Filed on behalf of Bazooka-Farmstar, LLC

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

Case IPR2023-01161
U.S. Patent No. 11,358,425

PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE

Pursuant to the Board's email of October 25, 2023, Petitioner submits its reply to Patent Owner's Preliminary Response (POPR) responding to the arguments concerning the lack of a video copy of EX1028 and the level of ordinary skill.

I. THE VIDEO IS NOT REQUIRED BECAUSE 35 U.S.C. §§311(b) AND 312(a)(3)(A) DO NOT APPLY TO "OTHER EVIDENCE"

Respondent criticizes Petitioner for not providing a full copy of the video that shows the SenwaTec vehicle pumping liquid manure.[1] Specifically, Respondent incorrectly argues that Petitioner fails to comply with 35 U.S.C. §311(b) or §312(a)(3)(A). (Paper 6 at 70-71.) Those statutes pertain to asserted prior art. They are inapplicable here. *See Yeda Research & Dev. Co. v. Mylan Pharm., Inc*., 906 F.3d 1031, 1041 (Fed. Cir. 2018) ("[Section] 311(b) only addresses prior art *and is silent on the question of other evidence*.") (emphasis added).

While §312(a)(3)(A) requires a petition to include copies of patents and printed publications *that form the basis of a ground of invalidity*, the video at issue here is not used for this purpose. Rather, the video is used as supporting "evidence … in considering the knowledge, motivations, and expectations of a POSITA regarding the prior art" (i.e. "other evidence"). *Id.* (*See* Paper 1, note 8 ("EX1028

[1] Petitioner has since provided a link to the video of EX1028 in a petition on a related patent. *Bazooka-Farmstar, LLC v. Nuhn Industries LTD.*, IPR2024-00004, Paper 1 at xii n.1 (P.T.A.B. Oct. 13, 2023).

[is] relied upon to demonstrate the knowledge generally available to a POSA….")).

Therefore, Section 312(a)(3)(A) does not apply to the video.

Instead, §312(a)(3)(B) addresses this "other evidence." *See Yeda*, 906 F.3d at 1041. This provision permits "affidavits or declarations of *supporting evidence and opinions*." *Id.* Petitioner provided a declaration that includes the video screenshots as an exhibit (EX1013) and has satisfied the requirements of §312(a)(3)(B).

II. THE VIDEO IS NOT NECESSARY TO UNDERSTAND THAT THE SENWATEC VEHICLE PUMPS LIQUID MANURE

EX1028 is instructive because it shows the vehicle of SenwaTec pumping liquid manure. However, its consideration does not impact the outcome of the analysis. A POSA would have understood that SenwaTec (EX1012) discloses a fluid pump for pumping liquid manure even without the video.

EX1012 discloses a vehicle with a dredging pump: "a powerful centrifugal pump [with] 8" suction[] and 6" discharge ports...." (*Id.*, 1) The pump is reinforced with a "HARDOX inner casing[.]" (*Id.*, 3.)

A POSA would have understood that such dredging equipment was used for liquid manure pumping. (EX1004, ¶303 (citing EX1058, 2)). And a POSA would have understood that centrifugal pumps are commonly used with liquid manures and slurries. (EX1066, 42-43; EX1004, ¶100; *see also* EX1004, ¶¶103-104 (citing EX1040, 64-65); EX1041, 4-5.) Given the extensive documentation of centrifugal pumps and dredging equipment used with liquid manure, a POSA would have

understood that the pump described by SenwaTec would be capable of pumping liquid manure. (EX1004, ¶302-303.)

III. RESPONDENT CONTRADICTS THE '425 PATENT AND PROVIDES A NONSENSICAL POSA DEFINITION

A POSA would have had a bachelor's degree in mechanical engineering or similar field, two years of professional experience in marine and off-road vehicles, and a working knowledge of fluid pumps and liquid manure. (Paper 1 at 31.)

