

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEBASTO ROOF SYSTEMS, INC.,
Petitioner,

v.

UUSI, LLC,
Patent Owner.

Case IPR2014-00650
Patent 7,579,802

**PETITIONER'S REPLY IN SUPPORT OF ITS MOTION
TO EXCLUDE THE OPINION TESTIMONY OF
DR. MARK EHSANI AND INADMISSIBLE EXHIBITS**

Attorney Docket: 130163.231151

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TABLE OF AUTHORITIES

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Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc)3

OTHER AUTHORITIES

37 C.F.R. § 42.225
37 C.F.R. § 42.231

While Patent Owner's opposition (Paper 27) is filled with accusatory and hyperbolic rhetoric, the disputed issues are narrow and the record supports exclusion of the paragraphs of Dr. Ehsani's declaration and most of the exhibits identified in Petitioner's motion (Paper 25). There are no legal issues in dispute, and few disputed issues of fact. Indeed, Patent Owner failed to include "a listing of facts that are admitted, denied, or cannot be admitted or denied," as required by 37 C.F.R. § 42.23(a) in responding to Petitioner's statement of material facts. Therefore, those material facts "may be considered admitted." *Id.*

I. IT IS UNDISPUTED RULE 702 SUPPORTS EXCLUSION OF DR. EHSANI'S TESTIMONY IF HE APPLIED THE PRESUMPTION OF VALIDITY, AND HE TESTIFIED THAT HE DID SO

Patent Owner does not dispute that Dr. Ehsani's testimony should be excluded if he applied the presumption of validity. Patent Owner does not respond to the case law supporting exclusion of expert testimony at a bench trial where the expert applies an incorrect legal standard. Instead, Patent Owner argues that Dr. Ehsani did not testify that he applied the presumption. However, Patent Owner failed to respond to Petitioner's statement of material fact, "Dr. Ehsani testified that he applied a presumption of validity for the purposes of his analysis" (Paper 25 at 2), so the Board may consider it admitted. Regardless, even if Patent Owner's argument were considered, it would not change the fact that Dr. Ehsani testified that he applied the presumption of validity for purposes of his analysis.

Patent Owner first contends that “Petitioner conveniently omitted” page 212, lines 4–12, of Dr. Ehsani’s testimony. Paper 27 at 2. That is incorrect. Petitioner quoted Dr. Ehsani’s entire answer, including those lines. Paper 25 at 5–6 (quoting Ex. 1024 at 3 (211:19–212:17)). This testimony evidences that Dr. Ehsani was clearly asked whether he believed that a presumption of validity applied for purposes of his analysis, and clearly answered “Yes” when asked for confirmation that he applied it for purposes of his analysis in this proceeding. *Id.*

Patent Owner next argues that Dr. Ehsani was not further asked about the clear and convincing evidence burden of proof, but this does not negate his testimony that he applied the wrong legal standard. Moreover, the main disputes here concern claim construction, and Dr. Ehsani’s application of the wrong legal standard primarily manifested itself in his unduly narrow constructions. *See generally* Paper 23. If Patent Owner had wished to try to show that Dr. Ehsani’s application of the presumption somehow did not infect his opinions, Patent Owner could have explored this issue on redirect examination. Patent Owner did not do so. Patent Owner merely argues that Dr. Ehsani reviewed the petitions and Petitioner’s expert declarations, but this is not probative of the legal standards he applied. He never adopted the legal standards set forth by Petitioner and Petitioner’s experts.

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