

ESTTA Tracking number: **ESTTA1079397**

Filing date: **09/02/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91234602
Party	Defendant Sanford Airport Authority
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Date	09/02/2020
Attachments	Sanford.119 - Motion to Strike Notice of Reliance and Certain Testimony and Exhibits.pdf(179547 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

**GREATER ORLANDO
AVIATION AUTHORITY,**

Opposer,

v.

SANFORD AIRPORT AUTHORITY,

Applicant.

**OPPOSITION NO.: 91234602 (parent)
Consolidated With
OPPOSITION NO.: 91235774**

APPLICANT’S MOTION TO STRIKE

Applicant, Sanford Airport Authority (“Applicant”), moves to strike certain testimony and exhibits filed by Opposer, Greater Orlando Airport Authority (“Opposer”), pursuant to Trademark Rule 2.123(e)(3) and TBMP § 532. The grounds for striking are set forth herein.

Applicant further requests suspension of the consolidated proceedings pending the disposition of this motion to strike. The opening of Applicant’s testimony period is currently scheduled for September 16, 2020. It is requested that the testimony period, any dates pertaining to cross-examination of the witnesses due, and subsequent dates be reset following the Board’s disposition of this motion. Applicant states the following in support thereof.

I. INTRODUCTION

At the conclusion of Opposer’s trial period, Opposer filed with the Board the following documents as evidence:

1. Opposer’s First Notice of Reliance Exhibits 1-41 (41-43 TTABVUE) including:
 - a. The discovery deposition of Diane Crews President and CEO of Sanford Airport Authority (43 TTABVUE 68-272) and exhibits thereto (41 TTABVUE 7-175, 42 TTABVUE, and 43 TTABVUE 2-67),

- b. Registration Certificate and Current Status Page of U.S. Registration No. 1,565,079 (43 TTABVUE 273-279),
 - c. File history for the '079 registration (43 TTABVUE 280-354),
 - d. File history for U.S. Application Serial No. 87/115,959 (43 TTABVUE 355-403), and
 - e. File history for U.S. Application Serial No. 87/115,958 (43 TTABVUE 404-460).
- 2. Trial Testimony of Sarah Butler together with its exhibit (44 TTABVUE);
 - 3. Trial Testimony of Lee Hoffman together with its exhibit (45 TTABVUE);
 - 4. Supplement to Opposer's First Notice of Reliance (46 TTABVUE);
 - 5. Opposer's Second Notice of Reliance Exhibits 42-49 (47 TTABVUE); and
 - 6. Trial Testimony of Edward Lawson together with its exhibit (48 TTABVUE 2-6), Trial Testimony of Thomas F. Woodle and its exhibit (48 TTABVUE 7-11), and Trial Testimony of Phillip N. Brown, and its exhibits (48 TTABVUE 12-93).

II. LEGAL STANDARD

A party may object to evidence submitted via testimony or notice of reliance in a motion to strike. *See* TBMP §§ 532, 533, 707. Objections to testimony or to a notice of reliance grounded in asserted procedural defects are waived unless raised promptly, when there is an opportunity to cure. *See, e.g., Barclays Capital Inc. v. Tiger Lily Ventures Ltd.*, 124 USPQ2d 1160, 1163, 2017 WL 4512466 (TTAB Sept. 20, 2017); *Corporacion Habanos SA v. Guantanamera Cigars Co.*, 102 USPQ2d 1085, 1093 (TTAB 2012).

Applicant timely makes its objections herein within two weeks after the close of Opposer's trial period. *Barclays*, 124 USPQ2d at 1163, 2017 WL 4512466; *Societe Des Produits Nestle S.A.*

v. Candido Vinuales Taboada, 2020 WL 4530518, at *8 (Aug. 5, 2020). Applicant reserves its right to object to Opposer’s evidence on additional substantive grounds, including relevance and hearsay, at the time Applicant files its trial brief. *See, e.g., FUJIFILM SonoSite, Inc. v. Sonoscape Co., Ltd.*, 111 USPQ2d 1234, 1236 (TTAB 2014) (deferred ruling on motion to strike an exhibit until final hearing to determine probative value of such exhibit); *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1755 (TTAB 2013) (“The Board does not ordinarily strike testimony taken in accordance with the applicable rules on the basis of substantive objections; rather, such objections are considered by the Board in its evaluation of the probative value of the testimony at final hearing.”).

