

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VALVE CORPORATION,
Petitioner,

v.

IRONBURG INVENTIONS LTD.,
Patent Owner.

Cases:

IPR2016-00948 (Patent 8,641,525 B2)
IPR2016-00949 (Patent 9,089,770 B2)

**PETITIONER'S RESPONSE TO
PATENT OWNER'S OBJECTIONS TO EVIDENCE**

I. Ironburg’s belated objections to evidence should be rejected as untimely.

On 01 November 2016, after the two-day deadline set by the Board (in the Conduct of Proceedings promulgated by the Board on 27 October 2016 as Paper 13), the Patent Owner (hereinafter “Ironburg”) raised three different belated objections to Petitioner’s Exhibit 1007 of IPR petitions IPR2016-00948 and IPR2016-00949.

This was the second time that Ironburg missed its deadline for objections to Petitioner’s Exhibit 1007. Ironburg previously missed the deadline for objections (ten business days after institution of the trial, under rule 37 C.F.R. § 42.64(b)(1)), and had to seek special leave from the Board to authorize a new and additional time period to file its objections. Ironburg then failed to meet the second deadline, as well.

Ironburg’s excuse for missing the Board’s second deadline was that, although the Board emailed the order authorizing the additional time period to the proper address of Ironburg’s attorney of record, the email arrived while such attorney was traveling – presumably for the entire second two-day period authorized for objections. This excuse fails for at least two reasons. Firstly, Petitioner’s counsel did not explain how his travel justified the tardiness of the submission, in view of the many communication tools ubiquitously available to the modern traveler. Secondly, the Board had verbally warned both parties of the

likelihood that its order would be forthcoming – just days prior, during an official teleconference.

II. Petitioner’s substantive responses to Ironburg’s objections to evidence.

If the Board permits Ironburg’s belated evidentiary objections despite their untimeliness, then the Petitioner offers the following substantive responses, which include and refer to an Exhibit 1013 containing supplemental evidence, filed herewith under 37 C.F.R. § 42.64(b)(2).

Ironburg objects that Petitioner’s Exhibit 1007 allegedly contains hearsay inadmissible under Fed. R. Evid. 802. *See* Paper # 13 filed by Ironburg on 01 November 2016, at pages 1-3. Ironburg also objects that Petitioner’s Exhibit 1007 is allegedly irrelevant under Fed. R. Evid. 402. *See id.*, at page 3. Petitioner disagrees with both of these belated objections, and reserves the right to rebut them in an opposition if Ironburg is allowed to bring a motion to exclude based upon them.

Ironburg also objects to Petitioner’s Exhibit 1007 as allegedly lacking authentication under Fed. R. Evid. 901. *See id.*, at page 3. However, that objection fails immediately, at least because Petitioner identified the source of Exhibit 1007 in each of the IPR petitions in IPR2016-00948 and IPR2016-00949 as being the “UK Search and Examination Report for Patent App. No. GB1011078.1, 16 May

2011,” and because each of the pertinent IPR petitions was signed by a registered U.S. patent attorney.

The source identification for Exhibit 1007 that was included in the IPR petitions over the signature of a registered U.S. patent attorney, already legally sufficed as authentication in the present forum. After all, every registered U.S. patent attorney has a continuing ethical duty of honesty and candor to the USPTO, that is expressly binding under criminal penalty under 18 U.S.C. § 1001. *See, e.g.*, 37 CFR § 11.18.

Specifically, 37 CFR § 11.18(b)(1) expressly describes the legal significance of a practitioner’s signature on documents filed in the present IRB proceedings, as certifying that:

All statements made therein of the party’s own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute, and violations

of the provisions of this section may jeopardize the probative value of the paper [...]

Therefore, the source identification for Exhibit 1007 that was included in each of the IPR petitions over the signature of a registered U.S. patent attorney, already legally sufficed as authentication in the present forum.

However, in an abundance of caution, and respecting the Board's approaching deadline for submission of any contemplated supplemental evidence relevant to the foregoing objections to evidence, Petitioner submits herewith Exhibit 1013 as supplemental evidence under 37 C.F.R. § 42.64(b)(2). Exhibit 1013 is a factual declaration from undersigned U.S. Patent attorney Joshua C. Harrison, confirming the authenticity of Petitioner's Exhibit 1007 as filed with and described by the IPR petitions in the instituted IPR2016-00948 and IPR2016-00949 trials.

Respectfully submitted,

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