

**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 AUTHORIZED MOTION TO STRIKE**

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## I. INTRODUCTION

Pursuant to the Board’s September 14, 2021 Order (Paper 69), Patent Owner MacNeil IP LLC (“MacNeil”) hereby moves to strike the portions of Petitioner Yita LLC’s (“Yita”) reply brief (Paper 60 or “Reply”) and the accompanying expert declarations identified herein. Yita filed 55 new exhibits with its reply. EX1039-EX1093. Omitting the deposition transcripts of MacNeil’s declarants and exhibits introduced during those depositions, MacNeil conservatively estimates that 43 of Petitioner’s 55 new exhibits (78%) could have been filed with the Petition, but were not. Yita’s new evidence includes new declarations from three purported expert declarants: Dr. Koch (EX1041); Mr. Strachan (EX1042); and Mr. Perreault (EX1044).

Tellingly, among Petitioner’s reply declarants, only Dr. Koch offered testimony in support of the Petition (EX1003). There is no new declaration from Rabbe’s French translator. Instead, Dr. Koch included ten paragraphs (30-31, 40-47) opining on the translations, going so far (Par. 46) as to give opinions such as there “is ample context to translate the term in the disputed sentence differently.” Yita improperly incorporates Dr. Koch’s French translation opinions by reference. But of course Dr. Koch also repeatedly admitted in his depositions that he did not speak or know French and was not a qualified French translator. EX2039, 17:2-11; 52:16-20; 53:15-17; EX2184, 7:18-22; 8:24-9:3. That Dr. Koch,

and not Yita's translator, is the witness commenting on translation speaks volumes. Cumulatively, new declarations amount to 243 pages of new testimony, of which the reply improperly incorporates by reference 178 pages (over 36,000 words) of testimony. Petitioner's reply brief, in contrast, is only 28 pages long (5,599 words).

As detailed herein, Yita's reply includes improper new arguments, rationales, and theories that should be stricken because they were not presented or developed in the Petition. Yita's reply goes far beyond merely responding to the arguments raised in the Patent Owner Response and instead attempts to alter Yita's prima facie invalidity case—which is something that both the Federal Circuit and the Board have made clear Yita cannot do. For the reasons discussed below, the Board should at least strike (a) Section IV of the Reply (pp. 23-25) and relatedly paragraphs 31-77 of Mr. Perreault's declaration (EX1044); (b) first paragraph of Section III.B.1 of the Reply (p. 14) and relatedly paragraphs 71-83 and 136-140 of Dr. Koch's declaration (EX1041); and (c) the last paragraph on page 21 that extends to the top of page 22 of the Reply and relatedly paragraphs 75-97 of Mr. Strachan's declaration (EX1042) and paragraphs 112-115 of Dr. Koch's declaration (EX1041). Petitioner and its experts advance completely new theories in these parts of the Reply and the respective declarations. In addition, the Board should also strike the improperly incorporated expert testimony identified in Section III(C) of this motion.

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