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 IPR2023-00539
Patent No. 9,981,673

PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S OPPOSITION TO REVISED MOTION TO AMEND

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 five (5) business days of service of evidence to which the objection is directed to 37 C.F.R. § 42.64(b)(1).

Exhibit 1035 – Expert Declaration of Steven Ricca in Support of Petitioner's Opposition to Patent Owner's Revised Motion to Amend

Amsted objects to Exhibit 1035 to the extent the testimony of Mr. Ricca is not cited to or relied upon by the Petitioner in its Opposition to the Revised Motion to Amend. *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, paragraphs 1-17, 22, 32, 43, 46-50, 56, 73, 78, 84, 87, 92-96, 101, 102, 105, 106, and 109 are not cited to or relied upon in the Opposition. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Amsted further objects to other portions of Exhibit 1035 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. 1021 at ¶¶18, 19, 24, 25-27, 38-45, 52, 53, 57, 60, 62, 64, 67, 68, 70, 71, 74, 79-82, 85, 94-96, 101, and 105-108.

Amsted further objects to Exhibit 1035 to the extent it references unspecified other arguments to support a position. *See*, *e.g.*, Ex. 1003 at ¶¶69. Accordingly, this testimony is misleading and confusing under Fed. R. Evid. 401-403.

Amsted further objects to Exhibit 1035 because it includes improper incorporations of other documents by reference in violation of 37 C.F.R. §42.6(a)(3). See, *e.g.*, Ex. 1021 at ¶¶11, 50, 54, 55, 71, 76, 88, 90, 97, 99, and 103.

Because many statements and opinions in Exhibit 1035 are unsupported and conclusory, Amsted further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403.

Respectfully submitted,

By: /Ryan N. Miller/

Dated: April 11, 2024

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

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2024, a copy of the foregoing was served by electronic mail on Petitioner's counsel, lead and back-up, as follows:

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