UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMEGA LINER COMPANY, INC.,

Petitioner

v.

BUERGOFOL GmbH,

Patent Owner.

IPR2023-01372
Patent 9,657,882 B2

PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(B)(1) - DECLARATION OF PATRICK BRANT (EXHIBIT 2001)

Pursuant to 37 C.F.R. §42.64(b)(1) and the Federal Rules of Evidence ("Fed. R. Evid."), Petitioner Omega Liner Company, Inc. objects to the admissibility of certain evidence in the Declaration of Patrick Brant (Exhibit 2001) filed on June 27, 2024 in support of Patent Owner's Response (Paper No. 13). These objections have been timely filed and served within five business days of Patent Owner's Response.

Evidence Filed by Patent Owner	**Petitioner's Objections**
Exhibit 2001, Declaration of Patrick Brant ("Decl. of Brant"), ¶¶ 13-25.	Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – improper legal conclusions – construction and interpretation of the claims. Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – improper legal conclusions – meaning and effect of foreign prosecutions. Fed. R. Evid. 801, 802 – hearsay – on Durethan B40 FAM.
Exhibit 2001, Decl. of Brant, ¶¶ 26-35.	Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – improper legal conclusions – secondary considerations (unexpected results). Fed. R. Evid. 801, 802 – hearsay – regarding intent of or path taken by the inventors, purported problems, purported discovery of same and purported improvement and solutions of the '882 Patent.

Exhibit 2001, Decl. of Brant, ¶¶ 36-40.	Fed. R. Evid. 701, 702, 37 C.F.R. 42.65 – improper legal conclusions – translations beyond claimed expertise. Fed. R. Evid. 801, 802 – hearsay – regarding translations.
Exhibit 2001, Decl. of Brant, ¶¶ 42-43.	Fed. R. Evid. 801, 802 – hearsay – purported testimony of S. MacLean (best evidence rule).
Exhibit 2001, Decl. of Brant, ¶¶ 48-49.	Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – incorrect legal standard, improper legal conclusions – inherency and obviousness.
Exhibit 2001, Decl. of Brant, ¶¶ 50-51.	Fed. R. Evid. 702, 703, 602, 37 C.F.R. 42.65 – improper legal conclusions – motivations, intentions and understanding of person of ordinary skill.
Exhibit 2001, Decl. of Brant, ¶¶ 56-59.	Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – improper legal conclusions – motivations, intentions and understanding of person of ordinary skill. Fed. R. Evid. 801, 802 – hearsay – regarding intent of or path taken by the inventors, purported problems, purported discovery of same and purported improvement and solutions of the ’882 Patent.

Exhibit 2001, Decl. of Brant, ¶¶ 60-61.	Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – improper legal conclusions – motivations, intentions and understanding of person of ordinary skill. Fed. R. Evid. 702, 703, 37 C.F.R. 42.65 – incorrect legal standard, improper legal conclusions – inherency and obviousness. Fed. R. Evid. 801, 802 – hearsay – regarding intent of or path taken by the inventors, purported problems, purported discovery of same and purported improvement and solutions of the ’882 Patent.
Exhibit 2001, Decl. of Brant, ¶¶ 66-75.	Fed. R. Evid. 801, 802 – hearsay – regarding intent of or path taken by the inventors, purported problems, purported discovery of same and purported improvement and solutions of the ’882 Patent (inventor declarations).

Dated: July 3, 2024

Respectfully submitted,

/Michael S. Neustel/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64(B)(1) - DECLARATION OF PATRICK BRANT (EXHIBIT 2001), was served by filing this document on the date indicated below through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via e-mail to the following attorneys of record for the Patent Owner listed below:

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