

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME FOCUS CREATIVE SERVICES CANADA, INC.,

Petitioner,

v.

LEGEND3D, INC.,

Patent Owner.

Case IPR2016-01243

Patent 7,907,793 B1

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 CFR § 42.64**

Mail Stop Patent Board
Patent Trial and Appeal Board
P.O. Box 1450
Alexandria, VA 22313-1450

I. INTRODUCTION

Pursuant to 37 Code of Federal Regulations (“CFR”) § 42.64(b)(1), Patent Owner Legend3D, Inc. (“Patentee” or “LEGEND3D”) hereby submits the following Objections to Evidence in relation to the filings by Petitioner Prime Focus Creative Services Canada, Inc., (“Petitioner”) of the petitioner for *inter partes* review (Paper 1) and accompanying exhibits. For these purposes, the Federal Rules of Evidence (“FRE”) are applicable hereto. (37 CFR § 42.62(a))

II. OBJECTIONS TO EVIDENCE

Prime Focus Exhibit 1007 (*Business Wire Dec. and Press Releases*)

OBJECTION: The subject declaration fails to show that the declarant has personal knowledge of the facts claimed, and the statements are hearsay and multiple hearsay, lack proper foundation and authentication, are argumentative, assume facts, and are based on inadmissible evidence (FRE, Rules 602, 611(a), 702, 703, 705, 801-802, 805, & 901). For example, the declarant does not indicate how long he has been so employed and does not indicate that he is a custodian of records or other *qualified* witness and trustworthiness has not been demonstrated. Further, Exhibit 1 is hearsay and multiple hearsay, and lacks proper foundation and authentication (FRE, Rules 801-802, 805, & 901); and Exhibit 2 is also hearsay and multiple hearsay, and lacks proper foundation and authentication (FRE, Rules 801-802, 805, & 901). The subject information is also irrelevant (FRE, Rule 402)

and substantially more prejudicial than probative (FRE, 403).

Prime Focus Exhibit 1007 (Declaration of Dr. David Forsyth)

Forsyth Declaration, ¶¶ 1 through 97:

OBJECTION: The subject declaration is not under oath or affirmation or penalty of perjury as required by law. (FRE, Rule 603; 28 United States Code § 1746; and 37 CFR §§ 1.68, 42.2, 42.53(a), 42.61(a), 42.63(a), *Coalition for Affordable Drugs IX, LLC v. Bristol-Myers Squibb Company*, Case No. IPR01723, at p. 6, fn. 5, (PTAB February 22, 2016) (Paper 10)) The aforesaid “declaration” is therefore not evidence (see, e.g., *Gemtron Corp. v. Saint-Gobain Corp.* (Fed. Cir. 2009) 572 F.3d 1371, 1380 [unsworn attorney argument is not evidence]), Patentee moves and will move to exclude and/or strike the subject “declaration” as not in compliance with the law, and therefore the subject petition is unsupported by any evidence and this defect is fatal to the petition.

Forsyth Declaration, ¶ 2:

2. ... It is my opinion that the prior art references in the associated petition for IPR render all of the claims of the ‘793 Patent (*i.e.*, Claims 1 through 20) obvious. ...

OBJECTION: The subject statements are legal conclusions. (*Nationwide Transport Finance v. Cass Information Systems, Inc.* (9th Cir. 2008) 523 F.3d 1051, 1058-1060) The subject statements additionally lack proper foundation and authentication and/or are based on inadmissible evidence (FRE, Rules 611(a), 702,

703, 705, 801-802, & 901). The subject statements are also irrelevant (FRE, Rule 402) and substantially more prejudicial than probative (FRE, Rule 403).

Forsyth Declaration, ¶ 6:

6. I have been asked to assume, for my analysis, that the claims of the challenged '793 Patent have a priority date of August 17, 2009 (its filing date). To the extent that Patent Owner argues for a different priority date, I reserve the right to supplement my declaration to address those arguments.

OBJECTION: The subject statements misstate the evidence, are argumentative, assume facts, lack proper foundation and authentication, and/or are based on inadmissible evidence (FRE, Rules 611(a), 702, 703, 705, 801-802, & 901). The subject statements are legal conclusions. (*Nationwide Transport Finance v. Cass Information Systems, Inc.* (9th Cir. 2008) 523 F.3d 1051, 1058-1060) The subject statements are also irrelevant (FRE, Rule 402) and substantially more prejudicial than probative (FRE, Rule 403).

Forsyth Declaration, ¶ 8:

8. I understand that, due to procedural limitations for IPR proceedings, the grounds of invalidity discussed herein are based solely on prior art patents and other printed publications. I understand that Petitioner reserves all rights to assert at a later time other grounds for invalidity not addressed herein, for instance failure of the application to claim patentable subject matter under 35 U.S.C. § 101, failure to meet requirements under 35 U.S.C. § 112 (*e.g.*, lack of written description in support of the claims), and anticipation or obviousness under 35 U.S.C. §§ 102 and 103 not based solely on patents and printed publications (*e.g.*,

evidence of prior use). Thus, the absence of discussion of such matters here should not be interpreted as indicating that there are no such additional grounds for invalidity of the '793 Patent. Similarly, absence of discussion of other printed prior art references here should not be interpreted as indicating that there are no other printed prior art references that either anticipate or render obvious the '793 Patent.

OBJECTION: The subject statements are legal conclusions. (*Nationwide Transport Finance v. Cass Information Systems, Inc.* (9th Cir. 2008) 523 F.3d 1051, 1058-1060) The subject statements additionally lack proper foundation and authentication, are argumentative, are hearsay and multiple hearsay, and/or are based on inadmissible evidence (FRE, Rules 611(a), 702, 703, 705, 801-802, 805, & 901). The subject statements are also irrelevant (FRE, Rule 402) and substantially more prejudicial than probative (FRE, Rule 403).

Forsyth Declaration, ¶¶ 18 through 30:

18. I am not a patent attorney and my opinions are limited to what I believe a person of ordinary skill in the art would have understood. I use the principles below, however, as a guide in formulating my opinions.

19. My understanding is that a primary step in determining the validity of patent claims is to properly construe the claims to determine claim scope and meaning.

20. In an IPR proceeding, I understand that claims are to be given their broadest reasonable construction in light of the patent's specification. 37 C.F.R. § 42.100(b). For the purposes of this IPR, I have construed each claim term in accordance with its plain and ordinary meaning under the required broadest

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