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 PETITIONER'S NOTICE OF SUPPLEMENTAL EVIDENCE

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 supplemental evidence submitted by Petitioner Hum Industrial Technology Inc. ("Hum" or "Petitioner"). These objections are timely served within five (5) business days of service of the supplemental evidence pursuant to 37 C.F.R. § 42.64(b)(1).

Exhibit 1021 International Heavy Haul Association Order Confirmation for Electronic Copy of 2007 Conference Proceedings

Amsted objects to Exhibit 1021 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 1021 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).

Amsted also objects to Exhibit 1021 as untimely. The document was available to Petitioner prior to filing the petition and could have been filed with the petition at the time of filing.

Exhibit 1022 International Heavy Haul Association 2007 Conference Proceedings

Amsted objects to Exhibit 1022 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 1022 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).

Amsted also objects to Exhibit 1022 as untimely. The document was available to Petitioner prior to filing the petition and could have been filed with the petition at the time of filing.

Exhibit 1023 June 18, 2011 Wayback Machine Web Capture of "Past Conferences" page on International Heavy Haul Association website

Amsted objects to Exhibit 1023 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 1023 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).

Amsted also objects to Exhibit 1023 as untimely. The document was available to Petitioner prior to filing the petition and could have been filed with the petition at the time of filing.

Dated: September 18, 2023

Respectfully submitted,

By: /Ryan N. Miller/
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Reg. No. 68,262
Counsel for Patent Owner
Amsted Rail Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 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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