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 OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE PURSUANT TO 37 C.F.R. § 42.64(c)

September 28, 2015

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I. INTRODUCTION

Patent Owner Hunter Douglas, Inc. ("Patent Owner") hereby opposes Petitioner's motion to exclude evidence.

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] (Paper 1.) Patent Owner filed its Response on May 4, 2015. (Paper 9.) With its Response, Patent Owner also filed, *inter alia*, Exhibit 2001. On May 11, 2015, Petitioner served its objections to certain evidence submitted by Patent Owner. (Exhibit 1014.)

III. LEGAL STANDARD

Pursuant to 37 C.F.R. § 42.64, "[a] motion to exclude must be filed to preserve any objection. The motion must identify the objections in the record in order and must explain the objections." Moreover, "[t]he moving party has the burden of proof to establish that it is entitled to the requested relief." 37 C.F.R. § 42.20(c). As such a motion to exclude must:

(a) identify where the objection originally was made;

(b) identify where in the record the evidence sought to be excluded was relied upon by an opponent;

[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.

(c) address objections to exhibits in numerical order; and

(d) explain each objection.

77 Fed. Reg. 48,765, 48,767 (Aug. 14, 2012).

IV. ARGUMENT

A. Exhibit 2001 Should Not Be Excluded.

Petitioner contends that Exhibit 2001 (the expert declaration of Mr. John Corey) is inadmissible under FRE 702 for two reasons. Neither of Petitioner's reasons has any merit.

1. Mr. Corey's Specialized Knowledge Qualifies Him as an Expert Pursuant to FRE 702.

According to FRE 702, an expert witness is one who "is qualified as an expert by knowledge, skill, experience, training, or education." Petitioner alleges that "Patent Owner fails to establish or explain why Mr. Corey is qualified to testify regarding the field of invention or the alleged invalidity of the '884 patent." (Paper 37 at 2-4.) Yet Petitioner does not and cannot dispute that Mr. Corey's background and experience qualify him, at a minimum, as a "person of ordinary skill in the art" under the '884 Patent under Petitioner's own definition. (*See* Exhibit 1009 at ¶ 34 ("[A] person having ordinary skill in the art would have an associate's degree or a bachelor's degree in mechanical engineering or a related field involving mechanical design coursework and a few years of working

experience in the area of mechanical design.") Mr. Corey's knowledge, skill, and experience go well beyond Petitioner's own definition of a person of ordinary skill in the art, and do, in fact qualify Mr. Corey as an expert in the field of window coverings and mechanical design. Indeed, in critiquing Mr. Corey's qualification as an expert, Petitioner omits any mention of Mr. Corey's curriculum vitae, attached as Attachment A to Exhibit 2001. This Attachment details Mr. Corey's extensive experience with mechanical design in the field of window coverings, and accordingly, controverts Petitioner's baseless allegation that Mr. Corey is not qualified to testify as an expert.

Moreover, even if Petitioner's criticisms had any merit (which they do not), these arguments go to the weight and sufficiency of Mr. Corey's testimonial evidence, rather than its admissibility, and as such are inappropriate for a motion to exclude. *See e.g.*, *Smith & Nephew, Inc. v. ConvaTec Tech., Inc.*, IPR2013-00097, Paper 90 at 58-60 (PTAB May 29, 2014) (denying a motion to exclude expert testimony on the same grounds proposed by Petitioner); *see also Liquid Dynamics Corp. v. Vaughan Co.*, 449 F.3d 1209, 1221 (Fed. Cir. 2006) (citing *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1344-45 (11th Cir. 2003); *In re TMI Litig.*, 193 F.3d 613, 692 (3d. Cir. 1999) ("So long as the expert's testimony rests upon 'good grounds,' it should be tested by the adversary process—competing expert testimony and active cross-examination …") (internal

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