III. ARGUMENT

A. **Opposer’s First Notice Should be Stricken *in toto* for Failing to Comport with Procedural and Substantive Requirements.**

i. *Discovery Deposition of Diane Crews Improperly Offered as Evidence During Opposer’s Trial Period Should be Stricken.*

The Board should strike the discovery deposition of Diane Crews, as well as its exhibits, from Opposer’s First Notice of Reliance for procedural and substantive deficiencies. Opposer’s First Notice of Reliance is procedurally flawed for the following reasons: (1) proffering materials that are inadmissible via a Notice of Reliance; and (2) failing to properly explain the relevance of each exhibit with sufficient specificity. The Notice of Reliance is substantively flawed because: (1) Opposer fails to provide proper foundation for the proffered evidence; and (2) the evidence is replete with inadmissible hearsay and should therefore be stricken.

A deposition taken pursuant to Federal Rules of Civil Procedure 30(b)(6) is a discovery tool. Discovery depositions and testimonial depositions for presentation at trial in proceedings before the Trademark Trial and Appeal Board are treated very differently. *Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.*, 511 F.3d 437, 441 n.2 (4th Cir. 2007). “Discovery

serves purposes in addition to the uncovering of information . . . [and may include] information that would be inadmissible at trial.” *Fischer Gesellschaft M.B.H. v. Molnar & Co., Inc.*, 203 USPQ (BNA) 861, 1979 WL 24867, at *3 (T.T.A.B. Apr. 26, 1979). Indeed, the discovery deposition of Ms. Crews includes information that would be inadmissible at trial.

Trademark Rule 2.120(k)(2), 37 C.F.R. § 2.120(k)(2), provides that the discovery deposition of a witness:

shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States; or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used. The use of a discovery deposition by any party . . . will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed when the party makes its pretrial disclosures.

The Trademark Rules further provide that “[n]o testimony shall be taken or evidence presented except during the times assigned.” Trademark Rule 2.121. In other words, a party may only introduce testimony and evidence during its assigned testimony period. *Fischer*, 203 USPQ (BNA) at ¶ 861, 1979 WL 24867; *Hole in 1 Drinks, Inc. v. Michael Lajtay*, 2020 WL 859853, at *2 (Feb. 19, 2020) (citing *Fischer*, 203 USPQ (BNA) at ¶ 867, 1979 WL 24867).

Diane Crews, President and CEO of Applicant, was deposed on December 12, 2019, during the discovery period, pursuant to Federal Rules of Civil Procedure 30(b)(6). 43 TTABVUE 69, 74-75. Opposer’s trial period opened more than seven months later on July 18, 2020. *See* 40 TTABVUE. During its trial period, Opposer did not seek to take the testimonial deposition of Ms. Crews or move the Board for an order to use the discovery deposition of Ms. Crews as evidence, and the parties have not stipulated to such use of the discovery deposition of Ms. Crews. Consequently, Applicant has not had time to cross-examine the witness. *See* Trademark Rule

2.123(e)(1) (“Where oral depositions are taken, every adverse party shall have a full opportunity to cross-examine each witness.”). Therefore, Opposer’s First Notice of Reliance dated August 13, 2020 (“First Notice of Reliance”), and Exhibit numbers 1-37 thereto should be stricken as it relates to the Crews deposition and not considered by the Board.¹ *See Fischer*, 203 USPQ (BNA) at ¶ 861, 1979 WL 24867, at *3 (striking discovery deposition where the offering party did not show “the existence of any compelling reason to blur the distinction between the discovery phase and the trial (testimony) period of a proceeding before the Board.”); *Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, 1717 n.3 (TTAB 1987) (stating that a party may not reasonably presume evidence is of record when that evidence is not offered in accordance with the rules); *see also* Trademark Rule 2.123(e)(3)(ii) (“A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.”); Trademark Rule 2.123(k) (“Evidence not obtained and filed in compliance with these sections will not be considered”).

