

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YITA LLC,
Petitioner

v.

MACNEIL IP LLC,
Patent Owner

Case No. IPR2020-01139
U.S. Patent No. 8,382,186

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board
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P.O. Box 1450
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Petitioner Yita LLC objects under the Federal Rules of Evidence to the admissibility of Exhibits 2023-2038, 2041-2051, and 2053-2112, which Patent Owner MacNeil IP LLC filed with its Patent Owner's Response on May 5, 2021. 37 C.F.R. § 42.64(b)(1).

Yita timely objects within the allowed five business days of service of Exhibits 2023-2038, 2041-2051, and 2053-2112. Yita files and serves MacNeil with these objections to provide notice that Yita may move to exclude Exhibits 2023-2038, 2041-2051, and 2053-2112 under 37 C.F.R. § 42.64(c).

I. Exhibit 2023-2029, 2032-2038, 2049:

FRE 106: Yita objects to Exhibit 2026 because it is incomplete. For example, page 1 of the document appears to be missing content at the bottom of the page.

FRE 401, 402, and 403: Yita objects to Exhibits 2023-2029, 2032-2038, and 2049 for including information that is irrelevant. These documents lack any tendency to make a fact that is of consequence in determining the action more or less probable than it would be without this document. In addition, to the extent these documents have any probative value to any ground upon which trial was instituted, it is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 603: Yita objects to Exhibits 2023 and 2024 under FRE 603, and under 37 C.F.R. §§ 1.68, 42.53(a), and 42.63(a). These documents are not proper evidence under FRE 603 and 37 C.F.R. §§ 1.68, 42.53(a), and 42.63(a). As such, these documents are also irrelevant under FRE 401, 402, and 403. Yita also objects to Exhibit 2023 under 37 C.F.R. § 42.63(b) because it does not include an affidavit attesting to the accuracy of the translation.

FRE 602 and 701: Yita objects to Exhibit 2024, including at least ¶ 26, under FRE 602 because MacNeil did not introduce sufficient evidence to establish that the witness has personal knowledge of the matters discussed. Yita objects to Exhibit 2024, including at least ¶ 26, as improper opinion testimony by a lay witness under FRE 701. MacNeil has not established the declarant as an expert witness in the subject matter discussed in ¶ 26.

FRE 702 and 703: Yita objects to Exhibit 2024, including at least ¶¶ 14-26, as improper expert testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the facts of the case.

FRE 801 and 802: To the extent MacNeil relies on the contents of these documents for the truth of the matter asserted, Yita objects to Exhibits 2023-2029,

2032-2035, 2038 and 2049 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

FRE 901 and 902: Yita objects to Exhibits 2023, 2025-2029, 2032-2038, and 2049 as not properly authenticated under FRE 901 because MacNeil has not presented evidence sufficient to support a finding that the documents in question are what MacNeil claims. There is no evidence that the documents are self-authenticating under FRE 902.

37 C.F.R. § 42.63(b): Yita objects to Exhibit 2023 under 37 C.F.R. § 42.63(b) because it does not include an affidavit attesting to the accuracy of the translation. Yita also objects to Exhibits 2025-2027 and 2029 under 37 C.F.R. § 42.63(b) because these documents include words in a language other than English that are not translated into English.

II. Exhibit 2041:

Yita objects to Exhibit 2041 to the extent it relies on Exhibits 2023-2038, 2042-2051, and 2053-2112 for the same reasons Yita objects to those documents as provided herein.

FRE 401, 402, and 403: Yita objects to Exhibit 2041, including at least ¶¶ 86-94, 99, 101, 106-108, 118-127, 139-141, and 164-165, for including information that is irrelevant. These paragraphs lack any tendency to make a fact that is of consequence in determining the action more or less probable than it

would be without this document. In addition, to the extent these paragraphs have any probative value to any ground upon which trial was instituted, it is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Yita also objects to ¶¶ 41-47, 49-55, 64-78, 106-112, 128-130, 153, 155-157, 159-160, 167, 175-176, and 180-182 as irrelevant under FRE 401, 402, and 403 because they have not been relied upon in support of any argument made in the Patent Owner Response.

FRE 702 and 703: Yita objects to Exhibit 2041, including at least ¶¶ 81-91, 94-96, 101-105, 114-117, 119-127, 129, 132-141, 143, 145, 147-178, and 181, as improper expert testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the facts of the case.

III. Exhibits 2030, 2058-2061, 2072, 2076-2077:

FRE 106: Yita objects to Exhibit 2072 and 2076-2077 because they are incomplete.

FRE 401, 402, and 403: Yita objects to Exhibits 2030, 2058-2061, 2072, and 2076-2077 for including information that is irrelevant. These documents lack any tendency to make a fact that is of consequence in determining the action more or

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