UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

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Case IPR2024-00004
U.S. Patent No. 11,491,835

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**PETITIONER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64**

Petitioner Bazooka-Farmstar, LLC ("Bazooka") objects under 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence ("FRE") to the admissibility of the following documents submitted by Patent Owner Nuhn Industries Ltd. ("Nuhn") in its Response filed on July 9, 2024 (Paper No. 23): The Declaration of Douglas Prairie (EX2094, the "Prairie Declaration") and The Declaration of Ian Nuhn (EX2083, the "Nuhn Declaration").

Nuhn filed its response on July 9, 2024. Bazooka's objections are timely filed under 37 C.F.R. § 42.64(b)(1). Bazooka serves Patent Owner with these Objections to provide notice that Bazooka will move to exclude the above-identified exhibits as improper evidence.

## I. PATENT OWNER'S EVIDENCE

### A. Prairie Declaration (EX2094)

Bazooka objects to the admissibility of the Prairie Declaration for at least the following reasons.

Dr. Prairie's opinions in the Prairie Declaration are inadmissible under at least FRE 702 and 703 because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable.

In addition, Dr. Prairie analyzes the claims of this patent through the wrong POSA lens, and is unqualified as an expert to provide technical opinions of a POSA under FRE 702 and 703, as he lacks any professional experience with marine

vehicles. *See, e.g.*, EX2087; *see also Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1377 (Fed. Cir. 2022).

In addition, the opinions in the Prairie Declaration are irrelevant, confusing, prejudicial, and of minimal probative value under FRE 401, 402, and 403.

**B. Nuhn Declaration (EX2083)**

Petitioner objects to the admissibility of the Nuhn Declaration for at least the following reasons.

Ian Nuhn's testimony is irrelevant, confusing, prejudicial, and of minimal probative value. Additionally, Ian Nuhn's testimony is based on conduct or statements made during compromise negotiations. Ian Nuhn's testimony is based on matters that he lacks personal knowledge of. Ian Nuhn's testimony also includes impermissible opinion testimony. Ian Nuhn's testimony contains hearsay, as well as hearsay within hearsay and is not properly authenticated. Ian Nuhn's testimony regarding alleged secondary considerations of non-obviousness fails to establish any nexus to the '835 Patent's claims.

Therefore, Ian Nuhn's testimony should be excluded under at least FRE 401, 402, 403, 408, 602, 603, 701, 702, 802, 805, 901, 1002, and/or 37 CFR § 42.51(b).

Respectfully submitted,

MERCHANT & GOULD P.C.

Date: July 16, 2024

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(Trial No. IPR2024-00004) *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.

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| Date of service: | July 16, 2024 |
| Manner of service: | Electronic mail addressed to:<br>bluchsinger@harnessip.com<br>syackey@harnessip.com<br>mcutler@harnessip.com |
| Documents served: | Petitioner's Objections to Evidence Under 37 C.F.R. § 42.64 |
| Persons served: | James B. Luchsinger<br>HARNESS, DICKEY & PIERCE P.L.C.<br>5445 Corporate Dr., Suite 200<br>Troy, MI 48098<br>Phone: 248-641-1600<br>Fax: 248-641-0270<br>bluchsinger@harnessip.com<br><br>Scott E. Yackey<br>HARNESS, DICKEY & PIERCE, P.L.C.<br>2801 Network Blvd., Suite 600<br>Frisco, TX 75034<br>syackey@harnessip.com<br><br>Matthew L. Cutler<br>HARNESS, DICKEY & PIERCE, P.L.C.<br>7700 Bonhomme, Suite 400<br>Clayton, MO 63105<br>mcutler@harnessip.com<br><br>/Thomas J. Leach/<br>Thomas J. Leach, Reg. No. 53,188 |