

**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  
Patent 8,382,186

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Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

*Submitted Electronically via the Patent Review Processing System*

**PATENT OWNER'S OBJECTIONS UNDER 37 C.F.R. § 42.64 TO  
PETITIONER'S EVIDENCE SUBMITTED WITH PETITIONER'S REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner MacNeil IP LLC (“Patent Owner”) respectfully submits the following objections to evidence filed by Petitioner in conjunction with Petitioner’s Reply to Patent Owner’s Response (Paper 60). These objections are timely, as they are being made within five business days of service of the evidence (August 24, 2021).

The following chart lists Patent Owner’s objections to the admissibility of certain evidence (identified below) that is included within or accompanies the Petitioner’s Reply and the basis for those objections:

<b>Objected to Exhibit</b>	<b>Basis for Objection</b>
Exhibits 1046-1050	<b>37 C.F.R. § 42.53:</b> Patent Owner objects to Exhibits 1046-1050, because the exhibits do not satisfy the requirements of 37 C.F.R. § 42.53. The exhibits do not have the proper certification, pursuant to 37 C.F.R. § 42.53(f)(6). 37 C.F.R. § 42.53(f)(6) states: “The officer shall prepare a certified transcript by attaching a certificate in the form of an affidavit signed and sealed by the officer to the

Objected to Exhibit	Basis for Objection
	<p>transcript of the deposition.” But none of the exhibits contains a certificate “in the form of an affidavit.” An affidavit, as defined in 37 C.F.R. § 42.2, requires an affidavit or declaration under 37 C.F.R. § 1.68 or 28 U.S.C. § 1746—the requirements of neither have been satisfied by the officer’s certificate here.</p> <p>Next, 37 C.F.R. § 42.53(f)(6)(iii) requires the certificate to state: “The name of the person who recorded the testimony, and if the officer did not record it, whether the testimony was recorded in the presence of the officer;” There is no explicit statement in the certificate identifying who recorded the testimony. Thus, the certificate does not satisfy 37 C.F.R. § 42.53(f)(6).</p>

<b>Objected to Exhibit</b>	<b>Basis for Objection</b>
	<p>In addition, 37 C.F.R. § 42.53(f)(6)(vii) requires the certificate to state: “If a witness refuses to read or sign the transcript, the circumstances under which the witness refused.” By implication of this requirement and due to the requirements of 37 C.F.R. § 42.53(f)(5), the certificate must either certify a properly signed transcript under 37 C.F.R. § 42.53(f)(5) or must contain the required explanation of the circumstances under which the witness refused to sign the transcript. Because none of the exhibits contains a signature of the witness in the required form or the required statement in the certificate, the certificate does not meet the requirements of 37 C.F.R. § 42.53(f)(6).</p>

<b>Objected to Exhibit</b>	<b>Basis for Objection</b>
	<p>The exhibits also violate the requirements of 37 C.F.R. § 42.53(f)(5). Specifically, each of the witnesses submitted a declaration subject to specific errata specified by the witness. Because 37 C.F.R. § 42.53(f)(5) requires that the witness shall read and sign (in the form of an affidavit) a transcript of the deposition, that declaration necessarily becomes part of the transcript and must be submitted along with the remainder of the transcript for the transcript to be admissible under the Board's rules. In the identified exhibits, Petitioner omitted the signed declaration of the witness, which constitutes the affidavit required by 37 C.F.R. § 42.53(f)(5).</p>

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