

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBOTIX CORP.,
Petitioner,

v.

COMCAM INTERNATIONAL, INC.,
Patent Owner.

Case IPR2015-00093
Patent 6,975,220 B1

Before MICHAEL R. ZECHER, NEIL T. POWELL, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION

Denying-in-part and Dismissing-in-part Petitioner's Motion to Exclude Evidence
37 C.F.R. § 42.64(c)

Mobotix Corporation (“Petitioner”) filed a Motion to Exclude Evidence. Paper 17 (“Mot. to Exclude”). ComCam International, Incorporated (“Patent Owner”) filed an Opposition to Petitioner’s Motion to Exclude Evidence. Paper 18 (“Opp.”). Petitioner filed a Reply to Patent Owner’s Opposition to Petitioner’s Motion to Exclude. Paper 20 (“Reply”).

Concurrent with this Decision, we are issuing a Final Written Decision addressing Petitioner’s assertions that claims 1–28 of U.S. Patent No. 6,975,220 B1 are unpatentable because they would have been obvious over Thomas¹ and Fernandez.² In the Final Written Decision, we determine that Petitioner has demonstrated the unpatentability of claims 1–6 and 9–28 over the combination of Thomas and Fernandez by a preponderance of the evidence, but that Petitioner has not demonstrated the same with regard to claims 7 and 8.

Petitioner’s Motion to Exclude addresses Exhibit 2002, which is a declaration of Mr. David Allen Monroe proffered by Patent Owner in support of its arguments that Petitioner did not establish the unpatentability of claims 1–28. The Motion to Exclude first contends that we should exclude Exhibit 2002 in its entirety as unfairly prejudicial. Mot. to Exclude 4–5.

The Motion to Exclude then contends that, if we do not exclude Exhibit 2002 in its entirety, we should exclude certain paragraphs of Exhibit 2002 for various other reasons. *Id.* at 5–14. Specifically, Petitioner asserts that we should exclude paragraphs 44, 48, 52, 53, 54, 57, 60, 61, 63, 65, and 66 of Exhibit 2002 on the basis that Mr. Monroe allegedly did not provide sufficient foundation for

¹ Provisional U.S. Patent Application No. 60/051,489, filed July 1, 1997 (Ex. 1008) and U.S. Patent Application No. 2005/0198063 A1, issued Sept. 8, 2005, filed Apr. 25, 2005 (Ex. 1015).

² U.S. Patent No. 6,697,103 B1, issued Feb. 24, 2004, filed Mar. 19, 1998 (“Fernandez”).

statements in these paragraphs. *Id.* at 5–11. Further, Petitioner asserts that we should exclude paragraphs 39–43, 46, and 49–51 of Exhibit 2002 as relating to inadmissible legal issues. *Id.* at 12–13. Petitioner asserts that we should exclude paragraphs 54, 55, 57, 65, and 67 of Exhibit 2002 because certain statements in these paragraphs allegedly constitute improper attorney argument. *Id.* at 13–14. Finally, Petitioner asserts that we should exclude paragraphs 59 and 64 of Exhibit 2002 because they are allegedly irrelevant. *Id.* at 14.

Petitioner’s Request to Exclude Exhibit 2002 in Its Entirety

Petitioner contends that Exhibit 2002 should be excluded under Federal Rule of Evidence 403, asserting that “its probative value is substantially outweighed by a danger of . . . unfair prejudice.” Mot. to Exclude 4. Petitioner argues that Mr. Monroe has a bias against Petitioner due to prior *inter partes* reviews in which Petitioner successfully challenged claims in four patents listing Mr. Monroe as a named inventor. *Id.* Patent Owner responds that Petitioner summons little evidence that Mr. Monroe has any bias against Petitioner, and that “[e]ven if, *arguendo*, any alleged bias existed, which it does not, this would only go the weight that the Monroe Declaration should be afforded and not the admissibility of it.” Opp. 3–4.

