

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GODBERSEN-SMITH CONSTRUCTION COMPANY
d/b/a/ GOMACO CORPORATION
Petitioner

v.

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
Patent Owner

Case IPR2024-00835
Patent No. 11,535,318

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner submits the following objections to certain exhibits submitted by Patent Owner. Petitioner's objections apply equally to Patent Owner's reliance on these exhibits in any previously filed or subsequently filed documents. These objections are timely, having been filed within five business days of service of evidence to which the objections are directed. Petitioner objects to the following exhibits:

Exhibit No.	Description
2013	Email correspondence between J. Dahlinger and D. Pope, dated July 14, 2009, FILED UNDER SEAL
2014	Heavy Equipment Guide Webpage, "New S600 Slipform Paver The Multi-Tool Every Paving Contractor Needs," dated November 22, 2010, available at https://www.heavyequipmentguide.ca/article/15235/new-s600-slipform-paver
2015	Declaration of Kenneth "Mark" Bryden in Support of Patent Owner's Response, FILED UNDER SEAL
2016	Declaration of Ronald M. Guntert, Jr. in Support of Patent Owner's Response
2017	Gomaco Brochure, "Commander III Trimmer Slipform Paver," dated 2008
2018	Caterpillar Brochure, "PM102 Cold Planer," dated 2007
2019	Guntert & Zimmerman Brochure, "S600 Multi-Purpose Slipform Paver"
2020	Caterpillar Sale Sheet, "PM102 Cold Planer," dated 2011
2021	Guntert & Zimmerman Newsletter, "Construction Profiles," dated Fall 2010
2022	Declaration of Todd Greenwood in Support of Patent Owner's Response, <i>Godbersen-Smith Construction Company d/b/a Gomaco Corporation v. Guntert & Zimmerman Const. Div., Inc.</i> , Case No. IPR2020-01698, dated July 22, 2021
2023	Iron Planet Webpage, "2011 Cat PM-102 Tracked Cold Planer," dated February 25, 2025, available at

	https://www.ironplanet.com/for-sale/Cold-Planers-2011-Cat-PM-102-Tracked-Cold-Planer-Louisiana/12143308
2024	Email correspondence between J. Dahlinger and A. Moser, dated June 24, 2009, FILED UNDER SEAL
2025	Guntert & Zimmerman Newsletter, “Construction Profiles,” dated Spring 2011
2026	Masonry Webpage, “CONEXPO-CON/AGG & IFPE 2011 a Huge Success,” dated February 10, 2025, available at https://www.masonrymagazine.com/Default?pageID=4818
2027	CONEXPO-CON/AGG Webpage, “CONEXPO-CON/AGG 2026: International Construction Trade Show,” dated February 10, 2025, available at https://www.conexpoconagg.com
2028	Gomaco Press Release, “GOMACO Introduces the GP-2400, the New Economical Slipform Paver,” dated February 14, 2025, available at https://www.gomaco.com/resources/pressreleases/pressreleases_2400.html
2029	Gomaco Brochure, “New GP3 Slipform Paver” (2016)
2030	Machinery Trader Webpage, “2015 Caterpillar PM-102 for Sale in Seoul, Seoul” dated February 25, 2025, available at https://www.machinerytrader.com/listing/forsale/237424645/2015-caterpillar-pm-102-wheel-cold-planersasphalt-equipment
2031	Spreadsheet – Guntert & Zimmerman Pavers and Swing Leg Sales, FILED UNDER SEAL
2032	Machinio Webpage, “2011 Caterpillar PM 102 in Malsch, Germany,” dated February 25, 2025, available at https://www.machinio.com/listings/96208521-2011-caterpillarp-102-in-malsch-germany
2033	Caterpillar Specification Log, “PM102 Cold Planer,” dated 2015
2035	Guntert & Zimmerman / Miller Formless – Industry Analysis for Fiscal Year 2015, by Lieven Van Broekhoven, dated July 30, 2021, FILED UNDER SEAL
2036	The Global Paving Industry Report by Lieven Van Broekhoven, dated July 30, 2021, FILED UNDER SEAL
2037	Gomaco Brochure, “GT-3200 Trimmer Slipform Paver,” dated 2018
2038	Guntert & Zimmerman Webpage, “S600 Slipform Paver Gallery,”

