

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION**

NUHN INDUSTRIES, LTD.,

Plaintiff,

v.

BAZOOKA-FARMSTAR, LLC,

Defendant.

Case No. 3:22-cv-00015-SMR-HCA

**DEFENDANT'S INITIAL INVALIDITY
CONTENTIONS**

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I. INTRODUCTION

Pursuant to the Court's Pretrial Scheduling Order dated April 17, 2023 ("Scheduling Order") (Dkt. 76), Bazooka-Farmstar, LLC ("Bazooka") hereby discloses its Initial Invalidity Contentions. Plaintiff Nuhn Industries, Ltd. ("Nuhn") has asserted infringement of U.S. Patent No. 10,974,557 ("the '557 Patent"); U.S. Patent No. 11,358,425 ("the '425 Patent"); U.S. Patent No. 11,491,835 ("the '835 Patent"); and U.S. Patent No. 11,541,708 ("the '708 Patent") (collectively "the Asserted Patents"). Specifically, Nuhn has asserted infringement of Claims 1-4, 6-11, 13-24, 26-41, 43-57, 59-80 of the '557 Patent; Claims 1-4 of the '425 Patent; Claims 1-5, 7-8, 17-21, 23, 33-40 of the '835 Patent; and Claims 1-2, 8-17, 21-24, 26-29, 35-38 of the '708 Patent (collectively "the Asserted Claims"). Bazooka's Initial Invalidity Contentions, including claim chart Exhibits AA-AM; BA-BE; CA-CH; and DA-DK, and supporting Exhibits 1-26 (collectively, "Initial Invalidity Contentions") demonstrate that each of the Asserted Claims are invalid under 35 U.S.C. § 102, 35 U.S.C. § 103, and/or 35 U.S.C. § 112. Bazooka provides its Initial Invalidity Contentions for the Asserted Claims and specifically reserves the right to supplement and/or amend these Initial Invalidity Contentions to account for the addition or withdrawal of claims that Nuhn may be permitted or required to make or any discovery or evidence uncovered in the case.

II. GENERAL RESERVATION

Bazooka's Initial Invalidity Contentions are subject to the reservations stated herein and to revision and amendment as provided in Rule 26(e) of the Federal Rules of Civil Procedure, the Scheduling Order, the Local Rules, the Court's claim constructions, analyses and opinions of expert witnesses concerning claim construction, infringement, invalidity, and unenforceability issues, and any position that Nuhn takes concerning any of the foregoing.

Bazooka's Initial Invalidity Contentions are based on information reasonably and presently available to Bazooka and are based on prior art located after a reasonable search and without

discovery from Nuhn. Bazooka expressly reserves its right to amend these Initial Invalidity Contentions should Nuhn provide any information that it failed to provide in its disclosures or should Nuhn amend its disclosures in any way. Furthermore, because discovery is ongoing, Bazooka reserves its right to revise, amend, and/or supplement the information provided herein, including by identifying, charting, and relying on additional references, as information becomes available during discovery.

Prior art not included in these Initial Invalidity Contentions, whether presently known or not known to Bazooka, may become relevant. For example, Bazooka may receive, either via informal request or pursuant to subpoena, documents from third parties who are believed to have knowledge, documentation, and/or corroborating evidence concerning prior art listed herein and/or additional prior art. These third parties include, as applicable and without limitation, the authors, inventors, assignees, and/or licensees of the prior art references listed in these disclosures. If and to the extent Nuhn contends any limitations of the Asserted Claims are not disclosed in the prior art identified herein, Bazooka reserves its right to identify other references that disclose and/or render obvious both any such allegedly missing limitations of any claims and those claims as a whole. Bazooka reserve all rights to rely on any reference found in the prosecution history of the applications leading to the Asserted Patents.

Bazooka offers these Initial Invalidity Contentions without prejudice to any position Bazooka may ultimately take as to any claim construction issues not yet decided by the Court. Nothing herein should be construed or represented as evidencing any express or implied agreement with any of Nuhn's claim construction or infringement positions. Bazooka expressly reserves its right to contest such claim constructions.

Bazooka further intends to rely on admissions concerning the scope of the prior art relevant to the Asserted Patents found in, *inter alia*: the patent prosecution history of the Asserted Patents and any related patents and/or patent applications; any deposition testimony of the named inventor on the Asserted Patents and any related patents and/or patent applications; and the papers filed and any evidence submitted by Nuhn in connection with this action. Bazooka's claim charts cite to particular teachings and disclosures of the prior art as applied to features of the Asserted Claims. However, a person having ordinary skill in the art ("POSA") generally may view an item of prior art in the context of other publications, literature, products, and understanding. As such, the cited portions are only examples, and Bazooka reserves its right to rely on uncited portions of the prior art references and on other publications, expert testimony, and other evidence as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation or any of the Asserted Claims as a whole. Bazooka further reserves its right to rely on uncited portions of the prior art references, other publications, and testimony, including expert testimony, to establish bases for combinations of certain cited references that render the Asserted Claims obvious.

The references discussed in the claim charts may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. Any obviousness combinations are provided in addition and in the alternative to Bazooka's anticipation contentions and are not to be construed as an admission or suggestion that any reference included in the combinations does not by itself anticipate.

Bazooka reserves its right to assert that the Asserted Claims are invalid under 35 U.S.C. § 102 in the event Bazooka obtains evidence that the inventor named in the Asserted Patents did not themselves invent the subject matter claimed in the Asserted Patents, or that the Asserted

Patents otherwise fails to name the correct inventor(s). Should Bazooka obtain such evidence, Bazooka will provide the name of any person from whom, and the circumstances under which, the alleged invention or any part of it was derived, or the name of any person who Bazooka contend is inappropriately named or not named as an inventor.

Bazooka also reserves its right to challenge any terms of any Asserted Claims under 35 U.S.C. § 112 beyond the grounds outlined herein, including by arguing that they are indefinite, not supported by the written description, or not enabled. Nothing stated herein shall be construed as a waiver of any argument available under 35 U.S.C. §§ 101, 102, 103, and/or 112.

III. IDENTIFICATION OF PRIOR ART

Subject to Bazooka's reservation of rights herein, Bazooka identifies the prior art of which it is presently aware, appreciates the significance of given the state of discovery, and that individually or in combination(s) invalidates the Asserted Claims of the Asserted Patents and evidences the state of the art as of the earliest alleged priority date of the Asserted Patents. Bazooka's identification of prior art is based on Bazooka's present understanding of the Asserted Claims and any claim constructions expressed or implied in Nuhn's Infringement Contentions.

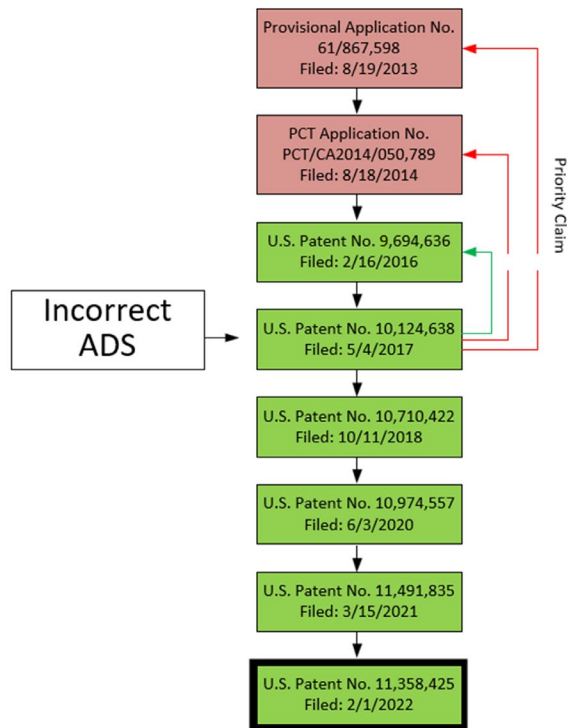
A. Priority Date of the Asserted Patents

The Asserted Patents are all related. The '708 Patent is a continuation of application No. 17 / 201,100, filed on March 15, 2021, now the '835 Patent. The '835 Patent and the '425 Patent are both continuations of application No. 16/891,627, filed on June 23, 2020, now the '557 Patent, which is a continuation of application No. 16/157,950, filed on October 11, 2018, now U.S. Patent No. 10,710,422, which is a continuation of application No. 15/586,493, filed on May 4, 2017, now U.S. Patent No. 10,124,638, which is a continuation of application No. 15/044,905, filed on February 16, 2016, now the '636 Patent, which is a continuation of application No. PCT/CA2014/050789, filed on August 18, 2014, which is a continuation of provisional application

No. 61/867,598, filed August 19, 2013. Therefore, the earliest possible priority date of the Asserted Patents is August 19, 2013 (“Priority Date”).

But that priority date is defective. The earliest effective priority date is February 16, 2016. Applicants must make “specific reference” to each application in the chain of priority for a given patent. 35 U.S.C. §§119-20. This requires every intermediate application in a chain of priority to make specific reference to each prior application. *Medtronic CoreValve, LLC v. Edwards Lifesciences Corp.*, 741 F.3d 1359, 1363 (Fed. Cir. 2014). Thus, an applicant must include both the application number **and the correct filing date** of each prior application in an ADS. 37 C.F.R. §§1.76(b), 1.78(d)(2). The application data sheet controls according to USPTO regulations. 37 C.F.R. §1.76(d). “Even if the Office has recognized a benefit claim by entering it into the Office’s database and including it on any of applicant’s filing receipts, the ***benefit claim is not a proper benefit claim*** under 35 U.S.C. §119(e) or 35 U.S.C. §120 and 37 C.F.R. §1.78 unless the reference is included in an ADS in compliance with 37 C.F.R. §1.76....” MPEP §211.02(I) (emphasis added).

The Asserted Patents fails to effectively claim priority to the ’598 Provisional and the ’789 PCT—the chain breaks at the ’636 Patent with an effective filing date of February 16, 2016:



The '638 Patent, to which the Asserted Patents claim priority, includes a defective priority claim because it incorrectly lists the filing dates of the '789 PCT (filed 8/18/2014, listed 8/19/2014) and the '598 Provisional (filed 8/19/2013, listed 8/18/2013):

Prior Application Status	Expired	Remove	
Application Number	Continuity Type	Prior Application Number	Filing or 371(c) Date (YYYY-MM-DD)
15044905	Continuation of	PCT/CA2014/050789	2014-08-19
Prior Application Status	Expired	Remove	
Application Number	Continuity Type	Prior Application Number	Filing or 371(c) Date (YYYY-MM-DD)
PCT/CA2014/050789	Claims benefit of provisional	61867598	2013-08-18
Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the Add button.			
		Add	

PCT Application No.
PCT/CA2014/050,789
Filed: 8/18/2014

Provisional Application No.
61/867,598
Filed: 8/19/2013

The Asserted Patents claim priority to the '638 Patent. But the '638 Patent fails to make specific reference to the '598 Provisional and the '789 PCT because it does not provide the correct filing dates for those applications. Because the '638 Patent does not properly claim priority to the '598 Provisional and the '789 PCT, the Asserted Patents are not entitled to the benefit of

the '598 Provisional or the '789 PCT. Rather, the earliest priority date the Asserted Patents could be entitled to is the priority date of the '636 Patent—February 16, 2016.

Bazooka includes Grounds based on a publication of Nuhn's commercial embodiment of the Asserted Patents: the publication by Ron Lyseng and the use and sale of Nuhn's Lagoon Crawler. While Lyseng and Nuhn's Lagoon Crawler are only prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016, *all the other prior art references identified in these contentions are prior art under the earliest possible priority date.*

Regardless of the effective priority date, the provisions of the America Invents Act apply.

B. Prior Art

Bazooka hereby identifies the following prior art with public availability and/or effective filing dates before the Critical Date that Bazooka relies on in its Initial Invalidity Contentions.

1. Patents

The following patents and published patent applications qualify as prior art under at least one or more provisions of 35 U.S.C. § 102.

Exhibit	Patent No.	Title	To	Issued/Publ.
1		All-Terrain Hostile Environment Vehicle	Carrier (I)	US20120185129
2	US7478817	All-Terrain Hostile Environment Vehicle	Carrier II	
3		An Amphibious Water Treatment Device ¹	Yoon	KR20130016490
5		Floating Manure Agitator	Puck	US20140112093
6	US7314395	Amphibious Vehicle	Bryham	

¹ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

7		Tracked All-Terrain Vehicle	Bennett	US20140288763
8		Tracked All-Terrain Vehicle	Bennett II	US20210331752
9	US6922922	Amphibious Dredging Vehicle and Method for Restoring Wetlands Using Same	Cheramie	
25	US7833071	Amphibious All-Terrain Vehicle	Gaither	
26		Floating Mixer for Sewage Treatment	Bradley	GB2366218

2. *Printed Publications*

The following printed publications qualify as prior art under at least one or more provisions of 35 U.S.C. § 102.

Exhibit	Author/Editor	Title	Publication Date
10	Dorotea Mekaniska AB	Truxor Amphibian Tool Carrier	At least as of captured August 18, 2010
11	SenwaTec	SENWATEC-SCHRÖER UMWELT-& GEWÄSSERTECHNOLOGIE GMBH & CO. KG, LIGHT AMPHIBIOUS BOAT/VEHICLE “AMPHI-KING®” SWT--AB380	At least as early as November 28, 2012
12	Ron Lyseng	<i>Float your boat in a slurry moat</i> , THE WESTERN PRODUCER	August 29, 2013
13	Nuhn Reference	Nuhn.ca/images/gforcetractor/feature8.jpg	At least as of captured June 5, 2011
20	Fisher Pump Brochure	Features of Typical Belt Drive Fisher Pump	Before March 2010 (See Exhibit 24)
21	Manure Manager	Nuhn Header Series Lagoon Pump, <u>Manure Manager</u> , July/August 2011, at 23.	July/August 2011

3. *Sales Activity, Public Use, and Other Knowledge*

The following products and services qualify as prior art under at least one or more provisions of 35 U.S.C. §102.

