Taylor R. Stemler

From: Kella, Michael <mkella@harnessip.com>
Sent: Monday, August 5, 2024 2:32 PM
To: Kristen M. Souther; Tom Leach; Robert A. Kalinsky; Jeffrey Blake; Michael Erbele; Taylor R. Stemler; Joe Dubis, Ph.D.
Cc: Luchsinger, J. Bradley; Cutler, Matthew; Yackey, Scott; Peak, Amber; '{F5947212}.Active@ef.merchantgould.com'; Enggas, Sarah; NuhnLitigation; Jeremy Miller; Foley, Jeremiah
Subject: RE: Bazooka Farmstar, LLC v. Nuhn Industries Ltd. IPR2023-01161 - PO's Amended Motion to Seal and for Protective Order

CAUTION - External.

Kristen,

The Amended Protective Order states: "Petitioner's and Patent Owner's use of material designated under the Amended Protective Order in the federal district court case *Nuhn Industries Ltd. v. Bazooka Farmstar*, LLC, Case No. 3:22-cv-00015 (S. D. Iowa), is not a violation of the Amended Protective Order."

This is exactly what you agreed would resolve the dispute during the meet and confer that preceded Nuhn filing the amended PO. *See* Transcript at 99:8-100:20. So I don't think the PO prohibits you from producing and/or using the documents in the district court. And notably, I don't recall you identifying an issue with the undertaking until last week in your email below (otherwise we could have addressed it with our prior PO filings in the IPRs). But since you now have a concern with the undertaking attached thereto, we can include a similar exclusion to the effect that use in the district court is not prohibited (or perhaps provide for a separate undertaking for counsel in the district court proceeding).

Thanks,
Mike

Michael P. Kella | Attorney at Law
O: 314.446.7665

From: Kristen M. Souther <ksouther@merchantgould.com>
Sent: Tuesday, July 30, 2024 5:35 PM
To: Kella, Michael <mkella@harnessip.com>; Tom Leach <TLeach@merchantgould.com>; Robert A. Kalinsky <RKalinsky@merchantgould.com>; Jeffrey Blake <JBlake@MerchantGould.com>; Michael Erbele <MErbele@MerchantGould.com>; Taylor R. Stemler <TStemler@MerchantGould.com>; Joe Dubis, Ph.D. <JDubis@MerchantGould.com>
Cc: Luchsinger, J. Bradley <bluchsinger@harnessip.com>; Cutler, Matthew <mcutler@harnessip.com>; Yackey, Scott <syackey@harnessip.com>; Peak, Amber <apeak@harnessip.com>; '{F5947212}.Active@ef.merchantgould.com' <{F5947212}.Active@ef.merchantgould.com>; Enggas, Sarah <senggas@harnessip.com>; NuhnLitigation

<nuhnlitigation@harnessip.com>; Jeremy Miller <jmiller@merchantgould.com>; Foley, Jeremiah <jfoley@harnessip.com>
Subject: RE: Bazooka Farmstar, LLC v. Nuhn Industries Ltd. IPR2023-01161 - PO's Amended Motion to Seal and for Protective Order

EXTERNAL EMAIL - USE CAUTION

Mike –

I am following up on this issue because the Amended PO that Nuhn filed on July 3, 2024 does not resolve the issue we discussed during the in-person meet and confer regarding RFP No. 80. Nuhn indicated it would file something in the IPR to ensure that Bazooka's use of an IPR document in the district court case (Case No. 3:22-cv-00015-SMR-HCA) does not violate the protective order that Nuhn seeks. The amended protective order that Nuhn has proposed in the '425 Patent IPR and the '835 Patent IPR only permits "[r]epresentatives of record for a party in the [IPR] proceeding" to access the protected material." *See* ¶2(A). Also, the acknowledgement statement at the end of the PO states: "I will use the confidential information only in connection with this proceeding and for no other purpose." Accordingly, Bazooka is still not able to use the documents submitted in the IPRs in the district court case without violating the protective order.

Because Nuhn has failed to take the necessary action in the IPRs to ensure Bazooka can use the IPR documents in the district court case without violating the protective order, Nuhn must produce the documents submitted to the USPTO in response to RFP 80. Please confirm Nuhn will produce documents responsive to RFP 80 by the August 15, 2024 deadline set by the Court.

Additionally, please note that Bazooka intends to oppose the amended protective orders to the extent that they prohibit use of the protected material in the other IPRs.

Thank you,
Kristen

Kristen M. Souther
Attorney
Merchant & Gould P.C.
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Suite 3800
Atlanta, GA 30303
USA

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Operating as Merchant & Gould, LLP, in California.
Please consider the environment before printing this email. Thank you.

From: Kella, Michael <mkella@harnessip.com>
Sent: Wednesday, July 3, 2024 2:27 PM

To: Tom Leach <TLeach@merchantgould.com>; Robert A. Kalinsky <RKalinsky@merchantgould.com>; Jeffrey Blake <JBlake@MerchantGould.com>; Michael Erbele <MErbele@MerchantGould.com>; Taylor R. Stemler <TStemler@MerchantGould.com>; Kristen M. Souther <ksouther@merchantgould.com>
Cc: Luchsinger, J. Bradley <bluchsinger@harnessip.com>; Cutler, Matthew <mcutler@harnessip.com>; Yackey, Scott <syackey@harnessip.com>; Peak, Amber <apeak@harnessip.com>; '{F5947212}.Active@ef.merchantgould.com' <{F5947212}.Active@ef.merchantgould.com>; Enggas, Sarah <senggas@harnessip.com>; NuhnLitigation <nuhnlitigation@harnessip.com>; Jeremy Miller <jmiller@merchantgould.com>
Subject: RE: Bazooka Farmstar, LLC v. Nuhn Industries Ltd. IPR2023-01161 - PO's Amended Motion to Seal and for Protective Order

CAUTION - External.

Counsel, Kristen,

Nuhn filed this pursuant to the parties' agreement in resolution of Bazooka's issues with Nuhn's response to Bazooka's Request for Production No. 80.

Mike

Michael P. Kella | Attorney at Law

O: 314.446.7665

From: Enggas, Sarah <senggas@harnessip.com>
Sent: Wednesday, July 3, 2024 1:23 PM
To: 'Tom Leach' <tleach@merchantgould.com>; 'Rob Kalinsky' <rkalinsky@merchantgould.com>; 'Jeffrey Blake' <jblake@merchantgould.com>; 'Michael Erbele' <merbele@merchantgould.com>; 'Taylor R. Stemler' <tstemler@merchantgould.com>; 'Jeremy Miller' <jmiller@merchantgould.com>
Cc: Luchsinger, J. Bradley <bluchsinger@harnessip.com>; Cutler, Matthew <mcutler@harnessip.com>; Yackey, Scott <syackey@harnessip.com>; Kella, Michael <mkella@harnessip.com>; Peak, Amber <apeak@harnessip.com>; '{F5947212}.Active@ef.merchantgould.com' <{F5947212}.Active@ef.merchantgould.com>
Subject: Bazooka Farmstar, LLC v. Nuhn Industries Ltd. IPR2023-01161 - PO's Amended Motion to Seal and for Protective Order

Counsel,

Attached please find Patent Owner's Amended Motion to Seal and for Protective Order, and exhibits 2088 and 2089, as filed today with the Patent Trial and Appeal Board.

Sincerely,

Sarah C Enggas
Litigation Paralegal

O: 314.726.7520

7700 Bonhomme, Suite 400
St. Louis, MO 63105

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