simpson Strong-Tie: Allowable Loads for the DG and DGH hanger installed on walls over wood structural panel sheathing
2022	Simpson Strong-Tie: DGH Fire Wall Hanger Now Available Skewed or with Offset Top Flange
2023	Simpson Strong-Tie: DG/DGB/DGH Fire Wall Hangers
2024	Merriam-Webster’s Collegiate Dictionary – Definition of Outwardly
2025	New Oxford American Dictionary – Definition of Outward
2026	U.S. Publication No. 2002/0104279
2027	U.S. Patent No. 11,560,707
2028	U.S. Publication No. 2002/0148191
2029	U.S. Publication No. 2013/0133284
2030	Merriam-Webster’s Collegiate Dictionary – Definition of Close
2031	New Oxford American Dictionary – Definition of Close

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2032	Merriam-Webster’s Collegiate Dictionary – Definition of Conform
2033	New Oxford American Dictionary – Definition of Conformance
2034	U.S. Patent No. 9,938,709
2035	U.S. Patent No. 5,237,613
2036	U.S. Patent No. 6,135,687
2037	Transcript of the May 25, 2022 Deposition of Mr. Fennel
2038	2012 International Building Code – Table 721.1(2)
2039	Fire Ratings of Masonry Walls
2040	Fire and Concrete Structures
2041	Fire Protection Safety with Concrete
2042	2012 International Building Code: Definition of “Fire Wall”
2043	Structural Design for Fire Safety
2044	Press Releases – MiTek Residential Construction Industry
2045	MiTek Releases FWH Fire Wall Hanger, A New USP Structural Connector Product
2046	USP Structural Connectors 2015-2016 Product Catalog
2047	Wood-Frame House Construction
2048	Proposed Stipulated Protective Order
2049	Amended Protective Order
2050	Second Declaration of Richard Kaczkowski

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2051	Declaration of Paul Tucker
2052	Declaration of Tom Irtmer
2053	Declaration of Andrea Baranyk
2054	Expert Report of Michael Alley
2055	Declaration of Dwight J. Duncan, CFA
2056	Declaration of Matt Church
2057	Declaration of Joe Dunkle
2058	Declaration of Ryan Holmes
2059	Declaration of Michael Nelson
2060	Declaration of Chris Horwitz
2061	May 14, 2025 Deposition of William Andrew Fennell
2062	May 25, 2022 Deposition of William Andrew Fennell
2063	October 5, 2022 Deposition of William Andrew Fennell
2064	January 28, 2025 Deposition of Sam Hensen
2065	March 17, 2025 Deposition of Sam Hensen
2066	January 29, 2025 Deposition of Bryan Wert
2067	April 16, 2025 Deposition of Bryan Wert
2068	January 27, 2025 Deposition of Roger Dankel
2069	January 22, 2025 Deposition of Steven Brekke
2070	January 31, 2025 Deposition of Mark Rolf
2071	January 23, 2025 Deposition of Kristi Campbell
2072	January 24, 2025 Deposition of Mike Nelson

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2073	Declaration of W. Andrew Fennell in Support of Petitioner’s Reply to Patent Owner’s Response and Petitioner’s Opposition to Patent Owner’s Contingent Motion to Amend (PGR2021-00109)
2074	Declaration of Sam Hensen in Support of Opposition to Motion for Preliminary Injunction
2075	Expert Report of Kenneth S. Serwin, PH.D.
2076	Expert Report of Nathan Hoffmann, PE
2077	U.S. Patent No. 537,504
2078	U.S. Patent No. 3,885,363
2079	U.S. Patent No. 6,230,466
2080	U.S. Patent No. 9,790,684
2081	U.S. Publication No. 2012/0285020
2082	U.S. Publication No. 2013/0047539
2083	File History of U.S. Application No. 18/492,460
2084	New Oxford American Dictionary – Definition of Open
2085	Merriam-Webster’s Collegiate Dictionary – Definition of Opening
2086	Simpson Design File for Gypsum Board Cantilever Hanger
2087	Simpson Emails Re: DHU vs. USP’s FHW (1/2)
2088	Simpson Emails Re: USP Gypsum Hanger (1/4)
2089	Simpson Emails Re: USP Gypsum Hanger (2/4)
2090	MiTek Emails Re: FWH
2091	USP: FWH Fire Wall Hanger Testing

