

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUM INDUSTRIAL TECHNOLOGY, INC.
Petitioner

v.

AMSTED RAIL COMPANY, INC.
Patent Owner

Case IPR2023-00538
Patent No. 9,365,223

**PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH
THE PETITION**

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence, as applied by the Patent Trial and Appeal Board, Patent Owner Amsted Rail Company, Inc. (“Amsted” or “Patent Owner”) provides the following objections to evidence submitted by Petitioner Hum Industrial Technology Inc. (“Hum” or “Petitioner”). These objections are timely served within ten (10) business days of institution of trial pursuant to 37 C.F.R. § 42.64(b)(1).

Exhibit 1003 – Expert Declaration of Steven Ricca (“Ricca Decl.”)

Amsted objects to Exhibit 1003 to the extent the testimony of Mr. Ricca is not cited to or relied upon by the Petition. *See* 37 C.F.R. § 42.104 (In the Petition, “[t]he Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”); *Actifo, Inc. v. Delphix Corp.*, IPR2015-00108, Paper 56 at 57 (PTAB Apr. 29, 2016) (excluding evidence not relied upon by the Petition); *SK Innovation Co., Ltd. v. Celgard, LLC*, IPR2014-00679, Paper 58 at 49 (PTAB Sept. 25, 2015) (same). For example, ¶¶ 1-28, 42-44, 46-48, 60-73, 75, 78, 83, 88, 92, 94, 97, 102, 121, 129, 131, 134, 138, 142, 144, 148, 154, 160, 175, 191-192, 199, 212, 224, 247-249, 250, 253, 256, 258, 260, 262, 265, 267, 274, 289, 318, 345, and 348 are not cited to or relied upon in the Petition. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Amsted further objects to other portions of Exhibit 1003 to the extent they do not adequately disclose the underlying facts or data on which statements and/or opinions are based, either by (1) providing no citations, (2) failing to cite where in a reference the disclosure supporting the statement and/or opinion can be found, *i.e.*, by providing pin cites, or (3) citing to disclosures or prior analysis that does not support the statement and/or opinion being proffered. *See, e.g.*, Ex. 1003 at ¶¶ 49, 71-72, 86, 123, 126-127, 138-139, 143-148, 150, 153, 155-156, 158-159, 167, 172-174, 177, 179, 185, 194-196, 199, 204-206, 212, 214-216, 224, 226-230, 241, 247-250, 275, 290-328, 344, 350, 352-353, 356, 359, 362, 364, and 366.

Amsted further objects to Exhibit 1003 to the extent it references unspecified other arguments to support a position. *See* Ex. 1003 at ¶¶ 27, 70, 148-149, 153, 193, 208-209, 228, 230, 245, 248, 302, 362, 374-375, and 379. Accordingly, this testimony is misleading and confusing under Fed. R. Evid. 401-403.

Because many statements and opinions in Exhibit 1003 are unsupported and conclusory, Amsted further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403.

Exhibit 1016 Third Generation On-Board Monitoring and Control

System Based on Controller Area Network Technology, Dr. John Donelson

III, et al.

Amsted objects to Exhibit 1016 as lacking authentication as required under Fed. R. Evid. 901-902. Rule 901 requires that the “proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Petitioner provides no evidentiary foundation for this document or attempt to authenticate it.

Amsted also objects to Exhibit 1016 because specific portions of the document are not cited to or relied upon in the Petition. *See* 37 C.F.R. § 42.104 (In the Petition, “[t]he Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”); *Actifo, Inc. v. Delphix Corp.*, IPR2015-00108, Paper 56 at 57 (PTAB Apr. 29, 2016) (excluding evidence not relied upon by the Petition); *SK Innovation Co., Ltd. v. Celgard, LLC*, IPR2014-00679, Paper 58 at 49 (PTAB Sept. 25, 2015) (same).

Respectfully submitted,

Dated: August 25, 2023

By: /Ryan N. Miller/
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Reg. No. 68,262
Counsel for Patent Owner
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2023, a copy of the foregoing was served by electronic mail on Petitioner's counsel, lead and back-up, as follows:

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Respectfully submitted,

Dated: August 25, 2023

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