

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASETEK DANMARK A/S,
Petitioner,

v.

COOLIT SYSTEMS, INC.,
Patent Owner.

Case No. IPR2020-00747
U.S. Patent No. 9,057,567

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

Patent Owner CoolIT Systems, Inc. filed a motion to exclude Petitioner's Exhibit 1028, which is an excerpted transcript of Patent Owner's expert's deposition testimony in the related IPR2020-00825 proceeding ("the 825 Case"). Motion to Exclude, Paper 31. Patent Owner's argument that the excerpted transcript violates FRE 106 and 37 C.F.R. § 42.53(f)(7) is meritless because the full deposition transcript is available to the parties and the Board in the 825 Case as Petitioner's Exhibit 1025. Moreover, Petitioner does not believe that any other portion of the expert's deposition testimony in the 825 Case is relevant to this proceeding.

Nevertheless, following Patent Owner's objection to the filing of an excerpted transcript, Petitioner served the full transcript on Patent Owner as supplemental evidence under 37 C.F.R. § 42.64(b)(2) within ten business days, thus correcting any alleged evidentiary defect in filing an excerpted transcript. Pursuant to well-established PTAB practice, Petitioner is now filing the *as-served* full transcript concurrently with this Opposition. *See, e.g., Gnosis SPA, et al. v. S. Ala. Med. Sci. Found.*, IPR2013-00116, Paper 29 at 3 (PTAB October 9, 2013) (the Board instructing that the party responding to an evidentiary objection should only serve (not file) supplemental evidence, and to file the supplemental evidence in response to a motion to exclude). The full transcript (Exhibit 1030) filed herewith substitutes the previously filed excerpted transcript (Exhibit 1028). There can be no dispute that the full transcript is admissible, and Patent Owner does not contend otherwise. *See*

Paper 31. Patent Owner's motion to exclude Exhibit 1028 should therefore be rejected as moot. *See LKQ Corporation v. Clearlamp, LLC*, IPR2013-00020, Paper 17 at 3 (PTAB Mar. 5, 2013) ("If, upon receiving the supplemental evidence, the opposing party is still of the opinion that the evidence is inadmissible, the opposing party may file a motion to exclude such evidence.").

Patent Owner's argument that Petitioner should have requested authorization to expunge Exhibit 1028 and substitute it with the full transcript prior to the filing of Patent Owner's sur-reply is contrary to Rule 42.64(b)(2), which simply requires a party to respond to any objection to evidence by serving supplemental evidence (filing of the supplemental evidence is not required by the Rules). *See also Gnosis SPA*, IPR2013-00116, Paper 29 at 3. Petitioner thus properly followed the Rule governing responses to objections to evidence.

Patent Owner's remaining argument that it was "deprived [] in its sur-reply of an opportunity to respond with the full deposition transcript available in the record for *this* proceeding," Paper 31 at 2, is also meritless because Patent Owner could have cited to the *served* Exhibit 1030 and asked Petitioner to file Exhibit 1030 in the record (which Petitioner would have done). Moreover, Patent Owner could have, and in fact did, cite to the deposition transcript from the 825 Case in this proceeding. *See* Sur-Reply (Paper 30) at 5. Accordingly, there can be no purported residual prejudice to Patent Owner stemming from the excerpted deposition transcript.

For the reasons above, Petitioner requests that the Board deny Patent Owner's
Motion to Exclude Petitioner's Exhibit 1028.

Respectfully submitted,

Date: June 7, 2021

By: *Arpita Bhattacharyya*
Arpita Bhattacharyya
Backup Counsel for Petitioner
Reg. No. 63,681

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner's Opposition to Patent Owner's Motion to Exclude** was served electronically via email on June 7, 2021, in its entirety on the following:

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Patent Owner has consented to service by email.

Date: June 7, 2021

By: /William Esper/
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