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2092	Simpson Emails Re: USP Gypsum Hanger (3/4)
2093	MiTek Emails Re: Cantilevered Hanger (Highly Confidential – Prosecution Bar)
2094	Simpson Emails Re: Status of DHU/DHUTF
2095	Simpson Emails Re: New DHT Drywall Hanger – Forecast Estimate
2096	Simpson Emails Re: Fire Rated Hanger
2097	Simpson Emails Re: Group Field Trial in Baltimore
2098	Simpson Emails Re: USP FWH
2099	Simpson Emails Re: Firewall Hanger (1/2)
2100	Simpson Emails Re: USP Fire Wall Hangers FWH Series
2101	Simpson Emails Re: DGF/DGHF and DGBF
2102	Simpson Emails Re: Fire Wall Hangers
2103	Simpson Emails Re: DU – DHU – DHUTF Challenge
2104	Simpson Emails Re: FWH USP (1/4)
2105	Simpson Emails Re: DHU
2106	Simpson Emails Re: USP FWH Hanger Talking Points
2107	Simpson Emails Re: FWH USP (2/4)
2108	Simpson Emails Re: Drywall Hanger
2109	Simpson Emails Re: Mitek FWH Meeting
2110	Simpson Emails Re: DHU vs. USP’s FWH (2/2)
2111	Simpson Emails Re: Confidential Drywall Hanger

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2112	Simpson Emails Re: Hanger Team Meeting Minutes
2113	Photograph of Initial Simpson FWH and MiTek FWH
2114	Simpson Emails Re: Baltimore Summary / Patent Meeting
2115	July 21, 2017 Simpson Hanger Team Minutes
2116	Simpson Emails Re: DGH/DGB Firewall Hanger is Now Available (1/2)
2117	Simpson Emails Re: DGH/DGB Firewall Hanger is Now Available (2/2)
2118	MiTek Emails Re: USP FWH Fire Wall Hanger
2119	MiTek Emails Re: FWH Fire Wall Hanger for 2 Hour Envelope
2120	MiTek Emails Re: Fire Wall Hanger – UFP
2121	MiTek Emails Re: Fire Wall Hanger
2122	MiTek Emails Re: Question? FWH Series – Fire Wall Hangers
2123	MiTek Emails Re: FWH3518
2124	Simpson Emails Re: New Fire Wall Hanger
2125	MiTek Emails Re: Standard Pricing – Reliable- Los Angeles Apts – Laurence Hovenier 1-27-15.xlsx
2126	Simpson Emails Re: Rumbings
2127	Simpson Emails Re: Top Flange Hanger Over 2 Layers of Gypsum Board
2128	Simpson Emails Re: B/HB Style Hanger for Wall with 2-Layers of Gyp
2129	Simpson Emails Re: FWH USP (3/4)

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2130	Simpson Emails Re: FWH USP (4/4)
2131	Technical Bulletin: FWH Series Fire Wall Hangers
2132	Fire Wall Hangers FWH Series
2133	DG/DGB/DGH Product Literature: Your Go-To, Load-Rated Fire Wall Hanger
2134	DGF/DGHF/DGBF Product Literature: Your Go-To, Load-Rated Fire Wall Hanger
2135	DGT/DGHT Fire Wall Hanger
2136	Simpson Emails Re: DHU/DHUTF
2137	Simpson Emails Re: Firewall Hanger (2/2)
2138	Simpson Cantilever Drywall Hanger Testing
2139	Mitek Emails Re: Revised Firewall Hanger Sales Sheet – Correction to Narrower Width Allowable Loads
2140	Simpson Emails Re: MiTek USP FWH Fire Wall Hanger
2141	Simpson Emails Re: USP Gypsum Hanger (4/4)
2142	Curriculum Vitae of Paul Tucker
2143	April 15, 2025 Deposition of William Andrew Fennell
2144	2012 International Building Code: Chapters 6 and 7
2145	2000 International Building Code
2146	FW Hangers Top Mount
2147	1994 Timber Construction Manual
2148	DU-DHU-DHUTF Drywall Hangers
2149	1967 Uniform Building Code