Respondent argues that this definition is overly generalized because the vehicle of the '425 Patent does not have "utility outside of … manure lagoons…." (Paper 6 at 20). This contradicts the '425 Patent, which describes "powering [the] vehicle across wet or muddy terrain" (outside of a manure lagoon). (EX1001, 2:6-7.) Furthermore, the technical field states that the invention "relates to pumps and vehicles equipped for pumping" and is not limited to pumping manure. (*Id.*, 1:25-26.) While manure pumping is one application, the specification is far broader: "the present invention **can be employed in any fluid pumping situation** … **such as when pumping fluid from rivers, ponds, lakes**, rain water storage reservoirs, etc." (EX1029, 4:4-9 (emphasis added) (incorporated by reference into the '425 Patent).)

Further, counter to Respondent's suggestions, a *mechanical engineer* with a *working knowledge of fluid pumps and livestock manure* would not need to have years of experience specifically designing agricultural equipment. Rather, given the multi-purpose nature of the vehicle pump (and versatile training of a mechanical

engineer), a working knowledge of pumps and associated fluids (including liquid manure) is more than sufficient.

Respondent also argues that Petitioner's definition excludes those most familiar with agricultural and manure agitation equipment. (Paper 6 at 20). This is incorrect. Marine and off-road vehicles include agricultural and manure agitation vehicles (i.e. tractors, farm vehicles, and floating manure agitators (*see* EX1014)). And Respondent ignores that Petitioner's definition includes a POSA having "a working knowledge of fluid pumps and livestock manure." (Paper 1 at 31.)

Respondent provides its own incorrect POSA definitions—the first being limited to manure pumping laborers, and the second including *any type of engineer* designing *any type of agricultural equipment*. (Paper 6 at 21.) These definitions are wrong. ***First***, there is no explanation of how a "livestock farmer … familiar with manure agitation equipment" would be capable of *designing* an amphibious pumping vehicle. Simply *using* equipment does not make one a POSA able to *design* it. Under this logic, any person familiar with driving a car is a POSA of designing a car. ***Second***, any type of "engineer with … experience designing agricultural equipment and knowledge of manure agitation equipment" is far overinclusive. For example, a software engineer who's designed cow milking equipment and knows of manure pumps would not know how to build an amphibious pumping vehicle.

Respectfully submitted,

MERCHANT & GOULD P.C.

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/Thomas J. Leach/

Thomas J. Leach
Registration No. 53,188
Robert A. Kalinsky
Registration No. 50,471
Michael A. Erbele
(pro hac vice forthcoming)
Taylor R. Stemler
Registration No. 79,777
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
TLeach@merchantgould.com
RKalinsky@merchantgould.com
MErbele@merchantgould.com
TStemler@merchantgould.com

Jeffrey D. Blake
Registration No. 58,884
MERCHANT & GOULD P.C.
191 Peachtree Street NE, Suite 3800
Atlanta, GA 30303
JBlake@merchantgould.com

(Trial No. IPR2023-01161)

ATTORNEYS FOR PETITIONER

CERTIFICATION OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), that service was made on Counsel for Patent Owner as detailed below.

Date of service:	November 1, 2023
Manner of service:	Electronic mail addressed to: bluchsinger@harnessip.com syackey@harnessip.com mcutler@harnessip.com
Documents served:	Petitioner's Reply to Patent Owner's Preliminary Response
Persons served:	James B. Luchsinger HARNESS, DICKEY & PIERCE P.L.C. 5445 Corporate Dr., Suite 200 Troy, MI 48098 Phone: 248-641-1600 Fax: 248-641-0270 bluchsinger@harnessip.com Scott E. Yackey HARNESS, DICKEY & PIERCE, P.L.C. 2801 Network Blvd., Suite 600 Frisco, TX 75034 syackey@harnessip.com Matthew L. Cutler HARNESS, DICKEY & PIERCE, P.L.C. 7700 Bonhomme, Suite 400 Clayton, MO 63105 mcutler@harnessip.com

/Thomas J. Leach/
Thomas J. Leach, Reg. No. 53,188