

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCELL PTY LTD.,
Petitioner,

v.

SCIENCONS, AS and ARTBIO, INC.,
Patent Owner.

Case No. PGR2025-00029
Patent No. 12,125,603

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(c)**

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner requests exclusion of Petitioner's exhibits 1002 and 1017 for violation of the Federal Rules of Evidence (F.R.E.). 37 C.F.R. §42.64(c).

II. EXHIBIT 1002 (MIRZADEH DECLARATION)

Patent Owner timely objected to exhibit 1002, the Declaration of Saed Mirzadeh, under F.R.E. 401, 402, 403, 701, 702, 703, and 802. Paper 13, 1-2. Patent Owner hereby moves to exclude paragraphs 152-63 of Dr. Mirzadeh's declaration, discussing written description, enablement, and indefiniteness, as not "the product of reliable principles" and methods "reliably applied" to the facts of this case. F.R.E. 702, 402, 403; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993). Expert testimony is neither relevant nor reliable, and therefore inadmissible, when it is not predicated on a correct legal standard. *See, e.g., U.S. Gypsum Co. v. Lafarge N. Am. Inc.*, 670 F. Supp. 2d 737, 745 (N.D. Ill. 2009) ("Having applied the incorrect legal standard..., [the expert witness] will not be permitted to testify on that topic.").

Here, Dr. Mirzadeh's declaration testimony in at least paragraphs 152-63 is not predicated on correct legal standards. In paragraphs 152-63, Dr. Mirzadeh offers opinions regarding written description, enablement, and indefiniteness for claims 1-3, 7-10, 12, 20. However, exhibit 1002 contains no legal standards

whatsoever for written description, enablement, or indefiniteness. When questioned in cross-examination, Dr. Mirzadeh confirmed he had no legal training, and that the only legal standards he applied were those set forth in paragraphs 8-28 (Section II) of his declaration. EX2004, 35:17-19, 36:6-11, 37:4-39:5. These paragraphs specify legal standards only for anticipation and obviousness, not for written description, enablement, or indefiniteness. *See* EX1002, ¶¶8-28. The opinions offered by Dr. Mirzadeh were thus not predicated on the correct legal standards, or indeed any legal standard. Accordingly, his testimony should be excluded as not compliant with the requirements for expert opinion under F.R.E. 702.

Moreover, in the Reply, Petitioner has abandoned its §112 arguments for all claims other than claims 2-3 and 20, confirming the lack of relevance of at least the discussion of the remaining claims. Any consideration of Dr. Mirzadeh's discussion of §112 would be a waste of time and needlessly confuse the issues, substantially outweighing the testimony's negligible probative value. Dr. Mirzadeh's §112 opinions should thus be excluded under F.R.E. 401-403 as well. Accordingly, paragraphs 152-63 of Dr. Mirzadeh's declaration should be excluded at least under F.R.E. 702 and 401-403.

III. EXHIBIT 1017 (HOFF DECLARATION)

Patent Owner timely objected to exhibit 1017, the Declaration of Per Mirzadeh, under F.R.E. 401, 402, 403, 701, 702, 703, and 802. Paper 13, 2. Patent Owner hereby moves to exclude the entirety of Dr. Hoff's declaration as not "the product of reliable principles" and methods "reliably applied" to the facts of this case. F.R.E. 702, 402, 403; *Daubert*, 509 U.S. at 589.

An objective of the standard applied by *Daubert* and F.R.E. 702 is to preclude expert testimony applying a "conclusory approach that cannot reasonably be assessed for reliability." *E.g.*, *United States v. Anderson*, 171 F.4th 232, 238 (3d Cir. 2026) (quoting Fed. R. Evid. 702, advisory committee's note to 2000 amendment). Expert testimony lacking sufficient explanation or support is subject to exclusion. *See Meyer Intellectual Props. Ltd. v. Bodum, Inc.*, 690 F.3d 1354, 1374 (Fed. Cir. 2012). For example, where an expert opines that claims are unpatentable without explaining "how or why a person ordinarily skilled in the art would have found the claims" unpatentable, that testimony lacks the necessary articulated reasoning and is proper to exclude. *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008).

Here, Dr. Hoff's opinions regarding unpatentability, as set forth in paragraphs 38-82 of EX1017, are textbook illustrations of improper conclusory testimony. For example, his opinion regarding each independent claim, as well as

most dependent claims, is provided by quoting the claim language followed by a single sentence: “In my opinion, Hassfjell-Hoff discloses this claim.” *E.g.*, EX1017, ¶¶38, 56. This is the epitome of conclusory testimony, and it thus lacks the articulated reasoning required of an expert opinion. This deficiency was pointed out in the POR (54-55), and Petitioner made no attempt to defend these opinions in the Reply, confirming the deficiency of Dr. Hoff’s opinions.

Indeed, the only discussion of Dr. Hoff’s declaration in the Reply was Petitioner’s assertion that paragraphs 32-37 describe “how the device in his article actually worked at the time.” Reply, 22. However, Petitioner did not advance a theory of unpatentability based on the Hassfjell-Hoff device, but rather on the Hassfjell-Hoff article. The functionality or lack thereof of the device is thus not relevant to the grounds of unpatentability advanced in the petition, rendering Dr. Hoff’s testimony inadmissible under F.R.E. 401 and 402. Moreover, neither Dr. Hoff nor any other witness applied the discussion in these paragraphs to any of the claims, and Petitioner’s attempt to inject a new theory of unpatentability based on the Hassfjell-Hoff device in Reply unduly confuses the issues without providing any probative value, rendering Dr. Hoff’s testimony inadmissible under F.R.E. 403 as well as F.R.E. 401-402.

The remainder of Dr. Hoff’s declaration describes background and legal standards he does not apply in a way relevant to these proceedings. Accordingly,

Dr. Hoff's declaration as a whole should be excluded at least under F.R.E. 702 and 401-403.

IV. CONCLUSION

Each of the above-identified portions of Exhibits 1002 and 1017 should be excluded. If not excluded, they should be restricted and given no weight to minimize prejudice. F.R.E. 105.

Respectfully submitted,

Dated: June 30, 2026

/ Michael T. Rosato /

Michael T. Rosato, Lead Counsel
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CERTIFICATE OF SERVICE

I certify that the foregoing Patent Owner's Motion to Exclude Evidence was served on June 30, 2026, on Petitioner at the following electronic service addresses:

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