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2150	Performance Standard for Wood-Based Structural-Use Panels
2151	April 17, 2025 Deposition of Kenneth Serwin
2152	The Evolution of Engineered Wood I-Joists
2153	Performance Standard Considerations for I-Joists Used in Residential Floor Construction
2154	Fire Rated Systems
2155	ICC-ES Evaluation Report: ESR-3444
2156	ICC-ES Evaluation Report: ESR-4464
2157	ASTM E814
2158	FWH Fire Wall Hanger Installation Instructions
2159	Simpson Emails Re: USP – FWH Fire Wall Hanger
2160	File History of U.S. Application No. 17/235,349
2161	File History of U.S. Application No. 16/433,799
2162	File History of U.S. Application No. 16/225,517
2163	File History of U.S. Application No. 15/675,409
2164	File History of U.S. Application No. 14/555,049
2165	Simpson Emails Re: Do You Have a Match for This?
2166	Simpson’s February 14, 2025 Expert Disclosure Pursuant to Federal Rule of Civil Procedure Rule 26 (served only)
2167	Plaintiffs’ November 11, 2024 Notice of Rule 30(B)(6) Deposition of Simpson Strong-Tie Company, Inc. (served only)
2168	ESI Order (served only)

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2169	January 28, 2025 Deposition of Tom Evans (served only)
2170	March 17, 2025 Deposition of Sam Hensen Exhibit 2 (served only)
2171	March 17, 2025 Deposition of Sam Hensen Exhibit 11 (served only)
2172	January 29, 2025 Deposition of Bryan Wert Exhibit 11 (served only)
2173	January 29, 2025 Deposition of Sam Hensen Exhibit 30 (served only)
2174	March 17, 2025 Deposition of Sam Hensen Exhibit 23 (served only)
2175	January 29, 2025 Deposition of Bryan Wert Exhibit 10 (served only)
2176	January 29, 2025 Deposition of Bryan Wert Exhibit 12 (served only)
2177	January 27, 2025 Deposition of Roger Dankel Exhibit 12 (served only)
2178	January 29, 2025 Deposition of Bryan Wert Exhibit 6 (served only)
2179	January 28, 2025 Deposition of Tom Evans Exhibit 21 (served only)
2180	January 28, 2025 Deposition of Tom Evans Exhibit 23 (served only)
2181	January 28, 2025 Deposition of Tom Evans Exhibit 17 (served only)
2182	January 29, 2025 Deposition of Steve Rotzin Exhibit 9 (served only)

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2184	January 29, 2025 Deposition of Steve Rotzin Exhibit 11 (served only)
2185	January 29, 2025 Deposition of Bryan Wert Exhibit 7 (served only)
2186	January 27, 2025 Deposition of Roger Dankel Exhibit 2 (served only)
2187	January 28, 2025 Deposition of Tom Evans Exhibit 7 (served only)
2188	January 29, 2025 Deposition of Bryan Wert Exhibit 8 (served only)
2189	Declaration of John R. Schroeder (served only)
2190	U.S. Patent No. 6,658,806
2191	U.S. Patent No. 3,867,802
2192	U.S. Patent No. 1,368,699
2193	U.S. Patent No. 8,205,402
2194	U.S. Patent No. 8,347,581
2195	ASTM E119 – 12a
2196	ASTM E814 – 13
2197	September 18, 2025 Deposition of William Andrew Fennell
2198	Third Declaration of Richard Kaczowski
2199	September 16, 2025 Deposition of Sam Hensen

Emphasis Added Throughout Unless Indicated Otherwise

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner Columbia Insurance Company (“Patent Owner”) moves to exclude portions of Exhibits 1003 and 1068 (collectively the “Fennell Declarations”) and Exhibit 1047 (the “Hensen Declaration”), as well as Exhibits 1010, 1013-1015, 1018-1027, 1030, 1033, 1036, 1038, 1072-1081, and 1083-1085 as submitted by Petitioner Simpson Strong-Tie Company Inc. (“Petitioner”). Pursuant to Federal Rules of Evidence 401-402 and 701-702 and to 37 C.F.R. § 42.6(a)(3), these exhibits are irrelevant, provide improper opinion testimony by a witness that has not been established as an expert in the subject matter discussed, contain inadmissible hearsay and/or hearsay within hearsay, and/or have been improperly incorporated by reference into Petitioner’s briefing.

