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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARKEMA INC. AND ARKEMA FRANCE
Petitioner

v.

HONEYWELL INTERNATIONAL INC.
Patent Owner

PGR2016-00011
Patent No. 9,157,017

**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO
EXCLUDE PURSUANT TO 37 C.F.R. § 42.64(c)**

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Petitioner Arkema Inc. and Arkema France opposes the Motion to Exclude (Paper 38) filed by Patent Owner Honeywell International Inc. on April 3, 2017.

I. Introduction

Honeywell moves to exclude Exhibit 1163, a declaration submitted by Dr. Takashi Shibanuma in an *inter partes* reexamination of a related Honeywell patent, as alleged inadmissible hearsay. Exhibit 1163 is *not* hearsay, however, because Arkema does not offer it to prove the truth of the matter asserted therein (*i.e.*, Daikin's subjective reasons for neither requesting examination of Inagaki (Ex. 1012) nor commercializing the refrigerants (including R-1234yf) disclosed therein in 1992). Instead, Arkema offers Exhibit 1163 for the limited, non-hearsay purpose of cross-examining and impeaching Dr. Bivens regarding his baseless assertion that Daikin—the assignee of Inagaki—allegedly perceived some technical deficiencies with the refrigerants Inagaki specifically describes. Thus, for this reason alone, Honeywell's motion to exclude should be denied.

Furthermore, Honeywell's motion is improper, and should be rejected, because it includes substantive arguments unrelated to the admissibility of Exhibit 1163.

Accordingly, Arkema respectfully requests that the Board deny Honeywell's motion to exclude Exhibit 1163.

II. Argument

Pursuant to 37 C.F.R. § 42.62(a), the Federal Rules of Evidence apply in Post-Grant Review proceedings. Honeywell has the burden to show it is entitled to the requested relief. 37 C.F.R. § 42.20(c). Honeywell has not and cannot meet its burden to exclude Exhibit 1163.

A. Exhibit 1163 Is Not Hearsay

Honeywell argues that “Arkema offers Exhibit 1163 for the truth of the matter it asserts,” which, according to Honeywell, is the proposition that “[t]here was no commercial incentive [to commercialize alternative, unsaturated refrigerants] when Inagaki published in 1992, as the costly R-12 to R-134a transition was already underway.” Paper 38 at 4 (quoting Paper 31 at 7) (Honeywell’s alterations). But Arkema does not rely on Exhibit 1163 for this proposition or the truth of any statement therein. As a result, Exhibit 1163 is not hearsay. FRE 801(c) (Hearsay is “a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence *to prove the truth of the matter asserted in the statement.*”) (emphasis added).

Instead, although obviousness rests on what Inagaki objectively disclosed to a person of ordinary skill in the art as opposed to a company’s undisclosed beliefs or intentions as Dr. Bivens seems to imply, Arkema cites other evidence to establish the absence of an economic incentive to develop low-GWP refrigerants

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