

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MULTI-COLOR CORPORATION
Petitioner

v.

BROOK & WHITTLE LIMITED
Patent Owner

PGR2025-00025
Patent No. 11,961,422

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Brook + Whittle Limited submits the following objections to evidence submitted with Multi-Color Corporation's Petition. These objections are timely, having been filed within ten business days of institution.

A. Exhibits 1003 and 1004 (Gatorade and Febreze Labels)

Patent Owner objects to Exhibits 1003 and 1004 for the following reasons:

- For lack of authentication under FRE 901 of (1) the photos; and (2) the content therein.
- As hearsay to the extent the photographed manufacturing labels are used to prove the truth of the matter asserted;
- As incomplete under FRE 106, as these exhibits do not provide sufficient information to determine the type of label used in either exhibit; and
- Exhibits 1003 and 1004 are not the best evidence under FRE 1002 and 1003: Photographs of these samples are not the best evidence as compared to the physical samples. Patent Owner also objects to these exhibits because Petitioner has not provided samples of these labels, or sufficient information regarding these labels for Patent Owner to acquire these labels, for analysis and/or testing.

Patent Owner also objects to these exhibits because Petitioner has not put forth any evidence that the sample label on the Gatorade bottle or the sample label on the

Febreze bottle were available at the time of the '422 Patent's priority date of May 14, 2021.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibits 1003 or 1004.

B. Exhibit 1005

Patent Owner objects to Exhibit 1005 for the following reasons:

- Exhibit 1005 is not the best evidence under FRE 1002 and 1003 because it was not the operative version of the document at the time of the '422 Patent's priority date of May 14, 2021: Exhibit 1005 was published August 30, 2024, but the operative version was published April 11, 2019; and
- As incomplete under FRE 106 for the same reason.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibit 1005.

C. Exhibits 1006, 1007, and 1008

Patent Owner objects to Exhibits 1006, 1007, and 1008 for the following reasons:

- For lack of authentication under FRE 901;

- For lack of personal knowledge under FRE 602;
- As hearsay under FRE 801-803 to the extent statements therein are relied on for the truth of the matter asserted;
- As double hearsay under FRE 805 to the extent statements within the external documents referenced in the Exhibits are relied on for the truth of the matter asserted; and
- Exhibits 1006, 1007, and 1008 are not the best evidence under FRE 1002 and 1003 because they were not the operative versions of the documents at the time of the '422 Patent's priority date of May 14, 2021:
 - (1) Exhibit 1006 was published September 3, 2024; the operative version was published September 17, 2019.
 - (2) Exhibit 1007 was published September 3, 2024; the operative version was published November 16, 2018.
 - (3) Exhibit 1008 was published September 3, 2024; the operative version was published November 16, 2018.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibits 1006, 1007, and 1008.

D. Exhibit 1009

Patent Owner objects to Exhibit 1009 for the following reasons:

- For lack of authentication under FRE 901;
- For lack of personal knowledge under FRE 602;
- As hearsay under FRE 801-803 to the extent statements therein are relied on for the truth of the matter asserted; and
- As double hearsay under FRE 805 to the extent statements within the external documents referenced in the Exhibits are relied on for the truth of the matter asserted.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibit 1009.

E. Exhibits 1010 and 1011

Patent Owner objects to Exhibits 1010 and 1011 for the following reasons:

- Exhibits 1010 and 1011 are not the best evidence under FRE 1002 and 1003 because they were not the operative versions of the documents at the time of the '422 Patent's priority date of May 14, 2021:
 - (1) Pages 16-36 of Exhibit 1010 were published August 30, 2024; the operative version was published May 15, 2018.
 - (2) Exhibit 1011 was published August 30, 2024; the operative version was published April 26, 2018.
- As incomplete under FRE 106 for the same reasons.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibits 1010 or 1011.

F. Exhibit 1012 (RD-TM-210-4)

Patent Owner objects to Exhibit 1012 for the following reasons:

- For lack of authentication under FRE 901;
- For lack of personal knowledge under FRE 602;
- As hearsay under FRE 801-803 to the extent statements therein are relied on for the truth of the matter asserted;
- For lack of relevance under FRE 401, because Petitioner cites Exhibit 1012 for the statement that "laboratory tests were conducted in reference to the disclosures in the '422 patent," but Exhibit 1012 (the test results) were published on 12/21/2018, thus predating the '422 patent (and were merely *revised* by Bushman "to focus only on" shrink sleeve labels on 12/28/2024); and
- As confusing, prejudicial, and a waste of time under FRE 403 for the same reason.

Patent Owner likewise objects to any portion of the Petition, Bushman's Declaration (Ex. 1013), and Deible's Declaration (Ex. 1014) purporting to rely on Exhibit 1012.

