UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Kubota North America Corporation,

Petitioner

v.

Vermeer Manufacturing Company,

Patent Owner

IPR2025-00167 (U.S. Patent No. 9,321,386)

PETITIONER'S EVIDENTIARY OBJECTIONS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Kubota North America Corporation ("Petitioner") hereby objects to Exhibits 2016, 2026, 2028-2032 and to statements in the Patent Owner's Response to Petition for *Inter Partes* Review of U.S. Patent No. 9,321,386 ("PO Response"), which was dated September 3rd, 2025 and filed with the Board and served on Petitioner on September 4th, 2025.

- **EXHIBIT 2016**

Patent Owner describes Exhibit 2016 as "Declaration of Mark Fleming, Ph.D., P.E. In Support of Patent Owner's Response to Petition For *Inter Partes* Review of U.S. Patent No. 9,321,386." Petitioner objects to Exhibit 2016 under Federal Rules of Evidence (FRE) 403, 702, and 801-807. Petitioner objects to Exhibit 2016 under FRE 702 to the extent Dr. Fleming's testimony is not based on sufficient facts or data, is the product of unreliable principles and methods, and/or reflects an unreliable application of the principles and methods to the facts of this dispute. Petitioner also objects to Exhibit 2016 under FRE 403 as being unfairly prejudicial, misleading, and confusing the issues. Patent Owner objects to Exhibit 2016 under FRE 801-807 as inadmissible hearsay or containing inadmissible hearsay to the extent Dr. Fleming relies on inadmissible hearsay statements to prove the truth of the matter asserted therein including citations to and reliance on inadmissible hearsay in EX1029, EX1030, EX1031.

- **EXHIBIT 2026**

Petitioner objects to Exhibit 2026 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2026 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2026 because Patent Owner has not produced evidence

sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2026.

- **EXHIBIT 2028**

Petitioner objects to Exhibit 2028 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2028 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2028 because Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2028.

- **EXHIBIT 2029**

Petitioner objects to Exhibit 2029 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2029 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2029 because Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2029.

- **EXHIBIT 2030**

Petitioner objects to Exhibit 2030 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2030 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2030 because Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with

personal knowledge as to the authenticity of Exhibit 2030.

- **EXHIBIT 2031**

Petitioner objects to Exhibit 2031 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2031 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2031 because Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2031.

- **EXHIBIT 2032**

Petitioner objects to Exhibit 2032 under FRE 801-807 as it is hearsay offered for the truth of the matter asserted and not subject to a hearsay exception. Petitioner objects to Exhibit 2032 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2032 because Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The declaration at Exhibit 2037 is insufficient as it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2032.

- **Paper 22, Patent Owner's Response (Paper 23 Redacted Version)**

Petitioner objects to PO Response under FRE 801-807 to the extent the PO Response relies upon inadmissible hearsay or contains inadmissible hearsay including in "VIII. Secondary Indicia of Non-Obviousness" spanning pages 62-81. The PO Response is objected to, to the extent it contains or relies upon, including through Dr. Fleming or otherwise, out-of-court statements, including multi-level hearsay statements, that are offered for the truth of the matter asserted and not subject to a hearsay exception.

Petitioner's objections include those statements in the PO Response that rely

on, through Dr. Fleming or otherwise, portions of EX1029, EX1030, EX1031 that are offered for the truth of the matter asserted. *See*, *e.g.*, PO Response reliance on EX1029 including pages 34, 74, 121, 142, 171-187; EX1030 including pages 35-57, 128, 301-303, 632; EX1031 including pages 16, 30-56, 46; testimony (*e.g.*, M. Hutchinson, L. Hartke, N. Borenstein, Kuemper); documents not of record (e.g., documents identified as "TORO-000[*]", "Toro Project Risk and Risk Management Plan," "Toro's 2015 Annual Statement"), to the extent they contain hearsay, including multi-level hearsay, and are offered by the PO Response for the truth of the matter asserted. FRE 703 does not permit Patent Owner, or its expert, Dr. Fleming, to repackage inadmissible hearsay as case-specific facts, and then present these inadmissible "facts" to the Board.

Petitioner also objects to the PO Response including "Section VIII. Secondary Indicia of Non-Obviousness" spanning pages 62-81 under FRE 403, 602, 701, 702, 901, and 902. Petitioner objects to statements in the PO Response referring to and/or relying on documents (e.g., "TORO-000[*]" identified documents, "Toro Project Risk and Risk Management Plan," "Toro's 2015 Annual Statement") and/or testimony individuals (e.g., M. Hutchinson, L. Hartke, N. Borenstein, Kuemper) (not themselves of record in the present proceeding) discussed in EX1029, EX1030, EX1031 because Patent Owner has not produced evidence sufficient to support a finding that the referenced documents or testimony are what Patent Owner claims they are under FRE 901. And the documents and/or testimony are not self-authenticating under FRE 902. Petitioner objects to statements in the PO Response relying on documents and/or testimony (not themselves of record in the present proceeding including those identified previously) discussed in EX1029, EX1030, EX1031 to the extent that the references are inaccurate or misleading under FRE 403. Petitioner objects to statements in the PO Response relying on testimony of

certain individuals (*e.g.*, M. Hutchinson, L. Hartke, N. Borenstein, Kuemper) discussed in EX1029, EX1030, EX1031 because Patent Owner has not produced evidence sufficient to support a finding that the referenced witness has personal knowledge and/or provides an opinion rationally based on the witness's perception under FRE 602, 701 and/or a produced evidence showing a witness is qualified as an expert providing testimony that is based on sufficient facts or data, is the product of unreliable principles and methods, and/or reflects an unreliable application of the principles and methods to the facts of this dispute based on sufficient facts or data, product of reliance principles and methods under FRE 702.

The Patent Owner served its PO's Response on Petitioner on September 4th, 2025. Therefore, Petitioner's Objections to Evidence are timely under 37 C.F.R. § 42.64(b)(1).

Respectfully submitted,

/David O'Dell/

Dated: September 9, 2025

David M. O'Dell
Lead Counsel for Petitioner
Registration No. 42,044

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e), service was made on Patent Owner as detailed below.

Date of service September 9, 2025

Manner of service Electronic Mail: rbrophy@atllp.com
mvandertuig@atllp.com;
mvandermolen@atllp.com

Documents served **Petitioner's Evidentiary Objections**

Persons served Richard L. Brophy
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
Saint Louis, Missouri 63105

Marc Vander Tuig
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
Saint Louis, Missouri 63105

Michael J. Vander Molen
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
Saint Louis, Missouri 63105

/David O'Dell/
David M. O'Dell
Lead Counsel for Petitioner
Registration No. 42,044