

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC

Petitioner,

- vs. -

NUHN INDUSTRIES LTD.,

Patent Owner.

**REPLY IN SUPPORT OF PETITIONER'S MOTION TO EXCLUDE
EVIDENCE**

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

The PTAB should exclude Mr. Prairie's and Ian Nuhn's declarations. Mr. Prairie is not a POSA, and Ian Nuhn relies on hearsay. The PTAB should also exclude EX2108-EX2115 for violation of 37 C.F.R. § 42.121(b).

I. MR. PRAIRIE'S DECLARATIONS (EX2004, EX2094, EX2099, EX2106) ARE INADMISSIBLE

A. Nuhn's POSA Definition Incorrectly Excludes Marine Vehicle Experience.

Bazooka's POSA definition is correct: a POSA must have marine vehicle experience. The '835 Patent is titled "Amphibious Pumping Vehicle." The vehicle in the '835 Patent is a marine *and* off-road vehicle. *See* EX1001, 7:62-8:4. Ian Nuhn describes his and competitor's products as *boats* (EX2083, ¶¶12-14, 17-19, 27, 64-67), as does Mr. Prairie (EX2094, ¶¶24-29, 331-353, 384-385). The application in the '835 Patent is not merely "manure lagoon agitation"—it is an amphibious pumping vehicle that maneuvers in a marine environment while agitating.

The expert declarations further demonstrate that marine vehicle experience is required. They address marine concepts, including methods to minimize fluid drag forces (EX1174, ¶84); methods of achieving vehicle buoyancy (EX1174, ¶¶86-88); methods of distributing weight to achieve a proper center of gravity (EX1174, ¶¶45-50, 84-85, 112; EX2094, ¶249, 288; EX2106, ¶¶183-196); and benefits and drawbacks of various propulsion methods (EX1174, ¶¶49-51; EX2094, ¶¶350-351).

Nuhn argues that knowledge of marine and off-road vehicles is too restrictive. But the '835 Patent describes and claims cross-discipline technology—limiting the POSAs. Nuhn admits the industry is small (EX1116, 86:18-20, 227:22-24), so it is unsurprising that the POSA definition is narrow. The proper POSA definition is guided by the nature of the invention, not by the ease of finding a qualifying expert.

Nuhn suggests that Puck and Sundstrom are not POSAs. This argument is irrelevant: neither are offering expert opinions, and Nuhn has not moved to exclude them. Regardless, Puck and Sundstrom both have professional experience designing manure agitation *boats*, which are marine vehicles. EX1014; EX1120, ¶¶5-7.

B. Mr. Prairie Is Not a POSA.

Nuhn admits that Mr. Prairie “lack[s] professional experience with marine vehicles.” Paper 56 at 3. Marine vehicle experience or education is necessary—Mr. Prairie admittedly does not have it.

Nuhn attempts to salvage its expert by pointing to Mr. Prairie’s education. Under Bazooka’s definition, lack of work experience can be “remedied by additional education.” But none of Mr. Prairie’s education pertains to *marine vehicles*. Nuhn identifies no courses showing that Mr. Prairie’s education covered topics related to engineering issues commonly arising in marine vehicles. Mr. Prairie’s lack of education is evidenced by his misunderstanding of basic marine concepts such as weight distribution. *See, e.g.*, EX1174, ¶45.

C. Mr. Prairie Is Not a POSA Even Under Nuhn’s Own Definition.

Knowledge of fluid pumps and liquid manure is required under both parties’ definitions. Mr. Prairie lacks that knowledge. Regardless of his resume, the bottom line is that Mr. Prairie must be qualified to opine on the topics for which he is designated as an expert. Mr. Prairie was unable to do so in his deposition.

A qualified expert should be able to describe what a POSA would understand from the prior art. Mr. Prairie failed to do so with Puck (EX1117, 206:18-213:3) and admitted he lacked expertise to discuss Carrier (*id.*, 240:19-241:4). A qualified expert should also be able to describe the general structure of a class of prior art products. Not only was Mr. Prairie unable to describe the structure of a centrifugal pump (*id.*, 47:12-52:23), but he could not even say if centrifugal pumps are “fluid pumps for pumping liquid manure” (*id.*, 34:18-37:19). Nor could he describe the structure of Nuhn’s centrifugal pump commercial embodiment of the ’758 Patent (*id.*, 275:13-20), which is incorporated-by-reference into the ’835 Patent (EX1001, 7:42-46). IPR2024-00098, EX2004, ¶¶15, 311-315, 352-357. None of Mr. Prairie’s experience nor education properly prepared him to opine on these matters.

II. IAN NUHN’S DECALARATION (EX2083) IS INADMISSIBLE

A. Nuhn Necessarily Relies on Hearsay to Establish Market Share.

Ian Nuhn admitted that his market “research” is based on hearsay. EX1116, 227:10-13; Paper 56 at 9. Nuhn attempts to cure this admitted defect by alleging that

his statements are corroborated by his personal knowledge. Paper 56 at 9. Ian Nuhn testified in his deposition that “[he] ha[s]n’t personally seen any new JT [or Puck] Boats in 2023.” EX1116, 227:20-22. But that is not what Ian Nuhn said in his declaration. Instead, Ian Nuhn provided unfounded market share estimates.

Ian Nuhn lacks personal knowledge of the entire market. He fails to show that his market sampling (boats he saw) is reliably extrapolated to the market as a whole, as an expert market analyst would be required to do. Ian Nuhn attempts to bridge this gap with hearsay and rumors: “It would get around.” *Id.*, 227:23-228:5. If Ian Nuhn’s declaration were limited to his personal knowledge, it might only be unreliable, rather than hearsay. But there is a logical leap from “I haven’t personally seen any new JT [or Puck] boats” (*id.*, 227:18-22) to extrapolating across the entire market and claiming: “Puck[] occupies less than 10% of the manure pumping boat market” (EX2083, ¶27). Ian Nuhn cannot rely on hearsay for that purpose.

B. Nuhn Relies on Hearsay from Out-of-Court Individuals to Establish “Skepticism.”

For hearsay purposes, the PTAB distinguishes between individual and industry skepticism. *Ingenico Inc. v. Ioengine, LLC*, IPR2019-00929, Paper 53 at 99-101 (PTAB Sept. 21, 2020). Specifically, the PTAB identifies individuals “giving [their] own opinions” as hearsay. *Id.* Dennis Nuhn clearly was an individual speaking on his own behalf—his hearsay statements contained within Ian Nuhn’s declaration should be excluded.

C. Nuhn Relies on the Hearsay of an Unidentified Service Mechanic.

Ian Nuhn's declaration does not identify the "service mechanic," preventing Bazooka from investigating if the declarant is actually a Stutsman employee, if the statements were made, and if they were within the scope of employment. Regardless of their hearsay status, these statements should be excluded under Rule 403.

D. Nuhn's Characterizations of Its Media Publications Are Improper.

Bazooka's objection is tailored to paragraphs in which Nuhn represents that the publications are "accurate reporting." Paper 53 at 13 (specifically objecting to ¶¶34, 37, 39-40, 42-44 rather than the full range of ¶¶33-51). Here, Nuhn uses out-of-court statements for the truth of the matter asserted, which should be excluded.

III. NUHN IMPROPERLY SUBMITTED NEW ARGUMENTS AND EVIDENCE IN ITS REPLY TO SUPPORT ITS MOTION TO AMEND

Nuhn's additional evidence is "rebuttal evidence" only in the sense that it presents a new alternative argument in support for its motion to amend. But under 37 CFR § 42.121(b), Nuhn should have identified its support for its amendments in its motion to amend—not in various exhibits to its Reply brief.

IV. CONCLUSION

For the reasons provided above, the PTAB should exclude the declarations of Ian Nuhn (EX2083) and Mr. Prairie (EX2004, EX2094, EX2099, EX2106), Nuhn's written description support chart (EX2108), and Nuhn's provisional application comparisons (EX2109-EX2115).

Respectfully submitted,

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CERTIFICATE 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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