

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 Reply (Paper 54). These objections are timely, having been filed within five business days of the Reply.

A. EX1046 (Second Declaration of Dr. Michael Deible)

Patent Owner objects to EX1046 for the following reasons:

- Under FRE 702(a): To the extent the issues in this proceeding involve *label design, construction, recyclability, and printing technology*, Dr. Deible's analytical chemistry background does not qualify him to opine as a POSITA.
- 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.
- Under FRE 801 and 702:

¶¶ 45-47, 154, and 155: In his First Declaration (EX 1014 ¶¶ 71-78), Dr. Deible presented caustic wash testing as an independent, affirmative basis for recyclability and cited APR recognition as (at least) supplementary support. Retroactively recharacterizing the purpose of his own testing to deflect Patent Owner's criticisms constitutes an unreliable application of his own methodology. Further, he cannot treat APR as the operative standard for Grounds 1–3 while arguing it is indeterminate under Ground 4 (¶¶ 154 and 155).

¶ 53 (Contamination opinion): Prior inconsistent statement—disclaimed contamination opinion at deposition (EX2011, 254:23-255:1), now claims testing was “designed to observe” contamination.

- Under FRE 702:

¶ 135 (Mitchell not reviewed): Offered obviousness opinion on a reference he never read; post-hoc review does not cure the unreliable foundation.

B. EX1047 (Declaration of Craig Bushman)

Patent Owner objects to EX1047 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.
- Under FRE 403:
 - (1) Bushman purports to act as both an expert and lay witness

In EX 1013 (¶¶ 4 and 10), Bushman was presented as a non-hourly fact witness, “Mr.” Bushman. In EX 1047 (**cover page and ¶ 4**), he is “Dr.” Bushman compensated hourly. If the Board does not accept Bushman as a qualified expert (given the ambiguity of his role across the two declarations), his opinion testimony in EX 1047 is inadmissible under FRE 701(c) because it is “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” His opinions about what a POSITA would or would not understand, whether standards

are “objective” or “subjective,” and whether claim language provides “reasonable certainty” are all inherently specialized. A lay witness cannot offer such testimony.

(2) Unfair prejudice from dual fact/expert role

Bushman's dual role as both a percipient fact witness and an opinion witness creates substantial risk of unfair prejudice and confusion of the issues. Further, the probative value of his opinions is substantially outweighed by the danger of confusion arising from this dual role, and the prejudice of allowing an interested former employee of Petitioner to bootstrap factual familiarity into expert authority.

- Under FRE 701-703 for:

(1) Unreliable methodology

¶¶ 39, 54, 66, 73, and 74 (APR subjectivity opinions generally): Bushman testifies that “meeting the Association for Plastic Recyclers guidelines is a subjective determination made by a panel of three members” and that panel members’ “respective backgrounds impact whether APR guidance recognition is provided in a given situation.” Yet in EX 1013, ¶ 56, he relied on that same APR recognition process as authoritative proof that the Gatorade Label “meet[s] or exceed[s] APR’s Critical Guidance Protocol” requirements. An expert who treats the identical process as both reliable (for anticipation) and inherently unreliable (for indefiniteness) has not applied a consistent methodology.

¶ 16 Rules: 702, 702(a)

- Concludes claim language “has multiple possible meanings, making it impossible for a POSITA to determine a definitive meaning” and “these claims are indefinite.”
- *Basis*: Ultimate legal conclusion on indefiniteness rendered as technical opinion. Inconsistent methodology—declarant himself determined “recyclable” meaning in EX 1013 ¶ 53 (“It is a PET film and a washable ink system designed to meet the requirements of recyclability per the APR”).

¶ 18 Rule: 702

- Opines that “no inks” retained is “a sufficient requirement” for recyclability and a POSITA understands this as the claim scope.
- *Basis*: Contradicts EX 1013 ¶ 53, where Bushman characterized the Gatorade Label as “recyclable” based on APR recognition—not on a “no inks” standard.

