

UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMART MODULAR TECHNOLOGIES INC.,  
Petitioner,

v.

JAMES B. GOODMAN,  
Patent Owner.

Case IPR2105-01675  
Patent No. 6,243,315 B1

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Before BRIAN J. McNAMARA, PATRICK M. BOUCHER, AND  
GARTH D. BAER, *Administrative Patent Judges*

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**RESPONSE BY PATENT OWNER TO PETITIONER'S OBJECTIONS**  
**TO PATENT OWNER'S ATTACHMENTS SUBMITTED WITH**  
**PATENT OWNER'S POST-INSTITUTION RESPONSE**

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The Petitioner has submitted objections on March 11, 2016 to two exhibits to the Patent Owner's Response filed March 3, 2016.

## **INTRODUCTION**

The following is a brief summary of the objections; however, the Petitioner's submission speaks for itself.

Petitioner argues that the attachments as Exhibit fail to comply with the formal requirements of 37 C.F.R. § 42.63(a) (as to form); 37 C.F.R. § 42.63(d)(1), (2)(ii) (as to labeling); and 37 C.F.R. § 42.63(d)(2)(I) (as to sequential numbering). In addition, Petitioner cites to 37 C.F.R. § 42.64 to argue that the Exhibits are incomplete sections of a document or webpage.

The last objection of the Petitioner is that the "Patent Owner's characterization of the Exhibits" under F.R.E 701 and F.R.E. 702 are improper because the Patent Owner's counsel is not identified as an expert in this case.

## **ARGUMENT**

Initially, it is respectfully pointed out that Petitioner is exalting form over substance, and Petitioner has made no objection as to the content or evidentiary value of the Patent Owner's Exhibits.

The objections by the Petitioner fail to comply with 37 C.F.R. § 42.64(b)(1) which sets a deadline for objections to "within five business days of service of evidence to which the objection is directed." Hence, the objections should be ignored as being untimely.

Nevertheless, the objections will be addressed in the following:

1. 37 C.F.R. § 42.63(a). Petitioner has not cited any case defining what constitutes “the form of an exhibit”. Moreover, Petitioner admits that the attachments are “exhibits:” by identifying the attachments as “Exhibits” in the Objections. Hence, this objection has no substance.
2. 37 C.F.R. § 42.63(d)(1). (2)(ii). Each of the Patent Owner’s Exhibits are labeled as to their origins on the documents themselves at the upper right hand corners. Hence, this objection has no substance.
3. 37 C.F.R. § 42.63(d)(2)(I). Each of the Patent Owner’s Exhibits are uniquely numbered sequentially in the upper right hand corner. It is respectfully noted that all of Petitioner’s exhibits fail to comply with this requirement. Thus, Petitioner has revealed that compliance is not actually important.

Petitioner cites to F.R.E. 106 as to completeness of the Exhibits; however, F.R.E. 106 requires any other part of the document “that in fairness ought to be considered at the same time”. Petitioner has failed to explain the need for the more than 3000 pages of JEDEC21-C to be submitted when a mere two pages show the information relevant to the Response. It is respectfully pointed out that the first page of the attachment identifies JEDEC21-C as having more than 3000 pages. Petitioner’s demand is illogical and intended to waste time and resources of the PTAB.

Petitioner argues that F.R.E. 701 and F.R.E. 702 make the Patent Owner’s attorney incompetent to point to a reference to support arguments even though no expert opinion is being offered by the attorney about that reference. The argument by Petitioner has misapplied F.R.E.

701, and 702 because no expert opinion or testimony has been offered by the Patent Owner's attorney. Even if an opinion were offered, the PTAB would determine whether or not the opinion has merit. Needless to say, the Petitioner's expert is not likely to have all of his opinions accepted completely by the PTAB when it is contradicted by facts.

### **CONCLUSION**

The objections made by the Petitioner are in violation of 37 C.F.R. § 42.64(b)(1), and should be ignored as untimely.

In addition, Petitioner merely argues about the form of the exhibits, and nothing about the content or evidentiary merits.

Hence, objections are without merit and should be ignored.

Respectfully submitted,

March 15, 2016

/David Fink/

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**CERTIFICATE OF SERVICE IN COMPLIANCE WITH 37 C.F.R. § 42.6(E)(4)**

The undersigned certifies that a complete copy of this *RESPONSE BY PATENT OWNER TO PETITIONER'S OBJECTIONS TO PATENT OWNER'S ATTACHMENTS SUBMITTED WITH PATENT OWNER'S POST-INSTITUTION RESPONSE* was served via email on Counsel for Petitioner in this proceeding on March 15, 2016:

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