

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZF NORTH AMERICA, INC., ZF ACTIVE SAFETY US INC.,
Petitioners,

v.

STONERIDGE CONTROL DEVICES, INC.,
Patent Owner.

IPR2023-00273
Patent No. 7,021,415 B2

**PETITIONER'S REPLY IN SUPPORT OF
MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

The Board should exclude Ex. 2005, ¶¶ 160-166, Exs. 2009-2012, and Exs. 2016-2018 (“the Challenged Exhibits”) as explained in Petitioner’s Motion to Exclude Evidence (“Motion”) and below. Patent Owner’s (“PO”) sweeping assertion that it “submitted evidence of copying and other secondary considerations” is unfounded. PO never shows a nexus between the evidence and the ’415 Patent, and despite PO’s urging, the Board cannot “assume” nexus. *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019) (To demonstrate nexus, a patentee must show that “the asserted objective evidence is tied to a specific product and that product embodies the claimed features, and is coextensive with them.”). PO’s Opposition (Paper 24) provides neither a compelling rebuttal to any issues raised in the Motion nor demonstrates the admissibility of the Challenged Exhibits.

II. EXHIBIT 2005, ¶¶ 160-166 SHOULD BE EXCLUDED

PO is simply wrong when it asserts that Petitioner attacks the sufficiency, and not the admissibility of Dr. Stein’s declaration. An expert’s opinion must set forth the reliable facts or data supporting that opinion in order to be *admissible*. Moreover, the expert must set forth a reliable methodology for his analysis and conclusions and properly apply them to the facts of the case. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999). The complete lack of analytical substance or investigation into the facts in Dr. Stein’s declaration speaks for itself, and requires exclusion under

FRE 401-403, 702, and 703. Dr. Stein's opinions on secondary considerations rely solely on unreliable exhibits and should be excluded for that reason also.

PO defends Dr. Stein by arguing that he arrived at his conclusions on alleged secondary considerations based on (1) reviewing claim charts he did not create showing a product he cannot identify; (2) inspecting a product he cannot identify; and (3) parroting what his lawyers told him about an alleged presentation he does not analyze and did not investigate. Paper 24, p. 3. PO ignores that Dr. Stein never provides an analysis showing that any product or any presentation embodies and is coextensive with the claims, as would be required for, e.g., copying. *See, e.g., Bosch Auto. Serv. Sols., LLC v. Matal*, 878 F.3d 1027, 1036-37 (Fed. Cir. 2017). If ever an expert's conclusions lacked the proper foundation for admissibility under *Kumho* and its progeny, this is that case.

III. EXHIBIT 2009 SHOULD BE EXCLUDED

Contrary to PO's argument, Ex. 2009 (and the other printouts complained of) is not authenticated, as there is no requisite indicia of authenticity and Ms. Stringfield does not have knowledge regarding the creation, authorship, or accuracy of the contents. Moreover, Ex. 2009 has no relevant non-hearsay purpose. The POR asserted its relevance was to show that a particular product of petitioners (one that PO had to show was coextensive with the claims, but did not) was standard on Jeeps and had a significant market share. Even PO's current assertion that Ex. 2009 is

non-hearsay because it shows only that Mopar (owned by a company that owns Jeep) sells one of Petitioner's products for the Jeep Cherokee (Paper 24, p. 5), is in fact hearsay being offered for the truth of that statement. Finally, PO is wrong in stating: (1) nexus can be assumed here, (2) PO has shown any Petitioner product embodies and is coextensive with a claim of the '415 patent; and (3) that Ex. 2009 admittedly shows a product of Petitioner, much less the specific product that was the subject of Exhibit 2016 or any other exhibit. *Id.*, p. 6. All of these premises are untrue.

IV. EXHIBIT 2010 SHOULD BE EXCLUDED

One the one hand, PO asserts that Ex. 2010 is not being used for the truth of the matter or to show that any product was successful. PO then states Ex. 2010 describes the enormous success of Petitioners EPBAs, completely undermining its argument that this is not being used for the truth of the statements therein. Paper 24, p. 7. Ex. 2010 is inadmissible hearsay. PO also admits that Ex. 2010 discusses no particular product (*Id.*), which effectively concedes its irrelevance.