Exhibit	By	To	Item Sold/Offered/Used or Information Known	Available Date
22	Dorotea Mekaniska AB	Customers in US; Public Use	Truxor DM 5000 with Doro Pump	Prior to August 19, 2013
23	Nuhn Industries, Ltd.	Customers in US and Canada; Public Use	Nuhn Dual Port Header Series Pump	Prior to March 2010
14	SenwaTec	Customers in Europe; Public Use	SenwaTec Amphi- King	At least as early as May 3, 2012
	Nuhn Industries, Ltd.	Customers in US and Canada; Public Use	Nuhn Lagoon Crawler	August 20- 21, 2013 ²

Investigation, analysis, and discovery are ongoing in this matter, and Bazooka reserves all rights to supplement these Initial Invalidity Contentions as appropriate.

IV. **INVALIDITY DUE TO ANTICIPATION**

Bazooka hereby identifies the prior art that Bazooka contends anticipates the Asserted Claims of the Asserted Patents. Bazooka's identification of anticipatory prior art is based on Bazooka's present understanding of these claims prior to claim construction by the Court and in view of the apparent constructions Nuhn is asserting in view of Nuhn's Infringement Contentions.

² Nuhn's Answer to Bazooka Interrogatory No. 3 states in relevant part: "Ian Nuhn conceived and designed the first Nuhn Lagoon Crawler Product (as defined in Specific Objection No. 16) in early August 2013. The first prototype of the Nuhn Lagoon Crawler Product was built in August of 2013 in time for the Manure Expo show held on August 20–21, 2013 in Ontario, Canada."

Depending on the Court’s construction of the Asserted Claims of the Asserted Patents, and/or positions that Nuhn or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues, different prior art references in the accompanying exhibits may be of greater or lesser relevance, and different combinations of these references may be implicated. Accordingly, the claim charts may reflect alternative applications of the prior art against the Asserted Claims.

Though these claim charts provide citations to point out where in the prior art references each element may be found, these citations are illustrative only. The references may contain other, uncited disclosures of a given claim element, and Bazooka reserves all rights to rely also on such other, uncited portions of these references.

Bazooka identifies the following anticipatory prior art (“Anticipatory References”):

A. U.S. Patent No. 10,974,557

Anticipatory Reference	Exhibit
Carrier (Exhibit 1)	AA
Lyseng (Exhibit 12)	Section IV.A.2
Nuhn Lagoon Crawler (Footnote 2)	Section IV.A.3
Carrier II (Exhibit 2)	AJ

1. *Carrier*

The claim chart attached as Exhibit AA hereto demonstrates that Carrier anticipates claims 1-17, 19-21, 29, 31-36, 39, 46-47, 49-50, 54-55, 62-66, 68, 70-75, and 78-79 of the ’557 Patent.

2. *Lyseng*

The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents and expressly or inherently teaches the

Asserted Claims of the '557 Patent. Lyseng necessarily anticipates the Asserted Claims of the '557 Patent.

3. *Nuhn Lagoon Crawler*

Nuhn's Lagoon Crawler is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Nuhn Lagoon Crawler is the commercial embodiment of the Asserted Patents. Accordingly, the commercial embodiment teaches the Asserted Claims of the '557 Patent. Use and sale of the Nuhn Lagoon Crawler necessarily anticipates the Asserted Claims of the '557 Patent.

4. *Carrier II*

Bazooka incorporates by reference Ground 1 of Reexamination Application No. 90/019,076, filed May 6, 2022, attached hereto as Exhibit AJ.

B. U.S. Patent No. 11,358,425

Anticipatory Reference	Exhibit
Carrier (Exhibit 1)	BA, BE
Lyseng (Exhibit 12)	BA
Nuhn Lagoon Crawler (Footnote 2)	Section IV.B.3
Carrier II (Exhibit 2)	BE

1. *Carrier*

Bazooka incorporates by reference Ground 1 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

Bazooka further incorporates by reference Ground 1 of Reexamination Application No. 90/019,107, filed August 31, 2022, attached hereto as Exhibit BE.

2. *Lyseng*

Bazooka incorporates by reference Ground 6 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

3. *Nuhn Lagoon Crawler*

Nuhn's Lagoon Crawler is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Nuhn Lagoon Crawler is the commercial embodiment of the Asserted Patents. Accordingly, the commercial embodiment teaches the Asserted Claims of the '425 Patent. Use and sale of the Nuhn Lagoon Crawler necessarily anticipates the Asserted Claims of the '425 Patent.

4. *Carrier II*

Bazooka incorporates by reference Ground 3 of Reexamination Application No. 90/019,107, filed August 31, 2022, attached hereto as Exhibit BE.

C. U.S. Patent No. 11,491,835

Anticipatory Reference	Exhibit
Carrier (Exhibit 1)	CA
Lyseng (Exhibit 12)	Section IV.C.2
Nuhn Lagoon Crawler (Footnote 2)	Section IV.C.3

1. *Carrier*

The claim chart attached as Exhibit CA hereto demonstrates that Carrier anticipates claims 1-10, 13-16, 17-26, and 29-40.

2. *Lyseng*

The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents and expressly or inherently teaches the

Asserted Claims of the '835 Patent. Lyseng necessarily anticipates the Asserted Claims of the '835 Patent.

3. *Nuhn Lagoon Crawler*

Nuhn's Lagoon Crawler is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Nuhn Lagoon Crawler is the commercial embodiment of the Asserted Patents. Accordingly, the commercial embodiment teaches the Asserted Claims of the '835 Patent. Use and sale of the Nuhn Lagoon Crawler necessarily anticipates the Asserted Claims of the '835 Patent.

D. U.S. Patent No. 11,541,708

Anticipatory Reference	Exhibit
Lyseng	Section IV.D.1
Nuhn Lagoon Crawler (Footnote 2)	Section IV.D.2
Bennett II	DA

1. *Lyseng*

The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents and expressly or inherently teaches claims of the '708 Patent. Lyseng necessarily anticipates the Asserted Claims of the '708 Patent.

2. *Nuhn Lagoon Crawler*

Nuhn's Lagoon Crawler is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Nuhn Lagoon Crawler is the commercial embodiment of the Asserted Patents. Accordingly, the commercial embodiment teaches the Asserted Claims of the '708 Patent. Use and sale of the Nuhn Lagoon Crawler necessarily anticipates the Asserted Claims of the '708 Patent.

3. *Bennett II*

The claim chart attached hereto as Exhibit DA demonstrates that Bennett II anticipates Claims 1, 8-17, 23-24, 26-28, and 35 of the '708 Patent.

V. INVALIDITY DUE TO OBVIOUSNESS

Each combination of art identified herein would have had no unexpected results, and at most would simply have represented a known alternative to a POSA. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 415 (2007) (rejecting the Federal Circuit's "rigid" application of the teaching, suggestion, or motivation to combine test, instead espousing an "expansive and flexible" approach). The Supreme Court has held that a person of ordinary skill in the art is "a person of ordinary creativity, not an automaton" and "in many cases a person of ordinary skill in the art will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 420-21.

Motivations or reasons to combine the teachings of the prior art references as described herein are found in, for example: the nature of the problem to be solved; the express, implied, and inherent teachings of the individual references themselves and the interrelated teachings of those references and of the prior art as a whole; the knowledge of persons of ordinary skill in the art; the fact that the prior art is generally directed toward the same problem, such that skilled artisans seeking to solve this problem would have looked to these cited references in combination; the predictability of results obtained in combining the different elements of the prior art; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution; the existence of a known need or problem in the field of endeavor at the time of the invention; the fact that the combination involves no more than applying known methods to yield predictable results, known techniques in the same way, and/or a simple substitution of one known, equivalent element for another to obtain predictable results; the tendency of known work in one field of endeavor to prompt variations based on predictable design

incentives and/or market forces either in the same field or a different one; and/or the fact that there were only a finite number of predictable solutions, such that a particular modification, substitution, or combination would have been obvious to try.

Bazooka's contention that the references in this section, in various combinations, render the Asserted Claims of the Asserted Patents obvious under 35 U.S.C. § 103 are in no way an admission or suggestion that each reference does not independently anticipate the Asserted Claims under 35 U.S.C. § 102. Notwithstanding the foregoing, to the extent Nuhn contends that any Anticipatory Reference fails to disclose any of these claim limitations, such Anticipatory Reference can be combined with disclosures from any one or more of the above-listed references to render these claim limitations and the claims reciting them obvious under 35 U.S.C. § 103. Any of these references may be combined with other disclosed references and/or with the knowledge of a person of ordinary skill in the art during the relevant time period to render the Asserted Claims of the Asserted Patents obvious and, therefore, invalid.

These combinations are not intended to be exhaustive, as there are many possible combinations of these references, and it is not practical to identify and list all potentially relevant combinations, particularly at this early stage before any discovery has been served by either party and before claim construction proceedings. Bazooka reserves all rights to supplement the obviousness arguments set forth herein using any references listed above and any other references, including those that may become known and/or relevant during the course of discovery. Bazooka further reserve all rights to rely upon combinations of references cited herein with references disclosed in the prosecution history of the Asserted Patents.

The Asserted Claims of the Asserted Patents are also invalid under 35 U.S.C. § 103 as obvious in view of each one of the references identified in Section IV, *supra*, on their own, in view

of the general knowledge and ordinary skill of in the art, and also in combination with one or more of each other or other prior art identified in Section IV above.

Bazooka hereby identifies exemplary disclosures from and combinations of prior art references that Bazooka contends render the Asserted Claims obvious, together with motivations for such combinations. Bazooka’s identification of obviousness prior art is based on Bazooka’s present understanding of the Asserted Claims prior to claim construction by the Court and in view of the apparent constructions Nuhn is asserting in view of Nuhn’s Infringement Contentions. Bazooka identifies the following obviousness prior art combinations (“Obviousness Combinations”).

A. U.S. Patent No. 10,974,557

Obviousness Combination	Exhibit
Carrier (Exhibit 1) Claims 1-17, 19-21, 29, 31-36, 39, 46-47, 49-50, 54-55, 62-66, 68, 70-75, and 78-79	Section V.A.1
Lyseng (Exhibit 12) All Asserted Claims	Section V.A.2
Truxor (Exhibit 10) in view of Carrier (Exhibit 1) Claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79	AB
Truxor (Exhibit 10) in view of Carrier (Exhibit 1) in view of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) Claims 7, 13, 24-26, 41-43, and 57-59	AC
Truxor (Exhibit 10) in view of Carrier (Exhibit 1) in view of Nuhn’s Multi-Port Header Series Pumps (Exhibits 21, 23) Claims 7, 13, 24-26, 41-43, and 57-59	Section V.A.5
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) ³ Claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80	AD
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) in view of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) Claims 7, 13, 24-26, 41-43, and 57-59	AE
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) in view of Nuhn’s Multi-Port Header Series Pumps (Exhibits 21, 23) Claims 7, 13, 24-26, 41-43, and 57-59	Section V.A.8

³ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

Puck (Exhibit 5) in view of Bryham (Exhibit 6) Claims 1-23, 27-40, 44-56, and 60-80	AF
Puck (Exhibit 5) in view of Bryham (Exhibit 6) in view of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) Claims 7, 13, 24-26, 41-43, and 57-59	AG
Puck (Exhibit 5) in view of Bryham (Exhibit 6) in view of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) Claims 7, 13, 24-26, 41-43, and 57-59	Section V.A.11
Truxor (DM5000) (Exhibit 22) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79	Section V.A.12
SenwaTec (Amphi-King) (Exhibit 14) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80	Section V.A.13
Cheramie (Exhibit 9) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80	AH
Carrier II (Exhibit 2) in view of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) Claims 1, 22, 24, 26-28, 56-57, and 59-61	AI
Carrier II (Exhibit 2) in view of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) Claims 1, 22, 24, 26-28, 56-57, and 59-61	Section V.A.16
Carrier II (Exhibit 2) Claims 1-13	Section V.A.17
Carrier II (Exhibit 2) in view of Puck (Exhibit 5) Claims 1-13	AJ
Carrier II (Exhibit 2) in view of Puck (Exhibit 5) in view of Gaither (Exhibit 25) Claims 1-13	AJ
Puck (Exhibit 5) in view of Bennett (Exhibit 7) Claims 1-13	AJ
Puck (Exhibit 5) in view of Bryham (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1-23, 27-40, 44-56, and 60-80	AK
Bradley (Exhibit 26) in view of Bryham (Exhibit 6) Claims 1-4, 6-11, 13, 15-17, 19-21, 29, 31-32, 34-39, 46-47, 49-50, 52-55, 62-66, 68, 70-71, and 73-79	AL
Bradley (Exhibit 26) in view of Bryham (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1-4, 6-11, 13, 15-21, 29-32, 34-39, 46-55, 62-71, and 73-80	AM

1. Carrier

As shown with respect to anticipation above (Exhibit AA), Carrier discloses every limitation of the Asserted Claims of the '557 Patent, specifically claims 1-17, 19-21, 29, 31-36, 39, 46-47, 49-50, 54-55, 62-66, 68, 70-75, and 78-79. To the extent any Asserted Claims of the '557 Patent are not found to be anticipated by Carrier (Exhibit AA) because one or more limitations is not literally present in the embodiment of Carrier, it would have been obvious for a POSA to modify the teaching of Carrier to create the claimed invention.

2. Lyseng

The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents. To the extent any Asserted Claims of the '557 Patent are not found to be anticipated by Lyseng because one or more limitations is not literally present in the embodiment of Lyseng, it would have been obvious for a POSA to modify the teaching of Lyseng to create the claimed invention.

3. Truxor in view of Carrier

Truxor in view of the remote-control teachings of Carrier would have rendered claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79 obvious.

a. Motivation to Combine Truxor with Carrier

Truxor teaches an amphibious pumping/dredging vehicle for use in ponds, lakes, and hazardous environments, such as oil spill sites. (Truxor, 2.) A POSA would have been motivated to add remote-control functionality to Truxor in view of the teachings of Carrier to provide a safer way of controlling the Truxor amphibious vehicle during dangerous dredging, excavation, and decontamination.

