COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0232
July 2, 2025

Custom Family Gifts LLC	*v.*	Raymond Harper and Dominick Mattiello
CLAIMANT		**RESPONDENTS**

ORDER DENYING REQUEST TO PRESENT AN EXPERT WITNESS

On June 26, 2025, Claimant filed a Request to Present an Expert Witness (Request; Dkt. 196) and Respondent Dominick Mattiello II filed a Response (Dkt. 197) to the Request. Respondent Raymond Harper (Harper) has not filed a response, but "[t]he Board may deny a request before the time to submit a response expires[.]" 37 C.F.R. § 220.5(a)(2).

"The use of expert witnesses in proceedings before the Board is highly disfavored and requests [to permit expert testimony] shall be rarely granted." 37 C.F.R. § 225.4(b). Parties seeking to justify a request for expert testimony must meet a high standard:

> The Board shall grant a request by a party to introduce an expert witness only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert. In considering a request for an expert witness, the Board shall balance the needs and circumstances of the case, and whether the request is made by one party or jointly among the parties, against the burden that permitting the expert testimony would impose on any other party, the costs to the opposing party of retaining a rebuttal witness, the amount in dispute, and the overall goal of efficient resolution of the proceeding.

37 C.F.R. § 225.4(b)(1).

"Any expert testimony permitted by the Board shall be submitted along with the offering party's written direct or response testimony in the form of an expert statement." 37 C.F.R. § 225.4(b)(3). Claimant has already submitted its direct testimony and Respondents have already filed their response testimony, so any expert witness statement would be untimely and the Request could be denied on that procedural basis alone. However, there are also ample substantive grounds for denying the Request.

Claimant seeks to present forensic expert testimony related to three items presented by Respondents:

- a "Work file templates for both triangular and circular mountain designs dated 8/16/2019 – 3/6/2020" document (Templates) that Harper produced during discovery on March 1st, 2025;
- a 2021 engagement letter between Dominick Mattiello and Myers Law Group's Nicholas D. Myers (Myers), filed as evidence in support of Respondents' written testimony on May 28, 2025 (Dkt. 128); and
- a March 21, 2025 email from Myers Law Group's Austin Vue to Dominick Mattiello with the subject line "Heirloom Prints LLC - Engagement Letter" with a copy of the 2021 engagement letter attached, which Harper forwarded to Board staff on June 18, 2025.

Claimant contends that the Templates document is "a complete fabrication," that the engagement letter bears "indications of fraud," and that the forwarded email "lack[s] the digital markers of an authentic email." Request at 1-2. Claimant contends that the "systematic submission of fabricated evidence . . . presents an extraordinary circumstance which merits the allowance of expert testimony into an otherwise streamlined process." *Id.* at 3.

Those circumstances are not present.

Harper copied the Board when he emailed Respondents' discovery production, including the Templates document, to Claimant on March 1, 2025. Then, on March 3, 2025, Dominick Mattiello emailed the Board and Claimant, expressly declaring that Respondents would not be using that document as evidence:

> I am writing to formally request the removal of Exhibit 3 [the Templates document] from our submitted evidence in Case No. 24-CCB-0232. While it was initially included as supporting material, we have determined that it is not necessary to establish our claim, and **we are voluntarily withdrawing it** to ensure that the proceedings remain efficient and on schedule. . . . To avoid unnecessary forensic disputes that could delay the proceedings, we are removing Exhibit 3 **and will not be relying on it in any capacity**. If the claimant wishes to conduct a third-party forensic review of his own materials, he is welcome to do so, but we do not believe such efforts should interfere with the timely resolution of this case.

Emphasis added. Because the Respondents promptly disclaimed any intent to submit the Templates document as evidence two days after producing it, and because they did not include it as evidence in their response testimony, the Board has no need to weigh its veracity. Claimant's contention that "expert testimony on this submission from early in the proceeding would properly set up the lens through which subsequent submissions be seen through," Response at 1, does not justify forensic expert testimony about a document Respondents did not file as evidence.

There is also no need for expert testimony about the Myers Law Group engagement letter or the firm's email providing a copy of that letter. Both are genuine. With Dominick Mattiello's authorization and Claimant's knowledge, the Board emailed Myers on June 30, 2025, seeking authentication. (Claimant erroneously notified the Board that the myers.law domain for Myers' email address "is not the domain the firm uses." The Board confirmed that the domain and email address match Myers' listing on the State Bar of California's online attorney search webpage.) In response, Myers sent the Board a copy of the 2021 engagement letter from the firm's files, which is identical to the copy filed by Respondents (see Dkt. 128), and stated, "the June 18, 2025 email from my office is authentic."

Claimant simply fails to show that the proceeding requires expert testimony on any topic identified. This case can and will "fairly proceed without the use of an expert." 37 C.F.R. § 225.4(b). The Board therefore denies the Request. Claimant previously asserted that the Templates document and the engagement letter were evidence of fraud in a Request for a Conference Related to a Pattern of Alleged Bad-Faith Conduct filed on June 18, 2025. Dkt. 186. The Board denied that request on June 20, 2025. Dkt. 193. Further filings on the same basis will not be heard. The Board trusts that the parties will find no further reasons to file anything with the Board prior to Claimant's reply testimony, which must be filed no later than July 7, 2025.