

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NORMAN INTERNATIONAL, INC.  
Petitioner

v.

HUNTER DOUGLAS INC.  
Patent Owner

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CASE IPR2014-01175  
Patent No. 6,968,884

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*Before* LINDA M. GAUDETTE, JAMES P. CALVE, and  
HYUN J. JUNG, *Administrative Patent Judges*

**PETITIONER'S OPPOSITION TO PATENT OWNER'S  
MOTION TO EXCLUDE EVIDENCE**

September 28, 2015

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**I. INTRODUCTION**

Pursuant to the Scheduling Order of February 10, 2015 (Paper 8), Petitioner timely opposes Patent Owner's Motion to Exclude Evidence (Paper 13). None of Petitioner's exhibits should be excluded from evidence.

Exhibits 1002 (Japanese Patent Application Publication S54-38648 to Tachikawa) ("Tachikawa"), 1004 (Great Britain Patent No. 1,174,127 to Skidmore) ("Skidmore"), 1005 (U.S. Patent No. 1,870,532 to Schuetz) ("Schuetz"), 1007 (U.S. Patent No. 6,056,036 to Todd) ("Todd"), and 1008 (U.S. Patent No. 6,293,329 to Toti) ("Toti") are all prior art to the 884 patent. These exhibits are therefore relevant and admissible to establish the state of the art at the time of the purported invention in the 884 patent, and the Board should therefore deny Patent Owner's attempt to exclude Exhibits 1002, 1004, 1005, 1007, and 1008.

The Board should also deny Patent Owner's attempt to exclude Exhibit 1009 (the "Carlson Declaration") and Exhibit 1010 (the "Foley Declaration") because Dr. Carlson and Mr. Foley are each qualified as experts regarding the field of art relevant to the 884 patent.

Petitioner therefore respectfully requests that Patent Owner's motion to exclude be denied in its entirety.

**II. EXHIBITS 1002, 1004, 1005, 1007, AND 1008 ARE RELEVANT AND ADMISSIBLE**

The Board should set aside Patent Owner's Motion to Exclude Exhibits 1002, 1004, 1005, 1007, and 1008. As an initial matter, Patent Owner objected to Exhibits 1002, 1004, 1005, 1007, and 1008 under Federal Rules of Evidence ("FRE") 402 and 403 *for the first time* in its Motion to Exclude (Paper 13). Patent Owner's Objections to Petitioner's Exhibits (Exhibit 2003 at 1) made no mention of FRE 402 and 403. Patent Owner instead made a conclusory assertion the exhibits were "inadmissible as each is irrelevant" because "the Board determined that trial should not be instituted on the grounds advocated by Petitioner that refer to these exhibits." Petitioner therefore requests that the Board deny Patent Owner's Motion to Exclude at least because Patent Owner failed to timely object to Petitioner's evidence with sufficient particularity under 37 C.F.R. 42.64(b)(1).

Patent Owner now requests that Exhibits 1002, 1004, 1005, 1007, and 1008 be excluded under FRE 402, but Patent Owner fails to (and indeed cannot) explain how these exhibits fail to meet the underlying test for relevant evidence under FRE 401. Under FRE 401, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."

Exhibits 1002, 1004, 1005, 1007, and 1008 are relevant because (a) these exhibits show the state of the prior art, which has a tendency to increase the

probability that the claims of the 884 patent are anticipated or rendered obvious; and (b) the anticipation or obviousness of the claims of the 884 patent are of consequence in determining the outcome of this *inter partes* review. Indeed, the Board may yet, in its discretion, find one or more of these references useful in determining the anticipation or obviousness of features claimed in the 884 patent. *See In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275 (Fed. Cir. 2015) (“It is not clear that IPR is strictly limited to the grounds asserted in the petition.”).

For example, Exhibits 1002 (Japanese Patent Application Publication JPS54-38648 of Tachikawa) and 1007 (U.S. Patent No. 6,056,036 to Todd) relate to extending and retracting a window covering using a lifting mechanism having a spring motor and a rotating shaft. Exhibit 1004 (Great Britain Patent No. 1,174,127 to Skidmore) relates to a lifting mechanism for raising or lowering blinds with a friction brake for holding the blinds in position. Exhibit 1005 (U.S. Patent No. 1,870,532 to Schuetz) relates to lifting mechanisms and brakes (including a one-way friction brake) employed in a hoisting apparatus to raise and lower a load while preventing undesired reverse-rotation of a rotating shaft. And Exhibit 1008 (U.S. Patent No. 6,293,329 to Toti) relates to an extendible and retractable covering for an architectural opening using a coil spring drive and transmission.

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