

Filed on behalf of Nuhn Industries Ltd.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,

Petitioner,

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

Case No. IPR2023-01161
U.S. Patent No. 11,358,425

**PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

Petitioner's Reply unsuccessfully attempts to address two of the many flaws in the Petition that the Patent Owner identified in its Preliminary Response:

Flaw 1 Ground 3 of the Petition improperly relies upon screenshots from a video [EX1013, Exh. B / EX1028] to demonstrate that the pump disclosed in SenwaTec's marketing brochure [EX1012] satisfies Element [1.3] of Claim 1, requiring "a fluid pump for pumping liquid manure," when a copy of the video was not submitted as evidence and the video does not qualify as prior art.

Flaw 2 The '425 Patent describes an amphibious manure lagoon pumping vehicle, which is a piece of agricultural equipment. The Petitioner's definition of a POSITA incorrectly requires "a bachelor's degree in mechanical engineering or similar field, and two years of professional experience in marine and off road vehicles," which excludes those most familiar and knowledgeable with this type of equipment - farmers and commercial manure applicators.

I. THE BOARD SHOULD NOT CONSIDER THE SENWATEC VIDEO

The Petitioner's Reply reinforces the point that the Board must limit its analysis of SenwaTec in Ground 3 to what is actually disclosed within SenwaTec's 3-page marketing brochure [EX1012]. That brochure does not teach or suggest using SenwaTec's pump in a manure lagoon to pump liquid manure.

Petitioner's excuse for not providing a copy of the video is that it is "other evidence" being "relied upon to demonstrate the knowledge generally available to

a POSA.” Paper 7, 1-2. But contrary to this assertion, the Petition relies upon screenshots from the video [EX1013, Exh. B / EX1028] to demonstrate that SenwaTec’s pump satisfies Element [1.3] of Claim 1 requiring “a fluid pump for pumping liquid manure.” *See* Petition, 65-66.¹ This video is not being used to demonstrate the **general** knowledge of a POSA, but instead is offered to demonstrate undisclosed capabilities of the **specific** pump found in SenwaTec’s marking brochure [EX1012]. Thus, the Petition uses the video to form the basis of a ground of invalidity and §312(a)(3)(A) applies.

A similar situation arose in *Salpeter v. ARP Manufacturing, LLC*, 2019 WL 7282091 (PTAB 2019), where the Board rejected a petitioner’s reliance on a video to supplement the teachings of a product manual because no link or verifiable publication date was provided. The deficiencies here are even more egregious because no copy of the video was provided in this IPR and because the video was apparently published on November 29, 2016 – more than 3 years **after** the Patent Owner’s August 12, 2013 provisional application filing date.² It is no wonder then why Petitioner would have preferred keeping the Patent Owner and the Board in the dark regarding the date this video was placed online. The video cannot

¹ Page 65 of the Petition also cites EX1027, which has other evidentiary problems as the Patent Owner explains on pages 67-69 of its Preliminary Response.

² Footnote 1 of Petitioner’s Reply directs the Board to a YouTube link for the video, which is found in the Petition for IPR2024-00004 involving a related family member patent. YouTube shows an upload date of November 29, 2016.

“demonstrate the knowledge generally available to a POSA,” as the Petitioner argues, with this publication date.

II. SENWATEC’S MARKETING BROCHURE DOES NOT TEACH A VEHICLE THAT PUMPS LIQUID MANURE

Petitioner makes a strained argument in its Reply that the reference to a “centrifugal pump” in SenwaTec’s marketing brochure suggests to a POSITA that the SenwaTec vehicle pumps liquid manure. The problem with argument is that not all centrifugal pumps are suitable for manure lagoon agitation. For example, The Liquid Manure Application Systems Design Manual [EX1040] cited by the Petitioner explains that centrifugal pumps with a closed impeller are not well suited for manure lagoon agitation. EX1040, 51-52. SenwaTec’s marketing brochure [EX1012] does not explain what type of impeller is included in SenwaTec’s pump so it does not follow that a POSITA would understand SenwaTec’s pump to be capable of pumping liquid manure simply because the brochure discloses a “centrifugal pump.” As a result, this argument does not satisfy Petitioner’s burden.

III. PETITIONER’S DEFINITION OF A POSITA IS LITIGATION INDUCED AND SHOULD BE REJECTED

Petitioner and Patent Owner are both in the farm equipment business. EX2004, ¶¶40-45. The only record evidence regarding the level of ordinary skill in *this industry* comes from the Patent Owner’s expert, Douglas Prairie, who grew up

on a family farm, has seen manure lagoon agitation first-hand, has 20+ years of experience in agricultural equipment design, and teaches college classes on the subject. EX2004, ¶¶4-10. The definition Mr. Prairie advances is the correct one.

The critiques raised in the Petitioner's Reply have **zero** merit and include misleading quotations. The '425 Patent explains that the ground engaging elements are "***of the type*** suitable for powering a vehicle across wet or muddy terrain." EX1001, 2:5-7. This excerpt describes the type of wheels found on the patented manure lagoon pumping vehicle, rather than suggest other off-road uses as Petitioner argues. ***The next quotation*** stating "the present invention can be employed in any fluid pumping situation ... such as when pumping fluid from rivers, ponds, lakes, rain water storage reservoirs, etc." ***is not even from the '425 Patent***. This comes from a non-family member patent for the Patent Owner's PTO-powered ***pump***. It does not follow that the ***manure lagoon pumping vehicle*** in the '425 Patent has uses beyond manure lagoon pumping. Finally, Petitioner's argument that manure pumping laborers are not POSITAs and its analogy to the automobile are unavailing. Unlike most automobile drivers, farmers and commercial manure applicators work on and maintain their equipment and possess specialized technical knowledge about the equipment they use. EX2004, ¶4. Petitioner's definition, which places academic experience over agricultural industry experience is divorced from reality, particularly in this field.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 8th day of November, 2023, a true and correct copy of the foregoing **Patent Owner's Sur-Reply To Petitioner's Reply to Patent Owner's Preliminary Response** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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