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

Proceeding	92061215
Party	Plaintiff Schiedmayer Celesta GMBH
Correspondence Address	MICHAEL J STRIKER STRIKER STRIKER & STENBY 103 EAST NECK RD HUNTINGTON, NY 11743 UNITED STATES Email: striker@strikerlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Michael J. Striker
Filer's email	striker@strikerlaw.com
Signature	/Michael J. Striker/
Date	06/20/2017
Attachments	SKMBT_42117062010160.pdf(476286 bytes)

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Schiedmayer Celesta GmbH,)
)
 Petitioner,)
)
 v)
)
 Piano Factory Group, Inc. and)
 Sweet 16 Musical Properties, Inc.)
)
 Respondents.)
 _____)

Cancellation No. 92/061,215
Reg. No.: 3,340,759
Mark: SCHIEDMAYER
Registration Date: 11/20/2007

**PETITIONER’S MEMORANDUM IN OPPOSITION TO RESPONDENTS’
MOTION TO STRIKE PETITIONER’S TESTIMONIAL EVIDENCE**

Petitioner herein, Schiedmayer Celesta GmbH, hereby opposes Respondents’ Motion to Strike portions of Petitioner’s Testimonial Evidence.

FACTS

On May 24, 2017, Petitioner timely filed the Declaration of Elianne Schiedmayer and copies of exhibits appended thereto.

Exhibit C thereof is a Certificate of Inheritance of the husband of Elianne Schiedmayer, indicating that Elianne Schiedmayer inherited all of the assets of her husband, Georg Schiedmayer. The subject document is in the German language and a translation has been submitted thereof.

The subject document was signed by a German notar who also signed the document as a true and complete copy of the original.

Exhibit F is a series of German language invoices in which certain repetitive German words are used. A translation of those words was also included to facilitate understanding of the invoices.

Both translations were undertaken by Dana Scruggs, an experienced translator of the German language.

RESPONDENTS' ARGUMENT

Respondents argue that the translator, Dana Scruggs, somehow qualifies as an expert witness and therefore should have been disclosed pursuant to the provisions of TBMP Section 401.03 Expert Disclosures.

Since the translator was not disclosed as an expert witness, Respondents argue that her translations should be stricken.

Respondents further argue that Exhibit C, the Certificate of Inheritance, should not be considered because in the opinion of Respondents it was not properly certified.

ARGUMENT

A Translator is Not an Expert Witness

“An expert witness is a witness who has knowledge beyond that of the ordinary lay person enabling him/her to give testimony regarding an issue that requires expertise to understand. Experts are allowed to give opinion testimony which a non-expert witness may be prohibited from testifying to... Experts are qualified according to a number of factors, including but not limited to the number of years they have practiced in their respective field, work experience related to the case, published works, certifications, licensing, training, education, awards and peer recognition.”

- *Expert Witness Law and Legal Definition, US Legal, Inc.*

On the other hand, a translator is:

“A person or machine that translates speech or writing.”

- *Collins English Dictionary, 12th Edition*

A translator engages in facts, not opinions. For instance, It is a fact that ‘*merci*’ translates as ‘thank you’, not an opinion.

The provisions of TBMP Section 401.03 – Expert Disclosures requires that if an expert is disclosed an entire series of various type of information including a Statement of Opinions; facts or data to be considered; exhibits that will be used; witnesses, qualifications; a list of other cases; a statement of compensation, etc. must be disclosed.

None of this information has been or ever will be required with regard to a translator.

In summary, a translator is clearly not an expert witness and need not be disclosed.

Certification of Certificate of Inheritance

Exhibit "C" to the Declaration of Elianne Schiedmayer is a German language Certificate of Inheritance. It has been signed by a German notary and the same German notary has again signed the document as a true and complete copy of the original.

First, it should be kept in mind that a German notary (notar) is not in any way equivalent to a U.S. Notary Public.

Indeed, it is well within the authority of a German notary to authenticate a document:

"In Germany, a notary (notar/notarin) is a highly qualified individual who has been trained as an attorney. A German notary provides advice to clients on legal transactions, as well as drafting, *authenticating and registering legal instruments like wills, deeds*, corporate registration applications, trusts, etc."

- *Notary Law-German Law Research-Research Guides at Harvard Library*. (emphasis supplied)

Thus, it will be seen that the subject document has been properly signed and authenticated under the provisions of German law.

In order to avoid any question whatsoever as to the efficacy of the authentication of the subject document, Petitioner has now submitted herewith as

Exhibit 1, another copy of the subject Certificate of Inheritance to which an apostille has now been affixed.

An apostille represents a final certification under The Hague Treaty to which the United States is a member.

15 USC Code 1061-Execution of Acknowledgements and Verifications, states the following:

“Acknowledgements and verifications required under this chapter may be made...when made in a foreign country...[by] apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made.”

It is noted that 37 CFR 1.66 – Statements Under Oath, indicates essentially the same law.

Finally, Rule 44 of the Federal Rules of Civil Procedure – Proving an Official Record, states that a foreign record is admissible if the record or a copy is attested or certified under a treaty or convention to which the United States and the country where the record is located are parties.

The apostille clearly meets this requirement as both Germany and the United States are members of The Hague convention, under which the apostille is authorized.

In view of the above, the subject Certificate of Inheritance should be given full credence and admitted into evidence. Additionally, the translations of Dana Scruggs should be fully considered as they do not constitute anything remotely similar to expert witness testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Striker', with a long horizontal flourish extending to the right.

