

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINDSAY CORPORATION
Petitioner

v.

VALMONT INDUSTRIES, INC.
Patent Owner

Case No. IPR2015-01039
U.S. Patent No. 7,003,357

**PATENT OWNER'S REPLY IN SUPPORT OF
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

I. INTRODUCTION

Petitioner's Opposition does nothing to establish the admissibility of the Challenged Evidence. Patent Owner thus requests the Board exclude the Challenged Evidence for the reasons discussed herein and in Patent Owner's Motion.

II. ARGUMENTS

A. Numerous conclusory paragraphs should be excluded.

Paragraphs 13-14, 43, and 46 in Exhibit 1009 and Paragraphs 3, 8, 12, 17-18, 26-27, and 29 in Exhibit 1019 should be excluded under at least FRE 702, 703, and 37 C.F.R. § 42.65(a), as they are conclusory and unsupported by additional evidence, and merely "parrot" Petitioner's conclusory arguments. *Edmund Optics, Inc. v. Semrock, Inc.*, IPR2014-00583, 2014 WL 4731775, at *6 (Sept. 19, 2014).

1. Dr. Rosenberg's interpretation of "handheld device."

Contrary to Petitioner's assertions on pages 3-4 of its Opposition, the Board is not required to "piece together" various statements from unrelated Paragraphs in an attempt to substantiate Dr. Rosenberg's conclusory statements. Indeed, by his own admission, the only documentary evidence Dr. Rosenberg relied on for his conclusion that a "handheld device" includes a laptop was the Dictionary.com definition of "handheld" published more than a decade after the filing date of the '357 application. *See* Exhibit 2018 at 12:13-13:2, 14:9-15:5. Paragraphs 13, 14, 43 and 46 of Exhibit 1009 and Paragraph 3 of Exhibit 1018 should be excluded

because they merely parrot Petitioner's conclusory argument regarding a "handheld device" and fail to disclose the underlying facts or data on which Dr. Rosenberg's opinion is based. FRE 702, 703; 37 C.F.R. § 42.65(a).

2. Dr. Rosenberg's interpretation of claim terms is improper.

Contrary to Petitioner's assertions on pages 4-5 of its Opposition, Dr. Rosenberg provided no objective support for his "agreements" with Petitioner's claim constructions. Claim construction is a matter of law. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). Dr. Rosenberg is not an expert in U.S. patent law and/or patent examination practice. 37 C.F.R. § 42.65(a); *see also Logic Tech. Dev., LLC v. Fontem Holdings I B.V.*, IPR2015-00098, 2015 WL 2231961, at *5 (May 11, 2015). The Paragraphs that implicate Dr. Rosenberg's "agreements" with claim constructions should thus be excluded. FRE 401, 402, 602, 701, and 702.

3. Conclusory statements regarding motivation to combine.

Contrary to Petitioner's assertions on pages 5-6 of its Opposition, Paragraphs 8 and 12 are not in "direct response" to arguments made in Patent Owner's Response, and Petitioner has not shown a need to rely on this evidence now. *Vibrant Media, Inc. v. Gen. Elec. Co.*, IPR2013-00170, 2014 WL 2965703, at *19 (June 26, 2014). Both Paragraphs should be excluded because they are vague, conclusory, and merely attempt to re-characterize and expand on Petitioner's previously insufficient evidence. *See Edmund Optics*, 2014 WL 4731775, at *6 (according little or no

weight to declarations that “provide[d] no sufficiently meaningful discussion or analysis that would constitute articulated reasoning with rational underpinning”).

4. Paragraphs 18 and 26 in Exhibit 1018 are inadmissible.

Petitioner’s recitation on pages 7-8 of its Opposition of Dr. Rosenberg’s observations in Paragraphs 18 regarding pixels and GUI requirements and his discussion of Scott in Paragraph 26 does not change the fact that those Paragraphs should be excluded because they are replete with conclusory statements. *See Edmund Optics*, 2014 WL 4731775, at *6; FRE 701, 702, and 703.

B. Numerous paragraphs lack foundation and evidentiary support.

Petitioner concedes that Paragraphs 13, 14, 20, 22, 28, 31, 34-36, 38, 40, 42, 56, 61, 65, and 70-75 of Exhibit 1009 and Paragraphs 17, 27, and 29 of Exhibit 1018 are inadmissible because they lack foundation under Rule 602, and are unsupported by sufficient facts, data or reasoned explanation under Rules 701, 702, and 703. In recognition of these issues, Petitioner now files an “amended” Exhibit 1009A, which includes citations to many of the above-referenced paragraphs, explaining on page 12 of its Opposition that Patent Owner’s objections are now “cured.” Patent Owner, however, maintains its objections to the above-referenced Paragraphs in Exhibit 1009 and Exhibit 1018 and will move for permission to strike Exhibit 1009A if relied upon by Petitioner because, among other things, Exhibit 1009A constitutes improperly filed and served supplemental information. 37 C.F.R. § 42.123.

C. Numerous Paragraphs impermissibly present new arguments.

Petitioner's blanket assertion on pages 13-14 of its Opposition that the challenged Paragraphs are "responsive" to Patent Owner's opposition does not establish their admissibility. *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, No. 2015-1693, --- F.3d ---, 2016 WL 2620512, at *8 (Fed. Cir. May 9, 2016) ("Once the Board identifies new issues presented for the first time in reply, . . . the Board [need not] parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper."). Indeed, Dr. Rosenberg admitted that he had not previously discussed at least two of his new "theories." Ex. 1018, ¶¶ 11, 12; *see also* Exhibit 2018 at 25:2-12, 26:5-27:16, and 43:21-44:15. Paragraphs 3, 11-12, 18, 26-27, 29, and 32 in Exhibit 1018 are inadmissible because they present new arguments on the merits and constitute improperly filed supplemental information. 37 C.F.R. § 42.123.

D. Exhibit 1019 should be excluded for numerous reasons.

Exhibit 1019 should be excluded as it is improperly filed and served supplemental information (37 C.F.R. § 42.123), has not been properly authenticated (FRE 901), lacks foundation (FRE 602), constitutes inadmissible hearsay (FRE 801, 802), and the probative value of the information in it is substantially outweighed by a danger of unfair prejudice (FRE 403). *See Toshiba Corp.*, IPR2014-01447, 2016 WL 932016, at *22. Contrary to Petitioner's assertions on page 14 of its Opposition, Exhibit 1019

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