

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 OPPOSITION TO PETITIONER'S
MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

Petitioner has moved to exclude EX2002, the declaration of Charles Conroy, but its motion to exclude (MTE, Paper 27) purports to challenge his expert qualifications by misapplying Petitioner's own definition of a POSITA and mischaracterizing his background and testimony. Moreover, Petitioner uses its chimerical argument regarding admissibility as a smokescreen to reargue the weight that should be given to the Conroy declaration, going beyond the scope of allowable argument under the rules and in direct contradiction to the Trial Practice Guide. 37 CFR § 42.64(c); Trial Practice Guide, <https://www.uspto.gov/patents/ptab/trial-practice-guide>.

Accordingly, Petitioner's motion should be *denied*.

II. MR. CONROY'S EXPERT TESTIMONY IS ADMISSIBLE UNDER PETITIONER'S OWN DEFINITION OF A POSITA

Petitioner's sole challenge to the admissibility of Mr. Conroy's testimony is under F.R.E. 702. MTE, 1. F.R.E. 702 specifies that an expert's testimony is admissible so long as the proponent has shown that the "expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," his "testimony is based on sufficient facts or data," and that his "opinion reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702. Petitioner does not argue that Mr. Conroy's lacks any of these requirements.

Petitioner's sole argument is that Mr. Conroy was not a POSITA. MTE, 1. Petitioner's own POSITA definition, however, cast a wide net referring, without limitation, to a "comparable field of study" and "other relevant industry experience," as well as "substitute" education and experience. As such, Petitioner's argument flies in the face of its own POSITA definition.

In the petition, Petitioner specified that, with respect to the '437 patent, a POSITA

would have had a bachelor's degree in chemistry, nuclear chemistry, radiochemistry, chemical engineering, physics, or materials science, or a comparable field of study, plus approximately two to three years of professional experience with radioisotope generators, radiopharmaceutical chemistry, nuclear medicine, or other relevant industry experience. Additional graduate education could substitute for professional experience, and significant experience in the field could substitute for formal education.

Pet., 3. No other requirements for a POSITA have been advanced in this case. In the MTE, Petitioner provides an edited reproduction of this definition that specifically omits the reference to "radiopharmaceutical chemistry" and "nuclear medicine" as examples of relevant industry experience, attempting to avoid the plain conclusion that Mr. Conroy's Pharmacy degree and his experience as a radiopharmacist falls within the scope of Petitioner's definition. MTE, 2-3.

Petitioner cites cases in which expert testimony was excluded because a witness lacked specific experience expressly required by the definition of a POSITA in those cases. MTE, 1-2; *see Billerud Aktiebolag (Publ) v. Westrock MWV, LLC*, IPR2023-01206, Paper 60 at 10 (level of ordinary skill expressly requires “specialization in paperboard manufacturing”) (Mar. 12, 2025); *id.*, 61 (conceded to have no “experience or specialization in paperboard manufacturing”); *BOE Tech. Group Co., Ltd. v. Optronix Sciences LLC*, IPR2024-01130, Paper 47 at 20-21 (Jan. 26, 2026) (POSITA expressly required to have “practical experience designing LED backlights for LCD displays”); *id.*, 22-23 (concededly no experience designing LED backlights for LCD displays); *Calco v. Össur Ams.*, 2026 WL 939211, *4 (C.D. Cal. Apr. 2, 2026) (POSITA required experience in developing orthotics, but proffered expert lacked any such experience). By contrast, as discussed below, Mr. Conroy’s education and experience qualify under Petitioner’s own definition of a POSITA, so Petitioner’s admissibility arguments fail.

A. Mr. Conroy’s Education Meets Petitioner’s POSITA Definition

First, Mr. Conroy satisfies the educational requirements of Petitioner’s definition. The ’437 patent relates to the field of radiopharmaceuticals, including generators for producing radiopharmaceuticals for use in cancer therapies. *See, e.g.*, EX1001, 1:20-27, 7:22-25, 12:35-38, 17:11-21; EX1002, ¶29. Mr. Conroy has

a Bachelors of Science degree in Pharmacy. EX2002, ¶2. His studies for this degree included chemistry and pharmaceutical science, as well as studies specifically in “radiopharmacy.” *Id.* None of this is disputed by Petitioner, and each corresponds with Petitioner’s definition of a POSITA, including the examples of industrial experience (radiopharmaceutical chemistry and nuclear medicine) that Petitioner has deleted from its definition in the MTE.

