

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMERSON ELECTRIC CO.,

Petitioner,

v.

SIPCO, LLC,

Patent Owner.

Case No. IPR2017-00216
Patent Number 8,013,732

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

**PETITIONER'S OBJECTIONS TO EVIDENCE
SUBMITTED WITH PATENT OWNER'S 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.

These objections address evidentiary deficiencies in the material filed by Patent Owner with its Response on August 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 August 16, 2017 Response (Paper No. 21, “POR”) 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.

I. Objections to Exhibit 2012 And Any Reference To/Reliance Thereon

Grounds for objection: F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 1002 (“Requirement of the Original”); F.R.E. 1003 (“Admissibility of Duplicates”); 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”).

Petitioner objects to the use of Exhibit 2012 under F.R.E. 901, 1002, 1003 and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and Exhibit 2012 is not self-authenticating under F.R.E. 902.

Petitioner also objects to Exhibit 2012 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). Accordingly, permitting reliance on this document in Patent Owner’s Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

Petitioner further objects to the use of Exhibit 2012 under F.R.E. 401, 402, and 403, and 37 C.F.R. § 42.61 because Patent Owner has not shown that this Exhibit represents the state of the art in the time period relevant to the '732 patent. Petitioner also objects to Exhibit 2012 under F.R.E. 401, 402, and 403, and 37 C.F.R. § 42.61, for failure to show that this Exhibit makes any fact of consequence in determining this action more or less probable than it would be without this Exhibit and is thus irrelevant and not admissible (F.R.E. 401, 402); permitting reference to/reliance on the Exhibit would also be misleading, irrelevant, and unfairly prejudicial to Petitioner (F.R.E. 402, 403).

II. Objections to Exhibit 2014 And Any Reference to/Reliance Thereon

Grounds for objection: 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”); F.R.E. 702 (“Testimony by Expert Witness”); F.R.E. 703 (“Bases of an Expert’s Opinion Testimony”); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioner objects to Exhibit 2014 under F.R.E. 702 and 703, and 37 C.F.R. § 42.61. The declarant of Exhibit 2014, Dr. Kevin C. Almeroth, fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702. Dr. Almeroth has also not “reliably applied the principles and methods to the facts of the case,” and his

opinions in Exhibit 2014 are not “the product of reliable principles and methods,” in violation of F.R.E. 702. Petitioner further objects to Exhibit 2014 under F.R.E. 401, 402, and 403, and 37 C.F.R. § 42.61, for failure to show that this Exhibit makes any fact of consequence in determining this action more or less probable than it would be without the Exhibit and is thus irrelevant and not admissible (F.R.E. 401, 402); permitting reference to/reliance on the Exhibit would also be misleading, irrelevant, and unfairly prejudicial to Petitioner (F.R.E. 402, 403).

III. Objections to Exhibit 2016 And Any Reference to/Reliance Thereon

Grounds for objection: 37 C.F.R. § 42.61 (“Admissibility”); 37 C.F.R. § 42.64(a) (“Deposition evidence”); 37 C.F.R. § 42.53(f)(8) (Objections in depositions).

Exhibit 2016 appears to be the deposition transcript of Stephen B. Heppe taken on August 9, 2017 in this proceeding. Petitioner hereby expressly repeats and incorporates by reference all of its objections stated on the record during that deposition, and affirmatively maintains all such objections.

IV. Objections to Exhibits 2017-2022 And Any Reference to/Reliance Thereon

Grounds for objection: F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding

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