

Case IPR2013-00020
Patent 7,297,364

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION
Petitioner

v.

CLEARLAMP, LLC
Patent OWNER

Case IPR2013-00020
Patent 7,297,364

Before SALLY C. MEDLEY, KEVIN F. TURNER and JOSIAH C. COCKS,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

LKQ'S OBJECTIONS TO CLEARLAMP'S SUPPLEMENTAL EVIDENCE

Pursuant to 37 C.F.R. § 42.64, Petitioner LKQ Corp. (“LKQ”) serves and submits the following objections to the supplemental evidence that Patent Owner Clearlamp, LLC (“Clearlamp”) provided on July 23, 2013.

LKQ expressly maintains its previous objections to the evidence Clearlamp submitted with its Patent Owner Response on July 1, 2013, which LKQ identified in a set of objections served and filed on July 9, 2013. LKQ further expressly reserves its right to file a Motion to Exclude based on any of the objections raised in its July 9, 2013 objections.

LKQ also provides the following objections to Clearlamp’s supplemental evidence.

Exhibit 2021

Exhibit 2021 is a full version of the deposition transcript of Robert Sandau, filed under seal and in redacted form. Clearlamp previously submitted only excerpts from the transcript of Mr. Sandau’s deposition as Exhibit 2016. To the extent Clearlamp submitted Exhibit 2021 in response to LKQ’s previous objections related to “Incomplete citation[s],” LKQ states that this objection was to Clearlamp’s selective citation beginning or ending in the middle of questions or answers, and not to pages from the transcript being omitted. Accordingly, Exhibit 2021 does not remedy these objections.

None of Clearlamp’s supplemental evidence makes reference to Exhibit

2021. Nor does Clearlamp's Notice of Supplemental Evidence make reference to Exhibit 2021. Clearlamp's Motion for Entry Under Seal explains what Exhibit 2021 is and why it contains confidential information, but does not indicate why it is being submitted. Indeed, from LKQ's review of Clearlamp's submissions to date, LKQ cannot find any citation to any portion of Mr. Sandau's deposition testimony that was not included in the excerpts submitted as Exhibit 2016.

Accordingly, LKQ's previous objections to Exhibit 2016 are equally applicable to Exhibit 2021. Specifically, LKQ objects to Exhibit 2021 because it is inadmissible under § 42.61 as evidence not obtained under Subpart A (Trial Practice and Procedure) of Federal Register Vol. 77, No. 157, Rules of Practice for Trials Before the Patent Trial and Appeal Board.

As the Patent Office Trial Practice Guide states, "Consistent with the policy expressed in Rule 1 of the Federal Rules of Civil Procedure, and corresponding § 42.1(b), unnecessary objections, 'speaking' objections, and coaching of witnesses in proceedings before the Board are strictly prohibited." LKQ objects to Exhibit 2021 because it contravenes the PTAB's prohibition on coaching witnesses. Mr. Sandau testified that prior to giving his deposition in the district court case he had a meeting with Mr. Cutler, Clearlamp's counsel and lead counsel for Patent Owner in this proceeding, in which the two discussed "[a]lmost the same line of questioning that I was just asked, or very similar." (Exhibit 2021 at 65:11-66:11).

This dress rehearsal constitutes Mr. Cutler's coaching of Mr. Sandau. Accordingly, none of Mr. Sandau's testimony, as reflected in Exhibit 2021, is admissible.

LKQ also objects to Exhibit 2021 because, in general, it lacks foundation (FRE 602) and authentication (FRE 901) and is hearsay (FRE 802). In addition, LKQ objects to Exhibit 2021 because nearly all of the questions cited by Clearlamp are leading (FRE 611(c)). LKQ further objects to Exhibit 2021 because Clearlamp's citations to it are often incomplete, starting or ending in the middle of a question or answer. The following table summarizes LKQ's specific objections to the cited passages of Exhibit 2021:

Objections to Cited Portions Of Exhibit 2021	
15:11-16:1	Incomplete citation
18:1-4	Leading (FRE 611(c))
18:5-11	Leading (FRE 611(c))
18:12-15	Leading (FRE 611(c))
20:20-21:9	Leading (FRE 611(c))
21:10-21	Leading (FRE 611(c))
22:22-23:1; 23:4-8	Leading (FRE 611(c)) Compound (FRE 611(a))

Objections to Cited Portions Of Exhibit 2021	
23:9-11	Leading (FRE 611(c))
23:23-25:10	Relevance (FRE 402)
25:11-16	Leading (FRE 611(c))
25:24-26:6	Relevance (FRE 402)
26:17-27:4	Incomplete citation
27:10-14	Incomplete citation
27:24-25	Incomplete citation
29:18-19	Foundation (FRE 602)
30:1-7	Foundation (FRE 602)
32:1-2; 13-15	Incomplete citation Leading (FRE 611(c))
34:16-19; 34:23-35:3	Incomplete citation Leading (FRE 611(c))
35:7-12	Foundation (FRE 602)
35:15-36:2	Foundation (FRE 602) Leading (FRE 611(c)) Compound (FRE 611(a))
36:16-23	Leading (FRE 611(c))

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