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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WEBASTO ROOF SYSTEMS, INC.  
Petitioner

v.

UUSI, LLC  
Patent Owner

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Case IPR2014-00650  
Patent 7,579,802

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO  
EXCLUDE THE OPINION TESTIMONY OF DR. MARK EHSANI AND  
INADMISSIBLE EXHIBITS**

**TABLE OF CONTENTS**

	<u>Page</u>
1. DR. EHSANI USED CORRECT LEGAL PRINCIPLES IN FORMING HIS OPINION AND PREPARING HIS DECLARATION.....	2
a. Dr. Ehsani did not prepare his Declaration with the incorrect understanding that the patent is presumed valid and requires clear and convincing evidence to invalidate .....	2
b. Dr. Ehsani formed his opinion and prepared his Declaration with the correct claim interpretation understanding .....	3
c. Dr. Ehsani did not construe claims contrary to their structure .	7
2. DR. EHSANI FULLY ANSWERED THE DEPOSITION QUESTIONS; PETITIONER SIMPLY DID NOT LIKE THE ANSWERS .....	9
3. PATENT OWNER DID NOT FILE INADMISSIBLE EXHIBITS.....	10
4. CONCLUSION .....	15

Petitioner admits that this motion is identical to its motion filed in the IPR 2014-00648 for the '612 Patent except for the paragraphs and exhibits it moves to exclude. Paper 25 at 1. As a result, most of Petitioner's arguments in its motion filed in IPR 2014-00648, which Petitioner merely reproduced in this motion, and which are specific to the '612 Patent, are inapplicable to this IPR and are therefore irrelevant to this IPR. Patent Owner nonetheless responds below to all of Petitioner's arguments for completeness.

The Board should deny Petitioner's Motion to Exclude the Declaration of Patent Owner's expert, Dr. Mark Ehsani, and certain exhibits relied on by Patent Owner and its expert in its Response. The Board should deny the motion because Dr. Ehsani formed his opinion and prepared his Declaration using the correct legal standards and claim construction methods. Further, Dr. Ehsani fully answered Petitioner's questions, often repeatedly asked by Petitioner over the course of two days, and Petitioner's unhappiness with Dr. Ehsani's answers is not the same as his resisting answering questions and is therefore insufficient grounds for excluding his testimony. Additionally, the Board should deny the motion because the exhibits at issue are properly relied on by Patent Owner and Dr. Ehsani, and/or are simply demonstrative exhibits. Patent Owner disputes Petitioner's alleged material facts and addresses them below.

**1. DR. EHSANI USED CORRECT LEGAL PRINCIPLES IN FORMING HIS OPINION AND PREPARING HIS DECLARATION**

- a. *Dr. Ehsani did not prepare his Declaration with the incorrect understanding that the patent is presumed valid and requires clear and convincing evidence to invalidate*

Mischaracterizing Dr. Ehsani's deposition testimony, Petitioner alleges that Dr. Ehsani's opinion is legally flawed because the opinion is based on his allegedly incorrect understanding that the patent at issue must be invalidated by clear and convincing evidence in this proceeding. Paper 25 at 6. In the cited testimony, however, Dr. Ehsani merely explained his thorough understanding of the examination process employed by the U.S. Patent Office in issuing patents. Dr. Ehsani presumed that the patent examiner did a thorough job when the patent issued as his testimony indicates: "the U.S. examiner will also independently, through his own resources and expertise, bring to bear other prior art, and that going through that exercise, which is rather rigorous, produces a fairly substantial prosecution history and -- and record and most often modification and -- and settlement on -- on specific claims -- claims. Through that laborious process, the patent is finally issued[.]" Ex. 1024 at 3 (212:4-12). Petitioner conveniently omitted this background testimony appearing on the same transcript page as the portions it cites to.

Dr. Ehsani was neither clearly asked, nor did he clearly testify, that his opinion in his Declaration is based on his understanding that the patent at issue must be invalidated by clear and convincing evidence in this proceeding. In fact, Dr. Ehsani was never asked anything about the burden of proof in this proceeding. While Petitioner complains that Dr. Ehsani did not mention anything in his Declaration about the presumption of validity and burdens in this proceeding, nor did Petitioner's expert, Dr. Hamid A. Toliyat. It is noteworthy that Dr. Ehsani reviewed Petitioner's corrected petitions and expert declarations (see Ex. 2001 at ¶ 15, pp. 10-13); accordingly, Dr. Ehsani considered the correct burden of proof and legal standards to the extent they were correctly stated by Petitioner and/or its expert witnesses. Therefore, Petitioner's allegation that Dr. Ehsani's testimony is unreliable because it is based on misapplication of legal principles is a blatant mischaracterization of Dr. Ehsani's testimony and Dr. Ehsani's Declaration, which fully satisfies the requirements of FRE 702 and is therefore admissible.

*b. Dr. Ehsani formed his opinion and prepared his Declaration with the correct claim interpretation understanding*

Petitioner further alleges that Dr. Ehsani's Declaration should be excluded because he incorrectly interpreted the claims by confining them to the preferred embodiment. Paper 25 at 8. In support, Petitioner cites Dr. Ehsani's deposition testimony taken out of context and then exaggerates and mischaracterizes it. The

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