

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 REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE**

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I. INTRODUCTION

Petitioner's Opposition (Opp., Paper 35) fails to justify the admissibility of the evidence identified in Patent Owner's Motion to Exclude (MTE, Paper 31). Petitioner complains throughout its opposition that the arguments in the MTE are directed to weight, not admissibility, which is particularly ironic given that Petitioner unabashedly devoted nearly half of its own motion to exclude (Paper 32, 5-7) to expressly discussing the weight to be given to testimony. By contrast, Patent Owner's MTE clearly explained and applied the legal standards for admissibility, and Petitioner fails to raise any relevant rebuttal to the substance of the MTE's arguments. Accordingly, the declaration of Mr. Hoff and the identified portions of the Mirzadeh declaration should be excluded as inadmissible.

II. THE IDENTIFIED PARTS OF EX1002 ARE INADMISSIBLE

As explained in Patent Owner's Motion to Exclude, the portions of Dr. Mirzadeh's declaration addressing §112 are inadmissible as improper expert opinion testimony under F.R.E. 702 as well as under F.R.E. 401-403 as irrelevant and having minimal probative value that is substantially outweighed by its prejudicial value, including waste of time and needless confusion of issues.

Regarding F.R.E. 401-403, Petitioner does not dispute that it has abandoned all §112 arguments except those argued in its reply, namely that claim 2 allegedly lacked enablement for an embodiment of pure ²²⁸Th and that claim 20 was

allegedly invalid under one alternative construction. *See* Opp., 7-8 (conceding that on reply, Petitioner narrowed the claims at issue by dropping §112 arguments other than those for claims 2-3 and 20); Reply, 21. At a minimum, this renders his opinions with respect to claims 1, 7-10, and 12 inadmissible as irrelevant under F.R.E. 401-402, as it has no “tendency to make a fact more or less probable,” where “the fact is of consequence in determining the action.” Fed. R. Evid. 401. This also eliminates all probative value of this testimony, rendering it inadmissible under F.R.E. 403, as admitting the evidence can do no more than waste time and confuse the issues.

As to F.R.E. 702, Petitioner does not dispute that Dr. Mirzadeh failed to apply a correct legal standard. Petitioner argues that Dr. Mirzadeh’s “testimony is not offered to instruct the Board on § 112 law” (Opp., 4), but this misses the point entirely. Dr. Mirzadeh offered opinions regarding written description, indefiniteness, and enablement. F.R.E. 702 requires reliable principles reliably applied to the facts of the case. Dr. Mirzadeh’s opinions were divorced from any legal standard whatsoever, making it impossible for his opinions that any of the challenged claims were unpatentable under §112 to reflect such reliable application. At best, his opinions would amount to “subjective belief or unsupported speculation,” falling short of the requirements under *Daubert* as encoded in F.R.E. 702. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.

579, 590 (1993).

Petitioner also argues that specific examples of Dr. Mirzadeh's testimony for claims 1, 2, and 7 were admissible notwithstanding his failure to apply appropriate standards for interpreting claim validity. Opp., 4-6. Not only do these arguments fail to cure the underlying defects in his testimony, but they also address only issues no longer of consequence in the proceeding. Claim 7 has been disclaimed, Petitioner has abandoned its §112 arguments for claim 1, and the only argument maintained by Petitioner for claim 2 is enablement, not indefiniteness as argued in the Opposition. *See* Opp., 5-6; Reply, 21.

Finally, Petitioner's attempt to distinguish *U.S. Gypsum* fails. Petitioner suggests that the MTE should have identified "error in Dr. Mirzadeh's conclusions" (Opp., 6) but this is precisely the type of argument regarding weight that is barred in a MTE, as the remainder of the Opposition complains of. The defect complained of in the MTE, which Petitioner fails to rebut, is that Dr. Mirzadeh lacked the necessary premises, in the form of legal standards, to offer the opinions in the first place. The same federal rules apply in district court as here, and they dictate the same conclusion.

III. THE HOFF DECLARATION IS INADMISSIBLE

Petitioner tries to defend the admissibility of Mr. Hoff's testimony, but its Opposition sounds as though it is addressing an entirely different document.

Petitioner complains that the MTE “cherry-picks isolated summary sentences” while “ignoring the surrounding analysis.” Opp., 8. But the sum total of Mr. Hoff’s “analysis” for each independent claim and most dependent claims consists of such summary sentences, sitting in isolation. That is, there is no “analysis.” Mr. Hoff’s declaration makes it utterly impossible for his opinions to “reasonably be assessed for reliability.” *United States v. Anderson*, 171 F.4th 232, 238 (3d Cir. 2026).

Petitioner claims Mr. Hoff’s opinion testimony is “replete with substantive reasoning,” yet identifies only individual, isolated statements in paragraphs discussing dependent claims. Opp., 8-9. Yet for each of the cited paragraphs, Mr. Hoff expresses opinions about dependent claims resting on conclusory opinions regarding the independent claims whose limitations are included in each dependent claim by dependency. Thus, his discussion of these claims also fails to provide the application of reliable principles required to satisfy the requirements of F.R.E. 702.

Regarding the remaining paragraphs of his declaration, Petitioner argues that Mr. Hoff’s testimony in ¶¶29-37 provides “technical context” or establishes “the level of skill in the art.” Opp. 10-11. However, Mr. Hoff’s declaration did not describe how these paragraphs would have reflected the level of skill in the art or otherwise provide context to POSITAs. Nor did Dr. Mirzadeh or any other declarant rely on Mr. Hoff’s declaration to substantiate the level of skill in the art. As such, the remainder of the Hoff declaration has no bearing on any facts of

consequence in this case.

Lastly, Petitioner argues that the “Board should exercise [its] discretion here” to accord Mr. Hoff’s testimony “little or no weight.” Opp., 9. Patent Owner agrees that his testimony deserves no weight, not only because of its deficient explanation but also because it fails to satisfy the requirements for admissibility of expert testimony. F.R.E. 105 (“the court, on timely request, must restrict the evidence to its proper scope”). Because both parties agree Mr. Hoff’s testimony at best should be accorded no weight, the testimony might as well be excluded.

IV. CONCLUSION

The Board should grant Patent Owner’s motion and exclude or alternatively restrict the identified portions of Exhibits 1002 and 1017.

Respectfully submitted,

Dated: July 14, 2026

/ Michael T. Rosato /
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CERTIFICATE OF SERVICE

I certify that the foregoing Reply in Support of Patent Owner's Motion to Exclude was served on July 14, 2026, on Petitioner at the following electronic service addresses:

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