

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIRIUS XM RADIO INC.,

Petitioner,

v.

FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER
ANGEWANDTEN FORSCHUNG E.V.,

Patent Owner.

Case IPR2018-00690
U.S. Patent No. 6,314,289

**PETITIONER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Sirius XM Radio Inc. ("Petitioner"), objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Fraunhofer-Gesellschaft Zur Forderung der Angewandten Forschung E.V. ("Patent Owner") in Patent Owner's Sur-Reply to Petitioner's Reply. Paper No. 43.

The evidence in support of Patent Owner's Sur-Reply to Patent Owner's Response was served on April 1, 2020. Paper No. 42. Petitioner's objections are timely under 37 C.F.R. § 42.64(b)(1). Petitioner serves Patent Owner with these objections to provide notice that Petitioner will move to exclude these exhibits as improper evidence.

I. Eberlein Declaration (Ex. 2050)

Petitioner objects to the admissibility of Patent Owner's Exhibit 2050 ("Eberlein Declaration") for at least the following reasons:

1. Petitioner objects to the Eberlein Declaration as untimely because the "sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." 2018 Revised Trial Practice Guide.
2. The Eberlein Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Patent Owner's use of the Eberlein

Declaration is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

3. The Eberlein Declaration is inadmissible under **FRE 602** because the witness has not indicated that he has personal knowledge to testify about the matter.

4. The Eberlein Declaration is inadmissible under **FRE 701** and **FRE 702** because the opinions therein are that of a lay witness, and they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable.

II. Diversity Combining within Viterbi Memo (Ex. 2051)

Petitioner objects to the admissibility of Patent Owner's Exhibit 2051 ("Diversity Memo") for at least the following reasons:

1. Petitioner objects to the Diversity Memo as untimely because the "sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." 2018 Revised Trial Practice Guide.

2. The Diversity Memo is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Patent Owner's use of the Diversity Memo is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

3. The Puncturing Pattern Memo is also hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**.

4. Patent Owner has also failed to establish that the Diversity Memo is what Patent Owner claims it is, and has failed to authenticate Exhibit 2051 under **FRE 901**.

III. Eberlein *et al.* PCT App. Pub. WO 00/36783 (Ex. 2052)

Petitioner objects to the admissibility of Patent Owner's Exhibit 2051 ("Eberlein PCT") for at least the following reasons:

1. Petitioner objects to Eberlein PCT as untimely because the "sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." 2018 Revised Trial Practice Guide.

2. Eberlein PCT is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Patent Owner's use of the Eberlein PCT is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

IV. Puncturing Pattern Memo (Ex. 2053)

Petitioner objects to the admissibility of Patent Owner's Ex. 2053 ("Puncturing Pattern Memo") for at least the following reasons:

1. Petitioner objects to the Puncturing Pattern Memo as untimely because the "sur-reply may not be accompanied by new evidence other than

deposition transcripts of the cross-examination of any reply witness.” 2018

Revised Trial Practice Guide.

2. The Puncturing Pattern Memo is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Patent Owner's use of the Puncturing Pattern Memo is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and is therefore inadmissible under **FRE 403**.

3. The Puncturing Pattern Memo is also hearsay under **FRE 801** and inadmissible under **FRE 802** and **FRE 803**.

4. Patent Owner has also failed to establish that the Diversity Memo is what Patent Owner claims it is, and has failed to authenticate Exhibit 2051 under **FRE 901**.

V. DARS Simulation Plan (Ex. 2054)

Petitioner objects to the admissibility of Patent Owner's Ex. 2054 (“DARS Simulation Plan”) for at least the following reasons:

1. Petitioner objects to the DARS Simulation Plan as untimely because the “sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” 2018 Revised Trial Practice Guide.

2. The DARS Simulation Plan is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Patent Owner's use of the DARS

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