

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NORMAN INTERNATIONAL, INC.
Petitioner

v.

HUNTER DOUGLAS, INC.
Patent Owner

Case No. IPR2014-01175
U.S. Patent No. 6,968,884

**PATENT OWNER'S MOTION TO EXCLUDE PURSUANT TO 37
C.F.R. § 42.64(c)**

September 14, 2015

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), Patent Owner Hunter Douglas, Inc. (“Patent Owner”) hereby moves to exclude Petitioner’s Exhibits 1002, 1004, 1005, 1007, 1008, 1009, 1010. Each of these exhibits violates the Board’s rules of admissibility, contravenes the Federal Rules of Evidence (“FRE”), and/or is not relevant to any remaining issue in this proceeding. As such, all should be excluded.

II. RELEVANT PROCEDURAL HISTORY

On July 16, 2014, Petitioner filed its second Petition for *inter partes* review of United States Patent No. 6,968,884 (the “‘884 Patent”).¹ With its Petition, Petitioner submitted Exhibit 1002 (Japanese Patent Application Publication S54-38648 (“Tachikawa”)); Exhibit 1004 (Great Britain Patent No. 1,174,127 (“Skidmore”)); Exhibit 1005 (U.S. Patent No. 1,870,532 (“Schuetz”)); Exhibit 1007 (U.S. Patent No. 6,056,036 (“Todd”) and Exhibit 1008 (U.S. Patent No. 6,293,329 (“Toti”)) in support of Grounds 1, 2, 3, 4, and 5 (Paper 1 at 16-56), none of which were instituted by the Board. *See* Paper 9 at 10-17, 21-24.

Petitioner also submitted Exhibits 1009 and 1010 concurrently with its Petition. Exhibits 1009 and 1010 are declarations by Lawrence E. Carlson and

¹ Petitioner’s first petition for *inter partes* review of the ‘884 Patent was denied in its entirety by the Board. *See* IPR2014-00276, Paper 2 and Paper 11.

Patrick E. Foley, respectively, which purport to provide expert testimony regarding the '884 Patent and Petitioner's alleged prior art. *See* Paper 1 at 4.

Patent Owner timely objected to Exhibits 1002, 1004, 1005, 1007, 1008, 1009, and 1010 within 10 business days of the institution of trial. *See* Exhibit 2002 at Appendix A; 37 C.F.R. § 42.64(b)(1).

III. ARGUMENT

A. Exhibits 1002, 1004, 1005, 1007, and 1008 Are Irrelevant to Any Ground Instituted by the Board.

Petitioner's Exhibits 1002, 1004, 1005, 1007, and 1008 are inadmissible as each is irrelevant to the remaining proceedings. In its Institution of *Inter Partes* Review Decision, the Board determined that trial should *not* be instituted on all grounds advocated by Petitioner that involved those exhibits. *See* Paper 9 at 10-17, 21-24. Those exhibits, accordingly, have no bearing on any issue remaining to be decided by the Board with respect to the instituted ground—Ground 6—and therefore should be excluded pursuant to FRE 402 and 403.

B. Exhibits 1009 and 1010 Fail to Meet the Requirements of FRE 702.

Petitioner's Exhibits 1009 and 1010 should be excluded under FRE 702, which provides that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if (a) the expert's knowledge will help the trier of fact to understand the evidence or

determine a fact in issue, (b) the testimony is based upon sufficient facts or data, (c) the testimony is the product of reliable principles and methods, and (d) the witness has applied the principles and methods reliably to the facts of the case.

Testimony on the issue of unpatentability proffered by a witness who is not “qualified in the pertinent art” generally is not admissible under FRE 702.

CaptionCall LLC v. UltraTec, Inc., IPR2013-00540, Paper 78 (PTAB Mar. 3, 2015) (quoting *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363-64 (Fed. Cir. 2008)). Nothing in the Petition or in Exhibits 1009 and 1010 demonstrates that declarants Mr. Carlson or Mr. Foley are qualified as experts in the relevant field of art of the ‘884 Patent.

1. Mr. Carlson Is Not Qualified as an Expert in the Relevant Field of Art.

Mr. Carlson claims that he is qualified to opine as an expert because of his “40 years educating engineering students on mechanical and component design” and the fact that he has “reviewed several textbooks relating to component design.” Exhibit 1009 at ¶¶ 17-23. These conclusions, however, are undermined by a review of Mr. Carlson’s *curriculum vitae* and his own description of his experience. Indeed, an informed reading of those materials reveals that he has had *no* relevant experience with window covers. *Id.* Mr. Carlson’s field of expertise appears to be in human limb prosthetics, not window coverings. *Id.* Mr. Carlson

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