II. APPLICABLE LAW

Pursuant to 37 C.F.R. § 42.1 and 37 C.F.R. § 42.62(a), the Federal Rules of Evidence govern the admissibility of evidence submitted in this *Inter Partes* Review proceeding.

Motions to exclude evidence in *Inter Partes* Review proceedings follow a two-step process: (1) a party must timely serve written objections to the challenged evidence under 37 C.F.R. § 42.64(b)(1); and (2) the party must preserve its objections by filing a motion to exclude under 37 C.F.R. § 42.64(c).

III. ARGUMENT

A. Patent Owner Timely Served Its Objections to Petitioner's Evidence

Exhibits 1003, 1010, 1013-1015, 1018-1027, 1030, 1033, 1036, and 1038 were submitted with the Petition (Paper 2). On March 12, 2025—within 10 business days after of institution— Patent Owner served its objections (Paper 13) to the submission of these exhibits on the same evidentiary grounds raised by this Motion.

Exhibits 1047, 1068, 1072-1081, and 1083-1085 were submitted with the Petitioner's Reply to Patent Owner's Response (Paper 43). On August 25, 2025—within 5 business days of Petitioner's Reply— Patent Owner served its objections (Paper 47) to the submission of these exhibits on the same evidentiary grounds raised by this Motion.

As such, Patent Owner has timely served its objections to the challenged evidence pursuant to 37 C.F.R. § 42.64(b)(1).

B. Substantial Portions of the Fennell Declarations (Exhibit 1003 and Exhibit 1068) were Improperly Incorporated by Reference

Paragraphs 96, 99-103, 104-112, 126-131, 137-139, 147-149, 152-154, 154-156, 160-163, 167-168, 241-243, 248, 253-261, 266, 274, 306, 331-334, 342-343, 346-349, 354-355, 364, 437-440, 447, 487, and 496-504 of Exhibit 1003 and Paragraphs 22-24, 28-30, 33, 37-40, 42-55, 61-67, 70-83, 85-100, 106-116, 136-149, and 152-154 of Exhibit 1068 were incorporated by reference in violation of 37

C.F.R. § 42.6(a)(3) (which expressly recites, “Arguments must not be incorporated by reference from one document into another document.”).

Paragraphs 96, 99-103, and 248 of EX1003 are not even cited in the Petition. Further, while ¶¶266, 274, 306, 354-355, 364, 447, and 487 of EX1003 and ¶¶33, 54-55, and 70-74 of EX1068 were cited in either the Petition or the Reply—typically within a multiple paragraph citation—the paragraphs do not support the statements for which they are cited.

The Petition and Petitioner’s Reply routinely cite to large paragraph spans from Mr. Fennell’s Expert Declarations consisting of multiple pages of argument to support otherwise conclusory assertions. Exemplary excerpts from the Petition are recited as follows:

- Claims 21-23 depend upon claim 20 and inherit its inadequacies. EX1003, ¶¶104-112.
- Alternatively, if PO argues for a claim interpretation that the “planar extension plate” is equivalent to “extension flange,” (which Petitioner does not concede), claim 20 is duplicative of claim 19 and thus an improper dependent claim. EX1003, ¶¶126-131.
- A POSA would have recognized that Cullen’s sidewalls 30, 32 could easily be adapted to extend through narrow openings in the drywall to enable the drywall to be installed over the back plate, while still shielding the top plate of the frame wall. EX1003, ¶¶136-140 (Patent Owner only asserts that ¶¶137-139 are incorporated by reference).
- Mr. Fennell also provides a number of other corroborating references showing that this technique was well-known and within

ordinary skill of a POSA for a number of aspects of construction. EX1003, ¶¶147-149.

