

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOMENTUM DYNAMICS CORPORATION,
Petitioner

v.

WITRICITY CORPORATION,
Patent Owner

Case No. IPR2021-01166
Patent No. 8,304,935

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
UNDER 37 C.F.R. § 42.64(c)**

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Patent Owner submits this Motion to Exclude pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence (“FRE”). Patent Owner requests that the Board exclude Exhibit 1007 under FRE 901 because Petitioner has failed to authenticate Exhibit 1007 by “produc[ing] evidence sufficient to support a finding that the item is what” Petitioner “claims it is.” FRE 901.

Specifically, Petitioner claims that Exhibit 1007 is a German doctoral dissertation by Kathleen O’Brien entitled “Inductively Coupled Radio Frequency Power Transmission System for Wireless Systems and Devices” (hereinafter the “O’Brien Dissertation”).¹ Ex. 1005, [38]. Petitioner submitted declaration testimony from two different declarants attempting to authenticate Exhibit 1007. One declarant (Dr. Hall-Ellis) concluded that Exhibit 1007 was a “true and correct copy” of the O’Brien Dissertation based solely on the general appearance of Exhibit 1007 (*e.g.*, “no pages are missing ... text on each page appears to flow seamlessly from one page to the next ... no visible alterations”) without ever reviewing an authentic copy of the O’Brien Dissertation or performing any type of

¹ Kathleen O’Brien, *Inductively Coupled Radio Frequency Power Transmission System for Wireless Systems and Devices* (2007) (Ph.D. dissertation, Technical University of Dresden). *See* Ex. 1024, [2].

comparison. *See* Ex. 1005, [38]. That same declarant later submitted a second declaration testifying that Exhibit 1007 was a copy of a different document than the O'Brien Dissertation. *See* Ex. 1025. Petitioner's other declarant (Michael T. Pierce, listed as backup counsel in this case) provided only conclusory testimony linking Exhibit 1007 and the O'Brien Dissertation, and provided no explanation whatsoever to support his conclusion that Exhibit 1007 is a "true and correct copy" of O'Brien. *See* Ex. 1024, [2].

Admittedly, the Board has generally set the bar for authenticating a reference low. However, given the questionable nature of Petitioner's authentication evidence in this case (*e.g.*, conflicting declaration testimony from one declarant, conclusory testimony from Petitioner's counsel), along with the insufficiency of that evidence to prove that Exhibit 1007 is authentic, the Board should grant this Motion and exclude Exhibit 1007 from the present proceeding.

I. Background

On January 24, 2022, Patent Owner timely objected to Exhibit 1007 under FRE 901. Paper 9, 1. This objection is explained below as required by 37 CFR 42.64(c). On January 28, 2022, Petitioner served supplemental evidence in response to Patent Owner's objections consisting of the Declaration of Michael T. Pierce (Ex. 1024), and the Declaration of Sylvia Hall-Ellis (Ex. 1025).

II. Petitioner fails to authenticate Exhibit 1007

Petitioner's evidence relating to the authenticity of Exhibit 1007 consists of:

1. Ex. 1005 – The Declaration of Sylvia D. Hall-Ellis, Ph.D (the “Hall-Ellis Declaration”);
2. Ex. 1024 – The Declaration of Michael T. Pierce (the “Pierce Declaration”); and
3. Ex. 1025 - The Second Declaration of Sylvia Hall-Ellis, Ph.D (the “Second Hall-Ellis Declaration”).

As explained below, this evidence, both individually and cumulatively, is insufficient to authenticate Exhibit 1007.

A. The Hall-Ellis Declaration fails to authenticate Exhibit 1007

The Hall-Ellis Declaration states that she was “retained as an expert by” Petitioner to “provide [her] expert opinion regarding the authenticity and public availability of” Exhibit 1007. Ex. 1005, [2]. Dr. Hall-Ellis testifies that the declaration “sets forth [her] opinions in detail and provides the bases for [her] opinions regarding the public availability” of the Exhibit. *Id.*

The declaration includes two Attachments (1a and 1b) related to public availability. Dr. Hall-Ellis testifies that “Attachment 1a” to the declaration “is a *true and correct copy* of the online catalog record” for the O’Brien Dissertation, and that she “*personally identified and retrieved* the library catalog record that is

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