G. Exhibit 1013 (Declaration of Bushman)

Patent Owner objects to portions of Exhibit 13 for the following reasons:

- As impermissibly based on hearsay under FRE 801-803 to the extent statements from references are relied on for the truth of the matter asserted (*see, e.g.*, Ex. 1013 ¶ 56);
- As improperly proffering expert testimony under FRE 701-702 without designating Bushman as an expert;
- To the extent Bushman’s declaration contains lay opinions, for lack of personal knowledge under FRE 602;
- As confusing, prejudicial, and a waste of time under FRE 403 because:
 - (1) Bushman is employed by Petitioner as VP of Global R&D and has a financial interest in the proceeding’s outcome (Ex. 1013 ¶ 4);
 - (2) Bushman applies a different claim construction standard than the Petitioner, where Bushman purportedly applied “the same construction standard” used in federal courts (Ex. 1013 ¶ 22), but the Petition contends that the “broadest reasonable interpretation” standard applies (Pet. at 12); and
 - (3) Bushman’s and Deible’s declarations circularly reference each other, where Bushman “accepted” Deible’s proffered POSITA standard “for purposes of [his] declaration” (Ex. 1013 ¶ 24), but

Deible also “considered and relied upon the Declaration of ... Bushman...” (*see, e.g.*, Ex. 1014 ¶¶ 25, 109, 112, 114, 133), suggesting improper cross-pollination between the two declarations;

- As cumulative under FRE 403 with Deible’s declaration (Ex. 1014); and
- For lack of relevance under FRE 401 for the same reasons.

Patent Owner likewise objects to any portion of the Petition or Dr. Deible’s declaration (Ex. 1014) purporting to rely on the objected to portions of Exhibit 1013.

H. Exhibit 1014 (Declaration of Deible)

Patent Owner objects to Exhibit 1014 for the following reasons:

- The anticipation ground (Ex. 1014 ¶¶ 56-106):
 - (1) For lack of authentication of Wiley KnowItAllLibrary under FRE 901; and
 - (2) For lack of personal knowledge of Wiley KnowItAllLibrary under FRE 602.
 - (3) As relying on hearsay under FRE 801-803 to the extent Wiley KnowItAllLibrary is relied on for the truth of the matter asserted;
- The obviousness ground (Ex. 1014 ¶¶ 107-123):

- (1) As confusing, prejudicial, and a waste of time under FRE 403 to the extent it references Mitchell, because Mitchell is not listed under the “Materials Considered” section of Deible’s declaration (Ex. 1014 ¶ 10); and
 - (2) As improper incorporation of expert opinion, where (a) Bushman was not designated as an expert; but (b) Deible’s declaration functionally cloaks Bushman’s improper opinions in expert status in a run around of FRE 701-702 (*see, e.g.*, Ex. 1014 ¶¶ 107-141).
- The indefiniteness ground (Ex. 1014 ¶¶ 142-160):
 - (1) As confusing, prejudicial, a waste of time, and cumulative under FRE 403, where Deible’s declaration is duplicative—paragraph by paragraph—of Bushman’s declaration regarding indefiniteness (*compare* Ex. 1013 ¶¶ 70-86 *with* Ex. 1014 ¶¶ 143-159); and
 - (2) As improper incorporation of expert opinion, where Bushman was not designated as an expert under FRE 701-702.
 - As impermissibly based on hearsay under FRE 801-803 to the extent statements from references are relied on for the truth of the matter asserted (*see, e.g.*, Ex. 1014 ¶ 78);
 - As confusing, prejudicial, and a waste of time under FRE 403 because Deible applies a different claim construction standard than the Petitioner,

where Deible purportedly applied “the same construction standard” used in federal courts (Ex. 1014 ¶ 22), but the Petition contends that the “broadest reasonable interpretation” standard applies (Pet. at 12); and

- For lack of relevance under FRE 401 for the same reasons.

Patent Owner likewise objects to any portion of the Petition or Bushman’s Declaration (Ex. 1013) purporting to rely on the objected to portions of Exhibit 1014.

I. Exhibits 1015, 1016, 1018

Patent Owner objects to Exhibits 1015, 1016, and 1018 for the following reasons:

- For lack of authentication under FRE 901;
- For lack of personal knowledge under FRE 602; and
- As hearsay under FRE 801-803 to the extent statements therein are relied on for the truth of the matter asserted.

Patent Owner likewise objects to any portion of the Petition, Bushman’s Declaration (Ex. 1013), and Deible’s Declaration (Ex. 1014) purporting to rely on any of Exhibits 1015, 1016, or 1018.

J. Exhibit 1019

Patent Owner objects to Exhibit 1019 for the following reasons:

- For lack of authentication under FRE 901;

- For lack of personal knowledge under FRE 602; and
- As hearsay under FRE 801-803 to the extent statements therein are relied on for the truth of the matter asserted.
- For lack of relevance under FRE 401 at least because Petitioner has failed to show when the exhibit was published, where the only hint is a cryptic footer: “SB.INK.98004.10.08.2019”;
- As confusing, prejudicial, and a waste of time under FRE 403 for the same reason;

Patent Owner likewise objects to any portion of the Petition, Bushman’s Declaration (Ex. 1013), and Deible’s Declaration (Ex. 1014) purporting to rely on any of Exhibit 1019.

Dated: October 3, 2025

Respectfully submitted,

/s/ W. Todd Baker

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document, including any exhibits filed therewith, was served on the 3rd day of October, 2025, via electronic mail directed to counsel of record for the Petitioners:

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/s/ W. Todd Baker

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