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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE

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Petitioner's Opposition (Opp., Paper 31) fails to justify the admissibility of the evidence identified in Patent Owner's Motion to Exclude (MTE, Paper 27). 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 28, 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 MIRZADEH DECLARATION (EX1002) IS INADMISSIBLE

As explained in Patent Owner's Motion to Exclude, Dr. Mirzadeh's declaration is founded on inadmissible opinions that are no longer relevant to Petitioner's challenge, and he has failed to ground his opinions on the correct claim constructions as required under F.R.E. 702 and applicable case law. MTE, 1-4. For example, Dr. Mirzadeh offered incoherent and self-contradictory constructions, rendering his opinions regarding those constructions inadmissible due to a lack of the articulated reasoning required under F.R.E. 702. *Id.* Likewise, his opinions relying on those constructions—i.e., the opinions expressed with regard to each claim—lack the appropriate underlying articulated reasoning required.

Incoherence of the testimony aside, Petitioner never grapples with the fact Dr. Mirzadeh's testimony is based on a theory Petitioner now disavows—that is, Dr. Mirzadeh presented "three constructions" (barely coherent at best) he claims are all equally possible. Petitioner now disagrees with that, seeking to construct a new and different case in reply based solely on attorney argument. Petitioner does not and cannot dispute that it has disavowed the claim construction foundation to the testimony advanced by Dr. Mirzadeh. *See* Opp., 5-6. Improprieties abound with Petitioner's constantly evolving whack-a-mole approach to construing claims, but certainly abandonment of the foundation of its expert's testimony renders that testimony irrelevant and, if anything, more prejudicial than probative.

Petitioner's response to the cases cited in the MTE confirms the inadmissibility of Dr. Mirzadeh's testimony. The MTE cited multiple cases describing the appropriateness of excluding expert testimony not premised on correct claim constructions or otherwise deficient, including the incoherent, self-contradictory analysis advanced by Dr. Mirzadeh. *See* MTE, 1-2. Petitioner does not rebut these deficiencies or dispute that the cases cited by Patent Owner dictate inadmissibility; rather, Petitioner merely responds that they do not necessarily "require exclusion of the expert's entire declaration." Opp., 5; *see also id.*, 6 (arguing wholesale exclusion is merely "disproportionate"). But as explained in the MTE, Dr. Mirzadeh's deficient claim constructions at minimum infect his opinions

for limitations 1c and 16c in each ground, including all of his §112 opinions. MTE, 4. At minimum, these opinions are properly inadmissible under F.R.E. 702, and should be excluded or otherwise limited from consideration under F.R.E. 105.

Petitioner does not identify any other reason why Dr. Mirzadeh's testimony would be relevant beyond his inadmissible expert testimony. Accordingly, his testimony is similarly excludable under F.R.E. 401-403. Petitioner's argument that the Board should disregard the Federal Rules because there "is no jury here to confuse or mislead" (Opp., 7) ignores that the rules apply equally in both forums and there is no separate jury-specific rule regarding confusion or waste of time.

III. THE HOFF DECLARATION (EX1019) 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., 7. 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 "supplies substantive reasoning," yet identifies only individual, isolated statements in paragraphs

discussing dependent claims. Opp., 7-8. 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 ¶¶31-37 provides "technical context" or establishes "the level of skill in the art." Opp., 9-10. 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 rely on Mr. Hoff's declaration to inform the level of skill in the art. As such, the rest 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., 8-9. 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. As both parties agree Mr. Hoff's testimony at best should be accorded no weight, it might as well be excluded.

IV. EXHIBITS 1024 AND 1025 ARE INADMISSIBLE

Petitioner has failed to show that exhibits 1024 and 1025 are admissible due

to lack of authenticity and lack of relevance under F.R.E. 401-403 and 901.[1] Petitioner seeks to rely on each exhibit to inform the meaning of the word "seal" to a POSITA (Opp. 11-12), but has presented no basis in testimony or otherwise to connect the two exhibits to the understanding of a POSITA. At minimum, this renders any purported relevance deficient under F.R.E. 401 and 104, as Petitioner has failed to meet all conditions required to render these exhibits relevant for the purpose for which they are offered. And regarding EX1024, even if Petitioner's declaration in EX1031 is accepted, it shows only that counsel caused the Home Depot website to take on the depicted appearance. Petitioner does not dispute that the appearance of EX1024 was produced by Petitioner's own counsel through undisclosed interactions with the website. Opp., 11. This no more authenticates an exhibit than a declaration attesting that Petitioner's counsel typed it herself. Accordingly, neither EX1024 nor EX1025 has been shown to be admissible.

V. CONCLUSION

The Board should grant Patent Owner's motion and exclude the above-identified exhibits or alternatively restrict them as appropriate under F.R.E. 105.

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[1] Patent Owner notes that Petitioner did not properly serve the purported authenticating exhibit (EX1031) as supplemental evidence, as the email (EX1032) did not include an exhibit list, certificate of service, or exhibit labeling.

Respectfully submitted,

Dated: July 14, 2026

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182

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:

Jennifer Librach Nall
James M. Heintz
Gianni Minutoli
Joseph Helmsen
Nicholas Kokkinos
DLA PIPER LLP (US)
Jennifer.nall.ptab@us.dlapiper.com
jim.heintz@us.dlapiper.com
Gianni.Minutoli@us.dlapiper.com
Joseph.Helmsen@us.dlapiper.com
nicholas.kokkinos@us.dlapiper.com
Sciencons-AIP-IPR@us.dlapiper.com

Respectfully submitted,

Date: July 14, 2026

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182