

Bazooka-Farmstar, LLC v. Nuhn Industries Ltd.

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

**PETITIONER'S DEMONSTRATIVES
PETITIONER'S MOTION TO EXCLUDE ORAL ARGUMENT
February 13, 2025**



Level of Ordinary Skill in the Art (POSA)



- A POSA would have:

had a bachelor's degree in mechanical engineering or similar field, and two years of professional experience in marine and off-road vehicles. A POSA would have had a working knowledge of fluid pumps and livestock manure. Lack of work experience can be remedied by additional education, and vice versa.

Douglas Prairie Is Not a POSA



- “The Federal Circuit has made clear that, ***[t]o offer expert testimony*** from the perspective of a skilled artisan in a patent case—like for claim construction, validity, or infringement—***a witness must at least have ordinary skill in the art.***”

Nespresso USA, Inc. v. K-Fee Sys. Gmhb, IPR2022-01574, Paper 29 at 21 (PTAB Apr. 10, 2024) (emphasis added).

Douglas Prairie Is Not a POSA



- Mr. Prairie is not a POSA.
 - No marine vehicle experience. Paper 53 at 4-5.
 - No working knowledge of fluid pumps and livestock manure. Paper 53 at 5-8.

Mr. Prairie Lacks Marine Vehicle Experience



- Nuhn admits Mr. Prairie has no professional experience with marine vehicles. Paper 56 at 3.
- Mr. Prairie fails to understand and apply basic marine concepts (i.e. weight distribution on a floating vehicle). *See, e.g.,* EX1174, ¶45.
- No evidence of remedial education.

Mr. Prairie Could Not Define *Structure* of Pump Capable of Pumping Liquid Manure



- Mr. Prairie could not provide pump structure. EX1117, 15:21-30:3, 47:12-52:23.
 - Defined pump by capabilities. EX1117, 18:4-12, 20:14-16.
 - Defined pump by intent, testing, and marketing—not structure. EX1117, 23:1-8, 44:12-45:4.

Ian Nuhn's Declaration Is Inadmissible



- Ian Nuhn's declaration (EX2083) is based on inadmissible hearsay.
- Ian Nuhn testified that he did not perform any market share study or hire an expert to do so. EX1116, 225:14-226:2.
- He relied on hearsay verbal communications with dealers and competitors. EX1116, 227:10-13.

Ian Nuhn's Declaration - Skepticism



- Hearsay statements cannot establish skepticism.
Ingenico Inc. v. Ioengine, LLC, IPR2019-00929, Paper 53 at 99-101 (PTAB Sept. 21, 2020).
- Skepticism from Dennis Nuhn is hearsay. EX2083, ¶¶54-55.
- Skepticism from unidentified “others” is hearsay. EX2083, ¶¶54-60.

Ian Nuhn's Declaration - Copying



- Ian Nuhn's testimony about what an unidentified service mechanic said is hearsay. EX2083, ¶¶74-76.
 - Mechanic did not provide a declaration. Paper 53 at 12.
 - Bazooka has no way to cross examine and determine what the mechanic said. Paper 53 at 11-12.



Ian Nuhn's Declaration - Praise

- Cited media publications are hearsay.
 - Ian Nuhn is not the declarant of these statements. EX2083, ¶¶35, 38, 40-41, and 43-45.
 - Paid publications. EX1116, 199:4-17.
 - Do not fall within any hearsay exception and should be excluded. Paper 53 at 13-14.

Nuhn's "Written Description" Exhibits are Improper



- 37 C.F.R. §§ 42.121(b) requires support for substitute claims in a MTA.
- All arguments and evidence in support of the MTA should be in the motion.
- Nuhn's exhibits (EX2108-EX2115) purport to identify written description support for the MTA.

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PETITIONER'S DEMONSTRATIVES
OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE ORAL ARGUMENT
February 13, 2025



Nuhn's Motion to Exclude Is Improper

- "A motion to exclude is the wrong vehicle to challenge public availability, which is a substantive issue that goes to the sufficiency of the evidence, not to admissibility."

Arista Networks, Inc. v. Cisco Sys., Inc., IPR2016-00303,
Paper 53 at 9 (PTAB May 25, 2017).

Nuhn's Motion to Exclude Is Improper



- Nuhn failed to timely object to Mr. Olofsson's or Mr. Lonnemann's Declarations.
See 37 C.F.R. § 42.64(b)(1).
- Nuhn waived arguments by failing to include them in Patent Owner's Response. *See* Paper 13 at 9.



Mr. Olofsson's Declaration Is Admissible

- Mr. Olofsson was not required to be the draftsman of his declaration.