- ii. *Opposer’s First Notice of Reliance on Deposition of Diane Crews Must be Stricken because Opposer Fails to Provide Proper Foundation for the Proffered Evidence.*

Alternatively, if the Board finds that the discovery deposition of Diane Crews is admissible as evidence, the Board should strike portions of Opposer’s First Notice of Reliance for procedural defects. Pursuant to Trademark Rule 2.122(g), 37 C.F.R. § 2.122(g), a notice of reliance must indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. To meet that requirement, the offering party should associate the materials with a specific factor relevant to a specific and pleaded claim or defense, or a specific fact relevant to determining a particular claim or defense. *See FUJIFILM*, 111 USPQ2d at 1236-37 (citing *Safer*

¹ Exhibit numbers 1-36 of the First Notice of Reliance correspond to Exhibit numbers 1-36 of the Crews deposition.

Inc. v. OMS Inv. Inc., 94 USPQ2d 1031, 1039-40 (TTAB 2010)); *see also* TBMP § 704.02. If the propounding party introduces a group of documents to support more than one element of a claim or defense, or more than one relevant fact, it should indicate the specific element or fact supported by each document in the group. *FUJIFILM*, 111 USPQ2d at 1236 (citing *Safer*, 94 USPQ2d at 1040). “Failure to identify the relevance of the evidence, or associate it with issues in the proceeding, with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order.” Trademark Rule 2.122(g). Therefore, Opposer’s First Notice of Reliance, regarding the deposition of Diane Crews and Exhibits numbers 1-37 thereto should be stricken for failure to associate the evidence with a specific fact relevant to determining a particular claim or defense.

In its First Notice of Reliance, Opposer proffers evidence in the form of the deposition of Diane Crews, and exhibits thereto. For Exhibit numbers 2-8 and 10-36, Opposer broadly claims that the evidence is relevant to the issue of “likelihood of confusion” without identifying the specific *du Pont* factor to which the evidence may be relevant. 41 TTABVUE 2-4; *see FUJIFILM*, 111 USPQ2d at 1236. Notably, however, Opposer, in recognizing its obligation to specify the issue attempted to do so for Exhibit 1 (“Identification of deponent and her knowledge”) and Exhibit 9 (“Likelihood of confusion, including but not limited to intent to confuse”). 41 TTABVUE 2,3. Despite this feeble attempt to comply with the rules, in Exhibit 9, Opposer’s caveat of “including but not limited to” implies that the evidence proffered in Exhibit 9 *could* support more than one element of a claim or defense, or more than one relevant fact.

Exactly which element of a claim or defense supported by the evidence in Exhibit 9 is not clear in the First Notice of Reliance. Nonetheless, it is not Applicant’s or the Board’s responsibility to comb through Opposer’s evidence to figure out the relevance or how Opposer intends to support

its claims with such evidence. Indeed, “[t]he Board will not expend its resources guessing which pages the propounding party is relying upon, particularly when an exhibit comprises such a large number of pages. [The propounding party must indicate] which web page or group of web pages within each exhibit **support each specific *du Pont* factor.**” *Barclays*, 124 USPQ2d at 1164-65, 2017 WL 4512466, at *3 (quoting *FUJIFILM*, 111 USPQ2d at 1236) (alteration in original) (emphasis added). Therefore, the Board should strike Opposer’s First Notice of Reliance and Exhibit numbers 1-37 thereto relating to the discovery deposition of Diane Crews for failing to identify the specific *du Pont* factor that is supported by Opposer’s evidence.

iii. *Opposer’s Evidence in Exhibit Numbers 38-41 to Opposer’s First Notice of Reliance Should be Stricken as Needlessly Cumulative.*

