

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMERSON ELECTRIC CO.,

Petitioner,

v.

SIPCO, LLC,

Patent Owner.

Case IPR2017-00216
Patent 8,013,732 B2

Before LYNNE E. PETTIGREW, STACEY G. WHITE, and
CHRISTA P. ZADO, *Administrative Patent Judges*.

**PETITIONER'S OBJECTIONS TO EVIDENCE
SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner Emerson Electric Co. (“Petitioner”), hereby submits the following objections to Patent Owner SIPCO, LLC’s (“Patent Owner”) Exhibits as indicated below, and any reference thereto/reliance thereon, without limitation. Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”) as required by 37 C.F.R § 42.62.

I. Introduction

These objections address evidentiary deficiencies in the material filed by Patent Owner with its Preliminary Response on February 16, 2017. The following objections apply to the Exhibits indicated below as they are actually presented by Patent Owner in the context of Patent Owner’s February 16, 2017 Preliminary Response (Paper No. 7, “POPR”) and not in the context of any other substantive argument on the merits of the instituted grounds in this proceeding. Petitioner expressly objects to any other purported use of these Exhibits, including as substantive evidence in this proceeding, which would be untimely and improper under the applicable rules, and Petitioner expressly asserts, reserves, and does not waive any other objections that would be applicable in such a context.

II. Objections to Exhibits 2001-05 And Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.61 (“Admissibility”); and 37 C.F.R. § 42.53 (“Taking Testimony”).

Petitioner objects to Exhibits 2002-2005 as impermissible hearsay under F.R.E. 801 and 802 to the extent to which the out-of-court statements therein are offered for the truth of the matters asserted and constitute impermissible hearsay for which Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay (F.R.E. 801, 802). Permitting reliance on these documents in Patent Owner’s Preliminary Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403). To the extent Patent Owner seeks to rely on content in the submissions as testimony, Petitioner objects as they are not in the form of an affidavit or a deposition transcript, as required by 37 C.F.R. § 42.53, and requests that Exhibits 2002-2005 be stricken.

Petitioner further objects to Exhibits 2002-2005 under F.R.E. 401, 402, and 403, and 37 C.F.R. § 42.61, because these Exhibits do not appear to make any fact of consequence in determining this action more or less probable than it would be without them and are thus irrelevant and not admissible (F.R.E. 401, 402);

permitting reference to/reliance on these documents would also be misleading, irrelevant, and unfairly prejudicial to Petitioner (F.R.E. 402, 403).

Exhibit 2001 exists to support that Exhibits 2002-2005 are “true and correct” copies, and there is no basis for admission of Exhibit 2001 in the absence of Exhibits 2002-2005. Accordingly, Petitioner objects to Exhibit 2001, which purports to describe Exhibits 2002-2005, on the same bases.

Dated: May 25, 2017

Respectfully submitted,

/s/ Donald L. Jackson

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE was served on May 25, 2017 in its entirety by causing the aforementioned document to be electronically mailed, pursuant to the parties' agreement, to the following attorneys of record:

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