Truxor describes an amphibious vehicle with quick attachment tools used for “dredging ... oil decontamination....” (*Id.*, 3.) Truxor discloses “joysticks for steering and the operation of the tools.” (*Id.*, 3.) Truxor further discloses how its operators use specialized safety equipment. For example, Truxor shows operators equipped with hearing protection, life jackets, and cold weather gear while operating the vehicle:



(*Id.*, 1 (depicting life jacket and hearing protection); *id.*, 5 (shows use in ice and dangerously cold water).)

Carrier discloses an amphibious pumping vehicle for hazardous material decontamination. (Carrier, ¶¶ [0003], [0007], [0050]-[0051].) Carrier discloses a remote-control system on the vehicle for controlling the pump and for driving the vehicle on land and in water (*Id.*, ¶¶ [0059], [0064]-[0065]; *see also* Exhibit AA, [1.6].) Carrier describes how a remote control is useful in situations where an operator of the vehicle may become incapacitated. (Carrier, ¶ [0065].) The remote-control system provides important safety benefits to operators of the vehicle, as it “enable[es] the firefighters to attack the fire or decon[tamination] objective from an even greater distance.” (*Id.*, ¶ [0059].)

A POSA would have been motivated to combine the amphibious dredging and water treatment device of Truxor with remote-control technology, like that of Carrier, to eliminate the risk of harm to operators of the vehicle. Truxor and Carrier disclose amphibious vehicles used in

environments that are dangerous or unpleasant for humans. Carrier discloses a remote-control system that allows an operator to control such a vehicle and its attachments from land, thereby reducing the risk of harm to the operator in dangerous environments. (*Id.*, ¶¶ [0055], [0059], [0064]-[0065].) A POSA would have recognized the risks of harm to operators using the vehicle of Truxor in certain applications and would have been motivated to make Truxor safer by implementing the remote-control technology disclosed by Carrier.

In fact, POSAs knew to add remote control to Truxor to make it safer. Melnikov (Exhibit 15; Exhibit 16 (translation)), which was filed on September 4, 2012,⁴ describes how “Truxor—a multifunctional amphibian machine manufactured by the Swedish company Dorotea Mekaniska AB is known” and that “the disadvantages of the machine may include the presence of an operator located on the machine itself, which limits the use thereof in conditions dangerous for humans.” (Melnikov at 3.) Melnikov proceeds to describe adding remote control to a Truxor-like amphibious machine with a pump for spraying liquid biopreparations. (*Id.* at 4-5.) Melnikov describes how the vehicle can be driven and the pump can be operated by remote control. (*Id.*) It would have been obvious to apply the known technique of remote control to the known device described by Truxor, which, as recognized by Melnikov, was ready for the improvement. The

⁴ Melnikov published August 27, 2013 (Exhibit 15; Exhibit 16 (translation)) and was filed September 4, 2012. Regardless of whether Melnikov is prior art to the ’557 Patent, a “motivation to combine need not be found in prior art references.” *Nat’l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1337 (Fed. Cir. 2004). Rather, evidence on this point can be found in non-prior art materials sufficient to show the knowledge generally available to one of ordinary skill in the art at the time of the alleged invention. *Id.* Like Melnikov (Exhibits 15-16), Exhibits 17-19 are relied upon to demonstrate the knowledge generally available to a POSA at the time of the alleged invention. *Nat’l Steel Car, Ltd.*, 357 F.3d 1319 at 1337. It also shows that the pump in the SenwaTec reference inherently pumps liquid manure. Exhibit 18. Because Exhibit 18 is a newspaper article, it is self-authenticating under Fed. R. Evid. 902(6).

combination would have yielded the predictable result of permitting operation of the Truxor vehicle while stationing the operator at a safe location.

b. Claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79

The claim chart attached hereto as Exhibit AB demonstrates that Claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79 of the '557 Patent are invalid as obvious by Truxor in view of Carrier.

4. *Truxor in view of Carrier in view of Nuhn Reference or Manure Manager*

Truxor in view of the remote-control teachings of Carrier, described above, in further view of the pump teachings of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) would have rendered claims 7, 13, 24-26, 41-43, and 57-59 obvious.

Truxor in combination with Carrier renders obvious claims 1-4, 6-11, 13-17, 19-23, 27-29, 32-36, 39-40, 44-47, 49-50, 54-56, 60-66, 68, 71-75, and 78-79. (*See* Exhibit AB.) As outlined below, Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) provides additional teachings that render obvious claims 7, 13, 24-26, 41-43, 57-59.

a. Motivation to Combine Truxor and Carrier with the Nuhn Reference or Manure Manager

Truxor teaches an amphibious vehicle that can be used for dredging and related pumping of liquids. Similarly, Carrier teaches an amphibious vehicle for pumping liquids. Truxor, Carrier, and the Nuhn Reference⁵ share the same field of art, the pumping of liquids. And more specifically,

⁵ The teachings of Manure Manager (Exhibit 21) are substantially identical to the teachings of the Nuhn Reference (Exhibit 13) and may be substituted for the same as appropriate. The motivation to combine references with the Nuhn Reference is substantially identical to the motivation to combine references with Manure Manager. Furthermore, it would have been obvious for a POSA to combine the Nuhn Reference with the teachings of Manure Manager, which disclose prior elements according to known methods to yield a predictable result, *i.e.*, substantially the same pump disclosed by each. *See, e.g., In re Katz Interactive Call Processing Pat. Litig.*, No. 07-ml-

the pumping of liquid manure. A POSA looking to improve dredging/pumping capabilities and safety of Truxor and Carrier would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of a dual ported and lofted housing, tapered fan design, improved output, and remote-control operation. (Nuhn Reference.) A POSA would have understood that, as stated in Nuhn's website, the port design of the pump "uses the input power very efficiently as it is not wasted by moving liquid around in the housing." (*Id.* at 7.) The design also "reduce[s] side thrust on the bottom bearings." (*Id.* at 5.) As discussed in an article about the pump, "the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produce 6,000 (US) gallons per minute at 1,000 r.p.m. **with little input horsepower.**" "On Track," *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5> (emphasis added). The improved efficiencies of the pump described by the Nuhn Reference would be especially beneficial given the remote environments that both Truxor and Carrier are designed to operate in. A POSA looking to improve the fluid pumping capabilities, efficiency, and operating range of Truxor or Carrier, would look to a pump, such as the Nuhn Reference, that uses little input horsepower for pumping large amounts of fluid. Furthermore, the Nuhn Reference teaches the use of remote-control capabilities which POSAs already recognized would further improve safety for operators of vehicles such as Truxor and Carrier. (Nuhn Reference at 7.)

01816-C RGK (FFMx), 2009 U.S. Dist. LEXIS 132101, at *189 (C.D. Cal. Jan. 29, 2009) ("This Court agrees with the defendants' reasoning and also notes that the two prior references are not just in related fields. They are in the same field. The references were developed by the same company and simply reflect different versions/models of the same type of product.").

b. Claims 7, 13, 24-26, 41-43, 57-59

The claim chart attached hereto as Exhibit AC demonstrates that Claims 7, 13, 24-26, 41-43, 57-59 of the '557 Patent are invalid as obvious by Truxor in view of Carrier in view of the Nuhn Reference. The teachings of Manure Manager (Exhibit 21) are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

5. *Truxor in view of Carrier in view of Nuhn's Multi-Port Header Series Pumps*

The public use, sale, offer for sale, and importation of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and Manure Manager printed publications (Exhibits 13, 21). Bazooka incorporates by reference the claim chart of Truxor in view of Carrier in view of the Nuhn Reference (Exhibit AC).

6. *SenwaTec in view of Yoon*

SenwaTec in view of the remote-control teachings of Yoon would have rendered claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80 obvious.

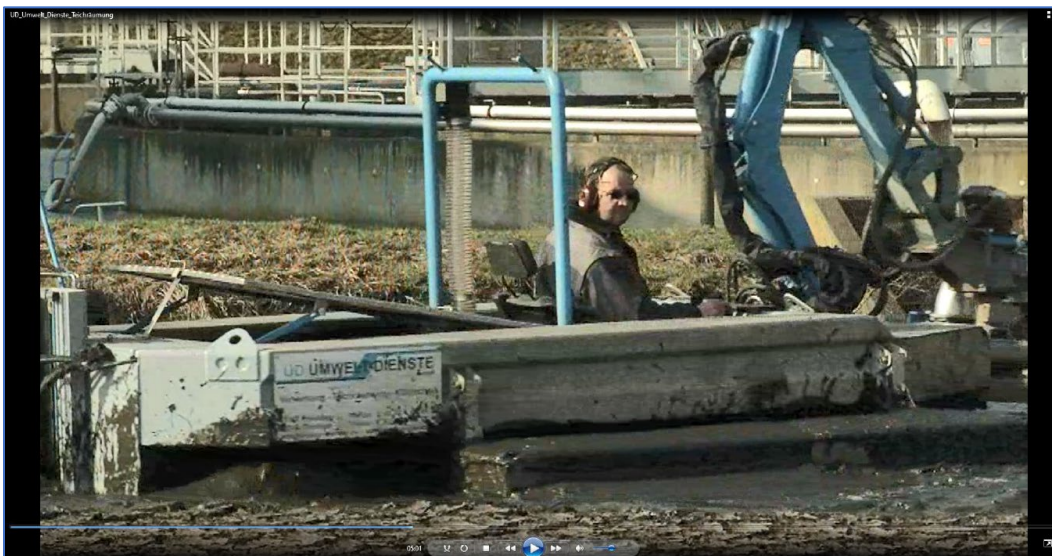
a. Motivation to Combine SenwaTec with Yoon

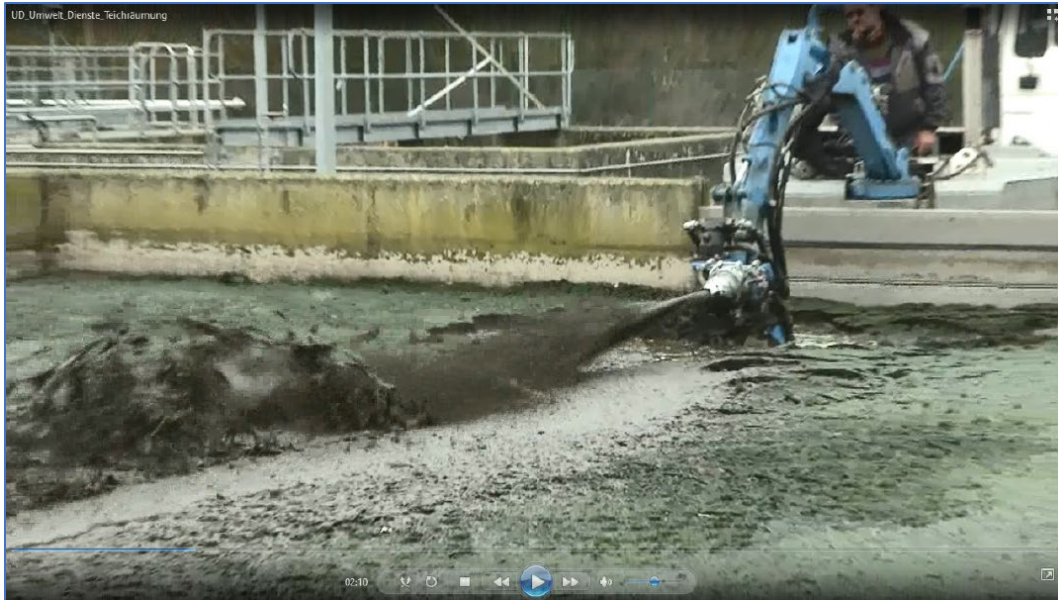
SenwaTec teaches an amphibious pumping/dredging vehicle for use in ponds, lakes, and hazardous environments, such as manure lagoons. (SenwaTec, 1-2; Exhibits 17-19; *see also* Lonnemann Decl. (Exhibit 14), ¶¶ 6-7, 12-19.⁶) A POSA would have been motivated to add remote-control functionality to SenwaTec in view of the teachings of Yoon to provide a safer way of controlling the SenwaTec amphibious vehicle during dangerous dredging, excavation, and manure pumping applications.

SenwaTec teaches an amphibious vehicle with multiple attachments for dredging, raking, cutting, and mowing. (SenwaTec, 1-2.) SenwaTec is used in ponds, lakes, and streams. (*Id.*) A

⁶See Footnote 4, *supra*.

POSA would have understood that Amphi-King (the product described in SenwaTec) was used for pumping liquid manure in manure lagoons, as described in pre-2013 publications. (Exhibits 17-19; *see also* Lonnemann Decl. (Exhibit 14), ¶¶ 6-7, 12-19.) A POSA would have understood that such manure-lagoon environments are unpleasant and potentially dangerous for human operators. One newspaper article reporting on the manure pumping applications in which the Amphi-King was used cheekily wrote: “He doesn’t mind his smelly job. With an amphibious vehicle, Eckhard Funck drives through the sewage pond near Mecklar and removes the sludge that has accumulated there....” (Exhibit 18, 2.) The images below show the SenwaTec pump being used in a manure lagoon to pump liquid manure. (Lonneman Decl., ¶¶6-7, 12-19.)





(Exhibit 19, 3-4.)

Yoon discloses the importance of implementing remote control on amphibious pumping vehicles as they are often used in sewage applications “contain[ing] materials that are harmful to humans and generate foul odor.” (Yoon (translation), ¶ [0013].) Yoon discloses a remote-control amphibious pumping machine enabling the operator to control the vehicle from land using the remote control. (*Id.*, ¶ [0048].)

A POSA would have been motivated to combine the amphibious dredging and manure pumping vehicle of SenwaTec with remote-control technology, like that of Yoon, to eliminate the risk of harm to operators of the vehicle. SenwaTec and Yoon disclose amphibious vehicles used in environments that are dangerous or unpleasant for humans. Yoon discloses a remote-control system that allows an operator to control such a vehicle and its attachments from land, thereby reducing the risk of harm to the operator in dangerous environments. (*Id.*, ¶ [0048].) A POSA would have recognized the risks of harm to operators using the vehicle of SenwaTec in certain applications and would have been motivated to make the SenwaTec vehicle safer by implementing the remote-control technology disclosed by Yoon.

