Filed on behalf of Seymour Levine

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE BOEING COMPANY.
Petitioner,

v.

SEYMOUR LEVINE
Patent Owner

Case IPR2015-01341
U.S. Patent No. RE39,618

PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE EVIDENCE

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Pursuant to the Scheduling Order (Paper 9), Patent Owner Seymour Levine ("Levine" or "Patent Owner") hereby opposes The Boeing Company's ("Boeing" or "Petitioner") Motion to Exclude Evidence (Paper 39).

I. Introduction

Boeing's Motion to Exclude is based on the false premise that Levine is relying on his own testimony to establish his date of conception and that the objected-to exhibits are necessary to corroborate that testimony. When all the pertinent evidence is considered, however, it is clear that Levine's date of conception is established by the documents themselves, which require no independent corroboration. *Price v. Symsek*, 988 F.2d 1187, 1195 (Fed. Cir. 1993) ("corroboration is not necessary to establish what a physical exhibit before the board includes. Only the inventor's testimony requires corroboration before it can be considered.") (internal quotations omitted).

This is also true for the dates recorded in the documents. In the case on which Boeing relies, *Microsoft Corp.* v. *Surfcast, Inc.,* IPR2013-00292, Paper 93, the exhibit being addressed, the inventor's notebook, Exhibit 2023, contained no dates, forcing the Patent Owner to rely only on inventor testimony. By contrast, in *Brown v. Barbacid*, 276 F.3d 1327, 1334-35 (Fed. Cir. 2002), the Federal Circuit found that "Brown's physical evidence . . . do[es] not require corroboration to demonstrate . . . that FT assay experiments *took place on September 20 and 25,*

1989." (emphasis added). Levine's documents, Exhibits 2002 and 2003, are signed and dated, and those dates are available for the Board to assess. Levine's testimony does little more than authenticate those documents.

Federal Rule of Evidence 901, the only basis on which Boeing seeks to exclude Exhibits 2002-2004, requires only that "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is," where such evidence can include "[t]estimony of a [w]itness with [k]nowledge . . . that an item is what it is claimed to be." Fed.R.Evid 901. Here, contrary to Boeing's assertion at Note 1 of its motion, Levine timely *served* supplemental evidence as required by 37 C.F.R. §42.64(b)(2) in response to Boeing's objection to this evidence (Paper 12). *See* Exhibit 2014, submitted herewith, which included a preliminary Declaration of Seymour Levine, provided here as Exhibit 2015. This evidence adequately authenticates the objected-to exhibits.

II. Levine has Adequately Authenticated Exhibits 2002-2004

A. Levine's Date of Conception is Established Through Physical Exhibits, Not Testimony

Neither Boeing's Motion to Exclude nor any of the cases it cites address the situation where, as here, the documents themselves provide all the evidence necessary to establish the date of conception. The Federal Circuit "does not

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