

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YITA LLC,
Petitioner

v.

MACNEIL IP LLC,
Patent Owner

Case No. IPR2020-01139
U.S. Patent No. 8,382,186

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioner Yita LLC objects under the Federal Rules of Evidence to the admissibility of Exhibit 2137, which Patent Owner MacNeil IP LLC served on June 2, 2021. 37 C.F.R. § 42.64(b)(1). Exhibit 2137 has not been filed as evidence¹ and was not served as supplemental evidence, which was required to be served by May 26, 2021. Out of an abundance of caution and to preserve its right to move to exclude this exhibit, Yita timely objects within the allowed five business days of service of Exhibit 2137. Yita did not object to MacNeil's supplemental evidence served May 26, 2021 because the Board has previously indicated that the rules do not provide for objections to supplemental evidence, even if the supplemental evidence is subsequently sought to be submitted as supplemental information. *See Valeo North America, Inc. v. Magna Electronics, Inc.*, IPR2014-01204, FWD, 11-12 (P.T.A.B. Jan. 25, 2016).

Because Exhibit 2137 does not squarely match the facts of *Valeo* (e.g., it was not served as supplemental evidence), Yita objects to Exhibit 2137 now as a precaution. To the extent MacNeil's motion to submit supplemental information is granted, Yita will object within five business days to any exhibit admitted as

¹ MacNeil is preparing a motion requesting to submit Exhibit 2137, among other exhibits, as supplemental information. *See* Paper 33, Board Order Authorizing Motion to Submit Supplemental Information.

supplemental information (including Exhibit 2137 and any exhibit served as supplemental evidence) for which Yita wishes to preserve its right to move to exclude. *See id.*

Yita files and serves MacNeil with these objections to provide notice that Yita may move to exclude Exhibit 2137 under 37 C.F.R. § 42.64(c).

I. Exhibit 2137: Translation of TW363545 by “Samuel” Shen Chong

Yita objects to Exhibit 2137 as untimely. MacNeil did not serve Exhibit 2137 with its Patent Owner Response, which was due on May 5, 2021. *See Paper 25* (jointly stipulating to move Due Date 1 to May 5). Nor did MacNeil timely serve Exhibit 2137 in response to Yita’s objections to evidence within the supplemental evidence window that expired on May 26, 2021. 37 C.F.R. § 42.64(b)(2). Instead, MacNeil served Exhibit 2137 on June 2, 2021, after both dates had passed. Thus, Exhibit 2137 is not proper evidence under 37 C.F.R. § 42.63(a). As such, this document is also irrelevant under FRE 401, 402, and 403.

Yita further objects to Exhibit 2137 under FRE 401, 402, and 403 for including information that is irrelevant. This document lacks any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without this document. In addition, to the extent this document has any probative value to any ground upon which trial was instituted, it is substantially

outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

To the extent MacNeil relies on the contents of Exhibit 2137 for the truth of the matter asserted, Yita objects to Exhibit 2137 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

Yita objects to Exhibit 2137 as not properly authenticated under FRE 901 because MacNeil has not presented evidence sufficient to support a finding that the document in question is what MacNeil claims. There is no evidence that the document is self-authenticating under FRE 902.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/ R. Wilson Powers III /

R. Wilson Powers III (Reg. No. 63,504)
Counsel for Petitioner

Date: June 9, 2021

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)** was electronically served via e-mail in its entirety on June 9, 2021, upon the following counsel of record for Patent Owner:

David G. Wille (Lead Counsel)
Chad C. Walters (Back-up Counsel)
Clarke W. Stavinoha (Back-up Counsel)
BAKER BOTTS L.L.P.
david.wille@bakerbotts.com
chad.walters@bakerbotts.com
clarke.stavinoha@bakerbotts.com

Jefferson Perkins (Back-up Counsel)
PERKINS IP LAW GROUP LLC
jperkins@perkinsip.com

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/ R. Wilson Powers III /

R. Wilson Powers III (Reg. No. 63,504)
Counsel for Petitioner

Date: June 9, 2021

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600