In fact, POSAs were motivated to combine remote-control technology with amphibious pumping vehicles such as SenwaTec before the filing date of the '557 Patent. As noted above, in 2012 Melnikov recognized the disadvantages of currently available multifunctional amphibian machines including “the presence of an operator located on the machine itself, which limits the use thereof in conditions dangerous for humans.” (Melnikov, 4.) While Melnikov teaches adding remote controls to a similar amphibious dredging vehicle known as Truxor, a POSA would have recognized that teaching applies equally to the amphibious dredging vehicle SenwaTec. (Lonnemann Decl. (Exhibit 14), ¶¶ 10-11.) A POSA would have been motivated to combine the remote-control technology taught by Yoon with the teachings of SenwaTec for the same reasons.

b. Claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80

The claim chart attached hereto as Exhibit AD demonstrates that Claims 1-4, 6-11, 13-23, 27-40, 44-56, 60-80 of the '557 Patent are invalid as obvious by SenwaTec in view of Yoon.

7. *SenwaTec in view of Yoon in view of Nuhn Reference or Manure Manager*

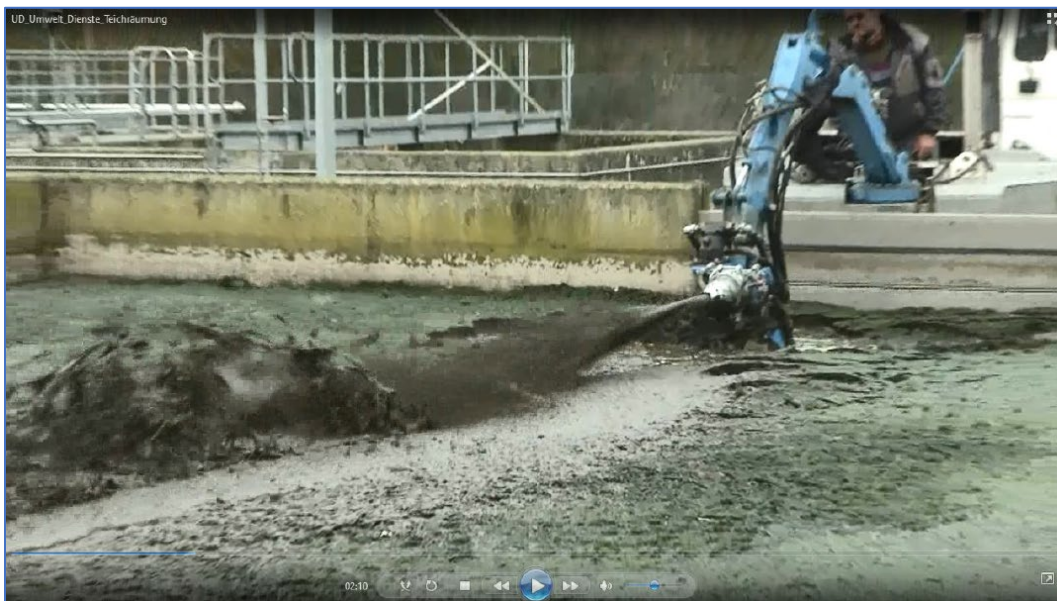
SenwaTec in view of the remote-control teachings of Yoon, described in Exhibit AD, in further view of the pump teachings of the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) would have rendered claims 7, 13, 24-26, 41-43, and 57-59 obvious.

SenwaTec in combination with Yoon renders obvious claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80. (Exhibit AD.) As discussed below, the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) provides additional teachings that render obvious claims 7, 13, 24-26, 41-43, and 57-59.

a. Motivation to Combine SenwaTec and Yoon with the Nuhn Reference or Manure Manager

SenwaTec teaches an amphibious vehicle with multiple attachments for dredging, raking, cutting, and mowing. (SenwaTec, 1-2.) The Amphi-King vehicle described in SenwaTec is used

in ponds, lakes, and streams. (*Id.*) A POSA would have understood that the Amphi-King was used for pumping liquid manure in manure lagoons, as described in various pre-2013 publications. (Exhibit 17-19; *see also* Lonnemann Decl. (Exhibit 14), ¶¶ 6-7, 12-19.⁷) The images below show the SenwaTec pump being used in a manure lagoon to pump liquid manure. (Lonneman Decl., ¶¶ 6-7, 12-19.)



⁷ See Footnote 4, *supra*.

(Exhibit 19, 3-4.)

Likewise, Yoon describes an amphibious vehicle used for pumping “livestock wastewater[.]” (Yoon, ¶ [0002].)

SenwaTec and Yoon share the same specific field of art as the Nuhn Reference⁸—pumping liquid manure. A POSA looking to improve the liquid manure pumping capabilities of SenwaTec and Yoon would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of a dual ported and lofted housing, tapered fan design, improved output, and remote-control operation. (Nuhn Reference.) A POSA would have understood that, as stated in Nuhn’s website, the port design of the pump “uses the input power very efficiently as it is not wasted by moving liquid around in the housing.” (*Id.* at 7 (describing the pump disclosed in the Nuhn Reference).) The design also “reduce[s] side thrust on the bottom bearings.” (*Id.* at 5.) As discussed in an article about the pump, “the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produces 6,000 (US) gallons per minute at 1,000 r.p.m. ***with little input horsepower.***” “On Track,” *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5> (emphasis added). The improved efficiencies of the pump described by the Nuhn Reference would be especially beneficial given the manure pumping applications that both SenwaTec and Yoon are designed to operate in. A POSA looking to improve the efficiency and manure pumping capabilities of SenwaTec or Yoon would look to a high-efficiency pump, such as the pump described in the Nuhn Reference, that uses little input horsepower. Furthermore, the Nuhn

⁸ See Footnote 5, *supra*.

Reference teaches the use of remote-control capabilities which would further enhance the safety of the vehicles such as SenwaTec and Yoon. (Nuhn Reference at 7; Exhibit AD.) As analyzed below, SenwaTec in view of Yoon in further view of the Nuhn Reference teachings render obvious claims 7, 13, 24-26, 41-43, and 57-59.

b. Claims 7, 13, 24-26, 41-43, and 57-59

The claim chart attached hereto as Exhibit AE demonstrates that Claims 7, 13, 24-26, 41-43, and 57-59 of the '557 Patent are invalid as obvious by SenwaTec in view of Yoon in view of the Nuhn Reference. The teachings of Manure Manager are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

8. *SenwaTec in view of Yoon in view of Nuhn's Multi-Port Header Series Pumps*

The public use, sale, offer for sale, and importation of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and Manure Manager printed publications (Exhibits 13, 21). Bazooka incorporates by reference the claim chart of SenwaTec in view of Yoon in view of the Nuhn Reference (Exhibit AE).

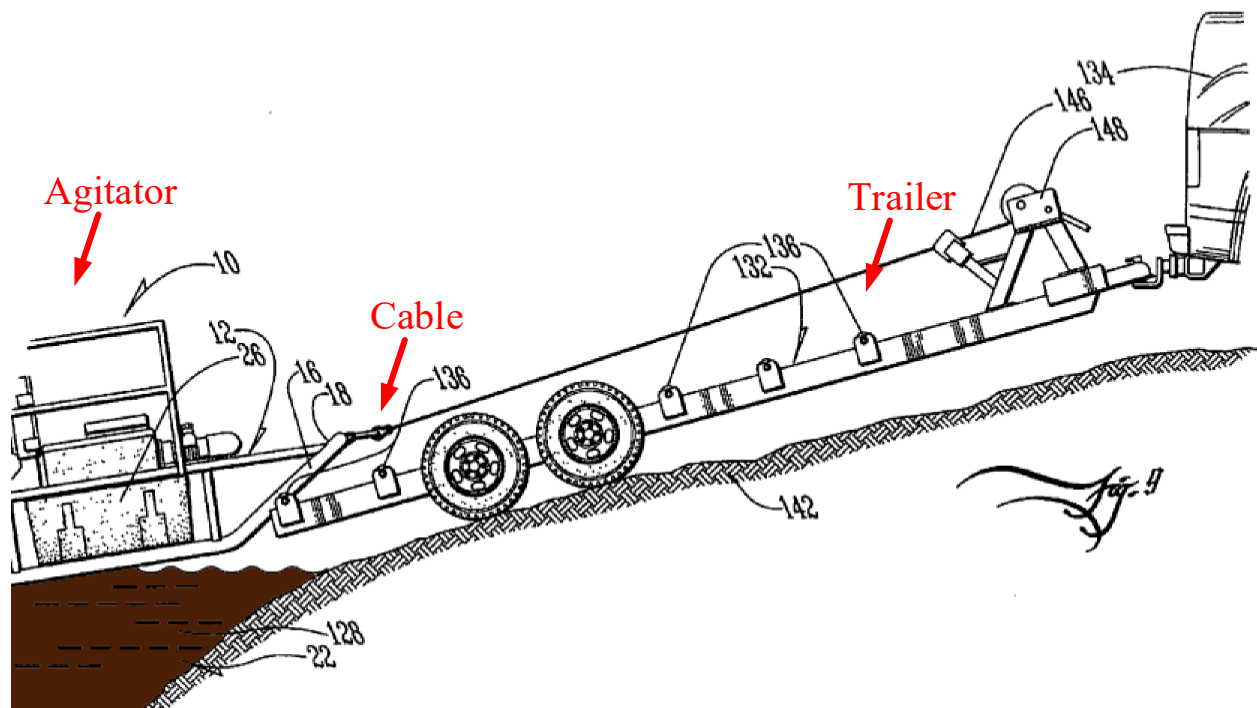
9. *Puck in view of Bryham*

Puck in view of the amphibious teachings of Bryham would have rendered claims 1-23, 27-40, 44-56, and 60-80 obvious.

a. Motivation to Combine Puck and Bryham

A POSA would have been motivated to add the powered, steerable wheels of Bryham to Puck's boat as claimed to solve the problems users, especially single users, faced launching and retrieving Puck's boat within a toxic manure lagoon. As taught by the references, the motivation to combine comes from the desire to make transporting, launching, and retrieving the Puck boat easier, safer and without having to put the trailer in the corrosive manure lagoon.

Puck describes a cumbersome, manual process of launching a floating manure vehicle on and off a trailer into a manure lagoon. (Puck, ¶¶ [0034], [0038].) Puck describes how when launching the agitator, a user “manually pushe[s the agitator] from the trailer (132) into the lagoon (22).” (*Id.*, ¶ [0034].) To retrieve it, a user must access the floating agitator and attach a cable to pull the agitator onto the trailer. (*Id.*, ¶ [0038].) This process would have required a user to wade in or stand immediately adjacent to a hazardous manure lagoon.



(*Id.*, FIG. 9 (annotated).)

Bryham identifies problems with launching vessels using trailers. Each of these problems are present when launching the Puck vessel into a manure lagoon. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution....” *KSR*, 550 U.S. at 419-20. Adding the powered, steerable wheels of Bryham to Puck would have been an obvious solution and, given

the teachings in Bryham and Puck, a POSA would have been motivated to make this combination to solve the identified problems.

Bryham describes how when launching vessels with trailers at least one of the boat operators “usually needs to get their feet wet.” (Bryham, 1:18-22.) A manure lagoon is an undesirable and hazardous environment for people to wade in and around when launching a vessel. Bryham presents a solution for launching vessels that does not require a user to step in or around a lagoon. (*Id.*, 1:17-23.) Stepping in toxic manure provides strong motivation to add the ground engaging structure of Bryham to Puck’s remote-control boat.

Bryham also notes that “when no launching ramp is available” users are faced with the problem of “manoeuvr[ing] a towing vehicle and trailer over unpaved terrain and into the water....” (*Id.*, 1:55-58.) Typical lagoons have difficult-to-navigate berms around the edge and often lack proper boat launching infrastructure. Bryham’s solution to the problem of launching vessels in areas without suitable launching infrastructure is to provide the boat with all terrain wheels capable of negotiating rugged shoreline terrain. (*Id.*, 1:25-27.)

Bryham finally discusses problems exposing a trailer (or vehicle) to highly corrosive environments, such as the sea. (*Id.*, 1:55-60.) Manure lagoons are also corrosive, damaging environments for equipment, such as trailers. Bryham teaches adding powered, steerable wheels to a boat to solve these problems.

A POSA would have recognized the problems of Puck and realized that these are the same problems identified and solved by adding Bryham’s powered, steerable wheels to a boat, such as Puck’s remote controlled boat. A POSA would have recognized that the boat of Puck could be readily modified to include the wheels of Bryham and would have been motivated to do so. The

obvious combination creates a safer, more efficient means of transporting, launching, and retrieving Puck's boat into a manure lagoon.

b. Claims 1-23, 27-40, 44-56, and 60-80

The claim chart attached hereto as Exhibit AF demonstrates that Claims 1-23, 27-40, 44-56, and 60-80 of the '557 Patent are invalid as obvious by Puck in view of Bryham.

10. *Puck in view of Bryham in view of Nuhn Reference or Manure Manager*

Puck in view of the amphibious teachings of Bryham, described in Exhibit AF, in further view of the pump teachings of the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) would have rendered claims 7, 13, 24-26, 41-43, 57-59 obvious.