- Further, installing pre-cut drywall around already installed structural connectors (or other components) was well-known in the art. EX1003, ¶¶152-154.
- In view of this, the modification to Cullen to incorporate sheathing, as taught by Bundy and Allan, would have been nothing more than applying known techniques to a similar device to obtain the predictable result of a method of installing a firewall hanger. EX1005, 5:18-20; EX1003, ¶¶154-156.
- As explained in §VII.A, the Cullen-Bundy hanger would similarly mount to Bundy's frame wall. EX1003, ¶¶159-163 (Patent Owner only asserts that ¶¶160-163 are incorporated by reference).
- A POSA would have understood from Allan that it was well known to cut an opening into sheathing to accommodate a structural connector, such as Cullen's legs 30, 32. EX1032, 4:27-41; EX1031, 2; EX1003, ¶¶166-171 (Patent Owner only asserts that ¶¶167-168 are incorporated by reference).
- In adapting the hanger to receive drywall, a POSA would have sought to install the drywall between Yamaguchi's channel-shaped portion and connection portion. EX1007, 1-5; EX1003, ¶¶241-246 (Patent Owner only asserts that ¶¶ 241-243 are incorporated by reference).
- Mr. Fennell also provides a number of other corroborating references showing that this technique was well-known and well within ordinary skill of a POSA. EX1003, ¶¶252-256 (Patent Owner only asserts that ¶¶ 253-256 are incorporated by reference).
- As Mr. Fennell explains, a POSA would have recognized that this order of assembly would be beneficial by allowing the structure to be completely framed before requiring the drywall to be installed. EX1003, ¶¶257-260.
- Recognizing the benefits of enabling drywall to extend all the way up to the top plates of a frame wall, a POSA would have been

motivated to use Robinson's hanger to secure a joist to a wooden frame wall and to adapt Robinson's hanger to receive drywall to enable the drywall to protect the top plate of a frame wall from fire, as taught by Bundy. EX1005, 5:18-20; EX1003, ¶¶329-337 (Patent Owner only asserts that ¶¶331-334 are incorporated by reference).

- A POSA would have also found this obvious as merely choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. EX1003, ¶¶346-349.
- In installing the hanger and the drywall in the manner shown above, a POSA would have found it obvious to mount the hanger to the wall and then to slide the sheathing upwards relative to the hanger so that the side walls 30, 32 of the hanger extended through the drywall. EX1003, ¶¶434-442 (Patent Owner only asserts that ¶¶437-440 and 442 are incorporated by reference).
- ArchRecord-Commings-Cullen-Bundy renders obvious claim 8 for similar reasons as provided for Cullen-Bundy in §VII.I. EX1003, ¶¶496-501.
- For the same reasons provided in §VIII, a POSA would have found it obvious to utilize Rice's templates for cutting openings in ArchRecord-Commings-Cullen's drywall, as claimed. EX1003, ¶502-504.

Similarly, exemplary excerpts from the Petitioner's Reply are recited as follows:

- In response, Patent Owner (PO) challenges the grounds by mischaracterizing the claims and the prior art combinations, egregiously misrepresenting data relied upon by its experts while obfuscating data contrary to its position, and taking inconsistent positions when discussing the prior art (alleging claim scope is

narrow) vis-à-vis the secondary indicia (alleging claim scope is broad). EX1068, ¶¶1-172.¹

- Any argument by Patent Owner to the contrary renders this term indefinite. EX1068, ¶¶43-46.
- Without more, the opening can extend from any one of these edges of the sheathing. EX1068, ¶¶47-49.
- The specification's 1/8 gap disclosure is meaningless because sheathing can still "closely conform" even if the gap is larger. EX1052, 69:18-76:10; EX1068, ¶¶51-53.
- As discussed throughout the Petition, Allan explicitly teaches installing a connector, cutting sheathing, and sliding sheathing into place so an outstanding extension portion extends through the sheathing. EX1006, 3:28-42, 4:1-14; Pet., 23-27; EX1068, ¶¶61-67.
- In contrast, Petitioner cites additional references to show that Allan's technique of cutting slots and installing sheathing around a mounted structural connector was commonly practiced in wood-frame assemblies. *See Messerschmidt v. United States*, 29 Fed. Cl. 1, 27 (Fed. Cl. 1993), *aff'd*, 14 F.3d 613 (Fed. Cir. 1993); EX1068, ¶¶75-83.
- Petitioner does not propose modifications *to Bundy*, but rather modifications *to Cullen, Yamaguchi, and Robinson* based on certain teachings found in Bundy. Pet., 20-23, 65-68, 102-105; EX1068, ¶¶87-103 (Patent Owner only asserts that ¶¶87-100 are incorporated by reference).
- This comparison fails because the FWH hanger has many features not claimed in the '339 patent, and the DU hanger is not representative of the hangers from the challenged prior art