	dated February 25, 2025, available at https://www.guntert.com/products/hwyair/s600gallery.html
2039	Guntert & Zimmerman Brochure, “S600 Multi-Purpose Slipform Paver”
2040	Screenshots of Guntert & Zimmerman video, “S600 Slipform Paver: 90 Degree Steering Feature,” available at https://www.youtube.com/watch?v=wEtMOGdBqbl
2041	Guntert & Zimmerman Operating & Maintenance Manual, “S600 Slipform Paver,” FILED UNDER SEAL
2042	Guntert & Zimmerman Brochure, “Construction Profiles,” dated Winter 2017
2043	CON EXPO-CON/AGG Webpage, “5 Questions to Ask When Purchasing a Concrete Paver,” dated February 10, 2025, available at https://www.conexpoconagg.com/news/5-questions-to-askwhen-purchasing-a-concrete-pave
2044	Guntert & Zimmerman Webpage, “Patents,” dated January 22, 2024, available at https://www.guntert.com/patents.html
2045	Gomaco World Brochure, “The New GP3: The World’s Most Intelligent Paver,” Vol. 44, No. 1, dated 2016
2046	Gomaco Webpage, “GP3 Slipform Paver,” dated February 25, 2025, available at https://www.gomaco.com/resources/gp3_paver.html
2050	World Highways Webpage, “Innovations in concrete paving with new technology,” dated June 22, 2016, available at https://www.globalhighways.com/wh4/feature/innovationsconcrete-paving-new-technology
2051	Construction Equipment Guide Webpage, “W 250 Heads Lineup of Wirtgen Cold Mills,” dated April 6, 2011, available at https://www.constructionequipmentguide.com/w-250-headslineup-of-wirtgen-cold-mills/15954
2052	Construction Week Webpage, “Wirtgen to premier new paving range in Las Vegas,” dated December 19, 2016, available at https://www.constructionweekonline.com/productsservices/article-42322-wirtgen-to-premier-new-paving-range-inlas-vegas
2053	Wirtgen Brochure, “Slipform Pavers SP 61i SP 62i SP 64i”
2054	Global Highways Webpage, “Concrete paving for key Interstate link in South Carolina,” dated November 15, 2013, available at https://www.globalhighways.com/wh1/wh4/feature/concretepaving-key-interstate-link-south-carolina

2055	World Highways Webpage, “Repairing concrete roads using new technology,” dated July 28, 2015, available at https://www.worldhighways.com/wh4/feature/repairing-concreteroads-using-new-technology
------	--

Exhibits 2013 and 2024

Petitioner objects to Exhibits 2013 and 2024 under Federal Rule of Evidence (“FRE”) 802 as inadmissible hearsay and under FRE 901 as lacking evidence of authentication.

Exhibits 2014, 2026, 2027, 2040, and 2050-2055

Petitioner objects to Exhibits 2014, 2026, 2027, 2040, and 2050-2055 under FRE 802 as inadmissible hearsay.

Exhibit 2015

Petitioner objects to Exhibit 2015 under FRE 702 as failing to offer the opinion of an expert with requisite scientific, technical, or specialized knowledge. Patent Owner adopts Petitioner’s definition for a person of ordinary skill in the art (“POSITA”) (see Ex. 2015 ¶ 14), but does not demonstrate that Dr. Bryden is qualified to provide relevant testimony from the perspective of a POSITA. As an example, the parties agree that a POSITA would have “at least two years of experience designing, developing, or operating heavy machinery, including their components and control systems,” but Exhibit 2015 does not show that Dr. Bryden’s experience as a supervisor at Westinghouse Electric Corporation or as a

founder of software companies is related to this definition. *Compare id.* ¶¶ 5-6, 14 with Ex. 1002 ¶¶ 8-16, 21-26 (declaration of Petitioner's technical expert demonstrating his experience with heavy machinery and applying this experience to the definition of a POSITA).

For similar reasons, Petitioner objects to Exhibit 2015 under FRE 702 as not being the product of reliable principles and methods. In Exhibit 2015, Dr. Bryden offers opinions on claim construction, disclosures in the prior art, and industry expectations without demonstrating Dr. Bryden's experience allows him to reliably opine on these issues or providing the underlying evidence to support those opinions. *See* Ex. 2015, Sections VIII-XI.

