

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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CANFIELD SCIENTIFIC, INC.,  
Petitioner,

v.

MELANOSCAN, LLC,  
Patent Owner.

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Case IPR: 2017-02125  
Patent No. 7,359,748

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**PETITIONER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE SUBMITTED IN  
CONNECTION WITH PATENT OWNER'S RESPONSE**

Pursuant to 37 CFR 42.64(b)(1), Petitioner Canfield Scientific, Inc. submits the following objections to the admissibility of evidence submitted in the Patent Owner's Response filed on June 20, 2018 (Paper No. 24):

Exhibit	Objection(s)
Paper No. 24	<ol style="list-style-type: none"> <li>1. Canfield incorporates by reference the objections made below with respect to each exhibit cited in Paper No. 24.</li> <li>2. Canfield objects to Patent Owner's attempt to incorporate by reference all earlier filings. <i>See</i> Paper No. 24 at p. 10. Incorporation without further discussion is improper.</li> <li>3. P. 4 – The first paragraph relies upon portions of the '748 patent that constitute hearsay not subject to any exception. It should be stricken under FRE 801-802. This paragraph also lacks foundation under FRE 602.</li> <li>4. P. 4 – The second paragraph and first sentence of the third paragraph constitute hearsay not subject to any exception and lack foundation under FRE 602.</li> <li>5. P. 4 – Ex. 2010, ¶ 32 does not support the proposition for which it is cited in the first paragraph of page 4.</li> <li>6. P. 5 – The last sentence of the paragraph continuing over from page 4 relies upon portions of the '748 patent that constitute hearsay not subject to any exception. It should be stricken under FRE 801-802. This sentence also lacks foundation under FRE 602.</li> <li>7. P. 5 – The first full paragraph relies upon portions of the '748 patent that constitute hearsay not subject to any exception. It should be stricken under FRE 801-802. Further, there is no evidence demonstrating the configuration of any embodiment of TIP or that any TIP machine is covered by any claim at issue in the IPR. For that reason, all discussion of TIP should be excluded under FRE 402. Further, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the</li> </ol>

	<p>issues under FRE 403. This paragraph also is premised upon improper claim constructions that are not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>8. P. 25. The citation to Ex. 2019, ¶ 55 does not support the proposition for which it is cited. Thus the sentence lacks evidentiary support.</p>
Ex. 2010	<p>¶¶ 12-14 - These paragraphs constitute hearsay not subject to any exception. They should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in this paragraph lacks foundation.</p> <p>¶ 15 – The first sentence constitutes hearsay not subject to any exception. It should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in this sentence lacks foundation.</p> <p>¶ 16 – The first and last sentences constitute hearsay not subject to any exception. They should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in these sentences also lacks foundation.</p> <p>¶ 20 – The second and third sentences constitute hearsay not subject to any exception. They should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in these sentences also lacks foundation.</p> <p>¶ 22 – This paragraph constitute hearsay not subject to any exception. It should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in this paragraph also lacks foundation.</p> <p>¶ 27 – The first and third sentences of this paragraph constitute hearsay not subject to any exception. They should be stricken under FRE 801-802. Lack of foundation under FRE 602- The</p>

	<p>testimony set forth in these sentences also lacks foundation.</p> <p>¶ 32-33 - Lack of foundation under FRE 602 - The testimony set forth in this paragraph lacks foundation. There is no evidence demonstrating the configuration of any embodiment of TIP or that any TIP machine is covered by any claim at issue in the IPR. For that reason, all discussion of any embodiment of TIP should be excluded under FRE 402. Further, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>¶¶ 34-39 – These paragraphs constitute hearsay not subject to any exception. It should be stricken under FRE 801-802. Lack of foundation under FRE 602- The testimony set forth in this paragraph lacks foundation. There is no evidence demonstrating the configuration of any embodiment of TIP or that any TIP machine is covered by any claim at issue in the IPR. For that reason, all discussion of TIP should be excluded under FRE 402. Further, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403. Further, under FRE 1002, the tens of thousands of whole body image sets referenced must be submitted as evidence.</p> <p>¶ 40 – The entirety of this paragraph constitutes hearsay not subject to any exception. It should be stricken under FRE 801-802. Lack of foundation under FRE 602 - The testimony set forth in this paragraph lacks foundation. There is no evidence demonstrating the configuration of any embodiment of TIP or that any TIP machine is covered by any claim at issue in the IPR. For that reason, all discussion of TIP should be excluded under FRE 402. Further, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403. Further, under FRE 1002, the article referenced in the last sentence must be submitted as evidence.</p> <p>¶ 41 – This paragraph constitutes hearsay not subject to any exception. It should be stricken under FRE 801-802. Lack of</p>
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	<p>foundation under FRE 602 - The testimony set forth in this paragraph lacks foundation. There is no evidence demonstrating the configuration of any embodiment of TIP or that any TIP machine is covered by any claim at issue in the IPR. For that reason, all discussion of TIP should be excluded under FRE 402. Further, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403. Further, under FRE 1002, the tens of thousands of whole body image sets referenced in the last sentence must be submitted as evidence.</p>
Ex. 2019	<p>FRE 702. Dr. Van Der Weide is not “qualified as an expert by knowledge, skill, experience, training, or education” in the pertinent art; we therefore fail to see how he could “assist the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702. Dr. Van Der Weide’s testimony does not establish that he is one of ordinary skill in the art or otherwise qualified to testify regarding the understanding of one of ordinary skill in the art at the time of the invention.</p> <p>Canfield incorporates by reference the objections made separately with respect to each exhibit cited in Ex. 2019.</p> <p>The following paragraphs of Dr. Van Der Weide’s declaration should be stricken for the reasons set forth below. <i>See also</i> objections to individual exhibits referenced in Dr. Van Der Weide’s declaration below.</p> <p>Paragraph 28 – This paragraph is conclusory and is not based on sufficient facts or data to support the stated opinion. Accordingly, it should be excluded under FRE 702-703.</p> <p>Paragraph 29 – The first sentence has not been established to be relevant under FRE 402 as it is directed to the alleged teachings of the ‘748 patent and not its claims. The second sentence cites to a document that is not submitted as an exhibit. Further, that document appears to be dated from 1977, thus it is not relevant to the state of the art of photography at the time of the invention in</p>

	<p>2000 so should be stricken under FRE 402. This sentence lacks foundation under FRE 602. The third, fourth, and fifth sentences are conclusory and not based on sufficient facts or data, does not involve the reliable application of pertinent principles and methods relied upon by experts, and is not supported by the cited exhibit 2027. For those reasons, it should be excluded under FRE 702-703.</p> <p>Paragraph 33 – The first sentence is conclusory and not based on sufficient facts or data. It should be stricken under FRE 702-703. Further, this sentence has not been established to be relevant under FRE 402 as it is directed to the alleged teachings of the ‘748 patent and not its claims. The second sentence is not supported by Voigt or sufficient facts or data, Ex. 1003, particularly with respect to the characterization of statements made in Voigt as being contemporaneous to the time of the invention. Further, the quoted statement from Voigt constitutes hearsay not subject to any exception. It should be stricken under FRE 402, 802-803, and 702-703. The third and fourth sentences are not supported by Voigt Ex. 1003, the ‘748 patent, or by sufficient facts or data. It should be stricken under FRE 702-703. The fourth sentence has not been established to be relevant under FRE 402 as it is directed to the alleged teachings of the ‘748 patent and not its claims.</p> <p>Paragraph 35 – The first sentence is conclusory and not supported by Ex. 2026 or any other sufficient facts or data. This sentence seeks to rely upon Ex. 2026 for the truth of the matter asserted, which is hearsay not subject to any exception and also misstates the content of Ex. 2026 in a manner that is more prejudicial than probative. The opinion stated in this sentence is not premised upon the reliable application of pertinent principles and methods. This sentence also seeks to improperly rely upon hearsay statements made in the ‘748 patent for the truth of the matter asserted. It should be excluded under FRE 402, 403, 702, 703, and 802. The second sentence is not supported by the ‘748 patent or any other sufficient facts or data and should be excluded under FRE 702-</p>
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703.

Paragraph 37 – Exhibits 2010 and 2028 do not support the propositions for which they are cited and thus any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraphs 36, 38, 41, and 42 – these paragraphs apply improper claim constructions that are not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 40 – This paragraph is conclusory and is not adequately supported by any sufficient facts or data. It does not involve the reliable application of any pertinent principles or methods to the facts of this matter. It will not help the trier of fact to understand the evidence or to determine a fact in issue. Thus, it should be excluded under FRE 702-703.

Paragraph 44 – the last sentence of paragraph 44 relies upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 45 – The second sentence is conclusory and is not supported by sufficient facts or data. For that reason it should be excluded under FRE 702-703. The third and fourth sentences are conclusory and are not supported by the ‘748 patent or by any other sufficient facts or data. They do not rely upon the application of any reliable pertinent principles or methods. For that reason it should be excluded under FRE 702-703. The last sentence is not supported by Ex. 1015 or any other sufficient facts or data. For that reason it should be excluded under FRE 702-703. The last sentence also lacks foundation under FRE 602.

