

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,

Petitioner,

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

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

**PATENT OWNER'S OBJECTION TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Patent Owner Nuhn Industries Ltd. (“Nuhn”) objects to the admissibility of the documents submitted by Petitioner Bazooka-Farmstar, LLC (“Bazooka”) with its Reply to Patent Owner’s Response in the *Inter Partes* Review of U.S. Patent No. 11,491,835 (Paper Nos. 34 (Sealed) and 35 (Redacted)) and Petitioner’s Opposition to the Motion to Amend in the *Inter Partes* Review of U.S. Patent No. 11,491,835 (Paper Nos. 36 (Sealed) and 37 (Redacted)). Specifically, Nuhn objects to the following listing of Exhibits submitted by Petitioner and basis for objecting:

Exhibit No.	Description of Petitioner’s Exhibit	Basis for Objection
EX1110	Declaration of Eric Winkel in Support of Petitioner’s Reply to Patent Owner’s Response, Dated October 1, 2024	37 C.F.R. §42.61(a), 37 C.F.R. §42.61(a), and one or more of FRE 401, 402, 403 702, 703 and/or 705 because Dr. Winkel is not qualified to opine as a POSITA and does because Dr. Winkel offers opinions on facts and data that he has not personally observed and/or lack personal knowledge about (<i>see</i> Paper 14); and/or 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R. §42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or was at the relevant time and is not a patent or printed publication.
EX1111	Declaration of Eric Winkel in Support of Petitioner’s Opposition	37 C.F.R. §42.61(a), 37 C.F.R. §42.61(a), and one or

	to Patent Owner's Motion to Amend, Dated October 1, 2023	more of FRE 401, 402, 403 702, 703 and/or 705 because Dr. Winkel is not qualified to opine as a POSITA and does because Dr. Winkel offers opinions on facts and data that he has not personally observed and/or lack personal knowledge about (<i>see</i> Paper 14); and/or 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R. §42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or was at the relevant time and itself is not a patent or printed publication and is not a patent or printed publication.
EX1115	Declaration of Royal Burrows, Dated June 21, 2023	37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 602, because the declaration is not made based on personal knowledge. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion of a lay witness and is based on scientific, technical, or other specialized knowledge within the scope of FRE 702. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE

		701, because the declaration is an opinion that is not rationally based on the witness's perception or helpful to clearly understand the witness's testimony or to determining a fact in issue. 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R. §42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or was at the relevant time and itself is not a patent or printed publication.
EX1119	Declaration of Benny D. Puck, Dated July 31, 2024	37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 602, because the declaration is not made based on personal knowledge. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion of a lay witness and is based on scientific, technical, or other specialized knowledge within the scope of FRE 702. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion that is not rationally based on the witness's perception or helpful to clearly understand

		the witness's testimony or to determining a fact in issue. 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R. §42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or was at the relevant time and itself is not a patent or printed publication.
EX1120	Declaration of Ernie Sundstrom, Dated August 1, 2024	37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 602, because the declaration is not made based on personal knowledge. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion of a lay witness and is based on scientific, technical, or other specialized knowledge within the scope of FRE 702. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion that is not rationally based on the witness's perception or helpful to clearly understand the witness's testimony or to determining a fact in issue. 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R.

		§42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or was at the relevant time and itself is not a patent or printed publication.
EX1121	Declaration of Benny D. Puck, Dated August 28, 2024	37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 602, because the declaration is not made based on personal knowledge. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion of a lay witness and is based on scientific, technical, or other specialized knowledge within the scope of FRE 702. 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 701, because the declaration is an opinion that is not rationally based on the witness's perception or helpful to clearly understand the witness's testimony or to determining a fact in issue. 37 C.F.R. §42.61(a), 37 C.F.R. §42.62, 37 C.F.R. §42.104(b)(2) and one or more of FRE 402 or 403, because the declaration is being used as evidence to establish what the prior is or

		was at the relevant time and itself is not a patent or printed publication.
EX1131	Deposition Transcript of Ansgar Lonnemann, Taken on September 6, 2024	37 C.F.R. §42.61(a), the Deposition was not taken, sought, or filed in accordance with 37 C.F.R. §42.53(a), (e), (f)(5), and/or (f)(6)(vii). The taking of EX1131 was taken in violation of 37 C.F.R. §42.53(e) because a translator was required, and Petitioner did not initiate a conference with the Board at least five (5) business days prior to the taking of the testimony.
EX1132	Deposition Transcript of Reidar Olofsson, Taken on September 5, 2024	37 C.F.R. §42.61(a), the Deposition was not taken, sought, or filed in accordance with 37 C.F.R. §42.53(a), (f)(5), and/or (f)(6)(vii).

Patent Owner's objections herein are timely under 37 C.F.R. § 42.64(b)(1).

Patent Owner serves Petitioner with these Objections to provide notice that Patent Owner will move to exclude the above- and below-identified exhibits as improper evidence.

Dated: October 8, 2024

Respectfully submitted,

By: /James B. Luchsinger/
James B. Luchsinger, Reg. 73,705
HARNESS DICKY & PIERCE, P.L.C.
5445 Corporate Drive, Suite 200
Troy, MI 48098
Phone: 248-641-1600
Fax: 248-641-0270
bluchsinger@harnessip.com

Matthew L. Cutler, Reg. No. 43,574
HARNESS DICKY & PIERCE, P.L.C.
7700 Bonhomme Ave., Suite 400
St. Louis, MO 63105
Phone: 314-726-7500
Fax: 314-726-7501
mcutler@harnessip.com

Attorneys for Nuhn Industries Ltd.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 8th day of October 2024, a true and correct copy of the foregoing **PATENT OWNER'S OBJECTION TO EVIDENCE UNDER 37 C.F.R. § 42.64** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

Lead Counsel

Thomas J. Leach
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Phone: 612-336-4665
Fax: 612-332-9081
tleach@merchantgould.com
USPTO Reg. No. 53,188

Back-up Counsel

Robert A. Kalinsky
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Phone: 612-336-4771
Fax: 612-332-9081
rkalinsky@merchantgould.com
USPTO Reg. No. 50,471

Jeffrey D. Blake
MERCHANT & GOULD P.C.
191 Peachtree Street NE, Suite 3800
Atlanta, GA 30303
Phone: 404-954-5040
Fax: 612-332-9081
jblake@merchantgould.com
USPTO Reg. No. 58,884

Michael A. Erbele
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Phone: 612-336-4670
Fax: 612-332-9081
merbele@merchantgould.com

Taylor R. Stemler
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
Phone: 612-371-5215
Fax: 612-332-9081
tstemler@merchantgould.com
USPTO Reg. No. 79,777

/James B. Luchsinger/
JAMES B. LUCHSINGER
HARNES DICKY & PIERCE, P.L.C.