V. EXHIBIT 2011 SHOULD BE EXCLUDED

PO cannot overcome the lack of foundation regarding the alleged presentation (Ex. 2012). PO argues that what occurred at the meeting is not the subject of Ex. 2011. Paper 24, p., 8. But, PO's argument hinges on Ex. 2012 having been presented to someone in a position to copy it, *of which there is no evidence*. Mr. Patrick cannot say what, if anything, was presented to whom *because he was not there*. Ex. 2011,

¶ 4. Further and as set forth in the Motion (Paper 23, pp. 8-11), his declaration is rife with improper opinion testimony from a fact witness, requiring its exclusion. *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1362 (Fed. Cir. 2008).

VI. EXHIBIT 2012 SHOULD BE EXCLUDED

As noted immediately above, there is no competent evidence that Ex. 2012 was presented to anyone. PO admits that “Ex. 2012 is offered for the proposition that Patent Owner communicated certain information to Petitioners.” Paper 24, p. 10. It was incumbent upon PO, then, to provide competent evidence this actually happened, and it has not. PO also argues that Ex. 2012 is relevant because it “shows claimed features including a sub-frame and at least one isolator that provides sound/vibration isolation.” *Id.* First, there is no competent opinion that Ex. 2012, e.g., shows an isolator or sub-frame. Second, to be relevant, the allegedly copied design must embody the patent claims at issue, which require more than a random sub-frame and isolator. PO’s own description of the exhibit proves its irrelevance. Third, there is no evidence that the presentation’s design was copied.

VII. EXHIBIT 2016 SHOULD BE EXCLUDED

PO asserts that Ex. 2016 is relevant “because it shows that Petitioners’ product embodies the claims of the ’415 patent.” *Id.*, p. 11. Claim charts prepared by counsel in patent litigation serve a notice as opposed to an evidentiary function. *O2 Micro Int’l, Ltd. v. Monolithic Power Sys.*, 467 F.3d 1355, 1365-66 (Fed. Cir. 2006).

Moreover, there is no evidence that Ex. 2016 shows one of Petitioner’s products (Dr. Stein doesn’t know what it shows) because the product depicted is unauthenticated. There also is no evidence that the product shown meets and is coextensive with the claims of the ’415 patent. As noted above, Dr. Stein fails to provide any admissible opinion of infringement, much less coextensiveness, and the opinion of PO’s lawyers who created the chart—with no involvement of Dr. Stein whatsoever—is irrelevant. *See, Sundance*, 550 F.3d at 1362.

VIII. EXHIBITS 2017 AND 2018 SHOULD BE EXCLUDED

PO asserts that Exs. 2017 and 2018 are offered only for the fact that the author deems Petitioner to be a “key player” or “key company” in the EBPA market. Paper 24, p. 11, 12. If true, then this admission simply confirms the exhibits’ irrelevance. The authors’ opinions (truthfully voiced or not) of “players” has no bearing on this case. And, PO’s admission that Exs. 2017 and 2018 merely concern EBPs in general does, in fact, further indicate their irrelevance.

IX. CONCLUSION

For the reasons stated in its Motion and above, Petitioner respectfully requests the Board exclude the Challenged Exhibits and arguments relying thereon.

Respectfully submitted

Dated: February 15, 2024

By: /John R. Hutchins/

John R. Hutchins
Reg. No. 43,686

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.105, I hereby certify that I caused a true and correct copy of this PETITIONER’S REPLY IN SUPPORT OF MOTION TO EXCLUDE EVIDENCE in connection with IPR2023-00273 to be served via e-mail on February 15, 2024, in its entirety on the following counsel of record for Patent Owner:

Timothy J. Murphy
tmurphy@cgolaw.com

Jessica Fleetham
jfleetham@cgolaw.com

Dated: February 15, 2024

By: /Carlos Goldie/

Carlos Goldie