Setting aside the issues discussed above, if Opposer’s First Notice of Reliance is not stricken in total, Exhibit numbers 38-41 should be stricken as cumulative. The Board has made it quite clear that it does not need to be inundated with evidence, especially where the notice of reliance does not summarize, indicate nor specify which part of the exhibit relates to which objection. Even if a party submits a proper notice of reliance detailing generally the relevance of the material being offered, it may nonetheless be objectionable under FRE 403 on the ground that it constitutes a “needless presentation of cumulative evidence.” *Safer*, 94 USPQ2d at 1031. The Board in *Safer* also held that even if an adverse party fails to lodge a timely objection, “the Board may *sua sponte* decline to consider the proffered evidence if the notice of reliance does not specify the relevance of the materials.” *Id.*

The application and registration file histories “form[] part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose in accordance with [the Rule].” Trademark Rule 2.122(b)(1). Further, the Rule provides that a registration of the opposer pleaded in an opposition will be received in

evidence and made part of the record if the opposition is accompanied by a photocopy of the registration, “or by a current copy of information from the electronic database records of the Office showing the current status and title of the registration.” Trademark Rule 2.122(d)(1).

At the time of filing the opposition,² Opposer attached as Exhibit A, a copy of the ‘079 registration *and* a print out from the Office electronic database showing the current status and title of the registration, thus the ‘079 registration is of record. Trademark Rule 2.122(d)(1). Furthermore, the Notice of Opposition listed the applications contained in Exhibit 40 and Exhibit 41, thus making them of record and available for use for any competent purpose. Trademark Rule 2.122(b)(1). Therefore, Opposer’s First Notice of Reliance including a copy of the ‘079 registration and file history, and copies of the file histories of Applicant’s applications via notice of reliance “[p]ursuant to 37 C.F.R. §2.1202(e) (sic)” are needlessly cumulative evidence and should be stricken. *See* TBMP § 702.05 (the Board strongly disfavors parties “papering” the record at trial with cumulative evidence; “[p]arties should submit only relevant, non-cumulative evidence.”).

B. Opposer’s Second Notice Should be Stricken for Failing to Comport with Procedural Requirements under *Safer*.

Opposer’s Second Notice of Reliance and Exhibit numbers 43-45 (47 TTABVUE) should be stricken for failing to associate the materials with a specific factor relevant to a specific and pleaded claim or defense, or a specific fact relevant to determining a particular claim or defense. *See FUJIFILM*, 111 USPQ2d at 1236-37 (citing *Safer Inc. v. OMS Inv. Inc.*, 94 USPQ2d 1031, 1039-40 (TTAB 2010)); Trademark Rule 2.122(g), 37 C.F.R. § 2.122(g); *see also* TBMP § 704.02.

² In each of the oppositions, now consolidated in the instant proceeding, Exhibit A to the Notice of Opposition was a copy of the ‘079 registration.

Assuming *arguendo* that the proffered evidence in Exhibit numbers 43-45 is otherwise admissible, Opposer does not state with specificity the *du Pont* factor that is supported by this evidence, thus leaving Applicant and the Board to guess at which claims or defenses are supported by the evidence. Opposer simply states the issue(s) as “[l]ikelihood of confusion.” 47 TTABVUE 3. For reasons previously discussed, the Board should strike Opposer’s Second Notice of Reliance Exhibit numbers 43-45 for failure to associate the evidence with a specific fact relevant to determining a particular claim or defense.

C. Trial Testimony of Lee Hoffman Must be Stricken as Improper Unsworn Declaration and for Lack of Foundation.

Opposer submits the “Trial Testimony of Lee Hoffman.” But that document is neither an affidavit nor an acceptable declaration. *See* Trademark Rule 2.20, 37 C.F.R. § 2.20; 28 U.S.C. § 1746 *See* TBMP § 703.01(b) (“The testimony of witnesses in *inter partes* cases may be submitted in the form of an affidavit or a declaration pursuant to § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party’s testimony period ...”). *See also* *M/S R.M. Dhariwal (HUF) 100% EOU v. Zarda King Ltd. and Global Technology & Trade Marks Limited*, 2019 USPQ2d 149090 (TTAB 2019). There is no ink signature, but more importantly, there is no oath or declaration that the statements are being made under penalty of perjury. As such, the “testimony” must be stricken.