	<p>Paragraph 50 – The second sentence has not been established to be relevant under FRE 402 as it is directed to the alleged teachings of the ‘748 patent and not its claims. The last sentence is not supported by Ex. 1003 or any other sufficient facts or data. For that reason it should be excluded under FRE 702-703.</p> <p>Paragraph 51 - The first sentence has not been established to be relevant under FRE 402 as it is directed to the alleged teachings of the ‘748 patent and not its claims and relies upon an improper claim construction. The last sentence is not supported by Ex. 1003 or any other sufficient facts or data. For that reason it should be excluded under FRE 702-703.</p> <p>Paragraph 53 – The first and second sentences are not supported by Ex. 1003 or any other sufficient facts or data. For that reason it should be excluded under FRE 702-703. Petitioner’s objections to Exhibits 2022—2025 are also incorporated herein by reference.</p> <p>Paragraph 54 – The first sentence after the quotations is not supported by sufficient facts or data. For that reason it should be excluded under FRE 702-703.</p> <p>Paragraph 55 – The first sentence is not supported by Ex. 1003 or any other sufficient facts or data. For that reason it should be excluded under FRE 702-703.</p> <p>Paragraph 56 – The seventh sentence is conclusory, not supported by sufficient facts or data, and not premised upon application of any reliable pertinent principles or methods. For that reason it should be excluded under FRE 702-703.</p> <p>Paragraph 57 – The second sentence is not supported by Ex. 1003 or any other sufficient facts or data. For that reason, it should be excluded under FRE 702-703. The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or</p>
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	<p>confusing the issues under FRE 403.</p> <p>Paragraph 59 – The first two sentences are conclusory and not supported by sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, they should be excluded under FRE 702-703.</p> <p>Paragraph 60 - The last sentence is not based on sufficient facts or data, is not supported by Ex. 1003, and is not premised upon application of any reliable pertinent principles or methods. For that reason, it should be excluded under FRE 702-703.</p> <p>Paragraph 61 – The third sentence is not based on sufficient facts or data, is not supported by Ex. 1003, and is not premised upon application of any reliable pertinent principles or methods. For that reason, it should be excluded under FRE 702-703. Further, this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 64 – The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403. The fifth sentence is not supported by Ex. 1004 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, it should be excluded under FRE 702-703.</p> <p>Paragraph 65 – The fourth sentence is not supported by the cited Exhibit 2027 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, it should be excluded under FRE 702-703. The eighth sentence is premised upon an improper claim construction that is not adequately supported by the ‘748 patent</p>
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	<p>and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 66 – The eighth sentence is not supported by Exhibit 1004 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, it should be excluded under FRE 702-703. The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 67 – The second, fourth, and sixth sentences are not supported by Exhibit 1004 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. The tenth and twelfth sentences are not supported by Ex. 1003 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.</p> <p>Paragraph 68 – The second and third sentences are not supported by Ex. 1004 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.</p> <p>Paragraph 70 - The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 72 – The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by</p>
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	<p>the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 73 – The first two sentences are not supported by Ex. 1006 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.</p> <p>Paragraph 75 – The third and fifth sentences are not supported by Ex. 1006 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.</p> <p>Paragraph 77 – The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 79 - The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the ‘748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>Paragraph 81 – The fourth sentence is not supported by Ex. 1003 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.</p> <p>Paragraph 82 – The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by</p>
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the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 83 – The fourth and fifth sentences are not supported by Ex. 1003 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703. The ninth sentence is premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 85 - The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403. The first sentence is also not supported by Ex. 1004 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703.

Paragraph 86 – The second, third, fourth, and sixth sentences are not supported by Ex. 1004 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, these sentences should be excluded under FRE 702-703. The third, fifth, sixth, and seventh sentences are premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 88 – The second and third sentences are not supported

by Ex. 1004 or any other sufficient facts or data and are not premised upon application of any reliable pertinent principles or methods. For that reason, this sentence should be excluded under FRE 702-703. The third sentence is premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 90 – The second and sixth sentences are premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 91 – The last sentence is not supported by Ex. 1005 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, this sentence should be excluded under FRE 702-703.

Paragraph 93 – The second sentence is premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under FRE 403.

Paragraph 94 – The first sentence is not supported by Ex. 1005 or any other sufficient facts or data and is not premised upon application of any reliable pertinent principles or methods. For that reason, this sentence should be excluded under FRE 702-703.

