PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCO BRANDS CORPORATION and ACCO BRANDS USA LLC,	:	
	:	***Inter Partes* Review**
Petitioners,	:	**Proceedings No. IPR2015-01167**
v.	:	**U.S. Patent No. 8,717,758**
THINK PRODUCTS, INC.,	:	
Patent Owner.	:	

PATENT OWNER THINK PRODUCTS, INC.'S OPPOSITION TO PETITIONERS' ACCO BRANDS' MOTION TO EXCLUDE EVIDENCE

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PATENT OWNER THINK PRODUCTS, INC.'S OPPOSITION TO PETITIONERS' ACCO BRANDS' MOTION TO EXCLUDE EVIDENCE

I. Patent Owner Think Products, Inc.'s Exhibit No. 2007 ("Exhibit A") is Properly Part of the Record and Should Be Considered on its Merits

Petitioners ACCO Brands Corporation and ACCO Brands USA LLC (collectively "ACCO Brands") has moved to exclude from evidence Exhibit 2007 (a/k/a "Exhibit A"), offered by the expert witness for the Patent Owner Think Products, Inc. ("Think Products") Robert Mahaffey during his deposition conducted by ACCO Brands on March 21, 2016. As acknowledged by Petitioners ACCO Brands in their Motion to Exclude (at 2), Mr. Mahaffey testified that Exhibit 2007/Exhibit A "captures my method, my process, my analysis of the cited art in order for me to collect my thoughts and be able to present my expert testimony today." (Transcript of Deposition of Robert Mahaffey at Page 115, lines 18-24) ACCO Brands nevertheless objects to the inclusion of Exhibit 2007 as part of the record of this IPR on the grounds that Exhibit 2007 lacks relevancy, constitutes hearsay and is untimely, as raising new argument not presented in the written testimony of Robert Mahaffey, filed January 15, 2016. ACCO Brands' objections lack merit.

II. Exhibit 2007 is "Relevant" under the Federal Rules of Evidence

Fed.R.Evid. 401 "defines as 'relevant evidence' evidence having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence." *United States v. Abel*, 469 U.S. 45, 50-51 (1984) "Rule 402 provides that all relevant evidence is admissible, except as otherwise provided by the United States Constitution, by Act of Congress, or by applicable rule." *Id.* ACCO Brands (at 3-4) concedes that Exhibit 2007 addresses "a variety of information," including the applied prior art of McDaid (Exhibit 1008) and Chen (Exhibit 1009), "apparent arguments concerning obviousness" and "statements and images apparently concerning the [claim] term *captive security rod*," all of which pertain ACCO Brands' challenge to the validity of Think Products' patent and making underlying factual determinations "more probable or less probable than [they] would be without the evidence," *United States v. Abel*, *supra*, 469 U.S. at 50-51.

ACCO Brands alleges (at 4) that Robert Mahaffey's testimony that Exhibit 2007 represents Mr. Mahaffey's "notes" that he prepared in preparation for his deposition, or a summary of Mr. Mahaffey's expert testimony, is "not credible." ACCO Brands' objection challenging the credibility of Exhibit 2007 goes to the "weight of the evidence" not its admissibility. *See*, *Wilmington v. J. I. Case Co.*, 793 F.2d 909, 920 (8th Cir. 1986) ("Virtually all the inadequacies in the expert's testimony urged here . . . go to the weight

of the expert's testimony rather than to its admissibility.") The relevancy of Exhibit 2007 cannot seriously be challenged by ACCO Brands.

III. Having Had the Opportunity to Cross-Examine Robert Mahaffey, ACCO Brands' Hearsay Objection to Exhibit 2007 is Meritless

ACCO Brands raises a hearsay objection (at 5-7) to Exhibit 2007, as prepared by Think Products' expert witness Robert Mahaffey and addressed by Mr. Mahaffey at his cross-examination deposition (Exhibit 1023) by ACCO Brands' counsel. ACCO Brands' hearsay objection (at 7) is that "the statements in the exhibit are not sworn testimony of any witness, and do not fall within any of the exceptions to the hearsay rule." ACCO Brands' hearsay objection is meritless because ACCO Brands had the "opportunity for cross-examination" of Robert Mahaffey concerning Exhibit 2007/Exhibit A, which obviates any conceivable hearsay objection. *See*, *Richard v. Perales*, 402 U.S. 389, 402 (1971) ("We conclude that a written report by a licensed physician who has examined the claimant and who sets forth in his report his medical findings in his area of competence may be received as evidence in a disability hearing and, despite its hearsay character [when the claimant had] the opportunity for cross-examination of the physician.")

IV. Exhibit 2007 Constitutes a Part of Think Products' Expert Robert Mahaffey's Cross-Examination Deposition Testimony and Was Therefore Properly and Timely Offered into Evidence

ACCO Brands acknowledges (at 6) Mr. Mahaffey's assertion that Exhibit 2007 constitutes "notes" that Robert Mahaffey "prepared in preparation for having his deposition taken," and that "this document is a summary of his declaration testimony," while disputing Mr. Mahaffey's assertion. The subject matter of Exhibit 2007, pertaining to the prior art applied by ACCO Brands' for challenging the validity of Think Products' patents as obvious and the discussion of the "captive security rod" claim term in Exhibit 2007. This was extensively addressed by Robert Mahaffey upon his cross-examination by ACCO Brands' counsel and Exhibit 2007, while in documentary form, constitutes a part of Mr. Mahaffey's cross-examination testimony and, since Robert Mahaffey was timely made available for cross-examination by Think Products, it follows that the inclusion of Exhibit 2007 as part of Robert Mahaffey's deposition was, likewise, timely and did not require a separate motion.

V. Conclusion

Accordingly, Petitioners ACCO Brands' Motion to Exclude from evidence Exhibit 2007 (a/k/a "Exhibit A"), presented by Patent Owner Think Products' expert witness during his cross-examination deposition, should be

denied and Exhibit 2007 should remain as part of the record in this IPR proceeding and accorded its appropriate evidentiary weight by the Board.

Respectfully submitted,

THINK PRODUCTS, INC.

Dated: June 6, 2016
Huntington, New York

By Ed D. Schindler
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CERTIFICATE OF SERVICE

I, JOHN F. VODOPIA, hereby certify that I served a true and complete copy of the PATENT OWNER THINK PRODUCTS, INC.'S OPPOSITION TO PETITIONERS' ACCO BRANDS' MOTION TO EXCLUDE EVIDENCE, on the following counsel for Petitioners/Requesters ACCO Brands Corporation and ACCO Brands USA LLC. via e-mail (as the parties have so agreed):

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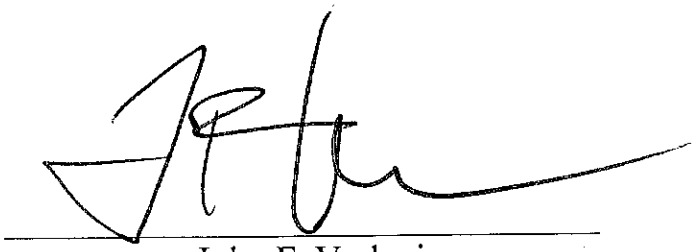
on June 6, 2016.



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