To the extent the purported testimony is considered, Opposer has additionally failed to lay the foundation for the proffered evidence submitted with the trial testimony of Lee Hoffman and admission of the “feedback form” under the business records exception. *See* 45 TTABVUE. To secure admissibility under the business records exception, the offering party must show that (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly

conducted business activity; and (4) that it was a regular practice of that business to make such a record. Fed. R. Evid. 803(6). “[O]bjections to . . . testimony, on substantive grounds, such as that the proffered evidence constitutes hearsay or improper rebuttal, or is incompetent, irrelevant, or immaterial, generally are not waived for failure to raise them promptly, unless the ground for objection is one which could have been cured if raised promptly.” TBMP § 707.04; *Anthony’s Pizza & Pasta Int’l v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271, 1273 n.4 (TTAB 2009); *see also Moke Am. LLC v. Moke USA, LLC*, 2020 USPQ2d 10400, WL 1937891, at *5 (TTAB 2020) (overruling objection to testimony regarding business records exception because objection was not timely raised).

The party objecting to declaration testimony on substantive grounds may either elect oral cross-examination or file a motion to strike in order to lodge an objection to declaration testimony. *Barclays*, 124 USPQ2d at 1167, 2017 WL 4512466. In *Moke*, the applicant had exercised its right under Trademark Rule 2.123(c), 37 C.F.R. § 2.123(c), to cross-examine the declarant, but had not raised the objections during the declarant’s examination. *Moke*, 2020 USPQ2d 10400, WL 1937891, at *6. The applicant later objected in its brief to a testimony declaration filed by the opposer on two grounds: (1) the declarant failed to lay a proper foundation for the admission of sales records attached to his declaration under the business records exception to the rule against hearsay, and (2) the declarant’s testimony about the history of the prior use of opposer’s mark by its predecessor-in-interest was hearsay. *Id.* at *5. The Board overruled the objection because the applicant did not preserve the objection at the time of cross-examination. *Id.*

Mr. Hoffman states in paragraph 6 of his declaration that, “[a] true and correct copy of the feedback form that I submitted to the Orlando International Airport is attached...” 45 TTABVUE 3,5. However, no foundation has been provided for any business records. Mr. Hoffman is not

qualified as a competent witness to properly authenticate Opposer's records, nor to testify as to what the data in the document is intended to reflect, when the document was created, or whether it was kept and created by someone with knowledge of the facts stated therein. Mr. Hoffman is neither a custodian nor a witness competent to testify to these issues. *Moke*, 2020 USPQ2d 10400, 2020 WL 1937891, at *5. Therefore, Mr. Hoffman's trial testimony, as well as the attached exhibit, must be stricken as it relates to the "feedback form."

D. Trial Testimony of Edward Lawson Must be Stricken for Lack of Foundation.

The above analysis also applies to the trial testimony of Edward Lawson (48 TTABVUE 2-6) which suffers from the same flaws as that of Mr. Hoffman³. Here, however, the reason for striking Mr. Lawson's testimony as to the "phone log" attached to Mr. Lawson's testimonial declaration (48 TTABVUE 6) is even more textured. Mr. Lawson declares that he contacted the Orlando International Airport customer service (managed by Opposer), who "recorded correctly" his phone number, but "recorded incorrectly" his last name as "Walsh." 48 TTABVUE 2-3 ¶ 5. Once again, Opposer provides no foundation for the "phone log" as a business record. *See* Fed. R. Evid. 803(6).

Mr. Lawson further states that he "ha[s] reviewed what [he] understand[s] to be a copy of the feedback form of the Orlando International Airport, and a copy of that form is attached ..." (48 TTABVUE 6 ¶ 6). No such "feedback form" is attached to Mr. Lawson's declaration. *See generally* 48 TTABVUE 2-6. Moreover, Mr. Lawson is not qualified as a competent witness to properly authenticate Opposer's records, nor to testify to what the data in the document is intended to reflect, when the documents were created, or whether they were kept and created by someone with knowledge of the facts stated therein. Mr. Lawson, like Mr. Hoffman, is neither a custodian

³ Mr. Lawson does appear to sign under penalty of perjury.

nor a witness competent to testify to these issues. *Moke*, 2020 USPQ2d 10400, 2020 WL 1937891, at *5. Therefore, Mr. Lawson’s trial testimony must be stricken as it relates to the “phone log” and as attached as an exhibit 1 thereto, and testimony about the “feedback form” should be stricken.