Paragraph 95 - The entirety of this paragraph is premised upon an improper claim construction that is not adequately supported by the '748 patent and its file history. Thus, it is not relevant under FRE 401 and any probative value is substantially outweighed by the danger of unfair prejudice and/or confusing the issues under

	FRE 403.
Ex. 2021	<p>1. Exhibit 2021 is not relied upon and never cited by Patent Owner in the Patent Owner's Response or in the Dr. Van Der Weide's declaration. Accordingly, it should be excluded for lack of foundation/authentication under FRE 602 and 901-902 and also as not relevant to any argument made in the Patent Owner's Response under FRE 401-402.</p> <p>2. Lack of Relevance under FRE 401-402. At present, claim construction at the PTAB is determined applying the Broadest Reasonable Construction Standard. Ex. 2021 applies the <i>Phillips</i> claim construction standard. For that reason, the document is not relevant.</p>
Ex. 2022	<p>1. Lack of relevance under FRE 401-402. Lack of relevance under FRE 401-402. The "ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application." <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Patent Owner appears to be citing Ex. 2022 in support of an interpretation of prior art reference Ex. 1003, dated 1995. Ex. 2022 is dated June 9, 2018, and has provided no foundation for its relevance to the meaning of a term used in the 1995 article.</p> <p>2. Lack of authentication under FRE 901-902. This exhibit appears to be a website printout that is not self-authenticating.</p>
Ex. 2023	<p>1. Lack of relevance under FRE 401-402. Lack of relevance under FRE 401-402. The "ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application." <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Patent Owner appears to be citing Ex. 2023 in support of an interpretation of prior art reference Ex. 1003, dated 1995. Ex. 2023 is undated, but appears to be a present day website printout, and has provided no</p>

	<p>foundation for its relevance to the meaning of a term used in the 1995 article.</p> <p>2. Lack of authentication under FRE 901-902. This exhibit appears to be a website printout that is not self-authenticating. Further, this exhibit contains no date of publication.</p>
Ex. 2024	<p>1. Lack of relevance under FRE 401-402. Lack of relevance under FRE 401-402. The “ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application.” <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Patent Owner appears to be citing Ex. 2024 in support of an interpretation of prior art reference Ex. 1003, dated 1995. Ex. 2024 is dated June 20, 2018, and has provided no foundation for its relevance to the meaning of a term used in the 1995 article.</p> <p>2. Lack of authentication under FRE 901-902. This exhibit appears to be a website printout that is not self-authenticating.</p>
Ex. 2025	<p>1. Lack of relevance under FRE 401-402. Lack of relevance under FRE 401-402. The “ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application.” <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Patent Owner appears to be citing Ex. 2025 in support of an interpretation of prior art reference Ex. 1003, dated 1995. Ex. 2025 is dated June 20, 2018, and has provided no foundation for its relevance to the meaning of a term used in the 1995 article.</p> <p>2. Lack of authentication under FRE 901-902. This exhibit appears to be a website printout that is not self-authenticating.</p>
Ex. 2026	<p>Hearsay without exception under FRE 801-803. The statements in the Exhibit were not made while the declarant(s) were testifying in this trial and are offered by Patent Owner to prove the truth of the</p>

	matter asserted, and Patent Owner has not established the basis for any exception.
Ex. 2027	<p>Lack of relevance under FRE 401-402. Exhibit 2027 is merely a glossary of terms and does not support the propositions for which it is offered.</p> <p>Hearsay without exception under FRE 801-803. The statements in the Exhibit were not made while the declarant(s) were testifying in this trial and are offered by Patent Owner to prove the truth of the matter asserted, and not subject to any of the exception of FRE 802 or 803.</p>
Ex. 2028	<p>1. Lack of relevance under FRE 401-402. The “ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application.” <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Ex. 2028 is dated 2010, long after the effective filing date, so patent owner has provided no foundation for its relevance. Additionally, due to this timing, it is not relevant to any interpretation of the prior art. Further, the document does not support the proposition for which it is cited with respect to the definition of “locate.” Thus, any probative value is substantially outweighed by a danger of unfair prejudice and/or confusing the issues under FRE 403.</p> <p>2. Hearsay without exception under FRE 801-803. The statements in the Exhibit were not made while the declarant(s) were testifying in this trial and are offered by Patent Owner to prove the truth of the matter asserted, and not subject to any of the exception of FRE 802 or 803.</p>
Ex. 2029	<p>1. Lack of relevance under FRE 401-402. The “ordinary and customary meaning of a claim term is the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e. as of the effective filing date of the patent application.” <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303, 1313 (Fed.</p>



	Cir. 2005). Ex. 2029 is dated 2001, after the effective filing date, and patent owner has provided no foundation for its relevance.
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Respectfully submitted,

*/ s / Julianne M. Hartzell*

June 27, 2018

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**CERTIFICATE OF FILING AND SERVICE**

The undersigned hereby certifies that, pursuant to 37 CFR §§ 42.6(e), copies of the foregoing “PETITIONER’S OBJECTIONS TO THE ADMISSIBILITY OF EVIDENCE SUBMITTED IN CONNECTION WITH PATENT OWNER’S RESPONSE” is being filed via the Patent Trial and Appeal Board’s End to End (PTAB E2D) system and is being served today, June 27, 2018, by electronic mail on counsel for the Patent Owner:

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