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. IPR2024-00098
U.S. Patent No. 11,541,708

PATENT OWNER'S OBJECTION TO EVIDENCE UNDER 37 C.F.R. § 42.64, RE: PETITIONER'S UNOPPOSED MOTION TO FILE SUPPLEMENTAL INFORMATION PURSUANT TO 37 C.F.R. § 42.123(A)

Patent Owner Nuhn Industries Ltd. ("Nuhn") objects under 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence ("FRE") to the *admissibility* of Exhibits A-F submitted by Petitioner Bazooka-Farmstar, LLC ("Bazooka") with Petitioner's Unopposed Motion to File Supplemental Information Pursuant to 37 C.F.R. § 42.123(a) ("Petitioner's Motion", Paper 15). Patent Owner did not contest Petitioner's Motion because Patent Owner does not dispute the timing of Petitioner's Motion or the purported relevancy of Exhibits A-G. *See e.g.*, C.F.R. § 42.123(a). However, the Patent Owner does object to the *admissibility* of Exhibits A-G attached to Petitioner's Motion pursuant to 37 C.F.R. § 42.61 (Admissibility), 37 C.F.R. § 42.64 (Objection; motion to exclude), 37 C.F.R. § 42.2 (Definitions, Affidavit), 37 C.F.R. § 42.53 (Taking testimony), 37 C.F.R. § 42.63 (Form of evidence), 37 C.F.R. § 1.52(b)(1)(ii), and/or 28 U.S.C. § 1746 and/or one or more of: FRE 403, 602, 701-703, 705, 801-803, 901-902, and 1002-1003.

Petitioner's Motion, including Exhibits A-G attached thereto, was first served on Patent Owner in this IPR on July 15, 2024. *See e.g.*, Paper 15, 7. Patent Owner's objections, as set forth below, are timely because this Paper has been filed within five (5) business days of Patent Owner first being served in this proceeding with the supplemental information following institution of trial. *See* 37 C.F.R. § 42.64(b)(1) and Paper 11. Patent Owner serves Petitioner with these Objections to provide notice that Patent Owner will move to exclude Exhibits A-G that are

attached to Petitioner's Motion, and that are more specifically described as: a certified translation of the video of EX1031 (Ex. A), a German newspaper article with an accompanying certified translation (Exs. B-C), a magazine article (Ex. D), a journal article (Ex. E), the declaration of Eckhard Funck with an accompanying certified translation (Ex. F), and the declaration of Reinhard Speerschneider with an accompanying certified translation (Ex. G). *See* Petitioner's Motion, Exs. A-G.

I. INTRODUCTION

Petitioner's Motion states that Bazooka "moves to file supplemental information relating to the ability of the vehicles described in the Truxor (EX1006) and SenwaTec (EX1012) prior art references to pump liquid manure, and confirming the public availability of EX1027." Paper 15, 1. Moreover, Petitioner's Motion states that Exhibits A-G are "directed to a POSA's understanding of the capability of the dredging pumps described in the Truxor and SenwaTec references to pump liquid manure. . ." (Paper 15, 3) and "reinforces the public availability of EX1031, which Patent Owner has put at issue in the proceeding" (Paper 15, 3). Petitioner's Motion attempts to offer into evidence Exhibits A-G with the intention to prove the truth that (1) EX1012 was publicly available and (2) to prove that the vehicles described in the Truxor (EX1006) and SenwaTec (EX1012) prior art references in fact pumped liquid manure. *See e.g.*, FRE 801(c)(2).

II. OBJECTIONS

Patent Owner objects to the admissibility of Exhibits A-D and F-G under to one or more of the following objections:

(1) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.63(d)(1)(ii), Exhibits A-G are not properly numbered;

(2) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 1002, None of the Exhibits A-D and F-G are originals;

(3) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 1003, Exhibits A-D and F-G are not true and accurate copies or translations of the original;

(4) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 403, Exhibits A-D and F-G are duplicative and/or likely to confuse the issues at trial;

(5) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 901, Exhibits A-D and F-G are produced without any admissible evidence establishing each respective Exhibit is what it purports to be and, in fact, are produced with no evidence explaining what each exhibit is;

(6) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 1.52(b)(1)(ii);

(1) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.63(b);

(2) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b), and 28 U.S.C. § 1746 because each Translation Declaration contained in Exhibits A-D and F-G fails to recite the requisite declaration under 28 U.S.C. § 1746(1);

(3) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b), 28 U.S.C. § 1746 and/or FRE 603 because each Translation Declaration contained in Exhibits A-D and F-G fails to recite the requisite declaration under 28 U.S.C. § 1746(1);

(4) 37 C.F.R. § 42.61, 37 C.F.R. § 42.53 because the Translation Declarations contained in Exhibits A-D and F-G is not an Affidavit, as defined under 37 C.F.R. § 42.2;

(5) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 802, because the Translation Declarations contained in Exhibits A-D and F-G and the respective translated evidence is hearsay evidence;

(6) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 803(6)(d), FRE 902(12), because the Translation Declaration does not contain a proper oath;

(7) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 701, because each Translation Declaration and Translations requires specialized knowledge within the scope of FRE 702;

(8) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 702 because each Translation Declaration does not qualify the translator as having sufficient qualifications to act as a translator;

(9) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 703 because each Translation Declaration fails to identify the facts, data or information that the translator relies on in making the purported translation;

(10) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 603 because the respective Declarations do not contain the oath required under FRE 902(12);

(11) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 802, because the respective Declarations are hearsay evidence;

(12) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 803(6)(d), FRE 902(12), because the respective Declarations do not contain the oath required under FRE 902(12);

(13) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 701, because the respective Declarations contains averments that purport to require specialized knowledge within the scope of FRE 702;

(14) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 702 because the respective Declaration do not qualify the Declarant as an expert

having expert knowledge, skill, experience, training, or education to qualify himself as an expert; and/or

(15) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 703 because the respective Declarations do not sufficiently identify the facts, data or information relied on in forming the averments contained within the same.

Dated: July 22, 2024

Respectfully submitted,

By: /James B. Luchsinger/

James B. Luchsinger, Reg. 73,705
HARNESS, DICKEY & 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, DICKEY & PIERCE, P.L.C.
7700 Bonhomme Ave., Suite 400
St. Louis, MO 63105
Phone: 314-726-7500
Fax: 314-726-7501
mcutler@harnessip.com

Scott E. Yackey, Reg. No. 73,301
HARNESS, DICKEY & PIERCE, P.L.C.
2801 Network Boulevard, Suite 600
Frisco, TX 75034
Phone: 469-777-5400

email: syackey@harnessip.com

Attorneys for Nuhn Industries Ltd.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 22nd day of July 2024, a true and correct copy of the foregoing **PATENT OWNER'S OBJECTION TO EVIDENCE UNER 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
HARNESS, DICKEY & PIERCE, P.L.C.