Puck in combination with Bryham renders obvious claims 1-22, 27-40, 44-56, and 60-80. Exhibit AF. As discussed below (Exhibit AG), the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) provides additional teachings that render obvious claims 7, 13, 24-26, 41-43, and 57-59.

a. Motivation to Combine Puck and Bryham with the Nuhn Reference or Manure Manager

Puck and the Nuhn Reference⁹ share the same field of art, the pumping of fluid. And more specifically, the pumping of liquid manure. A POSA looking to the improve pumping and agitation capabilities of Puck would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of a dual ported and lofted housing, tapered fan design, improved output, and remote-control operation. (Nuhn Reference.) According to Nuhn's website, the port design "uses the input power

⁹ See Footnote 5, *supra*.

very efficiently as it is not wasted by moving liquid around in the housing.” (*Id.* at 7.) The design also “reduce[s] side thrust on the bottom bearings.” (*Id.* at 5.) As discussed in an article about the pump, “the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produces 6,000 (US) gallons per minute at 1,000 r.p.m. *with little input horsepower.*” “On Track,” *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5> (emphasis added). The Nuhn Reference boasts the pump’s “massive agitation capacity.” (Nuhn Reference.) The improved efficiencies and pumping capacity taught by the Nuhn Reference would be especially beneficial to the manure agitation vehicle of Puck, as Puck relies on its pump for movement about the lagoon. (Puck, ¶ [0011].) Further, improved pumping power would help the design of Puck reach deep lagoons and improve lagoon mixing. A POSA looking to improve the efficiency, operating range, pump capacity, and movement capabilities of Puck, would look to a pump, such as the pump disclosed in the Nuhn Reference.

b. Claims 7, 13, 24-26, 41-43, 57-59

The claim chart attached hereto as Exhibit AG demonstrates that Claims 7, 13, 24-26, 41-43, 57-59 of the ’557 Patent are invalid as obvious by Puck in view of Bryham in view of the Nuhn Pump. The teachings of *Manure Manager* are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

11. Puck in view of Bryham in view of Nuhn’s Multi-Port Header Series Pumps

The public use, sale, offer for sale, and importation of Nuhn’s Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and *Manure Manager* printed publications (Exhibits 13, 21). Bazooka incorporates by reference the claim chart of Puck in view of Bryham in view of the Nuhn Reference (Exhibit AG).

12. Truxor (DM5000) in view of Yoon or Carrier

a. Motivation to combine Truxor (DM5000) in view of Yoon or Carrier

The public use, sale, offer for sale, and importation of DM5000 is substantially identical to the disclosure of the Truxor publication. Bazooka incorporates by reference the Motivation to Combine Truxor with Yoon or Carrier found in Ground 2 of the '425 Patent *Inter Partes* Review Petition (IPR Section XII.A), attached to these disclosures as Exhibit BA. Bazooka also incorporates the Motivation to Combine Truxor with Yoon or Carrier found in Exhibit CC ('835 Ground). *See also supra* Section V.A.3.a.

b. Invalidating Disclosure of Truxor (DM5000) in view of Yoon or Carrier

Bazooka incorporates the obviousness claim chart of the '557 Patent for the combination of Truxor in view of Carrier. (Exhibit AB.) The teachings of Yoon related to remote control usage may be used as an alternative to the remote-control usage taught in Carrier.

13. SenwaTec (Amphi-King) in view of Yoon or Carrier

a. Motivation to combine SenwaTec (Amphi-King) in view of Yoon or Carrier

The public use, sale, offer for sale, and importation of Amphi-King is substantially identical to the disclosure of the SenwaTec publication. Bazooka incorporates by reference the Motivation to Combine SenwaTec with Yoon or Carrier found in Ground 3 of the '425 Patent *Inter Partes* Review Petition (IPR Section XIII.A), attached to these disclosures as Exhibit BA. Bazooka also incorporates the Motivation to Combine SenwaTec with Yoon or Carrier found in Exhibit CD ('835 Ground). *See also supra* Section V.A.6.a.

b. Invalidating Disclosure of SenwaTec (Amphi-King) in view of Yoon or Carrier

Bazooka incorporates the obviousness claim chart of the '557 Patent for the combination of SenwaTec in view of Yoon. Exhibit AD. The teachings of Carrier related to remote control usage may be used as an alternative to the remote control usage taught in Yoon.

14. Cheramie in view of Yoon or Carrier

Cheramie in view of Yoon or Carrier renders Claims 1-4, 6-11, 13-23, 27-40, 44-56, and 60-80 of the '557 Patent obvious.

a. Motivation to combine Cheramie in view of Yoon or Carrier

The motivation to combine Cheramie with the remote-control teachings of Yoon or Carrier is substantially identical to the motivations explained above with respect to Truxor and SenwaTec. *Supra* Sections V.A.3.a, V.A.6.a; Exhibits AB, AD.

Cheramie teaches an amphibious dredging vehicle with attachment for dredging and cutting water-covered wetlands. Cheramie, Abstract. A POSA would have understood that the invention of Cheramie was designed to be used in thick, water-covered environments (marshes) and that such environments are unpleasant and potentially dangerous for human operators.

Yoon discloses the importance of implementing remote control on amphibious vehicles as they are often used in sewage applications “contain[ing] materials that are harmful to humans and generate foul odor.” (Yoon (translation), ¶ [0013].) Carrier discloses an amphibious pumping vehicle for hazardous material decontamination. (Carrier, ¶¶ [0003], [0007], [0050]-[0051].) Carrier discloses a remote-control system on the vehicle for controlling the pump and for driving the vehicle on land and in water (*Id.*, ¶¶ [0059], [0064]-[0065]; *see also* Exhibit AA, [1.6].) Carrier describes how a remote control is useful in situations where an operator of the vehicle may become incapacitated. (Carrier, ¶ [0065].) The remote-control system provides important safety benefits to

operators of the vehicle, as it “enable[es] the firefighters to attack the fire or decon[tamination] objective from an even greater distance.” (*Id.*, ¶ [0059].)

POSAs were motivated to combine remote-control technology with amphibious vehicles such as Cheramie before the filing date of the ’557 Patent. A POSA would have been motivated to combine the remote-control technology taught by Yoon or Carrier with the teachings of Cheramie for the same reasons.

b. Claims 1-4, 6-11, 13-23, 27-40, 44-56, 60-80

The claim chart attached hereto as Exhibit AH demonstrates that Claims 1-4, 6-11, 13-23, 27-40, 44-56, 60-80 of the ’557 Patent are invalid as obvious by Cheramie in view of Yoon or Carrier.

15. Carrier II in view of Nuhn Reference or Manure Manager

Claims 1, 22, 24, 26-28, 56-57, and 59-61 of the ’557 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over U.S. Patent No. 7,478,817 to Carrier (Carrier II) and in further view of the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21).

a. Motivation to combine Carrier II with the Nuhn Reference or Manure Manager

Carrier II teaches an amphibious vehicle for pumping liquids. Carrier II and the Nuhn Reference¹⁰ share the same field of art, the pumping of liquids. And more specifically, the pumping of liquid manure. A POSA looking to improve pumping capabilities of Carrier II would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of

¹⁰ See Footnote 5, *supra*.

a dual (and triple) ported, and lofted housing, tapered fan design, improved output, and remote control operation. (Nuhn Reference.) A POSA would have understood that, as stated in Nuhn's website, the port design of the pump "uses the input power very efficiently as it is not wasted by moving liquid around in the housing." (*Id.* at 7.) The design also "reduce[s] side thrust on the bottom bearings." (*Id.* at 5.) As discussed in an article about the pump, "the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produce 6,000 (US) gallons per minute at 1,000 r.p.m. **with little input horsepower.**" "On Track," *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5> (emphasis added). The image below, from the Nuhn Reference, shows the incredible distances that the Nuhn Reference pump and nozzle are able to achieve through their high pressure/high velocity configuration. (Nuhn Reference.) This range would benefit the remote firefighting operations described in Carrier II.



(*Id.* at 7.)

Additionally, the improved efficiencies of the pump described by the Nuhn Reference would be especially beneficial given the remote environments that Carrier II is designed to operate in. A POSA looking to improve the fluid pumping capabilities, efficiency, and operating range of Carrier II, would look to a pump, such as the Nuhn Reference, that uses little input horsepower for pumping large amounts of fluid. Furthermore, the Nuhn Reference teaches the use of remote-control capabilities which POSAs already recognized would further improve safety for operators of vehicles such as Carrier. (*Id.*)

b. Claims 1, 22, 24, 26-28, 56-57, and 59-61

The claim chart attached hereto as Exhibit AI demonstrates that Claims 1, 22, 24, 26-28, 56-57, and 59-61 of the '557 Patent are invalid as obvious by Carrier II in view of the Nuhn Reference. The teachings of Manure Manager are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

16. Carrier II in view of Nuhn's Multi-Port Header Series Pumps

The public use, sale, offer for sale, and importation of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and Manure Manager printed publications (Exhibits 13, 21). Bazooka incorporates by reference the claim chart of Carrier II in view of the Nuhn Reference (Exhibit AI).

17. Carrier II

As shown with respect to anticipation above (*supra* Section IV.A.4; Exhibit AJ), Carrier II discloses every limitation of the Asserted Claims of the '557 Patent. To the extent any Asserted Claims of the '557 Patent are not found to be anticipated by Carrier II (Exhibit AJ) because one or more limitations is not literally present in the embodiment of Carrier II, it would have been obvious for a POSA to modify the teaching of Carrier II to create the claimed invention.

18. *Carrier II in view of Puck*

Bazooka incorporates by reference Ground 2 of Reexamination Application No. 90/019,076, filed May 6, 2022, attached hereto as Exhibit AJ.

19. *Carrier II in view of Puck in view of Gaither*

Bazooka incorporates by reference Ground 3 of Reexamination Application No. 90/019,076, filed May 6, 2022, attached hereto as Exhibit AJ.

20. *Puck in view of Bennett*

Bazooka incorporates by reference Ground 4 of Reexamination Application No. 90/019,076, filed May 6, 2022, attached hereto as Exhibit AJ.

21. *Puck in view of Bryham in view of Bennett II*

Claims 1-23, 27-40, 44-56, and 60-80 of the '557 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Puck in view of Bryham in further view of Bennett II.

a. Motivation to combine Puck in view of Bryham in view of Bennett II

Bazooka incorporates by reference the motivation to combine Puck, Bryham, and Bennett II as stated in Ground 5 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

b. Claims 1-23, 27-40, 44-56, and 60-80

The claim chart attached hereto as Exhibit AK demonstrates that Claims 1-23, 27-40, 44-56, and 60-80 of the '557 Patent are invalid as obvious by Puck in view of Bryham in further view of Bennett II.

22. Bradley in view of Bryham

Claims 1-4, 6-11, 13, 15-17, 19-21, 29, 31-32, 34-39, 46-47, 49-50, 52-55, 62-66, 68, 70-71, and 73-79 of the '557 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Bradley in view of Bryham.

a. Motivation to combine Bradley in view of Bryham

A POSA would have been motivated to add the powered, steerable wheels of Bryham to Bradley's boat to solve the problems users, especially single users, faced launching and retrieving Bradley's device within a toxic sewage treatment plant. The motivation to combine comes from the desire to make transporting, launching, and retrieving the Bradley device easier, safer and without having to put a trailer in the corrosive sewage treatment plant.

Bradley describes a vessel for floating within a sewage treatment plant or lagoon. (Bradley, 1:4-6.) Bradley describes how it is "complicated" to remove the device from the volume of liquid within the plant. (*Id.*, 13:25-14:2.)

Bryham identifies problems with launching vessels using trailers, especially without a proper boat ramp. These problems are multiplied when launching the Bradley vessel into a manure lagoon or sewage treatment plant. "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution...." *KSR*, 550 U.S. at 419-20; *see also* MPEP §2143(I)(D). Adding the powered, steerable wheels of Bryham to Bradley would have been an obvious solution and, given the teachings in Bryham and Bradley, a POSA would have been motivated to make this combination to solve the identified problems.

Bryham describes how when launching vessels with trailers at least one boat occupant "usually needs to get their feet wet." (Bryham, 1:18-23.) A manure lagoon or sewage treatment

plant is an undesirable and hazardous environment for people to wade in and around when launching a vessel. Bryham presents a solution for launching vessels that does not require a user stepping in a lagoon or sewage treatment plant (*see id.*, 1:17-23), which provides strong motivation to add the ground engaging structure of Bryham to Bradley's vessel.

Bryham also notes that "when no launching ramp is available" users are faced with the problem of "manoeuvr[ing] a towing vehicle and trailer over unpaved terrain and into the water." (*Id.*, 1:55-58.) Typical lagoons have berms around the edge and often lack proper boat launching infrastructure. Bryham's solution to the problem of launching vessels in areas lacking launching infrastructure is to provide all terrain wheels capable of negotiating rugged shoreline terrain. (*Id.*, 1:25-27.)

Bryham finally discusses problems exposing a trailer (or vehicle) to highly corrosive environments. (*Id.*, 1:55-60.) Manure lagoons are also corrosive, damaging environments for equipment, such as trailers. Bryham teaches adding powered, steerable wheels to a boat to solve these problems.

A POSA would have recognized the problems of Bradley and realized that these are the same problems identified and solved by adding Bryham's powered, steerable wheels to a boat, such as Bradley. A POSA would have recognized that Bradley could be readily modified to include the wheels of Bryham, given that the Bradley vehicle already includes wheels mounted thereon and implies that it is adapted for amphibious operation in that it discloses hovercraft capabilities. (*See Bradley*, 7:8-11, 12:23-29.) A POSA would have been highly motivated to do so. This obvious combination creates a safer, more efficient means of transporting, launching, and retrieving Bradley's boat into a manure lagoon.

b. Claims 1-4, 6-11, 13, 15-17, 19-21, 29, 31-32, 34-39, 46-47, 49-50, 52-55, 62-66, 68, 70-71, and 73-79

The claim chart attached hereto as Exhibit AL demonstrates that Claims 1-4, 6-11, 13, 15-17, 19-21, 29, 31-32, 34-39, 46-47, 49-50, 52-55, 62-66, 68, 70-71, and 73-79 of the '557 Patent are invalid as obvious by Puck in view of Bryham.

