

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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YITA LLC,  
Petitioner

v.

MACNEIL IP LLC,  
Patent Owner

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

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**PETITIONER'S OPPOSITION TO  
PATENT OWNER'S MOTION FOR ENTRY OF MODIFIED  
PROTECTIVE ORDER**

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Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITIONER’S UPDATED EXHIBIT LIST**

<b>Exhibit No.</b>	<b>Description</b>
<b>1001</b>	U.S. Patent No. 8,382,186 to MacNeil et al., issued February 26, 2013 (“186 Patent”)
<b>1002</b>	File History of U.S. Patent No. 8,382,186 (“186 Patent File History”)
<b>1003</b>	Declaration of Paul E. Koch, Ph.D.
<b>1004</b>	U.S. Patent No. 7,444,748 to MacNeil, issued November 4, 2008 (“MacNeil”)
<b>1005</b>	French Patent Application Pre-Grant Publication No. 2547252 to Rabbe, published December 14, 1984, with attached certified English-language translation (“Rabbe”)
<b>1006</b>	U.S. Patent Application Pre-Grant Publication No. 2002/0045029 A1 to Yung, published April 18, 2002 (“Yung”)
<b>1007</b>	Gruenwald, G., <i>Thermoforming: A Plastics Processing Guide</i> , CRC Press, 2nd Edition, 1998 (“Gruenwald”)
<b>1008</b>	Throne, J., <i>Technology of Thermoforming</i> , Hanser, 1996 (“Throne I”)
<b>1009</b>	Throne, J., <i>Understanding Thermoforming</i> , Hanser, 2nd Edition, 2008 (“Throne II”)
<b>1010</b>	U.S. Patent No. 2,057,873 to Atwood, issued October 20, 1936 (“Atwood”)
<b>1011</b>	U.S. Patent No. 2,657,948 to Sturtevant, issued November 3, 1953 (“Sturtevant”)
<b>1012</b>	U.S. Patent No. 6,793,872 to Buss, issued September 21, 2004 (“Buss”)
<b>1013</b>	U.S. Patent No. 6,361,099 to McIntosh, issued March 26, 2002 (“McIntosh”)
<b>1014</b>	U.S. Patent No. 4,568,581 to Peoples, issued February 4, 1986 (“Peoples”)
<b>1015</b>	U.S. Patent No. 5,298,319 to Donahue, issued March 29, 1994 (“Donahue”)
<b>1016</b>	DOW HDPE DGDA-5004 NT 7 Data Sheet, published October 10, 2003
<b>1017</b>	Black Armor Web Advertisement
<b>1018</b>	<i>Husky Liner Advertisement</i> , August 24, 2000

<b>Exhibit No.</b>	<b>Description</b>
<b>1019</b>	U.S. Patent No. 4,420,180 to Dupont et al., issued December 13, 1983 (“Dupont”)
<b>1020</b>	U.S. Patent No. 4,280,729 to Morawski, issued July 28, 1981 (“Morawski”)
<b>1021</b>	European Patent Application Publication No. 0379630 to Sagona, published August 1, 1990 (“Sagona”)
<b>1022</b>	File History of U.S. Patent No. 8,267,459 (“’459 Prosecution History”)
<b>1023</b>	U.S. Patent No. 3,390,912 to Stata, issued July 2, 1968 (“Stata”)
<b>1024</b>	German Patent Application Publication No. 4000877 to Weitbrecht et al., published July 18, 1991
<b>1025</b>	U.S. Patent No. 6,027,782 to Sherman, issued February 22, 2000
<b>1026</b>	Japanese Patent Application No. H11-268570 to Suzuki, published October 5, 1999, with attached certified English-language translation (“Suzuki”)
<b>1027</b>	Word Comparison of the ’703 Application as filed to the ’899 Application as filed
<b>1028</b>	U.S. Patent No. 8,833,834 to MacNeil et al., issued September 16, 2014 (“’834 Patent”)
<b>1029</b>	Plastic Extrusion Tolerance Guide
<b>1030</b>	Merriam-Webster's Collegiate Dictionary, Eleventh Edition, 2003
<b>1031</b>	Oxford Compact English Dictionary, First Edition, 2000
<b>1032</b>	Curriculum Vitae of Paul E. Koch, Ph.D. (“Koch CV”)
<b>1033</b>	Declaration of Sylvia Hall-Ellis, Ph.D. (“Hall-Ellis Decl.”)
<b>1034</b>	U.S. Patent No. 8,910,995 to MacNeil et al. (“’995 Patent”)
<b>1035</b>	U.S. Patent No. 6,058,618 to Hemmelgarn et al. (“Hemmelgarn”)
<b>1036</b>	Webster’s Third New International Dictionary, 1961
<b>1037</b>	Transcript of Teleconference between Board and Parties, November 13, 2020
<b>1038</b>	Communications between MacNeil and Yita regarding the proposed modifications to the protective order

MacNeil seeks to enter a protective order that significantly alters the Board's default protective order. MacNeil's restrictions would deny access to all individuals at Petitioner Yita, including in-house counsel, and create a special class of confidential information designated "PROTECTIVE ORDER MATERIAL – ATTORNEYS' EYES ONLY" ("Attorneys' Eyes Only"). *See* Paper 27, Motion for Entry of Protective Order, Appendix B (redline comparison to Board's default protective order). MacNeil seeks to prohibit everyone at Yita, including in-house counsel, from accessing material that MacNeil self-designates as "Attorneys' Eyes Only." *Id.*

But the Board's default protective order is sufficient here, and MacNeil has not shown otherwise. MacNeil's modified protective order imposes undue prejudicial restrictions that are inconsistent with the integrity of this proceeding and run afoul of the careful balance struck by the Board's default protective order. MacNeil should not be able to argue that certain evidence demonstrates patentability on the one hand, while simultaneously arguing that the very same evidence cannot be seen by Yita on the other. Accordingly, the Board should deny MacNeil's Motion.

**I. Without agreement between the parties over a modified protective order, the Board's default protective order should be entered.**

Because the parties have not agreed on the entry of a protective order, according to the Trial Practice Guide, the Board should enter the default protective

order. The Office Patent Trial Practice Guide encourages parties “to agree on the entry of a stipulated protective order.” Office Patent Trial Practice Guide, Appendix B, 77 Fed. Reg. 48756, 48769 (Aug. 14, 2012). “*Absent such agreement, the default standing protective order will be automatically entered.*”<sup>1</sup> *Id.*

Despite objections from Yita about MacNeil’s deviations from the default protective order, MacNeil unilaterally proceeded and now seeks to have entered its divergent protective order. MacNeil’s changes are not trivial. For example, the Board’s default protective order requires “persons who are named parties to the proceeding” and “[i]n-house counsel of a party” to have access to protective order material. Patent Trial and Appeal Board Consolidated Trial Practice Guide, 108 (Nov. 2019), <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“Consolidated Trial Practice Guide”). MacNeil’s proposed altered protective order excludes these persons from accessing any materials that MacNeil self-designates as “Attorneys’ Eyes Only.” Motion, 2-3, Appendix A.

MacNeil first notified Yita of its proposed, altered protective order five days before filing its Patent Owner’s Response. *See* EX1038, 3-4. (communications between MacNeil and Yita regarding the proposed modifications to the protective order). In return, Yita raised its concerns about the additional restrictive terms in MacNeil’s proposed protective order and suggested entry of the Board’s default

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<sup>1</sup> Emphasis added throughout unless noted.

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