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. PGR2025-00040
Patent No. 12,249,437

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, 1017, 1024, and 1025 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 12, 1-2. Patent Owner hereby moves Dr. Mirzadeh's declaration, including its claim construction discussion and testimony dependent thereon, 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 applying an incorrect claim construction is not only unreliable, but also irrelevant, and therefore inadmissible. *See, e.g.*, *Trudell Med. Int'l Inc. v. D R Burton Healthcare, LLC*, 127 F.4th 1340, 1350 (Fed. Cir. 2025) (expert opinion tied to incorrect claim construction methodologically unsound); *PIN/NIP, Inc. v. Platte Chem. Co.*, 304 F.3d 1235, 1246 (Fed. Cir. 2002) (expert testimony under wrong claim construction inadmissible); *Marctec, LLC v. Johnson & Johnson & Cordis Corp.*, 638 F. Supp. 2d 987, 998 (S.D. Ill. 2009) ("Expert opinions under an incorrect claim construction have no relevance."); *cf. Finesse*

Wireless LLC v. AT&T Mobility LLC, 156 F.4th 1221, 1227 (Fed. Cir. 2025) (self-contradictory expert testimony insufficient to sustain burden of proof).

Here, Dr. Mirzadeh's declaration presents opinions regarding claim construction that are conclusory, self-contradictory, and fail to apply the correct legal standard. Claim construction is grounded in an inquiry into "how a person of ordinary skill in the art understands a claim term." Philips v. AWH Corp., 415 F. 3d 1303, 1312-13 (Fed. Cir. 2005). But rather than offering opinions regarding the understanding a POSITA would have had of limitation 1c, Dr. Mirzadeh presents what he calls "three possible constructions," without indicating whether a POSITA would actually have understood any of them to be correct. EX1002, ¶36.

Moreover, as explained in the POR, these constructions import new language and arbitrary limitations into the claim language without justification. *See* POR, 12-16 (introducing new terms including an "entire volume" seemingly distinct from the claimed "volume," introducing two distinct volumes that are selectively coupled, and adding a negative limitation absent from the claims).

Dr. Mirzadeh further describes for two of these three constructions what he claims to be a POSITA's understanding under that construction, but these descriptions contradict Dr. Mirzadeh's own description of these constructions. For example, Dr. Mirzadeh's second construction required that "Just the collector surface, ***not the entire volume, has a gas tight seal***," whereas his characterization

of the same construction two paragraphs later required "that the precursor isotope source is fluidly coupled to a fully enclosed ***volume that has a gas-tight seal***." EX1002, ¶¶36, 38. Similarly, for the first construction, Dr. Mirzadeh's characterization added a requirement of "a gas-tight seal that selectively fluidly couples the precursor isotope source to a volume," yet the first construction did not discuss selectively coupling at all. EX1002, ¶¶36-37. And as to his third construction, Dr. Mirzadeh never provided any explanation whatsoever. In sum, Dr. Mirzadeh's claim construction opinions are incoherent and self-contradictory, and he fails to apply the legal standard for claim construction or offer opinions with the articulated reasoning required under F.R.E. 702.

Furthermore, as Petitioner has repeatedly evolved and revised its positions it is at best unclear whether the claim constructions and testimony originally advanced by Dr. Mirzadeh is still maintained by Petitioner or bears any relevance to Petitioner's positions, whatever those might be. *See, e.g.*, Sur-Reply (Paper 26), 3-4 (summarizing these revisions). For example, Petitioner now seeks to expressly abandon Dr. Mirzadeh's opinions regarding claim construction, arguing in the Reply against the second of his constructions. Reply, 12-14. For the first and third constructions, Petitioner now concedes it is improper to read the term "selectively" into any coupling recited in the claims. Reply, 1-2. Petitioner's departure from and abandonment of Dr. Mirzadeh's original testimony renders his original declaration

testimony, at best, more prejudicial than probative and confirms the irrelevance of his opinions to the present proceedings.