Regarding education, Petitioner’s attorneys now argue they do not view a Bachelor of Science in Pharmacy degree as what was imagined as “a comparable field of study.” MTE, 2-3. However, Petitioner offers nothing more than a bare assertion for this, and as noted above, Petitioner’s argument directly contradicts the examples of relevant fields for industrial experience Petitioner included in its definition of a POSITA. *See* Pet., 3; MTE, 2-3 (deleting “radiopharmaceutical chemistry [and] nuclear medicine” from petition’s POSITA definition). Mr. Conroy explained details of his degree studies, including studies in chemistry, which Petitioner itself identifies as a qualifying field of study, as well as in pharmaceutical science including specifically courses in radiopharmaceuticals. Mr. Conroy further testified that he qualified under Petitioner’s definition, both due to his education as well as his experience with radiopharmaceutical generators. EX2002, ¶30; *see* Pet., 3 (POSITA’s experience qualifies in addition to education). No expert disputes this. Petitioner’s one-sentence of attorney argument ignores its

own definition and improperly seeks to sandbag Patent Owner with new argument re-imagining what degrees a POSITA might have.

Petitioner's complaint that "Patent Owner provided no explanation for why a degree in Pharmacy is comparable" misstates the burden. MTE, 3. As the proponent of its POSITA definition, Petitioner specified no particular limitations on what degrees were "comparable" or any other qualifications. Conversely, Patent Owner provided undisputed evidence of Mr. Conroy's qualifications, including his degree in Pharmacy specifically involving coursework in radiopharmaceuticals and chemistry—which Petitioner itself listed as a qualifying degree for a POSITA. And as noted above, Petitioner's argument also ignores Petitioner's own POSITA definition, in which relevant experience includes "nuclear medicine," plainly encompassing Mr. Conroy's education and background in radiopharmacy. Pet., 3. Patent Owner was under no burden to speculate as to what attorney argument Petitioner might later advance attempting to twist and reimagine Petitioner's own broad definition of a POSITA in order to suit its litigation objectives.

Petitioner also goes on to mischaracterize Mr. Conroy's testimony. Petitioner claims that "[a]t deposition, Mr. Conroy conceded that he did not take any coursework on radioisotope generators." MTE, 3 (citing EX1023, 17:19-22, 19:3-9). Not so. In the cited portion of his deposition, counsel asked whether Mr. Conroy took "any coursework in radioisotope generators when studying *for your*

MBA?,” to which he answered that he did not. EX1023, 17:19-22 (emphasis added); *see also id.*, 19:3-9 (no question regarding coursework). Of course, Petitioner ignores that Mr. Conroy’s declaration already explained his experience for his undergraduate degree did include such coursework: “The coursework for my Bachelor of Science covered chemistry, biology and pharmaceutical science as well as pharmacology. This included studies in radiopharmacy.” EX2002, ¶2. Petitioner never asked about any of this coursework, and its attempt to pretend that Mr. Conroy lacked such education mischaracterizes the record. In sum, Mr. Conroy meets the educational requirements for a POSITA based on his education in a comparable field to those listed by Petitioner, as well as his professional experience, discussed below.

B. Mr. Conroy’s Experience Meets Petitioner’s POSITA Definition

Mr. Conroy’s professional experience also qualifies under Petitioner’s definition. Petitioner does not dispute that Mr. Conroy has lengthy professional experience that has familiarized him with operating radiopharmaceutical generators and that he also has many years’ experience making radiopharmaceuticals using radiopharmaceutical generators. EX2002, ¶¶4-7; EX2003; EX1023, 16:20-17:7, 18:19-21, 34:2-36:1; 39:1-13. Mr. Conroy’s extensive experience with radiopharmaceutical generators satisfies Petitioner’s requirements at least as including more than “two to three years of professional

experience with radioisotope generators.” Pet., 3. Consistent with his education and experience, Mr. Conroy expressly testified that he was “at least a person of ordinary skill in the art as of the critical date,” and that he was also “familiar with the level of skill and understanding of a POSITA as of that date.” EX2002, ¶30; *see also* EX1023, 25:4-26:7, 225:20-27:17 (confirming qualification under Petitioner’s POSITA definition in deposition).

Petitioner now complains that Mr. Conroy’s experience ought not to count because some of his experience involved “liquid radioisotope generators, not emanation generators,” and his experience with radioisotope generators as a radiopharmacist did not involve designing new types of generators. MTE, 4-5. However, Petitioner’s POSITA definition did not require that all experience be with any particular type of radioisotope generator nor that a POSITA have actually designed new generators in the past—the definition required only “experience with radioisotope generators, radiopharmaceutical chemistry, nuclear medicine, or other relevant industry experience,” which Mr. Conroy unquestionably has. Pet., 3. Indeed, Petitioner admits that there is no requirement of experience with emanation generators. MTE, 5 (admitting that experience with emanation generators is not required for a POSITA).

