

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
US Patent No. 9,365,223

Before JAMES P. CALVE, KEVIN W. CHERRY, and MICHAEL L. WOODS,
Administrative Patent Judges.

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Hum Industrial Technology, Inc. (“Petitioner”) provides the following objections to evidence submitted in connection with Patent Owner’s Preliminary Response (Paper 11) and Patent Owner’s Sur-Reply (Paper 14) filed by Patent Owner Amsted Rail Company, Inc. (“Patent Owner”).

Exhibit 2001—Declaration of Dr. Michael I. Shamos: Petitioner objects to the admissibility of Exhibit 2001 under FRE 701–703, because it contains opinions that are conclusory, that do not disclose supporting facts or data, that are based on unreliable facts, data, or methods, and that include testimony outside the scope of Dr. Shamos’ specialized knowledge (to the extent Dr. Shamos has any such knowledge) that will not assist the trier of fact.

Petitioner further objects to Exhibit 2001 as containing opinions that are irrelevant, confusing, and present the danger of unfair prejudice under FRE 401–403. Specifically, Petitioner objects to Exhibit 2001 as lacking sound evidentiary basis, biased, vague, misleading, confusing the issues, and is more prejudicial than probative under FRE 403. Petitioner further objects to any paragraph in Exhibit 2001 that relies upon an exhibit objected to herein, for the reasons set forth in those objections. Any paragraph in Exhibit 2001 that relies upon any exhibit not relied upon by the Board to institute this proceeding is further objected to as not being relevant and therefore inadmissible under FRE 402.

Petitioner objects to select paragraphs of Dr. Shamos' declaration as described below:

¶¶ 43, 66, 69-71, 73-81, 85, 87, 94-104, 106, 109, 112-113, 114: Petitioner objects to these paragraphs under FRE 701–703 as expert testimony not based on sufficient facts or data, and not the product of reliable principles and methods. Petitioner further objects to these paragraphs under FRE 401–403 on the grounds of relevance and as more prejudicial than probative.

¶¶ 36, 37-41, 65, 68, 72, 82, 84, 86, 88-93, 105, 107-108, 110, 115, and Appendix A: Petitioner objects to these paragraphs as containing improper legal conclusions. Petitioner further objects to these paragraphs under FRE 701–703 as expert testimony not based on sufficient facts or data, and not the product of reliable principles and methods. Petitioner further objects to these paragraphs under FRE 401–403 on the grounds of relevance and as more prejudicial than probative.

The fact that Petitioner has not objected to certain paragraphs of Exhibit 2001 provides no indication that Petitioner agrees to the positions asserted therein.

Exhibit 2003: Petitioner objects to Exhibit 2003 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative, insofar as it is a filing from the related District Court litigation, and it is not relevant to the current matter. The Board's Institution Decision (Paper 15) does not cite to or rely on Exhibit 2003.

Exhibit 2004: Petitioner objects to Exhibit 2004 under FRE 401–403 on the

grounds of relevance and as more prejudicial than probative. Exhibit 2004 was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.

Exhibit 2005: Petitioner objects to Exhibit 2005 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative. The Board’s Institution Decision (Paper 15) does not cite to or rely on Exhibit 2005.

Exhibit 2006: Petitioner objects to Exhibit 2006 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative. The Board’s Institution Decision (Paper 15) does not cite to or rely on Exhibit 2006.

Exhibit 2007: Petitioner objects to Exhibit 2007 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative.

Exhibit 2008: Petitioner objects to Exhibit 2008 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative. Petitioner further objects to Exhibit 2008 under FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702–703 (insufficient support for expert testimony).

Petitioner further objects to Exhibit 2008 under FRE 802 (hearsay) to the extent Petitioner does not have the opportunity to cross-examine Mr. LeFebvre.

Exhibit 2009: Petitioner objects to Exhibit 2009 under FRE 401–403 on the

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grounds of relevance and as more prejudicial than probative. Exhibit 2009 was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.

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Respectfully submitted,

Dated: August 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2023, the foregoing was served via electronic mail to the attorneys of record for the '223 Patent at the following address:

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