

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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Petitioner Yita LLC objects under the Federal Rules of Evidence to the admissibility of Exhibits 2114, 2115, 2126–2129, and 2132–2137, which Patent Owner MacNeil IP LLC filed as supplemental information on August 4, 2021. 37 C.F.R. § 42.64(b)(1).

Yita timely objects within the allowed five business days of service of Exhibits 2114, 2115, 2126–2129, and 2132–2137. Yita files and serves MacNeil with these objections to provide notice that Yita may move to exclude Exhibits 2114, 2115, 2126–2129, and 2132–2137 under 37 C.F.R. § 42.64(c).

I. Exhibits 2114, 2115, 2128, 2129, and 2132-2137:

FRE 401, 402, and 403: Yita objects to Exhibits 2114, 2115, 2128, 2129, and 2132–2137 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 Exhibit 2115 under FRE 603, and under 37 C.F.R. §§ 1.68, 42.53(a), and 42.63(a). Exhibit 2115 is not proper evidence under FRE

603 and 37 C.F.R. §§ 1.68, 42.53(a), and 42.63(a). As such, the document is also irrelevant under FRE 401, 402, and 403.

FRE 702 and 703: Yita objects to Exhibit 2115, including at least ¶¶ 10–13, 15–17, 19–21, 23–25, 27–29, 31–33, 35–38, and 40–43, 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 2114, 2115, 2128, 2129, and 2132–2137 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

FRE 901 and 902: Yita objects to Exhibits 2114, 2128, 2129, and 2132–2137 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.

II. Exhibits 2126:

Yita objects to Exhibit 2126 to the extent it relies on Exhibits 2023–2038, 2041, 2043–2051, and 2053–2112 for the same reasons Yita previously objected.

See Paper 30.

FRE 401, 402, and 403: Yita objects to Exhibit 2126, including at least ¶¶ 86–179, 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 ¶¶ 43–48, 86–91, 93–94, 118–124, and 127–154 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 602 and 701: Yita objects to Exhibit 2126, including at least ¶¶ 33–42, 44–85, 91–101, 103–109, 111, 113, 117–133, 135–154, 156–165, and 168–179, 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 2126, including at least ¶¶ 33–42, 44–85, 91–101, 103–109, 111, 113, 117–133, 135–154, 156–165, and 168–179, 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 these paragraphs.

FRE 702 and 703: Yita objects to Exhibit 2126, including at least ¶¶ 30–72, 73–85, and 86–179, 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. Exhibit 2127:

Yita objects to Exhibit 2127 to the extent it relies on Exhibits 2132–2136 for the same reasons Yita objects to those documents as provided herein and Exhibits 2042 and 2084–2095 which Yita previously objected. *See* Paper 30.

FRE 401, 402, and 403: Yita objects to Exhibit 2127, including at least ¶¶ 3–18, 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.

FRE 602 and 701: Yita objects to Exhibit 2127, including at least ¶¶ 3–18 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 2127, including at least ¶¶ 3–18, 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 these paragraphs.

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