¹ The EX1068, ¶¶1-172 citation is the only citation to ¶¶ 22-23, 28-30, 37-40, 42, 50, 85-86.

combinations. EX1068, ¶¶87-103, 122-142 (Patent Owner only asserts that ¶¶87-100 and 136-142 are incorporated by reference).

- PO also raises the red herring of “moment arm”/“buckling” concerns against the art, despite acknowledgement from its own declarants that addressing load and moment arm concerns were well within a POSA’s skillset (e.g., calibrating height and thickness of the hanger metal). EX1049, 42:9-43:1; EX1052, 79:15-18, 97:13-17; EX1055, 23:6-21; EX1068, ¶¶95-100.
- Allegations that Cullen’s sidewalls would “buckle” in this arrangement are unfounded. POR, 38-39. *See supra* §1.B. EX1068, ¶¶95-103.
- Furthermore, prior to 2013 it was common practice to cut openings in sheathing around structural connectors or other penetrations, as acknowledged by PO’s declarants. EX1050, 46:2-12; EX1049, 27:1-4, 27:20-23; EX1068, ¶¶106-110.
- ... Petitioner’s rationales for extending prior art hangers through sheathing are rooted in the references as discussed in §1.B. EX1068, ¶¶111-113.
- Further, Cullen’s principle of operation is fully addressed in the Petition. Pet., 21-23; EX1068, ¶¶114-116.
- PO’s misrepresentations and obfuscations attempt to hide that PO’s secondary considerations evidence lacks nexus as not commensurate with the breadth of the claims. EX1068, ¶¶122-142 (Patent Owner only asserts that ¶¶136-142 are incorporated by reference).
- Second, PO fails to establish a nexus between its secondary considerations evidence and the claimed invention because their arguments rely on a feature that was already well known in the art—installing sheathing after mounting a structural connector. EX1068, ¶¶136-142.
- PO grossly misrepresents and obfuscates key data in a report relied upon by its experts, calling into question its entire secondary considerations position. EX1068, ¶¶143-149.

- Accordingly, there were other market forces at work than simply relying on the installation method as being the primary driver of sales. EX1068, ¶¶143-149.
- Mark Rolf, a named inventor of the ‘339 patent, also admitted that Petitioner’s DGT hanger required “*a bigger notch* in the drywall” and was “completely different” than MiTek’s FWH hanger. EX2070, 86:4-15; EX1068, ¶¶150-154; EX1047, ¶54; EX1048, ¶22. (Patent Owner only asserts that ¶¶152-154 are incorporated by reference, Patent Owner acknowledges ¶152 makes note of Mr. Rolf’s testimony in addition to making extensive further arguments that are not included in the Reply)

The conclusory statements within the Petition and Reply citing large swaths of expert testimony are textbook incorporation by reference. *3M Co. v. Evergreen Adhesives, Inc.*, 860 Fed. Appx. 724, 728 (Fed. Cir. 2021) (determining the Board did not “abuse[] its discretion when it concluded that 3M’s arguments were present in the briefing . . . only in the form of improper incorporation by reference to [declaration] testimony” because the arguments “in 3M’s Petition and Petitioner Reply are skeletal at best”); *General Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 Fed. Appx. 654, 658 (Fed. Cir. 2020) (finding the statement—“As demonstrated in his Declaration, and the claim chart attached as Attachment A, Mr. Struhsaker has memorialized his conception in a document . . . as of that date”—was an impermissible incorporation by reference); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 9 (Aug. 29, 2014) (finding the “practice of citing the Declaration to support conclusory statements that are not otherwise supported in the Petition . . . amounts to incorporation by reference”) (designated informative).