E. Trial Testimony of Thomas Woodle Must be Stricken for Lack of Foundation.

Thomas Woodle seeks to testify as to matters “within [his] personal knowledge” regarding the “feedback form” (48 TTABVUE 10-11) submitted by his unnamed “friends” on his behalf. 48 TTABVUE 7,8. Mr. Woodle’s testimony regarding this evidence should be excluded under the same analysis as that of Mssrs. Hoffman and Lawson for lack of foundation to support admission under the business records exception. *See* Fed. R. Evid. 803(6). And further because Mr. Woodle cannot necessarily have personal knowledge as to the contents of the feedback form where he did not personally submit the feedback form.

F. Exhibit E to the Testimony Evidence of Phillip N. Brown Should be Stricken because the Internet Materials Constitute Inadmissible Hearsay.

Exhibit E to the Trial Testimony of Phillip N. Brown (48 TTABVUE 80-93) should be stricken because the exhibit contains inadmissible hearsay. Internet evidence is known to rarely satisfy the Evidence Rules requirements for hearsay. As one court stated, “any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules.” *St. Clair v. Johnny’s Oyster & Shrimp, Inc.*, 76 F.Supp.2d 773, 775 (S.D. Tex. 1999).

As is well known, hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Fed. R. Evid. 801(c). In this case, Exhibit E consists of wholly hearsay material. Opposer’s submitted testimony of Mr. Brown contends that the contents of Exhibit E are “online postings on Twitter reflecting confusion between Opposer and Applicant.” 48 TTABVUE 21 ¶ 36. Thus, Opposer concedes it attempts to rely on the purported truth of the matters asserted. This

is inadmissible hearsay, and is inadmissible. Not only is the material inadmissible hearsay, and rank with multiple levels of hearsay, the material is also needlessly cumulative and repetitive of information already submitted in the *same* Exhibit E. *Compare* 48 TTABVUE 80-84 with 48 TTABVUE 85-93. Even if the Board decides the internet materials are admissible, what the exhibit purports to reveal is useless because “[d]ocuments submitted under notice of reliance pursuant to Trademark Rule 2.122(e) are generally admissible and probative only for what they show on their face, and not as proof of the matters asserted therein.” *Safer*, 94 USPQ2d at 1031 n.14 (internal citations omitted). And in this case, not only does this cumulative information not cure the inadmissibility of the evidence in Exhibit E, Exhibit E was submitted as an exhibit to a testimonial deposition rather than by way of a notice of reliance. Trademark Rule 2.122(e)(2). Opposer may not skirt its evidentiary requirements by attaching inadmissible evidence to its trial declaration. Exhibit E to the Trial Testimony of Phillip N. Brown (48 TTABVUE 80-93) should be stricken as inadmissible hearsay, or in the alternative amended to remove the offending material.

IV. CONCLUSION

WHEREFORE, Applicant respectfully requests the Board suspend the consolidated proceedings until such time as the Board disposes of the instant motion; and further requesting entry of an order (1) striking Opposer’s First Notice of Reliance *in toto* (41-43 TTABVUE); (2) striking portions of Opposer’s Second Notice of Reliance (48 TTABVUE); (3) striking the Trial Testimony of Lee Hoffman (45 TTABVUE); (4) striking portions of the Trial Testimony of Edward Lawson (48 TTABVUE 2-6); (5) striking portions of the Trial Testimony of Thomas Woodle (45 TTABVUE 7-11); and (6) striking Exhibit E and portions of Trial Testimony of Phillip N. Brown (48 TTABVUE 80-93).

Date: September 2, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Strike has been served on Stephen H. Luther by forwarding said copy on September 2, 2020, via email to:

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