

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiedmayer Celesta GmbH,

Cancellation No.: 92/061,215

Petitioner,

Reg. No. 3,340,759

v.

Mark: SCHIEDMAYER

Piano Factory Group, Inc. and
Sweet 16 Musical Properties, Inc.

Registration Date: November 20, 2007

Respondents.

**RESPONDENT’S REPLY TO PETITIONER’S RESPONSE TO MOTION TO
STRIKE PETITIONER’S TESTIMONIAL EVIDENCE**

Respondents Piano Factory Group, Inc. and Sweet 16 Musical Properties, Inc. (“Respondents”) hereby submit their reply to Petitioner’s response to Respondent’s motion to strike the testimony and translations of expert witness Dana Scruggs along with the “Erbschein” foreign document, filed May 24, 2017.

FACTS

Exhibit 1 to Petitioner’s Opposition dated June 20, 2017 includes a German language document entitled “Erbschein” certified by a German Notary Reinfelder and to which a copy of a Hague Convention Apostille has been attached. Also attached is apparently an English translation of the “Erbschein” entitled “Certificate of Inheritance” which also bears the seal of the German Notary Reinfelder and also to which a copy of a Hague Convention Apostille has been attached.

No further information regarding the qualifications of Dana Scruggs as a German translator has been provided other than the allegation that she is “an experienced translator of the German language.”

ARGUMENT

Motion to Strike Dana Scruggs as a Witness and her Translations of Exhibits C and F:

Petitioner seeks strenuously to persuade the Board that a translator is not an expert witness under the Federal Rules because “A translator engages in facts, not opinions.” This is a distinction without a difference. Expert witnesses inherently testify as to both facts and opinions—facts and opinions that only they have in their possession and which are beyond the scope of knowledge of the lay person. This is why experts are called to testify as to various matters—they assist the fact finder with getting and finding the facts and give their opinion as to what those facts suggest. Translation is not an exact science, a fact that is well known, and translation of legal documents requires utmost attention to detail. Furthermore, it is unlikely that Dana Scruggs provided the translation for free, her actual qualifications to translate German legal documents into English using US English legal terminology are highly relevant to the accuracy of the translation, and the document being translated is an exhibit in this proceeding. This list of items sounds just like the list of information needed to properly introduce an expert into this proceeding.

Furthermore, Petitioner’s argument that a translator does not qualify as an expert witness does not solve Petitioner’s problem that Dana Scruggs was not disclosed in Petitioner’s pretrial disclosures. Regardless of whether she should be considered a lay

witness or an expert witness, failure to disclose her at the pretrial disclosure stage gives Respondent the right to object to her testimony and move the Board to strike the same. Petitioner renews its motion to strike Dana Scruggs as a witness, expert or otherwise, in this proceeding because of Petitioner's failure to disclose her in its pretrial disclosures. Respondent renews its request that Exhibits C and F be stricken as they are the product of testimony from stricken witness Dana Scruggs.

Motion to Strike Exhibit C as an Improperly Authenticated Foreign Document:

Section 704.07 of the TBMP requires that the authenticity of an official record or copy be established under the Federal Rules of Evidence. Rule 902(3) of the Federal Rules of Evidence states that in order for a foreign public document to be authenticated, “[t]he document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester-or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation.”

In view of the production of an apparently genuine copy of the original German AND English translation of the same, certified by the foreign official who is likely the custodian of the document, Petitioner appears to have cured the defect in the originally submitted Exhibit. The entire purpose of Respondent's motion to strike Exhibit C as an improperly authenticated document was to give Petitioner an opportunity to cure the defect. Since an official English translation of the document has also now been produced, duly certified, there is no further need for Dana Scruggs' translation of the

same, and the version supplied in Petitioner's Response should be accepted as the official translation in this proceeding by the Board, not Dana Scruggs' translation in Exhibit C.

In view of the foregoing, the Respondent respectfully requests that Dana Scruggs be stricken as a witness and that Exhibits C and F be stricken as translations from Dana Scruggs. Respondent also respectfully requests that Exhibit 1 to Petitioner's Response be considered as the officially authenticated foreign document and its English translation of the document in Exhibit C and replace Exhibit C in Petitioner's testimony materials.

Dated: June 29, 2017

Respectfully submitted,

/s/ Adam R. Stephenson
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CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO MOTION TO STRIKE PETITIONER'S TESTIMONIAL EVIDENCE is being sent via email to Petitioner Schiedmayer Celesta GmbH's attorney of record at the designated email below:

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Dated: 6/29/2017

/s/ Adam Stephenson