

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUANGDONG XINBAO ELECTRICAL APPLIANCES
HOLDINGS CO., LTD.,
Petitioner,

v.

ADRIAN RIVERA,
Patent Owner.

Case IPR2014-00042
Patent 8,291,812 B2

Before FRANCISCO C. PRATS, JOSIAH C. COCKS, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

ORDER

Conduct of Proceeding
37 C.F.R. § 42.5

Introduction

On November 13, 2014, a conference call was conducted between respective counsel for the parties and the panel consisting of Judges Prats, Cocks, and Bonilla. Petitioner, Guangdong Xinbao Electrical Appliances Holdings Co., Ltd. (“Petitioner”), was represented by Daniel Cooley. Patent Owner, Adrian Rivera (“Patent Owner”), was represented by Sudip Kundu. The conference call was requested by Patent Owner. Petitioner arranged for a court reporter on the call. When available, a transcript of the call should be filed using Petitioner’s next available exhibit number.

Discussion

During the call, Patent Owner indicated that it was requesting authorization to file a motion to exclude in connection with arguments made by Petitioner at oral hearing on October 29, 2014, and which appeared in Petitioner’s demonstratives presented during that oral hearing. In connection with its request, Patent Owner referred the panel to a “Notice of Objection” filed October 28, 2014, and appearing in the record as Paper 46. Petitioner indicated that it opposed Patent Owner’s request.

The panel noted that in a conference call on October 27, 2014, Patent Owner already had raised the issue concerning allegedly “unsupported” argument appearing in Petitioner’s demonstratives, and that the panel had declined to prohibit presentation of such argument as part of Petitioner’s oral argument. Paper 44, 3. In that respect, we explained that the issue was one concerning the persuasive effect of such argument, and not the impermissible presentation of the argument. *Id.* Patent Owner simply is raising the same issue that already has been considered and addressed by the panel.

Furthermore, a motion to exclude filed under 37 C.F.R. § 42.64 is a vehicle to seek exclusion of evidence, not attorney “argument,” as is the content of the record at issue here. As Patent Owner expressed in the conference call on October 27, 2014, it had opportunity to express its position with respect to that “unsupported” argument in its Patent Owner Response, and, indeed, so availed itself of that opportunity. The panel explained that we understand the nature of Patent Owner’s argument, and that it will be considered in generating a Final Written Decision. The panel also explained that argument made by counsel at oral hearing does not become evidence simply because it may appear in a transcript of the oral hearing, which was seemingly Patent Owner’s concern.

Motions to exclude were due by DUE DATE 4 (*see* Paper 9, 5), and Patent Owner timely filed a Motion to Exclude (Paper 32). That motion will be considered. No additional motions to exclude are authorized.

During the call, Petitioner requested that Patent Owner’s “Notice of Objection” (Paper 46) be expunged. Objection to evidence should be served on the opposing party, and not filed absent authorization from the Board to file the objection. *See* 37 C.F.R. § 42.64(b)(1) (“Once a trial has been instituted, any objection must be *served* within five business days of service of evidence to which the objection is directed” (emphasis added)). Patent Owner’s “Notice of Objection” was not authorized to be filed and, consequently, will be expunged.

Order

It is

ORDERED that Patent Owner is not authorized to file an additional motion to exclude; and

FURTHER ORDERED that Paper 46 is expunged from the record of this proceeding.

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