23. *Bradley in view of Bryham in view of Bennett II*

Claims 1-4, 6-11, 13, 15-21, 29-32, 34-39, 46-55, 62-71, and 73-80 of the '557 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Bradley in view of Bryham in further view of Bennett II.

a. Motivation to combine Bradley in view of Bryham in view of Bennett II

A POSA would have been motivated to combine Bradley and Bryham for the above-stated reasons. *See* Section V(A)(22)(a), *supra*. And the Examiner's determination with regard to combining Bennett II with Puck and Bryham applies equally with respect to the combination of Bradley and Bryham. As the Examiner stated, "it would have been obvious ... to provide ... remote control ... as taught by Puck and to use the remote control on land and water as taught by Bennett for ease of use.... The combination combines known features to achieve predictable results." Both Puck and Bradley disclose remote control vehicles for floating in a manure lagoon and agitating liquid manure. It would have been obvious to extend the remote control of both of these devices in the same way to control the ground engaging propulsion structure when combined with a remote-control vehicle.

b. Claims 1-4, 6-11, 13, 15-21, 29-32, 34-39, 46-55, 62-71, and 73-80

The claim chart attached hereto as Exhibit AM demonstrates that Claims 1-4, 6-11, 13, 15-21, 29-32, 34-39, 46-55, 62-71, and 73-80 of the '557 Patent are invalid as obvious by Bradley in view of Bryham in further view of Bennett II.

B. U.S. Patent No. 11,358,425

Obviousness Combination	Exhibit
Carrier (Exhibit 1) Claims 1-21	Section V.B.1
Lyseng (Exhibit 12) Claims 1-21	Section V.B.2
Truxor (Exhibit 10) in view of Yoon (KR20130016490) (Exhibit 3 ¹¹) or Carrier (US20120185129) (Exhibit 1) Claims 1-7 and 12-19	BA
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-7 and 12-19	BA
Puck (US20140112093) (Exhibit 5) in view of Bryham (US7314395) (Exhibit 6) Claims 1-21	BA
Puck (US20140112093) (Exhibit 5) in view of Bryham (US7314395) (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1-21	BA
Truxor (DM5000) (Exhibit 22) in view of Yoon (KR20130016490) (Exhibit 3) or Carrier (US20120185129) (Exhibit 1) Claims 1-7 and 12-19	Section V.B.7
SenwaTec (Amphi-King) (Exhibit 14) in view of Yoon (KR20130016490) (Exhibit 3) or Carrier (US20120185129) (Exhibit 1) Claims 1-7 and 12-19	Section V.B.8
Cheramie (US6922922) (Exhibit 9) in view of Yoon (KR20130016490) (Exhibit 3) or Carrier (US20120185129) (Exhibit 1) Claims 1-4	BB
Carrier II (Exhibit 2) in view of Nuhn Reference (Exhibit 13)) or Manure Manager (Exhibit 21) Claims 1-4	BC
Carrier II (Exhibit 2) in view of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) Claims 1-4	Section V.B.11

¹¹ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

Yoon (Exhibit 3) in view of SenwaTec (Amphi-King) (Exhibit 14) or Truxor (DM5000) (Exhibit 22) Claims 1-4	BD
Carrier (Exhibit 1) in view of Puck (Exhibit 5) Claims 1-21	BE
Carrier II (Exhibit 2) Claims 1-8, 10, and 12-20	Section V.B.14
Carrier II (Exhibit 2) in view of Puck (Exhibit 5) Claims 1-21	BE
Puck (Exhibit 5) in view of Bennett (Exhibit 7) Claims 1-21	BE

1. Carrier

As shown with respect to anticipation above (*supra* Section IV.B.1; *see also* Exhibits BA, BE), Carrier discloses every limitation of the Asserted Claims of the '425 Patent. To the extent any Asserted Claims of the '425 Patent are not found to be anticipated by Carrier (*supra* Section IV.B.1; *see also* Exhibits BA, BE) because one or more limitations is not literally present in the embodiment of Carrier, it would have been obvious for a POSA to modify the teaching of Carrier to create the claimed invention.

2. Lyseng

The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents. To the extent any Asserted Claims of the '425 Patent are not found to be anticipated by Lyseng because one or more limitations is not literally present in the embodiment of Lyseng, it would have been obvious for a POSA to modify the teaching of Lyseng to create the claimed invention. Bazooka incorporates by reference Ground 6 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

3. *Truxor in view of Yoon or Carrier*

Bazooka incorporates by reference Ground 2 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

4. *SenwaTec in view of Yoon or Carrier*

Bazooka incorporates by reference Ground 3 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

5. *Puck in view of Bryham*

Bazooka incorporates by reference Ground 4 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

6. *Puck in view of Bryham in view of Bennett II*

Bazooka incorporates by reference Ground 5 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

7. *Truxor (DM5000) in view of Yoon or Carrier*

The public use, sale, offer for sale, and importation of the DM5000 is substantially the same as the disclosure of the Truxor printed publication and may be substituted for the same. Bazooka incorporates by reference Ground 2 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

8. *SenwaTec (Amphi-King) in view of Yoon or Carrier*

The public use, sale, offer for sale, and importation of the Amphi-King is substantially the same as the disclosure of the SenwaTec printed publication and may be substituted for the same. Bazooka incorporates by reference Ground 3 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

9. *Cheremie in view of Yoon or Carrier*

Claims 1-4 of the '425 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over U.S. Patent No. 6,922,922 to Cheremie and in further view of the remote control teachings of the Yoon or Carrier I.

a. Motivation to combine Cheremie with Yoon or Carrier

Bazooka incorporates the motivation to combine Cheremie with Yoon or Carrier. *Supra* Section V.A.14.a.

b. Claims 1-4

The claim chart attached hereto as Exhibit BB demonstrates that Claims 1-4 of the '425 Patent are invalid as obvious by Cheremie in view of Yoon or Carrier.

10. *Carrier II in view of Nuhn Reference or Manure Manager*

Claims 1-4 of the '425 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over U.S. Patent No. 7,478,817 to Carrier (Carrier II) (Exhibit 2) and in further view of the pump teachings of the Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21).

a. Motivation to Combine Carrier II with the Nuhn Reference or Manure Manager

The motivation to combine Carrier II with the Nuhn Reference or Manure Manager is described above. *Supra* Section V.A.15.a.

b. Claims 1-4

The claim chart attached hereto as Exhibit BC demonstrates that Claims 1-4 of the '425 Patent are invalid as obvious by Carrier II in view of the Nuhn Reference. The teachings of Manure Manager are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

11. *Carrier II in view of Nuhn's Multi-Port Header Series Pumps*

The public use, sale, offer for sale, and importation of Nuhn's Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and Manure Manager printed publications (Exhibits 13, 21). Bazooka incorporates by reference the claim chart of Carrier II in view of the Nuhn Reference (Exhibit BC).

12. *Yoon in view of SenwaTec or Truxor*

Claims 1-4 of the '425 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Yoon and in further view of the hydraulic power teachings of the SenwaTec or Truxor.

a. Motivation to combine Yoon with SenwaTec or Truxor

Yoon discloses an amphibious wastewater treatment vehicle for use in and around wastewater locations. The wastewater treatment vehicle includes a pump for pumping the wastewater and wheels for driving the vehicle into the wastewater. (Yoon, ¶¶ [0018], [0033].)

SenwaTec teaches an amphibious vehicle with multiple attachments for dredging, raking, cutting, and mowing. (Exhibit 11, 1-2.) A POSA would have understood that Amphi-King (the

product described in SenwaTec) was used for pumping liquid manure in manure lagoons, as described in pre-2013 publications. (Exhibits 17-19; *see also* Exhibit 14, ¶¶ 6-7, 12-19.) SenwaTec teaches the use of a hydraulics system to power the drive wheels and tracks, pump, and crane. (Exhibit 11, 1, 3.)

Truxor discloses an amphibious vehicle that is able to “travel effortlessly between land and water.” (Exhibit 10, 4.) Truxor describes that the vehicle can be equipped with a “wide range of attachments [that] makes it an ideal tool for a variety of tasks,” including “dredging, reed cutting, excavating, oil decontamination, [and] trash collecting” (*Id.*, 3.) Truxor teaches the use of a hydraulic system for the “operation of all equipment.” (*Id.*)

Only a finite number of vehicle transmission configurations are available for implementation into an amphibious vehicle such as Yoon. One example implementation is a standard mechanical drivetrain, in which a driveshaft and gears are powered by an engine to transmit the power from the power source to the various components. One disadvantage to this system is that it is extremely heavy, which could lead to poor performance in aquatic or muddy environments. Another example transmission involves electric motors coupled to the wheels which are powered by a battery or an alternator. The obvious disadvantage to this system being that in aquatic environments, the system must be extremely well sealed, otherwise, catastrophic failures could occur if any of the electronic components make contact with water.

A better alternative in amphibious applications is a hydraulic system, such as the ones disclosed by SenwaTec or Truxor.¹² Hydraulic systems are known to be relatively lightweight

¹² The public use, sale, offer for sale, and importation of the Amphi-King is substantially the same as the disclosure of the SenwaTec printed publication, and the public use, sale, offer for sale, and importation of the DM5000 is substantially the same as the disclosure of the Truxor printed publication. Furthermore, it would have been obvious for a POSA to combine the SenwaTec printed publication with the public use, sale, offer for sale, and importation of the Amphi-King,

because they do not require the use of a driveshaft. Furthermore, hydraulic systems are far better sealed than a traditional mechanical drivetrain and permit the power source to be stored in a dry location, away from the undercarriage of the vehicle. Finally, hydraulic systems are beneficial because they provide a greater ability to easily connect various components into the system. This is because the powertrain is driven by a piped fluid, rather than a series of gear or belts.

A POSA would understand that there are only a finite number of transmissions known in the art that would be suitable for powering a vehicle. Traditional hydraulic circuits are one of these suitable transmissions, and based on their design characteristics explained above, present a reasonable likelihood of success in the amphibious vehicle context. A POSA familiar with the teachings of SenwaTec or Truxor would have understood this type of transmission to be readily adaptable to the amphibious wastewater treatment device of Yoon. A POSA would have been motivated to implement the traditional hydraulic circuit of SenwaTec or Truxor into the amphibious vehicle of Yoon because of its lightweight, well-sealed, and easily connectable qualities.

b. Claims 1-4

The claim chart attached hereto as Exhibit BD demonstrates that Claims 1-4 of the '425 Patent are invalid as obvious by Yoon in view of SenwaTec or Truxor.

13. *Carrier in view of Puck*

Bazooka incorporates by reference Ground 2 of Reexamination Application No. 90/019,107, filed August 31, 2022, attached hereto as Exhibit BE.

which discloses prior elements according to known methods to yield a predictable result. *See, e.g., In re Katz*, 2009 U.S. Dist. LEXIS 132101, at *189. It would have been obvious for a POSA to combine the Truxor printed publication with the public use, sale, offer for sale, and importation of the DM5000, which discloses prior elements according to known methods to yield a predictable result, *i.e.*, the same amphibious vehicle disclosed by each. *See id.*

14. Carrier II

As shown with respect to anticipation above (Exhibit BE), Carrier II discloses every limitation of the Asserted Claims of the '425 Patent. To the extent any Asserted Claims of the '425 Patent are not found to be anticipated by Carrier II (*id.*) because one or more limitations is not literally present in the embodiment of Carrier II, it would have been obvious for a POSA to modify the teaching of Carrier II to create the claimed invention.

15. Carrier II in view of Puck

Bazooka incorporates by reference Ground 4 of Reexamination Application No. 90/019,107, filed August 31, 2022, attached hereto as Exhibit BE.

16. Puck in view of Bennett

Bazooka incorporates by reference Ground 5 of Reexamination Application No. 90/019,107, filed August 31, 2022, attached hereto as Exhibit BE.

C. U.S. Patent No. 11,491,835

Obviousness Combination	Exhibit
Carrier (Exhibit 1) Claims 1-10, 13, 17-25, and 29-40	Section V.C.1
Lyseng (Exhibit 12) Claims 1-40	CB
Truxor (Exhibit 10) in view of Yoon (Exhibit 3 ¹³) or Carrier (Exhibit 1) Claims 1-5, 7-21, and 23-40	CC
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-5, 7-21, and 23-40	CD
Puck (Exhibit 5) in view of Bryham (Exhibit 6) Claims 1-40	CE
Cheramie (Exhibit 9) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-5, 7-8, 17-21, 23, and 33-40	CF
Truxor (DM5000) (Exhibit 22) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1-5, 7-21, and 23-40	Section V.C.7
SenwaTec (Amphi-King) (Exhibit 14) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1)	Section V.C.8

¹³ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

Claims 1-5, 7-21, and 23-40	
Puck (Exhibit 5) in view of SenwaTec (Exhibit 11) Claims 1-5, 7-8, 17-21, 23, and 33-40	CG
Puck (Exhibit 5) in view of SenwaTec (Amphi-King) (Exhibit 14) Claims 1-5, 7-8, 17-21, 23, and 33-40	Section V.C.10
Puck (Exhibit 5) in view of Bryham (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1-40	CH

1. Carrier

As shown with respect to anticipation above (Exhibit CA), Carrier discloses every limitation of the Asserted Claims of the '835 Patent, specifically Claims 1-10, 13, 17-25, and 29-40. To the extent any Asserted Claims of the '835 Patent are not found to be anticipated by Carrier (Exhibit CA) because one or more limitations is not literally present in the embodiment of Carrier, it would have been obvious for a POSA to modify the teaching of Carrier to create the claimed invention.

2. Lyseng

Claims 1-40 are obvious over Lyseng. The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents. To the extent any Asserted Claims of the '835 Patent are not found to be anticipated by Lyseng because one or more limitations is not literally present in the embodiment of Lyseng, it would have been obvious for a POSA to modify the teaching of Lyseng to create the claimed invention.

The claim chart attached hereto as Exhibit CB demonstrates that Claims 1-40 of the '835 Patent are invalid as obvious by Lyseng.

3. Truxor in view of Yoon or Carrier

Truxor in view of the remote-control teachings of Yoon or Carrier would have rendered claims 1-5, 7-21, and 23-40 obvious.

a. Motivation to Combine Truxor with Yoon or Carrier

Bazooka incorporates the motivation to combine Truxor with Yoon or Carrier found in Ground 2 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA; *see also supra* Section V.A.3.a.

b. Claims 1-5, 7-21, and 23-40.

