

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARKEMA INC. and ARKEMA FRANCE,  
Petitioner,

v.

HONEYWELL INTERNATIONAL INC.,  
Patent Owner.

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Case PGR2016-00011  
Patent 9,157,017 B2

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Before MICHAEL P. TIERNEY, GRACE KARAFFA OBERMANN, *Vice Chief Administrative Patent Judges*, and MICHELLE N. ANKENBRAND, *Administrative Patent Judge*.

ANKENBRAND, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On May 1, 2017, a conference call was held between counsel for the parties and Judges Ankenbrand, Tierney, and Obermann. Petitioner requested the call to ask the Board to expunge Exhibits 2165 and 2166, filed with Patent Owner's Opposition to Petitioner's Motion to Exclude or, alternatively, to request leave to file either a motion to strike or a motion to exclude those exhibits.

Petitioner argued that Exhibits 2165 and 2166 are unauthorized exhibits that the Board should expunge pursuant to 37 C.F.R. § 42.7. In particular, Petitioner asserted that, at best, Exhibits 2165 and 2166 are supplemental evidence to support the admissibility of Exhibit 2103, but that Patent Owner did not timely serve those exhibits in response to Petitioner's objections to Exhibit 2103. In that regard, Petitioner noted that its objections to Exhibit 2103 were filed on December 22, 2016, but that Patent Owner did not serve Exhibits 2165 and 2166 until it filed an opposition to Petitioner's Motion to Exclude, on April 17, 2017—more than three months late. *See* 37 C.F.R. § 42.64(b)(2) (providing that supplemental evidence must be served “within ten business days of service of the objection”).

Patent Owner responded that Petitioner's objections did not identify the grounds for the objection to Exhibit 2103 with sufficient particularity under 37 C.F.R. § 42.64(b)(1), and that Petitioner's Motion to Exclude was the first time Petitioner detailed its objections to Exhibit 2103. Patent Owner stated that it served Exhibits 2165 and 2166 in response to the more detailed explanations set forth in Petitioner's Motion to Exclude. Thus, Patent Owner argued that if Exhibits 2165 and 2166 are viewed as supplemental evidence, they are timely based on the April 3, 2017 filing date of Petitioner's Motion to Exclude.

After considering the arguments raised by the parties, as well as the facts and circumstances of this case, we declined to expunge Exhibits 2165 and 2166 at the present time. We did, however, authorize Petitioner to file an additional motion to exclude addressing the admissibility of Exhibits 2165 and 2166. We also authorized Patent Owner to file a response to the motion, and Petitioner to file a reply. We ordered briefing on the motion as follows: Petitioner's motion is limited to four (4) pages and shall be filed no later than close of business (5 pm EST) on Thursday, May 4, 2017; Patent Owner's response is limited to four (4) pages and shall be filed no later than close of business (5 pm EST) on Tuesday, May 9, 2017; and Petitioner's reply is limited to two (2) pages and shall be filed no later than close of business (5 pm EST) on Thursday, May 11, 2017.

Accordingly, it is

ORDERED that parties are authorized to file the above-discussed papers addressing the admissibility of Exhibits 2165 and 2166 in accordance with the requirements and deadlines set forth herein.

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