

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKYHAWKE TECHNOLOGIES, LLC,
Petitioner,

v.

L&H CONCEPTS, LLC,
Patent Owner.

Case IPR2014-00438
Patent 5,779,566

Before JAMES T. MOORE, *Administrative Patent Judge*.

DECISION
Objection to Evidence
37 C.F.R. § 42.64

On March 30, 2015 Patent Owner filed a Motion to Exclude (Paper 25). The Motion to Exclude seeks to exclude Exhibit 1012, the declaration of the Petitioner's witness, Dr. Carl Gutwin. Paper 25, 1. The Motion to Exclude alleges that Dr. Gutwin's opinion is not reliable, and seeks to exclude on the basis of Rule 702 of the Federal Rules of Evidence. *Id.*

On April 1, 2015 a conference call was requested by Petitioner for the purpose of requesting expungement of the motion. No conference call is necessary. No response to the motion is authorized.

For an objection to evidence submitted during a preliminary proceeding, an objection must be served within ten business days of the institution of the proceeding. 37 C.F.R. § 42.64(a). A motion to exclude must identify the objections in the record. 37 C.F.R. § 42.64(c).

The Decision instituting this proceeding was filed August 21, 2014. As a consequence, any objection to Exhibit 1012 should have been served before September 5, 2014, almost seven months ago. There is no indication in the Motion to Exclude where the Patent Owner complied with the mandatory requirement of 37 C.F.R. § 42.64(c).

The Deposition of Dr. Gutwin, Ex. 2015, was taken November 14, 2014 and covers over 270 pages. In those pages there appear to be an astonishing number – 244– of pro forma objections. The vast majority are from Mr. Fisher and merely state “Objection, form” or “Objection, scope.” Mr. Morris has only a few “Objection, nonresponsive” to his credit. We are not pointed to any particular one of this surfeit of objections as being the basis for the instant Motion to Exclude. Nor are we pointed to any objection served after the deposition within the required 5 days. *See* 37 C.F.R. §42.64(b)(1).

If the first line of the Motion to Exclude is accurate “[u]nder 37 C.F.R. § 42.64(c), Patent Owner objects and moves to exclude Exhibit 1012...” then the initial objection at this date is also untimely.

The Motion to Exclude is therefore DENIED.

IPR2014-00438
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