

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COASTAL INDUSTRIES, INC.  
Petitioner,

v.

SHOWER ENCLOSURES AMERICA, INC.  
Patent Owner.

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Case IPR2017-00573  
Patent 7,174,944

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Before MICHAEL W. KIM, CARL M. DEFRANCO, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

ORDER

*Conduct of Proceeding; Compelling Testimony*  
37 C.F.R.. §§ 42.5, 42.52

On August 8, 2018, a conference call was held between the parties and Judges Kim, DeFranco, and Finamore. A court reporter was on the call, and a transcript of the call will be filed as an exhibit to this proceeding within ten (10) business days.

Several issues were discussed during the call, but only the following issues required resolution. First, Patent Owner requests authorization to seek a subpoena pursuant to 37 C.F.R. § 42.52(a) to compel testimony from a third party concerning the authenticity of Exhibit 1035, which appears to be a specification for a product manufactured by Alumax Bath Enclosures, who appears to be a subsidiary of ALCOA. Petitioner did not oppose Patent Owner's request in principle, but wanted Patent Owner to submit the request via motion, and reserved the right to oppose. The panel indicated that such motion practice may cause ancillary delays in the proceeding, which is already on a compressed timeline for the reasons to be addressed later. Given that, Petitioner agreed to not oppose the request.

In light of the above, and what was discussed on the call, Patent Owner is authorized to seek a subpoena pursuant to 37 C.F.R. § 42.52(a) to compel third party testimony concerning the authenticity of Exhibit 1035. As the subpoena concerns a disinterested third party, however, the information sought will be strictly limited in scope and narrowly tailored to the issues concerning the authenticity of Exhibit 1035 only, and impose no more than a minimal administrative burden on the third party.

The parties also disputed the propriety of the use of a non-court reporter provided video camera during the deposition of Petitioner's Reply declarant, Jeffery Dowd, and which party would ultimately bear the expense of any court-reporter provided video. For the reasons set forth in the call, the parties are limited to taking a video deposition of Mr. Dowd by the court reporter only.

Finally, the parties disagreed as to the appropriate timing for the due date for Patent Owner's Reply to Petitioner's Opposition to Motion to

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Amend, currently due August 14, 2018, given the various scheduling considerations and possibilities. For the reasons set forth in the call, Patent Owner's Reply is due no later than August 29, 2018, and the parties are permitted to stipulate to due dates for filings of pre-authorized papers no later than September 21, 2018. The parties are reminded that the panel is disinclined to delay that date (i.e., Due Date 13 referred to in Paper 50) any further, absent unusual or unforeseeable circumstances, and that the parties are advised to work together to ensure that all readily foreseeable scheduling considerations and possibilities are addressed within the time remaining.

In consideration of the foregoing, it is hereby:

ORDERED that that Patent Owner's request for authorization to seek a subpoena under 37 C.F.R. § 42.52(a) to compel testimony of a third party concerning the authenticity of Exhibit 1035 is *granted*, but only to the extent indicated above;

FURTHER ORDERED that any video deposition is limited to being taken by a court reporter;

FURTHER ORDERED that the Patent Owner's Reply to Petitioner's Opposition to Motion to Amend is due no later than August 29, 2018, and the parties are permitted to stipulate to due dates for filings of pre-authorized papers no later than September 21, 2018; and

FURTHER ORDERED that a transcript of the call will be filed as an exhibit to this proceeding no later than ten (10) business days from the entry date of this Order.

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