Dr. Mirzadeh's claim construction opinions regarding limitation 1c underpin all of his opinions regarding the claims of the '437 patent. *See* EX1002, ¶¶55-58 (limitation 1c), 84-85 (relying on limitation 1c arguments for claim 16), 128-33 (limitation 1c), 149 (relying on limitation 1c arguments for claim 16), 177 (relying on second construction of limitation 1c), 183-87, 289 (relying on constructions to argue indefiniteness). For at least this reason, the remaining opinions expressed throughout Dr. Mirzadeh's declaration also lack the necessary articulated reasoning required under F.R.E. 702. Further, in light of these deficiencies and the disconnect between his opinions and Petitioner's remaining arguments, Dr. Mirzadeh's opinions lack relevance and serve only to subject Patent Owner to undue prejudice and introduce confusion, both of which substantially outweigh any probative value. Fed. R. Evid. 401-403. Accordingly, Dr. Mirzadeh's claim construction opinions, as well as the remainder of his 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 12, 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 38-72 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 31-37 describe "how the device in his article actually worked at the time." Reply, 26. However, Petitioner did not advance any theories 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. EXHIBIT 1024 (CONROY DEPOSITION EXHIBIT 6)

Patent Owner timely objected to exhibit 1024 under F.R.E. 401, 402, 403, and 901. Paper 21, 1. Patent Owner hereby moves to exclude exhibit 1024 as not authenticated and not shown to be relevant to the current proceedings. F.R.E. 402, 403, 901.

Exhibit 1024 appears to be a printout of an image of part of a webpage for Home Depot. Only a portion of a webpage appears to be depicted in exhibit 1024, showing what seems to be a cut-off list of items under the heading "Inspired by Your Recent Views." Exhibit 1024 was first introduced over objection during the deposition of Charles Conroy and was submitted into evidence in Reply without a subscribing witness. EX1023, 149:24-125:22. The list shown in exhibit 1024 appears to state that it was generated based on a series of recent views of other webpages; however, Petitioner has provided no witness testimony showing what webpage views were used to generate the page or otherwise showing how the webpage came to be generated in the form depicted in exhibit 1024. Because Petitioner has failed to authenticate it, exhibit 1024 is thus inadmissible under F.R.E. 901.

Furthermore, Petitioner has not met its burden to show the relevance of exhibit 1024. Petitioner cites exhibit 1024 as purportedly showing the plain and ordinary meaning of the word "seal" (Reply, 3); however, Petitioner has provided

no testimony indicating that a POSITA would view exhibit 1024 as providing or informing the definition of the word "seal" or that it would have been used by a POSITA to understand the meaning of the claims of the '437 patent. Nor has Petitioner provided any evidence showing that exhibit 1024 was prior art or that it would otherwise have informed the point of view of a POSITA. Petitioner has thus failed to demonstrate the relevance of exhibit 1024, and its probative value is minimal and substantially outweighed by risk of unfair prejudice and confusion of issues. Fed. R. Evid. 401-403.

Accordingly, exhibit 1024 should be excluded at least under F.R.E. 901 and 401-403.

V. EXHIBIT 1025 (CONROY DEPOSITION EXHIBIT 8)

Patent Owner timely objected to exhibit 1025 under F.R.E. 401, 402, 403, and 901. Paper 21, 1. Patent Owner hereby moves to exclude exhibit 1024 as not shown to be relevant to the current proceedings. F.R.E. 402, 403.

Exhibit 1025 was first introduced over objection during the deposition of Charles Conroy and was submitted into evidence in Reply without a subscribing witness. EX1023, 166:4-22. The Reply (17) relies on exhibit 1025 as purportedly depicting the appearance of Hassfjell-Hoff's gate valve. However, Petitioner has provided no evidence linking exhibit 1025 to Hassfjell-Hoff's gate valve. The only witness discussing exhibit 1025 is Mr. Conroy, who, when presented with exhibit

1025, testified that exhibit 1025 is "clearly not the gate valve in Figure 3" of Hassfjell-Hoff, and when asked whether it was of the "same type as what's shown in Hassfjell-Hoff figure 3," he testified that "They look to be very dissimilar." EX1023, 166:18-168:1. This dissimilarity is self-evident, as may be seen by comparing exhibit 1025 to Fig. 3 of Hassfjell-Hoff, which clearly shows no component matching the object shown in exhibit 1025. Petitioner has offered no other testimony showing any relevance of exhibit 1025. Petitioner has thus failed to demonstrate the relevance of exhibit 1025, and its probative value is minimal and substantially outweighed by risk of unfair prejudice and confusion of issues. Fed. R. Evid. 401-403.

Accordingly, exhibit 1025 should be excluded at least under F.R.E. 401-403.

VI. CONCLUSION

Each of Exhibits 1002, 1017, 1024, and 1025 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 /
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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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Respectfully submitted,

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