

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SIRIUS XM RADIO INC.,  
Petitioner,

v.

FRAUNHOFER-GESELLSCHAFT ZUR FORDERUNG DER  
ANGEWANDTEN E.V.,  
Patent Owner.

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Case IPR2018-00690  
Patent 6,314,289

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**PETITIONER'S OPPOSITION TO  
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

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Petitioner's Opposition to Patent Owner's Motion to Exclude  
IPR2018-00690 (U.S. Patent No. 6,314,289)

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Petitioner, Sirius XM Radio Inc. ("Petitioner"), opposes Fraunhofer-Gesellschaft Zur Forderung Der Angewandten E.V. ("Patent Owner")'s Motion to Exclude (Paper 53, the "Motion"). For the reasons set forth below, Patent Owner's request to exclude Petitioner's Exhibits 1002, 1003, 1008, 1010, 1014-1016, 1018, 1025-1028, 1031, 1032 fails to meet its "burden of proof to establish that it is entitled to the requested relief." 37 C.F.R. § 42.20(c).

**I. EXHIBIT 1002 (DR. LYON'S EXPERT DECLARATION) IS ADMISSIBLE AS IT PROVIDES EVIDENCE SUPPORTING PETITIONER'S ARGUMENTS FOR UNPATENTABILITY**

Exhibit 1002 (Dr. Lyon's Declaration) is admissible because it relies on relevant evidence to demonstrate the unpatentability of the challenged claims, and there is no evidentiary basis to exclude portions of Dr. Lyon's Declaration for multiple reasons described below.

First, Patent Owner's contention that Dr. Lyon relies on irrelevant documents, namely Exhibits 1003 (Smallcomb) and 1005 (Campanella), wholly lacks merit.<sup>1</sup> Motion at 1. Exhibits 1003 and 1005 are central to Petitioner's contention that the prior art invalidates the '289 Patent and are, therefore, relevant by definition. Petitioner addresses the relevance of Exhibit 1003 below. *See* § II,

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<sup>1</sup> Patent Owner did not object to or move to exclude Exhibit 1005, demonstrating that Patent Owner concedes the relevance of Exhibit 1005.

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