

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
Patent No. 11,772,723

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
2005	Declaration of Kenneth "Mark" Bryden in Support of Patent Owner's Response, FILED UNDER SEAL
2006	Declaration of Ronald M. Guntert, Jr. in Support of Patent Owner's Response
2007	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	Construction Equipment Guide Webpage, "S600 Slipform Paver Designed for Multiple Tasks," dated November 18, 2010, available at https://www.constructionequipmentguide.com/s600-slipform-paver-designed-for-multiple-tasks/15267
2016	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
2018	Angular Sensor 1 Diagram
2019	Guntert & Zimmerman Brochure, "S600 Multi-Purpose Slipform Paver"
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	Declaration of Jeff Holley 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 20, 2021
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	Excerpts of the Declaration of Ronald M. Guntert, Jr. in Support of Patent Owner's Preliminary Response, <i>Godbersen-Smith Construction Company d/b/a Gomaco Corporation v. Guntert & Zimmerman Const. Div., Inc.</i> , Case No. IPR2020-01698, dated January 18, 2021
2031	Spreadsheet – Guntert & Zimmerman Pavers and Swing Leg Sales, FILED UNDER SEAL
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

Exhibit 2005

Petitioner objects to Exhibit 2005 under Federal Rule of Evidence (“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. 2005 ¶ 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 2005 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 2005 under FRE 702 as not being the product of reliable principles and methods. In Exhibit 2005, 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. 2005, Sections VIII-XI.

Petitioner further objects to Exhibit 2005 under FRE 802 as inadmissible hearsay if Patent Owner does not make Dr. Bryden available for a deposition in this proceeding.

Exhibit 2006

Petitioner objects to Exhibit 2006 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. 2006 ¶¶ 9-12.

To the extent Exhibit 2006 attempts to provide factual testimony, such as testimony regarding trends in the industry or sales, Petitioner objects to Exhibit 2006 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. 2006 ¶¶ 4-5, 13-15.

Petitioner further objects to Exhibit 2006 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 2007 and 2024

Petitioner objects to Exhibits 2007 and 2024 under FRE 802 as inadmissible hearsay and under FRE 901 as lacking evidence of authentication.

Exhibits 2011 and 2012

Petitioner objects to Exhibits 2011 and 2012 under FRE 802 as inadmissible hearsay.

Exhibits 2014-2016 and 2026-2027

Petitioner objects to Exhibits 2014-2016 and 2026-2027 under FRE 802 as inadmissible hearsay.

Exhibit 2018

Petitioner objects to Exhibit 2018 under FRE 401-403 as being prejudicial, confusing, or a waste of time. The exhibit is an unmarked diagram, purportedly of “Angular Sensor 1,” with no explanation of the source from which the diagram is from or who the diagram was created by.

Petitioner further objects to Exhibit 2018 under FRE 901 as an unauthenticated document. Beyond titling the exhibit “Angular Sensor 1 Diagram,” Petitioner has not identified what the diagram is or what source the diagram is from.

Exhibits 2019, 2021, 2025, and 2031

Petitioner objects to Exhibits 2019, 2021, 2025, and 2031 under FRE 802 as inadmissible hearsay.

Exhibits 2022, 2023, and 2030

Petitioner objects to Exhibits 2022, 2023, and 2030 under FRE 802 as inadmissible hearsay if Patent Owner does not make Todd Greenwood, Jeff Holley, and Ronald M. Guntert, Jr., respectively, available for depositions in this proceeding.

Exhibits 2028 and 2029

Petitioner objects to Exhibits 2028 and 2029 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 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.

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