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 NIKKO MATERIALS USA, INC. d/b/a GOULD  
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

NIKKO MATERIALS USA, INC., an  
 Arizona corporation, d/b/a GOULD  
 ELECTRONICS, INC.,

Plaintiff,

v.

R.E. SERVICE CO., INC., a California  
 corporation,

Defendant.

CASE NO. CV 03-02549 SBA (JL)

~~PROPOSED~~ ORDER SUSTAINING PLAINTIFF'S  
 EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF  
 GREGORY L. LUCAS, ROBERT MORGENSEN,  
 AND MARK FRATER IN SUPPORT OF R.E.  
 SERVICE CO. INC.'S OPPOSITION TO NIKKO'S  
 MOTION TO CORRECT THE JUDGMENT  
 PURSUANT TO FED. R. CIV. P. 60(A) OR IN THE  
 ALTERNATIVE TO ALTER OR AMEND THE  
 JUDGMENT PURSUANT TO FED R. CIV. P.  
 59(E) AND ARGUMENT THEREON

Hearing Date: March 7, 2006  
 Hearing Time: 1:00 PM  
 Courtroom: 3

The Honorable Sandra Brown Armstrong

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This matter came before the Court on Plaintiff's EVIDENTIARY Objections To The Declarations Of Gregory L. Lucas, Robert Morgensen, And Mark Frater In Support Of R.E. Service Co. Inc.'s Opposition To Nikko's Motion To Correct The Judgment Pursuant To Fed. R. Civ. P. 60(a) Or In The Alternative To Alter Or Amend The Judgment Pursuant To Fed R. Civ. P. 60(e) And Argument Thereon.

5 The Court, having considered the pleadings and papers on file, **HEREBY**  
6 **ORDERS** that Nikko's objections are **SUSTAINED** as follows:

7  
8 1. The declarations of Gregory L. Lucas, Robert Morgensen, and Mark Frater, and  
9 argument thereon, are inadmissible in their entirety as irrelevant and unduly prejudicial under  
10 Fed. R. Evid. 401 and 403.

11 RES' position in its Opposition fails to recognize that Nikko's motion merely seeks to  
12 correct a technical error by the Court in rendering a Judgment (Docket 528, entered 1/17/06) to  
13 reflect that a permanent injunction was granted by the Court in its Order (Docket 532, enter  
14 1/12/06). The declarations submitted by RES to support its argument that a permanent  
15 injunction is no longer necessary are wholly irrelevant to the issue raised in Nikko's motion.  
16 Indeed, as recognized in the Court Order entered on January 12, 2006 (Docket 532), the Court  
17 already granted Nikko a permanent injunction. Thus, RES' declarations and the argument  
18 thereon are excluded as irrelevant under Fed R. Evid. R. 401.

19 Moreover, even if deemed relevant by the Court, the declarations submitted by RES in  
20 support of its Opposition are more prejudicial than probative as they contain only the self-  
21 serving statements of interested parties without any substantive evidence to rely on. The  
22 declarations of Gregory L. Lucas, Robert Morgensen, and Mark Frater include broad statements  
23 about the state of the printed circuit board ("PCB") industry yet fail to disclose any substantive

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documents to support their analyses. For this reason, the declarations submitted by RES are also excluded under Fed. R. Evid. R. 403 as being unduly prejudicial and lacking in probative value.

2       2.       The declarations of Gregory L. Lucas, Robert Morgensen, and Mark Frater, and  
3 argument thereon, are inadmissible in their entirety under Fed. R. Evid. 602 because the  
4 declarations do not contain evidence sufficient to support a finding that the declarants have  
5 personal knowledge of the matters stated in their declarations.

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7       3.       The declarations of Gregory L. Lucas and Robert Morgensen in their entirety, and  
8 ¶¶ 2-8 of the declaration of Mark Frater, and argument thereon, are excluded as inadmissible  
9 hearsay under Fed. R. Evid. R. 802.

10       Neither Gregory L. Lucas nor Robert Morgensen testified at trial, and Mark Frater never  
11 testified at trial or at a hearing to the truth of the matter asserted in ¶¶ 2, 3, 4, 5, 6, 7, and 8 in his  
12 declaration. Thus, the declarations of Gregory L. Lucas and Robert Morgensen in their entirety,  
13 and ¶¶ 2-8 of the declaration of Mark Frater, and argument thereon, are excluded as inadmissible  
14 hearsay under Fed. R. Evid. R. 802.

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16       4.       The declarations of Gregory L. Lucas and Robert Morgensen, and any argument  
17 thereon, are excluded in their entirety as containing improper expert opinions.

18       Neither Gregory L. Lucas nor Robert Morgensen was disclosed under Fed. R. Civ. P. R.  
19 (a)(2), and they are lay witnesses pursuant to Fed. R. Evid. R. 701. Yet the substance of their  
20 declarations relies on expert opinions regarding, among other things, the state of the PCB  
21 industry and how the industry as a whole will benefit by the continued manufacture and sale of  
22 RES' SC3 product. These statements fall outside the scope of lay witness opinions under Fed. R.  
23 Evid. R. 701.

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Beyond this procedural objection, neither Gregory L. Lucas nor Robert Morgensen have provided sufficient bases for their opinions. Fed. R. Evid. R. 702 requires that there be “sufficient facts and data” to support an expert opinion. However, neither Gregory L. Lucas nor Robert Morgensen have provided any documentation or other evidence to support their sweeping statements regarding the PCB industry or its need for continued production of SC3.

For these reasons, the declarations of Gregory L. Lucas and Robert Morgensen, and any argument thereon, are excluded in their entirety.

**IT IS SO ORDERED.**

Dated: 3-16-06



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The Honorable SAUNDRA BROWN ARMSTRONG  
United States District Judge

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