

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 REPLY IN SUPPORT OF ITS
MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

Patent Owner Hunter Douglas, Inc. submits this reply in support of its motion to exclude evidence.

II. ARGUMENT

A. Exhibits 1002, 1004, 1005, 1007, and 1008 Lack Any Relevance to the Issues Before the Board.

Petitioner asserts that that 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. This is flatly incorrect. As admitted by Petitioner, Patent Owner’s Objections to Petitioner’s Exhibits clearly object on the basis that these five (5) exhibits are irrelevant because “the Board determined that trial should not be instituted on the grounds advocated by Petitioner that refer to these exhibits.” Exhibit 2003. 37 C.F.R. § 42.64(b)(1) requires that an “objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.” Thus, no further particularity was required, as it is clear from Patent Owner’s statement the grounds for its objection.

In its Petition, Petitioner asserted Grounds 1-5, which were denied institution by the Board. (*See* Paper 1, Paper 7.) These denied grounds were based on obviousness combinations that included Exhibits 1002 (“Tachikawa”), 1004

(“Skidmore”), 1005 (“Schuetz”), 1007 (“Todd”), and 1008 (“Toti”). Petitioner asserted *no other relevance* for these exhibits in the petition. (*See generally* Paper 1.) It is far too late for Petitioner now to claim that these exhibits are relevant because they “show the state of the prior art.” This claim was never made in the original petition (*id.*), and was not included in the scope of the trial instituted by the Board. Exhibits 1002, 1004, 1005, 1007, and 1008 are therefore irrelevant and should be excluded under at least FRE 402.

Further, it would be blatantly prejudicial to Patent Owner if Petitioner is allowed to present new, heretofore unidentified, arguments at trial regarding the “state of the prior art” that were never presented in the petition. Therefore, Exhibits 1002, 1004, 1005, 1007, and 1008 also should be excluded under FRE 403 as such prejudice far outweighs the non-existent probative value of these exhibits to the narrow grounds on which the Board instituted review.

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

Petitioner failed to demonstrate that Dr. Carlson or Mr. Foley are qualified to offer testimony under FRE 702 or 703. As noted by Petitioner, FRE 702 provides that a witness may testify as an expert if, *inter alia*, the expert’s knowledge will help the trier of fact to understand the evidence or determine a fact in issue and the testimony is based upon sufficient facts or data. Neither Dr.

Carlson nor Mr. Foley have any experience in the pertinent field of the art, and therefore are not qualified to testify as experts under FRE 702 or 703.

i. Dr. Carlson Lacks Experience in the Art of Window Coverings.

Petitioner misinterprets the relevant field in an attempt to bolster Dr. Carlson's insufficient qualifications as an expert witness. In its Petition, Petitioner repeatedly defines the relevant field of art as pertaining to "window coverings" and "window blinds and shades." Paper 1 at 16, 32, 46, 55, 56-57. In its motion to exclude, Patent Owner pointed out that Petitioner's primary expert, Dr. Carlson, lacked any experience in the field of art of window covers, which disqualifies him from testifying regarding the '884 patent. Paper 13 at 3-4. In response, Petitioner has changed its position and now refers to the relevant field of art broadly as "mechanical design" and "mechanical arts in general." Paper 23 at 6. Indeed, despite its previous representations that the relevant field of art is "window covers," Petitioner now refers to the definition as "overly narrow." *Id.*

In order to testify as an expert, a person must be "qualified in the pertinent art." *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363-64 (Fed. Cir. 2008). "General experience in a related field may not suffice when experience and skill in specific product design are necessary to resolve patent issues."

Extreme Networks, Inc. v. Enterasys Networks, Inc., 395 F. Appx. 709, 715 (Fed.

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