Within the citation spans of the Fennell Declarations were arguments concerning yet other exhibits which were completely omitted from the Petition without even being cited. Tellingly, Exhibits 1010, 1013 and 1014 were discussed by Mr. Fennel at ¶¶ 148, 152-153, 255, 257-258, 343, 346-347, and 437-438 of his first declaration (EX1003) but never cited in the Petition or any other papers. Similarly, Exhibit 1019 was discussed by Mr. Fennel at ¶¶ 138, 243, and 333 of his first declaration (EX1003) but also was never cited in the Petition or any other papers. *See, Hospira, Inc., v. Genentech, Inc.*, IPR2017-00804, Paper 83 at 35 (PTAB Oct. 3, 2018) (“Exhibit 1055 has not been cited or relied upon by Petitioners in their Reply, and we decline to incorporate by reference the opinion in Dr. Jusko’s reply declaration concerning that exhibit.”).

Petitioner’s mass incorporation by reference into the Petition and Petitioner’s Reply to Patent Owner’s Response represented an improper attempt to circumvent the word count limit for the Reply. *See* November 2019 PTAB Consolidated Trial Practice Guide at pgs. 35-36; *Cisco Sys.*, Case IPR2014-00454, Paper 12 at 9. Accordingly, the Board should exclude ¶¶ 96, 99-103, 104-112, 126-131, 137-139, 147-149, 152-154, 154-156, 160-163, 167-168, 241-243, 248, 253-261, 266, 274, 306, 331-334, 342-343, 346-349, 354-355, 364, 437-440, 447, 487, and 496-504 of EX1003 and ¶¶ 22-24, 28-30, 33, 37-40, 42-55, 61-67, 70-83, 85-100, 106-116, 136-149, and 152-154 of EX1068 from consideration for violating 37 C.F.R. § 42.6(a)(3).

C. Paragraphs 143-149 of Exhibit 1068 Should be Excluded as the Witness Is Not Qualified to Opine on the Subject Matter of the Paragraphs and his Opinions Were Not the Product of Reliable Principles and Methods

In accordance with FRE 702, an expert must be qualified by “knowledge, skill, experience, training, or education” to render opinions on the subject matter at issue, and such opinions must be the product of reliable principles and methods properly applied to the facts of the case.

Paragraphs 143-149 of Exhibit 1068 were propounded by Petitioner to critique the survey performed by Patent Owner’s survey expert. The declarant—Mr. Fennell—acknowledged that he had no formal training beyond having “taken the standard statistics classes that most engineers receive.” EX2198 at 121:8-122:16. Nor did he have any work experience specifically in market research and surveys beyond that a committee he sat on had conducted a survey sometime in the early 2000s. EX2198 at 122:17-25, 124:15-16, 124:18-125:1, 125:3, 125:10-13. Further, the declarant made no effort to learn any principles or methodologies regarding conducting or interpreting surveys and could not provide legitimate answers when asked about uses and limitations of closed versus open survey questions. EX2198 at 125:16-17, 125:19-22, 125:24-128:13 (repeatedly answering “not sure I can help you”).

Accordingly Paragraphs 143-149 of Exhibit 1068 should be excluded from consideration.

**D. Paragraphs 23, 47, and 50-56 of Exhibit 1047 Should be Excluded
as Improper Opinion Testimony Propounded by a Lay Witness**

In accordance with FRE 701, non-experts are precluded from providing opinion testimony with limited exceptions.

The declarant in EX1047—Mr. Hensen—was presented as a fact witness rather than as an expert, yet his declaration acknowledges that passages of his testimony were merely his opinions on certain matters.

- In my opinion, this time frame would indicate that MiTek was receiving similar inquiries for a specifically designed hanger for a two-hour fire resistive wood-framed walls around the same time that Simpson was receiving such inquiries. EX1047, ¶23
- I would be surprised by any such failure since, in my opinion, Columbia's hanger was something that was easy to identify. ... To me that is a pretty obvious solution. EX1047, ¶47
- I do not think there was any skepticism about whether the FWH product would have worked. EX1047, ¶51
- In my understanding, skepticism means skepticism whether the product would, in fact, allow for the method of installation EX1047, ¶52
- I am aware of some arguments by Columbia ... I disagree EX1047, ¶56

Accordingly, Mr. Hensen's opinion testimony in Exhibit 1047 at ¶¶ 23, 47, and 50-56 should be excluded from consideration.

