

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

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

**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 Reply to Petitioner’s Opposition to the Revised Motion to Amend filed on January 13, 2025 (Paper No. 50): The Declaration of Douglas Prairie (EX2106, the “Prairie Declaration”); the provisional application comparisons (EX2109-EX2115), and the written description support chart (EX2108).

Bazooka’s objections are timely 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 exhibit as improper evidence.

I. PATENT OWNER’S EVIDENCE

A. Prairie Declaration (EX2106)

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 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. Provisional Application Comparisons (EX2109-EX2115)

Bazooka objects to the admissibility of the provisional application comparisons for at least the following reasons.

The provisional application comparisons are inadmissible because they are irrelevant, confusing, prejudicial, and of minimal probative value under FRE 401, 402, and 403.

The provisional applications comparisons are also inadmissible under 37 C.F.R. §§ 42.121(b) and/or 42.221(b) because the support in the original disclosure of the patent and earlier filed disclosure for each proposed substitute claim must be set forth in the motion to amend. By failing to identify the support in the original disclosure of the patent and earlier filed disclosures in its motion to amend, these arguments are waived and the exhibits are inadmissible.

C. Written Description Support Chart (EX2108)

Bazooka objects to the admissibility of the written description support chart for at least the following reasons.

The written description support chart is inadmissible because it is irrelevant, confusing, prejudicial, and of minimal probative value under FRE 401, 402, and 403.

The written description support chart is also inadmissible under 37 C.F.R. §§ 42.121(b) and/or 42.221(b) because the support in the original disclosure of the patent and earlier filed disclosure for each proposed substitute claim must be set forth in the motion to amend. By failing to identify the support in the original disclosure of the patent and earlier filed disclosures in its motion to amend, these arguments are waived and the exhibits are inadmissible. Additionally, such argument must be included in the motion to amend itself, not in an appendix or an “exhibit” in a party’s reply brief. *See Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, 01130, Paper 15 (PTAB Feb. 25, 2019).

Respectfully submitted,

MERCHANT & GOULD P.C.

Date: January 14, 2025

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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.

Date of service:	January 14, 2025
Manner of service:	Electronic mail addressed to: bluchsinger@harnessip.com syackey@harnessip.com mcutler@harnessip.com
Documents served:	Petitioner's Objections to Evidence Under 37 C.F.R. § 42.64
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

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