

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Kubota North America Corporation,

Petitioner

v.

Vermeer Manufacturing Company,

Patent Owner

PGR2025-00016 (U.S. Patent No. 12,098,063)

PETITIONER'S EVIDENTIARY OBJECTIONS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Kubota North America Corporation (“Petitioner”) hereby objects to Exhibits 2013, 2014, 2015, 2025, 2027-2031 and to statements in the Patent Owner’s Response to Petition for Post Grant Review of U.S. Patent No. 12,098,063 (“PO Response”), which was filed with the Board and served on Petitioner on September 15th, 2025.

- **EXHIBIT 2013**

Patent Owner describes Exhibit 2013 as “Declaration of Mark Fleming, Ph.D., P.E. In Support of Patent Owner’s Response to Petition For Post Grant Review of U.S. Patent No. 12,098,063.” Petitioner objects to Exhibit 2013 under Federal Rules of Evidence (FRE) 403, 702, and 801-807. Petitioner objects to Exhibit 2013 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 2013 under FRE 403 as being unfairly prejudicial, misleading, and confusing the issues. Patent Owner objects to Exhibit 2013 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 Exhibit 2014, Exhibit 2015, Exhibit 2002.

- **EXHIBIT 2014**

Petitioner objects to Exhibit 2014 under FRE 801-807 as being inadmissible hearsay or containing inadmissible hearsay. The exhibit includes out-of-court statements, including multi-level hearsay statements (such as reliance on and reference to testimony and documents related to another proceeding), that are offered for the truth of the matter asserted and not subject to a hearsay exception. Patent Owner objects to Exhibit 2014 to the extent Patent Owner, through Dr. Fleming or otherwise, attempts to rely on these statements to prove the truth of the matter asserted therein.

- **EXHIBIT 2015**

Petitioner objects to Exhibit 2015 under FRE 801-807 as being inadmissible hearsay or containing inadmissible hearsay. The exhibit includes out-of-court statements (such as reliance on and reference to testimony and documents related to another proceeding), including multi-level hearsay statements, that are offered for the truth of the matter asserted and not subject to a hearsay exception. Patent Owner objects to Exhibit 2015 to the extent Patent Owner, through Dr. Fleming or otherwise, attempts to rely on these statements to prove the truth of the matter asserted therein.

- **EXHIBIT 2025**

Petitioner objects to Exhibit 2025 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 2025 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2025 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 2032 is insufficient at least because it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2025.

- **EXHIBIT 2027**

Petitioner objects to Exhibit 2027 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 2027 under FRE 901. Patent Owner has not demonstrated the authenticity of Exhibit 2027 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 2032 is insufficient at least because it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2027.

- **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 2032 is insufficient at least because 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 2032 is insufficient at least because 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 2032 is insufficient at least because 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 2032 is insufficient at least because it is not from a fact witness with personal knowledge as to the authenticity of Exhibit 2031.

- **Paper 17, Patent Owner's Response (Paper 18 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 45-62. 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 Exhibit 2014, Exhibit 2015, Exhibit 2002 that are offered for the truth of the matter asserted. *See, e.g.*, PO Response reliance on Exhibit 2014 including pages 34, 74, 120-125, 140-144, 171-187; Exhibit 2015 including pages 7-16, 35-57, 126-129, 203-220, 298-299, 301-303, 632; Exhibit 2002 including pages 151, 170-191, 217-223, 517-518, 542, 548,

703, 712, 734, 736; 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 45-62 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 Exhibit 2014, Exhibit 2015, Exhibit 2002 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 Exhibit 2014, Exhibit

2015, Exhibit 2002 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 Exhibit 2014, Exhibit 2015, Exhibit 2002 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 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 15th, 2025. Therefore, Petitioner's Objections to Evidence are timely under 37 C.F.R. § 42.64(b)(1).

Respectfully submitted,

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

Dated: September 19, 2025
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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 19, 2025

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

Documents served **Petitioner's Evidentiary Objections**

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