**E. Paragraphs 36-45, 51-53, and 55-56 of Exhibit 1047 and Exhibits
1010, 1013-1015, 1018-1027, 1030, 1033, 1036, 1038, 1072-1081, and**

1083-1085 are Irrelevant and/or Improperly Incorporated by Reference

Evidence is relevant if it has a “tendency to make a fact more or less probable than it would be without the evidence.” FRE 401. “Irrelevant evidence is not admissible.” FRE 402.

a. Paragraphs 36-45, 51-53, and 55-56 of Exhibit 1047

Petitioner did not cite to ¶¶ 36-45, 51-53, and 55-56 of Mr. Hensen’s deceleration that was submitted as Exhibit 1047 within its Reply brief or any other brief. As such, Petitioner’s briefings entirely fail to identify with any generality or particularity how these paragraphs are relevant to this proceeding. Further, these passages primarily consist of argument rebutting positions taken by Patent Owner. As such, if these passages were given consideration they would serve to circumvent the word count limit for the Reply by effectively allowing Petitioner to incorporate argument from Mr. Hensen’s deceleration in violation of 37 C.F.R. § 42.6(a)(3).

b. Exhibits 1010, 1013-1015, 1018-1027, 1030, 1033, 1036, 1038, 1072-1081, and 1083-1085

Petitioner did not cite or reference Exhibits 1010, 1013-1015, 1018-1027, 1030, 1033, 1036, 1038, 1072-1081, and 1083-1085 in the Petition, Reply, or any other brief. As such, Petitioner’s briefings entirely fail to identify with any generality or particularity how these exhibits are relevant to this proceeding. *SK Innovation Co., LTD. v. Celgard, LLC*, IPR2014-00679, Paper 58 at 49 (PTAB Sep. 25, 2015) (“Because Patent Owner did not cite Exhibits 2013 and 2016 in this

proceeding, we grant Petitioner’s Motion to Exclude Exhibits 2013 and 2016 [under FRE 401 and 402]”).

To the extent these exhibits are referenced or argued anywhere, they are referenced only in Petitioner’s Declarations Exhibits 1003, 1047, 1048, or 1068. Thus, even if these references were relevant to arguments advanced by Petitioner, they were improperly incorporated by reference—through Mr. Fennell’s, Mr. Evan’s, or Mr. Hensen’s declarations—in violation of 37 C.F.R. § 42.6(a)(3).

IV. CONCLUSION

For the foregoing reasons, Patent Owner Columbia Insurance Company respectfully requests the Board exclude:

- Exhibits 1010, 1013-1015, 1018-1027, 1030, 1033, 1036, 1038, 1072-1081, and 1083-1085;
- Paragraphs 96, 99-103, 104-112, 126-131, 137-139, 147-149, 152-154, 154-156, 160-163, 167-168, 241-243, 248, 253-261, 266, 274, 306, 331-334, 342-343, 346-349, 354-355, 364, 437-440, 447, 487, and 496-504 of Exhibit 1003;
- Paragraphs 22-24, 28-30, 33, 37-40, 42-55, 61-67, 70-83, 85-100, 106-116, 136-149, and 152-154 of Exhibit 1068; and
- Paragraphs 23, 36-34, 47, 48 and 50-56 of Exhibit 1047.

Dated: November 17, 2025

Respectfully submitted,

/Kurt F. James/

Kurt F. James, Reg. No. 33,716
Counsel for Columbia Insurance Company

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 42.6(e), the undersigned certifies that November 17, 2025, a copy of the foregoing PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE, were served via email on the following:

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
REQUIREMENTS UNDER 37 C.F.R. § 42.24**

Under 37 C.F.R. § 42.24(d), the undersigned certifies that this PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE complies with the type-volume limitation of § 42.24(a)(v) because it contains 13 pages.

This paper also complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and the type style requirements of 37 C.F.R. § 42.6(a)(2)(iii) and (iv).

Dated: November 17, 2025

Respectfully submitted,

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