

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZHONGSHAN BROAD OCEAN MOTOR CO., LTD.;
BROAD OCEAN MOTOR LLC; and
BROAD OCEAN TECHNOLOGIES, LLC

Petitioners

v.

NIDEC MOTOR CORPORATION

Patent Owner

U.S. Patent No. 7,626,349
Case No. IPR2014-01121

**PETITIONERS' RESPONSE TO PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

Pursuant to the Board's January 21, 2015 Scheduling Order (Paper 21), Petitioners Zhongshan Broad Ocean Motor Co., Ltd. Broad Ocean Motor LLC, and Broad Ocean Technologies, LLC (collectively, "Broad Ocean" or "Petitioners") provide the following Response to Patent Owner's Motion to Exclude Evidence.

First, Patent Owner's Motion is procedurally defective because Nidec failed to file the underlying objections to Broad Ocean's evidence with the Board on August 21, 2015, as required by 37 C.F.R. 42.64(b)(1). Second, even assuming Nidec's Motion is properly before this Board, its objections should not be sustained because in view of the testimony by Mr. Hu, the objected-to Exhibits qualify as business records. Moreover, Nidec is now attempting to bolster its case by referring to the same objected-to testimony and exhibits in its motion for observations and as much has waived any such objections.

II. NIDEC'S MOTION SHOULD BE DENIED BECAUSE IT FAILED TO FOLLOW THE DEADLINES UNDER 37 C.F.R. 42.64(b)(1)

Effective May 19, 2015, 37 C.F.R. 42.64(b)(1) requires, *inter alia*:

(1) Objection. Any objection to evidence submitted during a preliminary proceeding must be filed within ten business days of the institution of the trial. Once a trial has been instituted, any objection must be filed within five business days of service of evidence to which the objection is directed.

The prior version of 37 C.F.R. 42.64(b)(1) only required a party to serve objections to evidence, which meant that such objections were not in the record of the proceedings. According to the Office Patent Trial Practice Guide, a motion to exclude required the movant to “[i]dentify where in the record the objection originally was made.” See Office Patent Trial Practice Guide, 77 Fed. Reg. 48765, 48767 (Aug. 14, 2012). Accordingly, on May 19, 2015, the Patent Trial and Appeal Board, in a Final Rule-making decision, amended 37 C.F.R. 42.64(b)(1) to replace the word “served” with “filed” to reconcile the need to have objections in the record as a prerequisite for a motion to exclude based on the same objection.

Broad Ocean filed its Reply on August 21, 2015 accompanied by several exhibits to which Nidec later objected. Nidec however only served those objections on August 28, 2015, in violation of 37 C.F.R. 42.64(b)(1). Nidec recently attempted to cure its mistake by belatedly filing the Objections as Exhibit 2029 on September 21, 2015, almost one month after it was originally due. But Nidec should not be allowed to circumvent the Rules. If anything, it should have asked for permission from the Panel to file its objections after the fact, which it failed to do as well. Nidec’s motion should therefore be denied because it failed to file its objections on a timely basis.

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