Petitioner further objects to Exhibit 2015 under FRE 802 as inadmissible hearsay if Patent Owner does not make Dr. Bryden available for a deposition in this proceeding.

Exhibit 2016

Petitioner objects to Exhibit 2016 under FRE 701 as improperly attempting to offer expert testimony from a lay witness. As an example, Mr. Guntert discusses the technical characteristics of slew drives and jacking columns and his lay view of the technical feasibility of using these in specific contexts. *See, e.g.,* Ex. 2016 ¶¶ 13-16.

To the extent Exhibit 2016 attempts to provide factual testimony, such as testimony regarding trends in the industry or sales, Petitioner objects to Exhibit 2016 under FRE 401-403 as being prejudicial, confusing, or a waste of time because the testimony is conclusory, the provided information is incomplete, and the information is not corroborated by evidence. *See, e.g.*, Ex. 2016 ¶¶ 4-5, 17-19.

Petitioner further objects to Exhibit 2016 under FRE 401-403 as being prejudicial, confusing, or a waste of time because of the witness's bias. The bias alone is sufficient to render the testimony inadmissible, but the bias issue is particularly acute here due to the lack of supporting evidence to corroborate the testimony.

Exhibits 2017, 2028, 2029, 2037, 2045, and 2046

Petitioner objects to Exhibits 2017, 2028, 2029, 2037, 2045, and 2046 under FRE 401-403 as prejudicial, confusing, or a waste of time. These exhibits discuss Gomaco products that are not relevant to this proceeding.

Exhibits 2018, 2020, 2023, 2030, 2032, and 2033

Petitioner objects to Exhibits 2018, 2020, 2023, 2030, 2032, and 2033 under FRE 401-403 as being prejudicial, confusing, or a waste of time. These exhibits discuss Caterpillar products that are not relevant to this proceeding.

Exhibits 2019, 2021, 2025, 2031, 2038, 2039, 2041, 2042, and 2044

Petitioner objects to Exhibits 2019, 2021, 2025, 2031, 2038, 2039, 2041, 2042, and 2044 under FRE 802 as inadmissible hearsay.

Exhibit 2022

Petitioner objects to Exhibit 2022 under FRE 802 as inadmissible hearsay if Patent Owner does not make Todd Greenwood available for a deposition in this proceeding.

Exhibits 2035 and 2036

Petitioner objects to Exhibits 2035 and 2036 under FRE 701 as improperly attempting to offer expert testimony from a lay witness. Exhibits 2035 and 2036 are concrete paver market share reports prepared by Lieven Van Broekhoven, apparently based on his personal knowledge. Mr. Van Broekhoven provided no information regarding where he obtained the information or how he is qualified to provide or evaluate it.

Petitioner further objects to Exhibits 2035 and 2036 under FRE 401-403 as being prejudicial, confusing, or a waste of time, since Mr. Van Broekhoven has provided no support for how he is qualified to provide and evaluate the unsubstantiated data in the report.

Petitioner further objects to Exhibits 2035 and 2036 under FRE 802 as inadmissible hearsay if Patent Owner does not make Lieven Van Broekhoven available for a deposition in this proceeding.

Exhibit 2043

Petitioner objects to Exhibit 2043 under FRE 401-403 as being prejudicial, confusing, or a waste of time. This exhibit purportedly provides support for an industry need prior to the alleged invention (see Paper No. 18, page 62) but is dated after the alleged invention.

Respectfully submitted,

Dated: March 5, 2025

By: /Jason Stach/

Jason Stach, Lead Counsel
Reg. No. 54,464

*Counsel for Petitioner Godbersen-
Smith Construction Company d/b/a/
GOMACO Corporation*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner's Objections to Patent Owner's Exhibits** was served on March 5, 2025. The parties have agreed that filing with the Board through the PTAB's P-TACTS system constitutes electronic service on Patent Owner, and Petitioner filed the documents via the PTAB's P-TACTS system. Accordingly, Petitioner electronically served Patent Owner's counsel of record, including James Hannah, Jeffrey H. Price, and Jenna Fuller.

Dated: March 5, 2025

By: /Lisa C. Hines/
Lisa C. Hines
Case Manager

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP