

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 NOTICE TO PETITIONER OF IMPROPER
SERVICE OF PURPORTED SUPPLEMENTAL EVIDENCE, AND IN THE
ALTERNATIVE, OBJECTION TO EVIDENCE
UNDER 37 C.F.R. § 42.64, RE: PURPORTED SUPPLEMENTAL
EVIDENCE SUBMITTED PURSUANT TO 37 C.F.R. § 42.64(b)(2)**

On August 5, 2024, counsel for Petitioner sent counsel for Patent Owner an email, attached hereto as Exhibit A, enclosing a Supplemental Declaration of Eckhard Funck (English), Supplemental Declaration of Eckhard Funck (German), and the Supplemental Translation Declaration of Ute Von Wietersheim (collectively “purported supplemental evidence”). In view of this email, Patent Owner Nuhn Industries Ltd. (“Nuhn”) files this Paper, *Patent Owner’s Notice To Petitioner Of Improper Service Of Purported Supplemental Evidence, And In The Alternative, Objection To Evidence Under 37 C.F.R. § 42.64, Re: Purported Supplemental Evidence Submitted Pursuant To 37 C.F.R. § 42.64(B)(2)*.

Petitioner’s email of August 5, 2024 purporting to “serve” the purported supplemental evidence is wholly improper and ineffective. The parties do not have a stipulation for electronic service in this IPR and counsel for Patent Owner did not receive the purported supplemental evidence via priority Mail Express® mail or like mail, so service by electronic means was not authorized pursuant to 37 C.F.R. § 42.6(e)(1) and (3), and in fact improper. In addition, Petitioner did not file the requisite Certificate of Service for the purported supplemental evidence so Petitioner has failed to effectuate service and make the purported supplemental evidence of record in this IPR. *See 37 C.F.R. § 42.6(e)(4)(ii)*.

In view of Petitioner’s improper service, Petitioner failed to timely serve its purported supplemental evidence pursuant to 37 C.F.R. § 42.64(b)(2). For this

reason alone, Petitioner's purported supplemental evidence shall not be evidence in this IPR. In addition, and in view of Petitioner's failure to file a Certificate of Service for the purported supplemental evidence, Petitioner's purported supplemental evidence is not of record or evidence in this IPR. In view of these deficiencies, Petitioner's purported supplemental evidence is not and cannot be made of record in this proceeding. In this Paper, Patent Owner provides notice to Petitioner of its deficient service and filing of its purported supplemental evidence.

Patent Owner also objects under 37 C.F.R. § 42.61, 37 C.F.R. § 42.64(b)(1) and/or the Federal Rules of Evidence ("FRE") to the admissibility of Petitioner's purported supplemental evidence identified in Petitioner's email dated August 5, 2024. Patent Owner makes the following objections to the purported supplemental evidence solely to preserve its rights pursuant to 37 C.F.R. § 42.64(b)(1):

I. OBJECTIONS

Patent Owner objects to the admissibility of Petitioner's Supplemental Declaration of Eckhard Funck (English), Supplemental Declaration of Eckhard Funck (German), and the Supplemental Translation Declaration of Ute Von Wietersheim under to one or more of the following objections:

- (1) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.6(e)(1) and (3), the purported supplemental evidence was not properly served;

- (2) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.6(e)(4)(ii), the purported supplemental evidence was not filed in this proceeding;
- (3) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.63(d)(1)(ii), the purported evidence is not properly numbered;
- (4) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 1002, none of the purported evidence is an original;
- (5) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 1003, the purported evidence does not contain true and accurate copies or translations of the originals;
- (6) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 403 or FRE 603, the purported evidence is duplicative and/or likely to confuse the issues at trial;
- (7) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 901, the purported evidence is 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;
- (8) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 1.52(b)(1)(ii);
- (9) 37 C.F.R. § 42.61(a) and 37 C.F.R. § 42.63(b);

- (10) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b), and 28 U.S.C. § 1746
because the purported evidence fails to recite the requisite
declaration under 28 U.S.C. § 1746(1);
- (11) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b), 28 U.S.C. § 1746
and/or FRE 603 because the purported evidence fails to recite the
requisite declaration under 28 U.S.C. § 1746(1);
- (12) 37 C.F.R. § 42.61, 37 C.F.R. § 42.53 because the purported
evidence does not satisfy the requirements for an Affidavit as
defined under 37 C.F.R. § 42.2;
- (13) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 802, because
the purported evidence is hearsay evidence;
- (14) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 803(6)(d),
FRE 902(12), because the purported evidence does not contain a
proper oath;
- (15) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 701, because
the respective purported evidence contains averments that purport
to require specialized knowledge within the scope of FRE 702;
- (16) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 702 because
the respective purported evidence does not qualify the Declarant as

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

- (17) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.63(b) and FRE 703 because the respective purported evidence does not sufficiently identify the facts, data or information relied on in forming the averments contained within the same;
- (18) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a) and FRE 802, because the respective purported evidence is hearsay evidence; or,
- (19) 37 C.F.R. § 42.61(a), 37 C.F.R. § 42.62(a), and FRE 803(6)(d), FRE 902(12), because the purported evidence does not contain the oath required under FRE 902(12).

Dated: August 12, 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

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

Fax: 314-726-7501
mcutler@harnessip.com

Scott E. Yackey, Reg. No. 73,301
HARNESS, DICKY & 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 12th day of August 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
HARNESS, DICKEY & PIERCE, P.L.C.

EXHIBIT A

From: [Taylor R. Stemler](#)
To: [Luchsinger, J. Bradley](#); [Cutler, Matthew](#); [Yackey, Scott](#)
Cc: [Jeremy Miller](#); [Tom Leach](#); [Robert A. Kalinsky](#); [Jeffrey Blake](#); [Michael Erbele](#); [Jeremy Miller](#); [{F6096799}.Active@ef.merchantgould.com](#)
Subject: FW: Bazooka-Farmstar v. Nuhn Industries, IPR2024-00098 | 37 CFR § 42.64(b)(2) Supplemental Evidence [IMAN-DB1.FID6096799]
Date: Monday, August 5, 2024 11:08:51 AM
Attachments: [Supplemental Funck Declaration \(English\).pdf](#)
[Supplemental Funck Declaration \(German\).pdf](#)
[Supplemental Wietersheim Declaration.pdf](#)

EXTERNAL EMAIL - USE CAUTION

Counsel,

Pursuant to 37 CFR § 42.64(b)(2), Petitioner serves the following documents as supplemental evidence.

- Supplemental Declaration of Eckhard Funck (German and English copies)
- Supplemental Declaration of Ute von Wietersheim

Best regards,

Taylor

Taylor R. Stemler

Attorney
Merchant & Gould P.C.
150 South Fifth Street
Suite 2200
Minneapolis, MN 55402-4247
USA

Telephone (612) 371-5215

Fax (612) 332-9081

merchantgould.com

GUARDIANS OF GREAT IDEAS®

Note: This email message is confidential and may be privileged or otherwise protected by law. If you are not the intended recipient, please: (1) reply via email to the sender; (2) destroy this communication entirely, including deletion of all associated text files from all individual and network storage devices; and (3) refrain from copying or disseminating this communication by any means whatsoever. Operating as Merchant & Gould, LLP, in California.

Please consider the environment before printing this email. Thank you.