¶¶ (19-21) Rules: 702, 703

- Concludes that Dr. Phillip’s testimony “demonstrates an example that the ’422 patent does not disclose to a POSITA what the definition” of “recyclability” is.
- *Basis*: Conclusory opinion resting entirely on characterization of Phillips deposition excerpts (¶¶ 19–20). No independent technical basis offered.

¶¶ 24–25 Rules: 702, 703

- Opines that the “no inks are retained” standard is “vastly different” from the “reclaimed as reusable resin” standard; cites Dr. Phillips’s testimony at EX1048, 42:7–45:6 that benchmarks are “dictated by the manufacturers.”
- *Basis:* Unreliable methodology—Bushman does not explain from his own experience whether these are actually different standards in industry practice. Contradicts EX 1013 (¶ 56) where he applied APR recognition (a resin-quality benchmark) without noting any conflict.

¶¶ 28 and 29 Rule: 703

- Recounts Dr. Reitman’s testimony that “the threshold is linked to the recyclability” and “getting to a resin that doesn’t have contaminating inks” (EX1049, 31:5–32:2; 36:2–21); concludes “a POSITA has no objective standard.”
- *Basis:* Conclusion derived entirely from opposing expert’s testimony. Bushman does not explain from his own experience why this standard is unworkable. He simply characterizes Reitman’s testimony and announces conclusion.

¶¶ 31, 32 and 55-57 Rule: 702

- Opines that APR PET-CG-02 is merely a “guideline” not a “standard” and is “not consistent” with the “no inks” requirement.

- *Basis*: Contradicts EX 1013 ¶ 56, where Bushman relied on PET-CG-02 recognition as definitive proof of recyclability. Cannot credibly characterize the same protocol as both authoritative (for anticipation) and unreliable (for indefiniteness).

¶¶ 39 and 66 Rule: 702

- Testifies that “meeting the Association for Plastic Recyclers guidelines is a subjective determination made by a panel of three members.”
- (a) Contradicts EX 1013 ¶ 56 (relied on APR recognition as authoritative) and
(b) Underlying facts not disclosed per § 37 CFR 42.65(a): does not identify which panels, when served, what labels evaluated, or what specific experiences demonstrate subjectivity. Bare assertion of personal knowledge.

¶¶ 47–50 Rule: 702

- Argues that “substantially free of colored plastics” criterion is inconsistent with ink criteria and that “colored plastics are ‘often not recyclable’” lacks objective criteria; cites APR panel subjectivity again (EX2010, 238:12–242:16).
- *Basis*: Same unreliable methodology and APR inconsistency as ¶ 39.

¶¶ 75–80: These paragraphs summarize Bushman’s conclusion that the claim term recyclable is “indefinite” and “not understandable by a POSITA.” To the

extent these paragraphs rest on the unreliable methodology objected to above, they are also object to.

(2) Improper bases for opinions

¶¶ 75–80: Bushman concludes that “the claim term ‘wherein the recyclable shrink label is recyclable’ is therefore disclosed in multiple different alternate ways” and is “indefinite and not understandable by a POSITA.” Whether a claim satisfies the “reasonable certainty” standard of § 112 is a legal conclusion.

C. EX1050

Patent Owner objects to EX1050 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

Patent Owner likewise objects to any portion of the Reply and related declarations purporting to rely on EX1050.

D. EX1051

Patent Owner objects to EX1051 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

Patent Owner likewise objects to any portion of the Reply and related declarations purporting to rely on EX1051.

E. EX1052

Patent Owner objects to EX1052 for the following reasons:

- As incomplete under FRE 106.

Patent Owner likewise objects to any portion of the Reply and related declarations purporting to rely on EX1052.

Dated: June 25, 2026

Respectfully submitted,

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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 25th day of June, 2026, via electronic mail directed to counsel of record for the Petitioners:

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