

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 PGR2024-00026
U.S. Patent No. 11,772,723

**PATENT OWNER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Patent Owner Guntert & Zimmerman Const. Div., Inc. (“G&Z” or “Patent Owner”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Petitioner Godbersen-Smith Construction Company d/b/a Gomaco Corporation (“Gomaco” or “Petitioner”) in its Petition for Post Grant Review. *See* Paper No. 1. Trial was instituted on November 14, 2024. *See* Paper No. 11. Thus, Patent Owner’s objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner will move to exclude the below identified exhibits as improper evidence.

I. PETITIONER’S EVIDENCE

A. Declaration of William Singhose (Ex. 1002)

Patent Owner objects to the admissibility of the Declaration of William Singhose (the “Singhose Declaration”) for at least the following reasons:

- Dr. Singhose’s opinions in the Singhose Declaration are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. In addition, Dr. Singhose is unqualified as an expert to provide technical opinions of a person skilled in the art. *See e.g.*, Ex. 1003 (CV of William Singhose). Therefore, William Singhose’s opinions are inadmissible under Federal Rules of Evidence (“FRE”) 702.

- The Singhose Declaration does not introduce evidence of Dr. Singhose’s personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under FRE 602.
- The Singhose Declaration is hearsay under FRE 801 and does not fall within a hearsay exception under FRE 802 or FRE 803.
- Dr. Singhose’s opinions in the Singhose Declaration are not relevant under FRE 401 and are inadmissible under FRE 402. Further, Dr. Singhose’s opinions are confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore are inadmissible under FRE 403.

For at least these reasons, the Singhose Declaration is inadmissible under FRE 401-403, 602, 702, and 801-803.

B. Various Exhibits and Publications

Patent Owner objects to the admissibility of the following exhibits for at least the following reasons:

Ex. 1005	Commander III New Generation Trimmer/Paver Operator/Service Manual G21 Controls (“CIII”)
Ex. 1010	GT-3200 Trimmer/Slipform Paver (“GT-3200”)
Ex. 1018	Robert L. Norton, <i>Machine Design An Integrated Approach</i> , (3. Ed. 2006)

Ex. 1019	Erik Oberg et al., <i>Machinery's Handbook</i> 25 (25th ed. 1996)
Ex. 1030	Declaration of Shari Simmons
Ex. 1031	Disclosure of Preliminary Claim Constructions and Extrinsic Evidence, <i>Guntert & Zimmerman Const. Div., Inc. v. GOMACO Corp.</i> , Case No. 5:20-cv-4007-CJW-KEM (N.D. Iowa Sept. 15, 2020)
Ex. 1032	Deposition Transcript of Kenneth Mark Bryden, Ph.D., <i>Guntert & Zimmerman Const. Div., Inc. v. GOMACO Corp.</i> , Case No. 5:20-cv-4007-CJW-KEM (N.D. Iowa) (Aug. 13, 2020)
Ex. 1036	<i>Godbersen-Smith Const. Co. v. Guntert & Zimmerman Const. Div., Inc.</i> , IPR2020-01698, Paper 83 (May 19, 2022) (Public Version)
Ex. 1037	<i>Godbersen-Smith Const. Co. v. Guntert & Zimmerman Const. Div., Inc.</i> , IPR2021-00136, Paper 65 (June 9, 2022) (Public Version)
Exs. 1100 - 1154	Public dissemination evidence for the New Generation Commander III Operator's Manual related to machine 900100-(###)

- To the extent that Petitioner attempts to rely on any date that appears on Exhibits 1005, 1010, 1018, 1019, 1030, 1100-1154 to establish public accessibility of Exhibits 1005, 1010, 1018, 1019, 1100-1154 as a printed publication or prior art reference, the date is hearsay under FRE 801 and does not fall within a hearsay exception under FRE 802 and FRE 803 because Petitioner has failed to authenticate the date by which Exhibits 1005, 1010, 1018, 1019, 1100-1154 were allegedly publicly accessible.

- Exhibits 1030-1032, 1036, and 1037 are not relevant under FRE 401 and are inadmissible under FRE 402 because the Board did not Institute based on them. Moreover, Exhibits 1030-1032, 1036, and 1037 are of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under FRE 403.
- Exhibits 1018, 1019, 1031 and 1037 are not relevant under FRE 401 because Petitioner did not rely on Exhibits 1018, 1019, 1031 and 1037 in its Petition, and therefore is inadmissible under FRE 402.

Respectfully submitted,

Dated: November 27, 2024

/James Hannah/
 James Hannah (Reg. No. 56,369)
 Jenna Fuller (Reg. No. 74,212)
 Kramer Levin Naftalis & Frankel LLP
 333 Twin Dolphin Drive, Suite 700
 Redwood Shores, CA 94065
 Telephone: (650) 752-1700
 Facsimile: (650) 752-1800
 jhannah@kramerlevin.com
 jfuller@kramerlevin.com

Jeffrey H. Price (Reg. No. 69,141)
 Kramer Levin Naftalis & Frankel LLP
 1177 Avenue of the Americas
 New York, NY 10036
 Telephone: (212) 715.7502
 Facsimile: (212) 715-8302
 jprice@kramerlevin.com

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Attorneys for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) constitutes electronic service, that service was made on the Petitioner as detailed below.

<i>Date of service</i>	November 27, 2024
<i>Manner of service</i>	Electronic Filing with the Board
<i>Documents served</i>	PATENT OWNER'S OBJECTIONS TO EVIDENCE UNDER 37 C.F.R. § 42.64
<i>Persons Served</i>	Finnegan, Henderson, Farabow, Garrett & Dunner LLP Jason E. Stach Luke J. McCammon David K. Mroz Sonja W. Sahlsten Robert K. High

/James Hannah/
James Hannah
Registration No. 56,369
Lead Counsel for Patent Owner