Pevarello v. Lan, Patent Interference 105,394, 2007 Pat. App. LEXIS 28, 85 U.S.P.Q.2D (BNA) 1771, 1779 (BPAI Jan. 12, 2007).

- Mr. Olofsson testified that he reviewed and agreed with the statements and the exhibits in his declaration. EX1132, 211:18-20, 233:25-234:7.



Mr. Olofsson's Declaration Is Admissible

- Mr. Olofsson testified based on personal knowledge:
 - He worked at Truxor for 30 years. EX1132, 193:9-12.
 - He researched, designed, tested, and supported the Truxor DM5000 product and was familiar with its documentation, marketing, and sales. EX1132, 11:15-12:22, 17:4-19, 196:21-197:9.
 - He was aware that the Truxor DM5000 was the subject of newspaper publications before 2013. EX1132, 139:1-18.



Mr. Olofsson's Declaration Is Admissible

- Mr. Olofsson correctly used Google Search with a custom date range.
See BLD Servs., LLC v. LMK Techs., LLC, IPR2014-00770, Paper 40 at 15-16 (PTAB Nov. 18, 2015).
- Mr. Olofsson understood the qualitative increase in internet traffic to Truxor's website; he was not required to provide quantitative metrics.
EX1008, ¶15; Paper 57 at 6.

Mr. Lonnemann's Declaration Is Admissible



- “[I]t is common for people to want a translator in their dominant language present during depositions because of their binding impact in lawsuits. . . . To suggest that . . . using a translator creates doubt that [the deponent] understood the declaration he signed is ‘offensive, ignorant, and fundamentally unacceptable in civilized society.’”

Int’l Turbine Servs., LLC v. Puerto Quetzal Power, LLC, No. 1:21-cv-1154-DAE, 2024 U.S. Dist. LEXIS 109007, at *6 (W.D. Tex. June 20, 2024).

Mr. Lonnemann's Declaration Is Admissible



- Mr. Lonnemann sufficiently understands English to understand and execute his declaration.

So I can speak English very well with my own words. But if I have to look in this situation, there are six people in my screen, I'm first time in America, . . . [Y]ou have a little bit of dialect. So if you're the main speaker, and so it's very difficult for me to understand it. I'm very happy to hear the translation.

EX1131, 204:22-205:5; *see* EX1131, 24:7-19, 205:22-206:22.

Mr. Lonnemann's Declaration Is Admissible



- There is no relevant distinction between “manure” and “shit.” EX1073, ¶32; EX1120, ¶14; EX1110, ¶¶150-153
- Mr. Lonnemann understood and testified about the public use of the SenwaTec Amphi-King vehicle, including in “manure” or “shit.” EX1131, 36:20-37:2, 152:21-153:3, 154:20-155:8, 200:11-201:9; Paper 57 at 9-10.

Mr. Lonnemann's Declaration Is Admissible



- Mr. Lonnemann's German-language supplemental declaration (EX1179-EX1180) matches his original English declaration (EX1013).
- Mr. Lonnemann understood his testimony.

Statements of Public Use Are Relevant to Nuhn's Pending Motion to Amend



- “The PTAB correctly concluded that it is not limited by § 311(b) in its review of proposed substitute claims in an IPR The determination is supported by the text, structure, and history of the IPR Statutes, which indicate Congress’s unambiguous intent to permit the PTAB to review proposed substitute claims more broadly than those bases provided in § 311(b).”

Uniloc 2017 LLC v. Hulu, LLC, 966 F.3d 1295, 1304 (Fed. Cir. 2020).



Nuhn's POSA Definition Is Wrong

- Unpersuasive to “attempt[to constrict the ‘pertinent art,’ i.e., the pertinent technology, to a particular subset of individuals who use the pertinent technology, rather than the pertinent technology itself.”
 - *CaptionCall, LLC v. Ultratec, Inc.*, IPR2013-00549, Paper 71 at 11 (PTAB Mar. 3, 2015)
- Nuhn needlessly restricts POSA definition to “two years of experience designing agricultural equipment and knowledge of manure agitation equipment.” Paper 54 at 12-13.
 - ‘835 Patent Title and Abstract does not mention “manure.” EX1001, 1.
 - Pertinent art includes fluid pumps and fluid mechanic systems. Paper 57 at 12.
- PTAB ***already rejected Nuhn’s definition.***

Dr. Winkel Is a POSA



- Dr. Winkel has extensive experience with marine vehicles and fluid mechanics. EX1003; Paper 57 at 13-15.
 - Publications and presentations on fluid mechanics. EX1003.
 - Experience with pumps. EX1004.
- Dr. Winkel even meets Nuhn's rejected definition. EX1004, ¶¶7-9; Paper 57 at 14.