The claim chart attached hereto as Exhibit CC demonstrates that Claims 1-5, 7-21, and 23-40 of the '835 Patent are invalid as obvious by Truxor in view of Yoon or Carrier.

4. *SenwaTec in view of Yoon or Carrier*

SenwaTec in view of Yoon or Carrier renders obvious Claims 1-5, 7-21, and 23-40 of the '835 Patent.

a. Motivation to Combine SenwaTec with Yoon or Carrier

Bazooka incorporates the motivation to combine Truxor with Yoon or Carrier found in Ground 3 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA; *see also supra* Section V.A.6.a.

b. Claims 1-5, 7-21, and 23-40

The claim chart attached hereto as Exhibit CD demonstrates that Claims 1-5, 7-21, and 23-40 of the '835 Patent are invalid as obvious by SenwaTec in view of Yoon or Carrier.

5. *Puck in view of Bryham*

The combination of Puck with the amphibious teachings of Bryham renders claims 1-40 obvious.

a. Motivation to Combine Puck and Bryham

Bazooka incorporates the motivation to combine Puck with Bryham found in Ground 4 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA; *see also supra* Section V.A.9.a.

b. Claims 1-40

The claim chart attached hereto as Exhibit CE demonstrates that Claims 1-40 of the '835 Patent are invalid as obvious by Puck in view of Bryham.

6. Cheramie in view of Yoon or Carrier

Cheramie in view of Yoon or Carrier renders obvious Claims 1-5, 7-8, 17-21, 23, 33-40 of the '835 Patent.

a. Motivation to Combine Cheramie in view of Yoon or Carrier

The motivation to combine Cheramie with the remote-control teachings of Yoon or Carrier is identical to the motivations explained above. *See supra* Section V.A.14.a.

b. Claims 1-5, 7-8, 17-21, 23, 33-40

The claim chart attached hereto as Exhibit CF demonstrates that Claims 1-5, 7-8, 17-21, 23, 33-40 of the '835 Patent are invalid as obvious by Cheramie in view of Yoon or Carrier.

7. Truxor (DM5000) in view of Yoon or Carrier

The public use, sale, offer for sale, and importation of the DM5000 is substantially the same as the disclosure of the Truxor printed publication. Bazooka incorporates by reference the claim chart of Truxor in view of Yoon or Carrier (Exhibit CC).

8. *SenwaTec (Amphi-King) in view of Yoon or Carrier*

The public use, sale, offer for sale, and importation of the Amphi-King is substantially the same as the disclosure of the SenwaTec printed publication. Bazooka incorporates by reference the claim chart of SenwaTec in view of Yoon or Carrier (Exhibit CD).

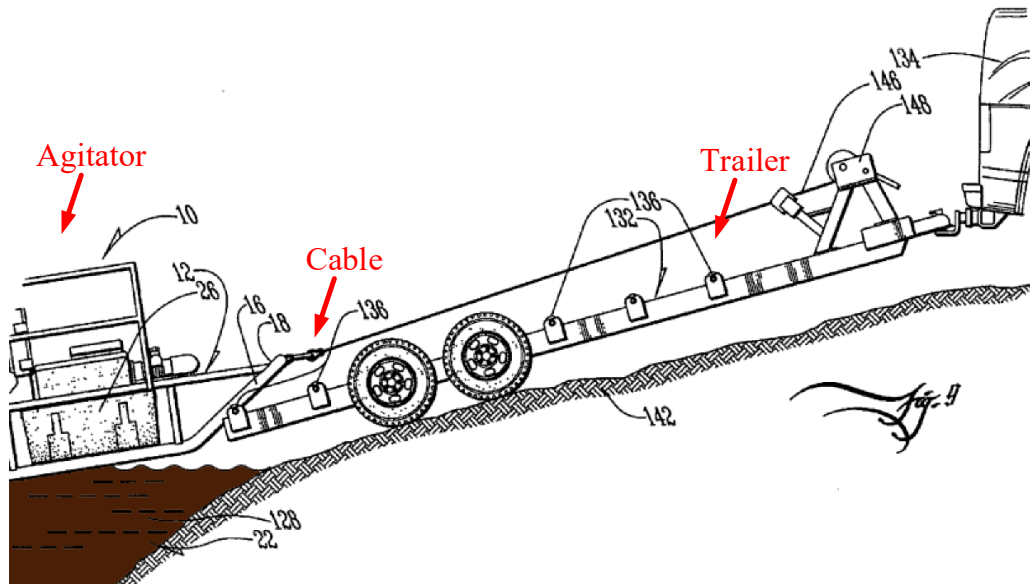
9. *Puck in view of SenwaTec*

Puck in view of SenwaTec renders obvious Claims 1-5, 7-8, 17-21, 23, 33-40 of the '835 Patent.

a. *Motivation to Combine Puck in view of SenwaTec*

Puck and SenwaTec share the same field of art, the pumping of fluids. More specifically, both Puck and SenwaTec are used in the field of manure pumping. (Exhibit 19.) A POSA would have been motivated to add the powered, steerable wheels, or tracks, of SenwaTec to Puck's boat as claimed to employ an amphibious vehicle that can be remotely controlled to enter, exit, and travel between manure lagoons. Additionally, SenwaTec solves the problems users, especially single users, faced launching and retrieving Puck's boat within a toxic manure lagoon. As taught by the references, the motivation to combine comes from the desire to make transporting, launching, and retrieving the Puck boat easier, safer, and cleaner – without having to put the trailer in the corrosive manure lagoon.

Puck describes a cumbersome, manual process of launching a floating manure vehicle on and off a trailer into a manure lagoon. (Exhibit 5, ¶¶ [0034], [0038].) Puck describes how when launching the agitator, a user “manually pushe[s the agitator] from the trailer (132) into the lagoon (22).” (*Id.*, ¶ [0034].) To retrieve it, a user must access the floating agitator and attach a cable to pull the agitator onto the trailer. (*Id.*, ¶ [0038].) This process would have required a user to wade in or stand immediately adjacent to a hazardous manure lagoon.



(*Id.*, FIG. 9 (annotated).)

SenwaTec teaches an amphibious vehicle equipped with either wheels or tracks to facilitate easy transitions between a variety of environments. (Exhibit 11, 3.) SenwaTec advertises its amphibious vehicle as having “good clearance on terrain, marshes and swamps during on-land drives.” (*Id.*, 1.) The image below shows the amphibious vehicle of SenwaTec easily transitioning from water to land.



(*Id.*, 2.)

The powered and steerable ground engaging propulsion system (i.e. wheels or tracks) of SenwaTec further enable land/water transitions where a boat launch is unavailable. Manure lagoons can have steeply sloped banks that would inhibit access for a boat like Puck. SenwaTec, on the other hand, is designed to overcome varying terrain present on the banks. The image below shows the amphibious vehicle of SenwaTec transitioning from water to land without the use of a landing.



(*Id.*, 1.)

SenwaTec also facilitates convenient loading and unloading without the need for a landing or for a user to enter the manure lagoon, solving a significant limitation of the Puck design. The image below shows the easy loading and unloading procedure enabled by the ground wheels and tracks.



(*Id.*, 1.)

A POSA would have recognized the problems of Puck and realized that these are the same problems identified and solved by adding SenwaTec's powered, steerable wheels, or tracks, to a boat, such as Puck's remote-controlled boat. A POSA would have recognized that the boat of Puck could be readily modified to include the wheels or tracks of SenwaTec and would have been motivated to do so. The obvious combination creates a safer, more efficient means of transporting, launching, and retrieving Puck's boat into a manure lagoon.

b. Claims 1-5, 7-8, 17-21, 23, 33-40

The claim chart attached hereto as Exhibit CG demonstrates that Claims 1-5, 7-8, 17-21, 23, 33-40 of the '835 Patent are invalid as obvious by Puck in view of SenwaTec.

10. *Puck in view of SenwaTec (Amphi-King)*

The public use, sale, offer for sale, and importation of the Amphi-King is substantially the same as the disclosure of the SenwaTec printed publication. Bazooka incorporates by reference the claim chart of Puck in view of SenwaTec (Exhibit CG).

11. *Puck in view of Bryham in view of Bennett II*

The combination of Puck with the amphibious teachings of Bryham, described in Exhibit CE, in further view of the remote-control teachings of Bennett II would have rendered claims 1-40 obvious.

Puck in combination with Bryham renders obvious claims 1-40. To the extent the remote-control steering system of Puck would not have been obviously modified to control the Bryham wheels (Exhibit CE, [1.5]), Bennett II teaches remote control of the ground engaging propulsion structure.

a. Motivation to Combine Puck, Bryham, and Bennett II

A POSA would have been motivated to combine Puck and Bryham for the above-stated reasons. *Supra* Section V.A.9.a; *see also* Ground 5 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

And the Examiner already determined that a POSA would have been motivated to combine Bennett with Puck, concluding “it would have been obvious ... to provide ... remote control and a valve for improved steering and propulsion as taught by Puck and to use the remote control on land and water as taught by Bennett for ease of use.... The combination combines known features to achieve predictable results.”¹⁴ (Exhibit BA at 14 (Office Action).) Nuhn never challenged this rationale, likely because the motivation to use the remote control for both land and water propulsion would have been apparent.

b. Claims 1-40

The claim chart attached hereto as Exhibit CH demonstrates that Claims 1-40 of the ’835 Patent are invalid as obvious by Puck in view of Bryham in view of Bennett II.

D. U.S. Patent No. 11,541,708

Obviousness Combination	Exhibit
Bennett II (Exhibit 8) Claims 1, 8-17, 23-24, 26-28, and 35-38	DA
Truxor (Exhibit 10) (Exhibit 22) in view of Yoon (Exhibit 3 ¹⁵) or Carrier (Exhibit 1) Claims 1, 8-17, 23-24, 26-28, and 35-38	DB

¹⁴ Bennett II is a continuation of Bennett, which the examiner applied during the prosecution of the ’557 Patent. Bennett II shares a specification with Bennett. Therefore, the examiner’s findings with respect to Bennett apply equally to Bennett II.

¹⁵ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

Truxor (DM5000) (Exhibit 22) in view of Yoon (Exhibit 3 ¹⁶) or Carrier (Exhibit 1) Claims 1, 8-17, 23-24, 26-28, and 35-38	Section V.D.3
SenwaTec (Exhibit 11) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1, 8-17, 21-24, 26-28, and 35-38	DC
SenwaTec (Amphi-King (Exhibit 14) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1, 8-17, 21-24, 26-28, and 35-38	Section V.D.5
Cheramie (Exhibit 9) in view of Yoon (Exhibit 3) or Carrier (Exhibit 1) Claims 1, 8-17, 21-24, 26-28, and 35-38	DD
Puck (Exhibit 5) in view of Bryham (Exhibit 6) Claims 1, 8-17, 21-24, 26-28, and 35-38	DE
Lyseng (Exhibit 12) Claims 1-2, 8-17, 21-24, 26-29, and 35-38	DF
Obviousness Grounds 2-7 and 12-14 in view of Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) All of the claims cited in prior obviousness grounds plus Claims 1, 2, 17, 21- 24, and 26- 29	DG
Obviousness Grounds 2-7 and 12-14 in view of Nuhn’s Multi-Port Header Series Pumps (Exhibits 21, 23) All of the claims cited in prior obviousness grounds plus Claims 1, 2, 17, 21- 24, and 26- 29	Section V.D.10
Obviousness Grounds 2-7 and 12-14 in view of Fisher Pump (Exhibit 20) All of the claims cited in prior obviousness grounds plus Claims 1, 2, 21, 22, 24, and 26- 29	DH
Puck (Exhibit 5) in view of Bryham (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1, 8-17, 21-24, 26-28, and 35-38	DI
Bradley (Exhibit 26) in view of Bryham (Exhibit 6) Claims 1, 8-13, 15-17, 21- 24, 26-28, and 35-38	DJ
Bradley (Exhibit 26) in view of Bryham (Exhibit 6) in view of Bennett II (Exhibit 8) Claims 1, 8-17, 21- 24, 26-28, and 35-38	DK

1. Bennett II

a. Motivation to Combine Bennett II

As shown with respect to anticipation above (Exhibit DA), Bennett II discloses every limitation of Claims 1, 8-17, 23-24, 26-28, and 35-38 of the ’708 Patent. To the extent Claims 10-12, 17, and 36-38 of the ’708 Patent are not found to be anticipated by Bennett II (Exhibit DA)

¹⁶ Exhibit 4 is English translation of “수륙양용 수 처리장치.”

because one or more limitations is not literally present in the embodiment of Bennett II, it would have been obvious for a POSA to modify the teaching of Bennett II to create the claimed invention.

b. Claims 10-12, 17, and 36-38

The claim chart attached hereto as Exhibit DA demonstrates that Claims 10-12, 17, and 36-38 of the '708 Patent are invalid as obvious by Bennett II.

2. *Truxor in view of Yoon or Carrier*

Truxor in view of Yoon or Carrier renders obvious Claims 1, 8-17, 23-24, 26-28, and 35-38 of the '708 Patent.

a. Motivation to combine Truxor in view of Yoon or Carrier

Bazooka incorporates the motivation to combine Truxor with Yoon or Carrier found in Ground 2 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA. *See also supra* Section V.A.3.a.

b. Claims 1, 8-17, 23-24, 26-28, and 35-38

The claim chart attached hereto as Exhibit DB demonstrates that Claims 1, 8-17, 23-24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Truxor in view of Yoon or Carrier.

3. *Truxor (DM5000) in view of Yoon or Carrier*

The public use, sale, offer for sale, and importation of the DM5000 is substantially the same as the disclosure of the Truxor printed publication. Bazooka incorporates by reference the claim chart of Truxor in view of Yoon or Carrier (Exhibit DB).