Michael J. Striker
Attorney for Petitioner
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743

EXHIBIT 1

Ausfertigung

9 GRN 413/92

Notariat Stuttgart
- Nachlaßgericht -

Beschluß vom 23. April 1992

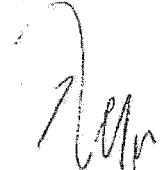
E r b s c h e i n

A l l e i n e r b e des am 26. Februar 1992 in Stuttgart
verstorbenen

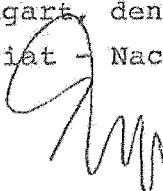
Johann Georg Hermann S c h i e d m a y e r ,
Kaufmann, geb. am 16.12.1931, zuletzt
wohnhaft Fraasstraße 9, 7000 Stuttgart 1,

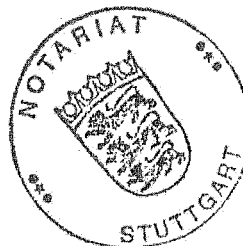
ist

die Witwe Marie Bernadette Fernande Elianne
S c h i e d m a y e r geb. Villard,
geb. am 29.03.1944, wohnhaft Fraasstraße 9,
7000 Stuttgart 1.


- Reinfelder -
Notar

Vorstehende Ausfertigung stimmt
mit der Urschrift überein.
Stuttgart, den 05. Mai 1992
Notariat - Nachlaßgericht -


- Reinfelder -
Notar



ER 910a 3796 177

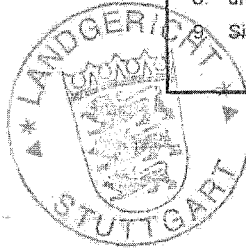
Gebühr gem. Anlage JVKostG

Nr. 1310 20,00 €

Apostille

(Convention de la Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland
2. Diese öffentliche Urkunde
ist unterschrieben von Notar Reintelder
3. in seiner Eigenschaft als Notar beim Notariat Stuttgart
4. sie ist versehen mit dem Siegel/Stempel
des Notariats Stuttgart
5. in Stuttgart
6. am 13. Juni 2017
7. durch die Präsidentin des Landgerichts
8. unter Nr. 910a 3796/17
10. Unterschrift
in Vertretung



Horz

Horz
Präsidentin des Landgerichts

9 GRN 413/92

Notary's Office of Stuttgart
- Probate Court -

Decision dated 23 April 1992

Certificate of Inheritance

The sole heir of the following individual, who died in Stuttgart on 26 February 1992

Johann Georg Hermann Schiedmayer,
Kaufmann, born on 16 December 1931, most recently
residing at Fraasstraße 9, 7000 Stuttgart 1,

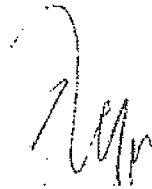
is

the widow Marie Bernadette Fernande Elianne
Schiedmayer, maiden name Villard,
born on 29 March 1944, residing at Fraasstraße 9,
7000 Stuttgart 1.

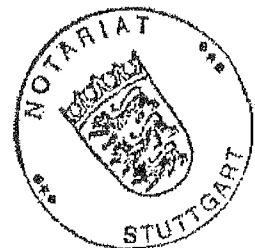


- Reinfelder -
Notary Public

The reproduction provided above matches the
original copy.
Stuttgart, 05 May 1992
Notary's Office - Probate Court -



- Reinfelder -
Notar



910a 3796 / 17

Gebühr gem. Anlage JVKostG

Nr. 1310 20.00 €

910a 3796 / 17

Fee per Attachment JVKostG

No. 1310 20.00 €

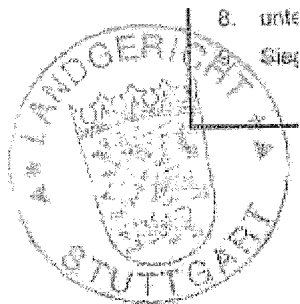
APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: Federal Republic of Germany
2. This public document has been signed by *Reinfelder*, a notary public
3. acting in his capacity as a notary public for the notary's office of *Stuttgart*
4. It bears the seal/stamp of the notary's office of *Stuttgart*

CERTIFIED

5. at *Stuttgart*
6. the *13th of June 2017*
7. by *the President of the District Court*
8. No. 910a-3796/17
9. Seal/Stamp
10. Signature
by proxy





Horz
Präsidentin des Landgerichts

Horz
President of the District Court

June 15, 2017

DECLARATION

The undersigned, Dana Scruggs, having an office at 8902 Otis Avenue, Suite 225A, Indianapolis, Indiana 46216, hereby states that she is well acquainted with both the English and German languages and that the attached is a true translation to the best of her knowledge and ability of the Apostille.

The undersigned further declares that the above statement is true; and further, that this statement was made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any patent resulting therefrom.

A handwritten signature in black ink that reads "Dana Scruggs". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Dana Scruggs

April 6, 2017

DECLARATION

The undersigned, Dana Scruggs, having an office at 8902 Otis Avenue, Suite 225A, Indianapolis, Indiana 46216, hereby states that she is well acquainted with both the English and German languages and that the attached is a true translation to the best of her knowledge and ability of "Erbschein".

The undersigned further declares that the above statement is true; and further, that this statement was made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any patent resulting therefrom.

A handwritten signature in black ink, appearing to read "Dana Scruggs", with a long horizontal flourish extending to the right.

Dana Scruggs

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the attached Memorandum was served upon counsel for the Respondents at his email address of record:

adam@iptech.law

this 20th day of June, 2017

Dated: 6/20/17


Michael Striker