Similar to a district court in a bench trial, the Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to evidence presented. *See, e.g., Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) (“One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received . . .”). In the process of considering the record evidence and preparing our Final Written Decision in this case, we were cognizant of Petitioner’s assertions regarding Mr. Monroe’s alleged bias when assessing the

appropriate weight we should accord Mr. Monroe's testimony. We are not persuaded, however, that Petitioner's allegations of bias warrant excluding Exhibit 2002 in its entirety.

Petitioner's Request to Exclude Specific Paragraphs

As noted above, Petitioner asserts that we should exclude each of paragraphs 39–44, 46, 48–55, 57, 59–61, and 63–67 of Exhibit 2002 for one or more reasons. Mot. to Exclude 5–14. Each of paragraphs 44, 48, 55, 57, 59–61, and 67 is related to Petitioner's challenge of one or more of claims 1–6 and 9–28. As also noted above, our concurrently issued Final Written Decision holds that, even without excluding paragraphs 44, 48, 55, 57, 59–61, and 67 of Exhibit 2002, Petitioner has demonstrated the unpatentability of claims 1–6 and 9–28 by a preponderance of the evidence. Accordingly, Petitioner's request to exclude paragraphs 44, 48, 55, 57, 59–61, and 67 is dismissed as moot.

We turn now to Petitioner's requests to exclude other paragraphs.

Petitioner's Request to Exclude Paragraphs 52–54, 63, 65, and 66 for Alleged Lack of Foundation

Petitioner alleges that paragraphs 52–54, 63, 65, and 66 contain conclusory assertions for which Mr. Monroe does not provide adequate foundation. Mot. to Exclude 5–13. Patent Owner counters that Petitioner's arguments focus only on the ultimate conclusions provided by Mr. Monroe, without acknowledging the supporting facts that Mr. Monroe provides. Opp. 4.

We agree with Patent Owner that Petitioner's arguments overlook the evidence and reasoning Mr. Monroe provides in support of the statements to which Petitioner objects. For example, Petitioner objects to paragraph 53 because "paragraph 53 purports to contrast the patent at issue with 'prior art,' yet without setting forth any comparison or identifying the specific prior art." Mot. to

Exclude 11. Apparently, Petitioner refers to the statement in paragraph 53 that, “[i]n contrast with the prior art, controller 21 sends a signal to video/audio control 316 to on one particular of the cameras 33 a-n when a particular sensor of the sensors 12, 13, 15, 17, 18, 19, 20 in the area covered by the particular camera is triggered.” Ex. 2002 ¶ 53. We find this argument unpersuasive because paragraphs 55–59 provide the basis for Mr. Monroe’s statements made in paragraph 53. Ex. 2002 ¶¶ 55–59. We are not persuaded that paragraphs 52–54, 63, 65, and 66 should be excluded for lack of foundation.

Petitioner’s Request to Exclude Paragraphs 39–43, 46, and 49–51 As Relating to Inadmissible Legal Issues

Our concurrently issued Final Written Decision does not rely on any of paragraphs 39–43, 46, and 49–51. Accordingly, Petitioner’s request to exclude these paragraphs is dismissed as moot.

Petitioner’s Request to Exclude Paragraphs 54, 55, 57, 65, and 67 Because Certain Statements in These Paragraphs Allegedly Constitute Improper Attorney Argument

Petitioner objects to certain statements within paragraphs 54, 55, 57, 65, and 67 because they “are merely conclusory, non-technical, attorney-style arguments lacking evidentiary support.” Mot. to Exclude 13. For example, Petitioner objects to the statement in paragraph 57 that “Petitioner fails to show how Thomas or Fernandez teaches this element.” *Id.* Our concurrently issued Final Written Decision does not rely on any of the portions of paragraphs 54, 55, 57, 65, and 67 to which Petitioner objects. Accordingly, Petitioner’s request to exclude these paragraphs is dismissed as moot.

Petitioner's Request to Exclude Paragraphs 59 and 64 As Allegedly Irrelevant

Our concurrently issued Final Written Decision does not rely on paragraphs 59 and 64. Accordingly, Petitioner's request to exclude these paragraphs is dismissed as moot.

Based on the foregoing, it is hereby

ORDERED Petitioner's Motion to Exclude is *denied-in-part* and *dismissed in part* as moot.

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