Petitioner’s citation to *Grantley* (MTE, 4) is entirely inapt. In *Grantley Patent Holdings, Ltd. v. Clear Channel Communications, Inc.*, the excluded expert

merely supervised others who used the systems in question without particularly using them himself, he never developed an understanding of the technical details of the technological field, and he offered no technical details whatsoever himself, relying entirely on another expert. 2008 WL 7701186 at *3 (E.D. Tex. Apr. 4, 2008). The definition adopted by the court required specific coursework and specific types of experience that the expert undisputedly lacked. *Id.* at *2-3. By contrast, Mr. Conroy confirmed repeatedly that not only did he operate radiopharmaceutical generators, but also that he was familiar with their design, manufacture, and principles of operation based on his roles as a radiopharmacist, his work at multiple firms in the field, and demonstrations of various radioisotope generators. EX2002, ¶¶4-6.

Petitioner further asserts that “One does need to understand how a radioisotope generator works or how to build a radioisotope generator in order to use one.” MTE, 5. This appears to concede that Mr. Conroy’s experience satisfies even Petitioner’s newly elevated POSITA definition; for example, Petitioner’s argument implies Mr. Conroy’s experience operating generators would necessarily entail understanding of how the generator works and how to build generators. But even if Petitioner meant to say the opposite, it fails in this case, as Mr. Conroy expressly testified that he was familiar with how radioisotope generators worked, and when questioned, he confirmed that his skill and experience provided him with

the technical understanding required for him to design radioisotope generators.

EX2002, ¶¶5-6; EX1023, 30:2-19.

Accordingly, Mr. Conroy meets Petitioner's own definition of a POSITA, and his testimony is admissible under F.R.E. 702.

III. PETITIONER'S ARGUMENTS REGARDING WEIGHT SHOULD BE DISREGARDED

Petitioner devotes the remainder of its motion to exclude not to arguing admissibility but to an attempt to reargue the weight that should be accorded to Mr. Conroy's testimony. Not only are the arguments Petitioner raises wholly without merit as explained in the Sur-Reply, but they also violate the Board's rules regarding motions to exclude. The Board has repeatedly and unambiguously instructed parties that motions to exclude may not be used to advance arguments regarding the sufficiency or weight of evidence. *See, e.g., Askelladen LLC v. N5 Techs., LLC*, Paper 36 at 8 (Apr. 18, 2018) ("A motion to exclude is not the proper vehicle to challenge the sufficiency of evidence."); Trial Practice Guide §II.K ("A motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents.").

Here, Petitioner brazenly defies the Board's rules by raising arguments regarding the weight accorded to Mr. Conroy's expert testimony. Petitioner asks the Board to find that "Mr. Conroy's declaration should be accorded no weight"

and goes on to spend the last third of its motion to exclude raising arguments regarding the “probative weight of an expert’s testimony.” MTE, 5-7.

Allowing parties to inject arguments regarding weight into briefing regarding admissibility of evidence invites parties to file motions to exclude as a form of self-help to obtain additional merits briefing. Petitioner’s misuse of briefing by raising improper arguments regarding the weight of expert testimony has prejudiced Patent Owner by requiring it to waste time and effort responding to Petitioner’s arguments. Such conduct constitutes an “improper use of the proceeding,” as it at minimum has caused an “unnecessary increase in the cost of the proceeding.” 37 C.F.R. §42.12(a)(7). Petitioner’s improper merits arguments regarding Mr. Conroy’s testimony warrant adopting his testimony as established fact. *See id.*, §42.12(b)(1); *cf., e.g., Square, Inc. v. Think Computer Corp.*, CBM2014-00159, Paper 48 at 2 (Nov. 27, 2015) (Board considers whether conduct warrants sanctions, whether conduct has caused harm, and proportionality of sanctions.).

IV. CONCLUSION

Accordingly, Petitioner’s motion to exclude should be denied.

Respectfully submitted,

Dated: July 7, 2026

/ Michael T. Rosato /
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CERTIFICATE OF SERVICE

I certify that the foregoing Patent Owner's Opposition to Petitioner's Motion to Exclude Evidence was served on July 7, 2026, on Petitioner at the following electronic service addresses:

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