

Filed on behalf of ABB, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ABB, INC.

Petitioner

v.

ROY-G-BIV CORPORATION

Patent Owner

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Trial No. IPR2013-00062 (joined with IPR2013-00282)

Patent 6,516,236 B1

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**DECLARATION OF STEVEN M. AUVIL**

ABB v ROY-G-BIV  
TRIAL IPR2013-00062  
TRIAL IPR2013-00282  
ABB - EXHIBIT 1142

I, STEVEN M. AUVIL, hereby declare and state as follows:

1. I am lead counsel for petitioner ABB Inc. in the related district court proceeding, *ROY-G-BIV Corporation v. ABB Inc., MEADWESTVACO TEXAS, LP AND MEADWESTVACO CORPORATION*, Case No. 6:11-cv-00622 (E.D. Tex., filed November 15, 2011).

2. I make this declaration in support of petitioner ABB Inc.'s opposition to patent owner ROY-G-BIV ("RGB")'s motion to submit supplemental evidence. I am familiar with the facts set forth in this declaration.

3. Based on documents produced by RGB in the co-pending litigation with ABB and marked confidential or highly confidential under the litigation protective order ("Litigation PO"), ABB learned that RGB had worked with Compumotor to develop the XMC specification in 1994. Compumotor is a division of Parker-Hannifin, and so ABB served a subpoena on Parker-Hannifin to obtain documents relating to that work. On March 1, 2013, Parker Hannifin produced documents in response to a subpoena served in the litigation, and these documents were marked as confidential under the Litigation PO. On information and belief, RGB's counsel asked Parker Hannifin to produce the documents marked confidential or highly confidential under the protective order, thereby restricting use of and access to the documents and information contained therein. On further information and belief, RGB's counsel contended that Parker-Hannifin

and Compumotor were still bound by a confidentiality agreement entered into with RGB in 1994.

4. On March 13, 2013, I sent RGB's counsel Richard Meyer an email stating that ABB believed that RGB's counsel requested that Parker Hannifin designate the documents as confidential. A true and correct copy of this email is attached as Appendix A.

5. Also in this email, I stated that the confidentiality designation was improper as it related to the Parker Hannifin documents ("PH Documents"). I further stated that the confidentiality designation was improper related to other documents produced by RGB involving communication between RGB and Compumotor taking place in the 90's ("RGB Documents").

6. Also in this email, I requested that the PH Documents and RGB Documents be de-designated as confidential under the Litigation PO, because they did not properly fall into a protectable category under the protective order.

7. In a response dated April 15, 2013, RGB litigation counsel Patrick Lafferty responded, refusing to de-designate the confidentiality designations of the requested documents. A true and correct copy of this email is attached as Appendix B.

8. On April 15, 2013, ABB filed its First Amended Answer and Counterclaims, Docket #138 in the Litigation. ABB identified Marc McClung as

being an unnamed co-inventor based, at least in part on, the PH Documents and RGB Documents discussing Mr. McClung's contributions. RGB moved to dismiss the counterclaim of unenforceability, and the Court recently denied that motion. Dkt. # 279 in the Litigation.

9. Also in this email, RGB took the position that Parker Hannifin was the correct party to contact in order to request de-designation of the PH Documents.

10. On April 26, 2013, I sent a response to RGB counsel Richard Meyer, requesting that RGB agree that the parties expand the Litigation PO to include the inter partes review ("IPR") proceedings. The proposal would have allowed parties to use in the IPR proceedings any relevant confidential business information ("CBI") produced in the district court litigation. A true and correct copy of this email is attached as Appendix C.

11. One month later, on May 3, 2013, RGB counsel Richard Meyer replied, and rejected the proposal from the April 4, 2013 email. A true and correct copy of this email is attached as Appendix D.

12. On July 19, 2013, I sent Richard Meyer an email stating that Dave Brown's IPR declaration for the '557 patent necessarily made relevant documents produced by RGB in the district court proceeding designated as confidential. I proposed that the parties agree to expand the scope of the Litigation PO to make

discovery produced in the district court available in the IPR proceedings. A true and correct copy of this email is found in Appendix D.

13. On July 23, 2013, Richard Meyer responded and refused this proposal. A true and correct copy of this email is found in Appendix D.

14. On September 10, 2013, I sent RGB's litigation counsel a letter, again requesting de-designation of the RGB Documents, and further requested that RGB confirm that it would not claim confidentiality in any of the PH Documents. In this letter I specified several examples of documents that were improperly designated as confidential. A true and correct copy of this letter is attached as Appendix E.

15. On September 23, 2013, I sent a letter to Richard Meyer, noting that RGB submitted to the Patent Trial and Appeal Board ("PTAB") documents designated as confidential under the Litigation PO, in order to establish a priority date over the references at issue. A true and correct copy of this letter is attached as Appendix F.

16. Also in the September 23 letter, I specifically identified numerous documents designated as confidential under the Litigation PO, which were and are relevant to the IPR proceeding as they show inconsistent positions that RGB took.

17. In the September 23 letter I also noted RGB's improper interpretation of their duty to disclose documents to the PTAB during an IPR proceeding.

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