4. *SenwaTec in view of Yoon or Carrier*

SenwaTec in view of Yoon or Carrier renders obvious Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent.

a. Motivation to combine SenwaTec in view of Yoon or Carrier

Bazooka incorporates the motivation to combine Truxor with Yoon or Carrier found in Ground 3 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA. *See also supra* Section V.A.6.a.

b. Claims 1, 8-17, 21-24, 26-28, and 35-38

The claim chart attached hereto as Exhibit DC demonstrates that Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by SenwaTec in view of Yoon or Carrier.

5. *SenwaTec (Amphi-King) in view of Yoon or Carrier*

The public use, sale, offer for sale, and importation of the Amphi-King is substantially the same as the disclosure of the SenwaTec printed publication. Bazooka incorporates by reference the claim chart of SenwaTec in view of Yoon or Carrier (Exhibit DC).

6. *Cheremie in view of Yoon or Carrier*

Cheremie in view of Yoon or Carrier renders obvious Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent.

a. Motivation to combine Cheremie in view of Yoon or Carrier

Bazooka incorporates the motivation to combine Cheremie with Yoon or Carrier found in Section V.A.14.a.

b. Claims 1, 8-17, 21-24, 26-28, 35-38

The claim chart attached hereto as Exhibit DD demonstrates that Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Cheremie in view of Yoon or Carrier.

7. *Puck in view of Bryham*

Puck in view of Bryham in view of Yoon or Carrier renders obvious Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent.

a. Motivation to combine Puck in view of Bryham

Bazooka incorporates the motivation to combine Truxor with Yoon or Carrier found in Ground 4 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA. *See also supra* Section V.A.9.a.

b. Claims 1, 8-17, 21-24, 26-28, 35-38

The claim chart attached hereto as Exhibit DE demonstrates that Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Puck in view of Bryham.

8. Lyseng

Lyseng renders obvious Claims 1-2, 8-17, 21-24, 26-29, and 35-38 of the '708 Patent. The Lyseng publication is prior art to the Asserted Patents to the extent that the Asserted Patents are afforded an effective filing date of February 16, 2016. The Lyseng publication depicts the commercial embodiment of the Asserted Patents. To the extent any Asserted Claims of the '708 Patent are not found to be anticipated by Lyseng because one or more limitations is not literally present in the embodiment of Lyseng, it would have been obvious for a POSA to modify the teaching of Lyseng to create the claimed invention.

The claim chart attached hereto as Exhibit DF demonstrates that Claims 1-2, 8-17, 21-24, 26-29, and 35-38 of the '708 Patent are invalid as obvious by Lyseng.

9. Obviousness Grounds 2-7 and 12-14 in view of Nuhn Reference or Manure Manager

The Nuhn Reference (Exhibit 13) or Manure Manager (Exhibit 21) when combined with any of Obviousness Grounds 2-7 and 12-14 for the '708 Patent renders obvious Claims 1-2, 17, 21-24, and 26-29 of the '708 Patent.

a. Motivation to combine Obviousness Grounds with the Nuhn Reference or Manure Manager

i. Truxor in view of Yoon and/or Carrier in further view of the Nuhn Reference or Manure Manager

See the Motivation to Combine Truxor in view of Yoon or Carrier in further view of the Nuhn Reference or Manure Manager described in Section V.A.4.a.

ii. SenwaTec in view of Yoon and/or Carrier in further view of the Nuhn Reference or Manure Manager

See the Motivation to Combine SenwaTec in view of Yoon or Carrier in further view of the Nuhn Reference or Manure Manager described in Section V.A.7.a.

iii. Cheramie in view of Yoon and/or Carrier in further view of the Nuhn Reference or Manure

Cheramie teaches an amphibious vehicle that can be used for dredging and related pumping of liquids. Similarly, Carrier and Yoon teaches an amphibious vehicle for pumping liquids. Cheramie, Yoon, Carrier, and the Nuhn Reference¹⁷ share the same field of art, the pumping of liquids. And more specifically, the pumping of liquid manure. A POSA looking to improve dredging/pumping capabilities and safety of Cheramie, Yoon, and Carrier would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of a dual ported and lofted housing, tapered fan design, improved output, and remote-control operation. (Nuhn Reference.) A POSA would have understood that, as stated in Nuhn’s website, the port design of the pump “uses the input power very efficiently as it is not wasted by moving liquid around in the housing.” (*Id.* at 7.) The design also “reduce[s] side thrust on the bottom

¹⁷ *See supra* Footnote 5.

bearings.” (*Id.*) As discussed in an article about the pump, “the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produces 6,000 (US) gallons per minute at 1,000 r.p.m. **with little input horsepower.**” “On Track,” *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5> (emphasis added). The improved efficiencies of the pump described by the Nuhn Reference would be especially beneficial given the remote environments that Cheramie, Yoon, and Carrier are designed to operate in. A POSA looking to improve the fluid pumping capabilities, efficiency, and operating range of Cheramie, Yoon, and Carrier, would look to a pump, such as the Nuhn Reference, that uses little input horsepower for pumping large amounts of fluid. Furthermore, the Nuhn Reference teaches the use of remote-control capabilities which POSAs already recognized would further improve safety for operators of vehicles such as Cheramie, Yoon, and Carrier. (*See* Nuhn Reference.)

iv. Puck in view of Bryham in view of the Nuhn Reference or Manure Manager

See the Motivation to Combine Puck in view of Bryham in further view of the Nuhn Reference or Manure Manager described in Section V.A.10.a.

v. Bradley in view of Bryham in view of the Nuhn Reference or Manure Manager

Bradley and the Nuhn Reference share the same field of art, the pumping of fluid. And more specifically, the pumping of liquid manure. A POSA looking to the improve pumping and agitation capabilities of Bradley would look to the teachings of the Nuhn Reference.

The Nuhn Reference discloses the Nuhn Header Series Vertical Manure Pit Pump. The Nuhn Reference teaches that the pump provides improved pumping capabilities, such as its use of a dual ported and lofted housing, tapered fan design, improved output, and remote-control operation. Nuhn Reference. According to Nuhn’s website, the port design “uses the input power

very efficiently as it is not wasted by moving liquid around in the housing.” (Nuhn Reference.) The design also “reduce[s] side thrust on the bottom bearings.” (*Id.* at 7.) As discussed in an article about the pump, “the design allows the Nuhn pump [(disclosed in the Nuhn Reference)] to produces 6,000 (US) gallons per minute at 1,000 r.p.m. with little input horsepower.” “On Track,” *Manure Manager*, November/December 2010, pg. 22, <https://mydigitalpublication.com/publication/?m=1559&i=53440&p=22&ver=html5>. The Nuhn Reference boasts the pump’s “massive agitation capacity.” (Nuhn Reference, 5.) The improved efficiencies and pumping capacity of the Nuhn Pump would be especially beneficial to the manure agitation vehicle of Bradley, as Bradley relies on its pump for the propulsion of fluid from its jets to mix the lagoon. (Exhibit 26, Col. 9:26-10:7.) Further, improved pumping power would help the design of Bradley reach deep lagoons and improve lagoon mixing. A POSA looking to improve the efficiency, operating range, pump capacity, and movement capabilities of Bradley, would look to a pump, such as the pump disclosed in the Nuhn Reference.

b. All of the claims cited in prior obviousness grounds plus Claims 1, 2, 17, 21-24, and 26-29

The claim chart attached hereto as Exhibit DG demonstrates that Claims 1-2, 8-17, 21-24, 26-29, 35-38 of the ’708 Patent are invalid as obvious by the Nuhn Reference when combined with Obviousness Grounds 2-7 and 12-14 of the ’708 Patent. Bazooka incorporates Exhibits DB, DC, DD, DE, DI, DJ, and DK. The teachings of Manure Manager are substantially identical to the teachings of the Nuhn Reference and may be substituted for the same as appropriate.

10. Obviousness Grounds 2-7 and 12-14 in view of Nuhn’s Multi-Port Header Series Pumps

The public use, sale, offer for sale, and importation of Nuhn’s Multi-Port Header Series Pumps (Exhibits 21, 23) are substantially the same as the disclosure of the Nuhn Reference and Manure Manager printed publications (Exhibits 13, 21). Bazooka incorporates by reference the

claim charts of Obviousness Grounds 2-7 and 12-14 in view of the Nuhn Reference (Exhibits DB, DC, DD, DE, DI, DJ, and DK).

11. *Obviousness Grounds 2-7 and 12-14 in view of Fisher Pump (Exhibit 20)*

The Fisher Pump when combined with any of Obviousness Grounds 2-7 and 12-14 for the '708 Patent renders obvious Claims 1-2, 21-22, 24, and 26-29 of the '708 Patent. The Fisher Pump Brochure (Exhibit 20) discloses several distinct Fisher Pump embodiments. Each of these embodiments is interchangeable for purposes of invalidity with respect to Claims 1-2, 21-22, 24, and 26-29 of the '708 Patent, and each embodiment may be substituted for the other as appropriate.

a. Motivation to combine Obviousness Grounds with Fisher Pump

i. Truxor in view of Yoon and/or Carrier in further view of the Fisher Pump

Truxor teaches an amphibious vehicle that can be used for dredging and related pumping of liquids. Similarly, Carrier teaches an amphibious vehicle for pumping liquids. Truxor, Carrier, and the Fisher Pump share the same field of art, the pumping of liquids. And more specifically, the pumping of liquid manure. A POSA looking to improve dredging/pumping capabilities and safety of Truxor and Carrier would look to the teachings of the Fisher Pump.

The Fisher Pump Brochure discloses the features and benefits of the Fisher Pump. The Fisher Pump provides improved pumping capabilities, such as the double discharge impeller which equalizes case pressure and allows the impeller to center in the case. Likewise, the double discharge case does not require fluid to travel more than 180 degrees before discharging for better efficiency and less internal wear. (Exhibit 20.) The improved efficiencies of the Fisher Pump would be especially beneficial given the remote environments that both Truxor, Carrier, and Yoon are designed to operate in. A POSA looking to improve the fluid pumping capabilities, efficiency,

and operating range of Truxor, Carrier, or Yoon, would look to a pump, such as the Fisher Pump, that is more efficient for pumping large amounts of fluid.

ii. SenwaTec in view of Yoon and/or Carrier in further view of the Fisher Pump

SenwaTec teaches an amphibious vehicle with multiple attachments for dredging, raking, cutting, and mowing. (Exhibit 11, 1-2.) The Amphi-King vehicle described in SenwaTec is used in ponds, lakes, and streams. (*Id.*) A POSA would have understood that the Amphi-King was used for pumping liquid manure in manure lagoons, as described in various pre-2013 publications. (Exhibits 17-19; *see also* Exhibit 14, ¶¶ 6-7, 12-19.¹⁸) The images below show the SenwaTec pump being used in a manure lagoon to pump liquid manure. (Exhibit 14, ¶¶ 6-7, 12-19.)



¹⁸ *See supra* Footnote 4.



(Exhibit 19, 3.)

Likewise, Yoon describes an amphibious vehicle used for pumping “livestock wastewater[.]” (Exhibit 4, ¶ [0002].)

SenwaTec, Carrier, and Yoon share the same field of art as the Fisher Pump—pumping liquids. Furthermore, SenwaTec and Yoon share the same specific field of art as the Fisher Pump—pumping liquid manure. A POSA looking to improve the pumping capabilities of Carrier, and/or the liquid manure pumping capabilities of SenwaTec and Yoon would look to the teachings of the Fisher Pump.

The Fisher Pump Brochure discloses the Fisher Pump. The Fisher Pump provides improved pumping capabilities, such as the double discharge impeller which equalizes case pressure and allows the impeller to center in the case. Likewise, the double discharge case does not require fluid to travel more than 180 degrees before discharging for better efficiency and less internal ware. (Exhibit 20.) The improved efficiencies of the pump described by the Fisher Pump Brochure would be especially beneficial given the manure pumping applications that both SenwaTec and Yoon are

designed to operate in. A POSA looking to improve the efficiency and manure pumping capabilities of SenwaTec or Yoon would look to a high-efficiency pump, such as the Fisher Pump.

iii. Cheramie in view of Yoon and/or Carrier in further view of the Fisher Pump

Cheramie teaches an amphibious vehicle that can be used for dredging and related pumping of liquids. Similarly, Carrier and Yoon teach an amphibious vehicle for pumping liquids. Cheramie, Yoon, Carrier, and the Fisher Pump share the same field of art, the pumping of liquids. And more specifically, the pumping of liquid manure. A POSA looking to improve dredging/pumping capabilities and safety of Cheramie, Yoon, and Carrier would look to the teachings of the Fisher Pump.

The Fisher Pump Brochure discloses the Fisher Pump. The Fisher Pump provides improved pumping capabilities, such as the double discharge impeller which equalizes case pressure and allows the impeller to center in the case. Likewise, the double discharge case does not require fluid to travel more than 180 degrees before discharging for better efficiency and less internal wear. (Exhibit 20.) The improved efficiencies of the pump described by the Fisher Pump would be especially beneficial given the remote environments that Cheramie, Yoon, and Carrier are designed to operate in. A POSA looking to improve the fluid pumping capabilities, efficiency, and operating range of Cheramie, Yoon, and Carrier, would look to a pump, such as the Fisher Pump, that uses little input horsepower for pumping large amounts of fluid.

iv. Puck and Bryham in view of the Nuhn Reference

Puck and the Fisher Pump share the same field of art, the pumping of fluid. And more specifically, the pumping of liquid manure. A POSA looking to improve pumping and agitation capabilities of Puck would look to the teachings of the Fisher Pump.

The Fisher Pump Brochure discloses the features and benefits of the Fisher Pump. The Fisher Pump provides improved pumping capabilities, such as the double discharge impeller which equalizes case pressure and allows the impeller to center in the case. Likewise, the double discharge case does not require fluid to travel more than 180 degrees before discharging for better efficiency and less internal wear. (Exhibit 20.) The improved efficiencies and pumping capacity of the Fisher Pump would be especially beneficial to the manure agitation vehicle of Puck, as Puck relies on its pump for movement about the lagoon. (Exhibit 5, ¶ [0011].) Further, improved pumping power would help the design of Puck reach deep lagoons and improve lagoon mixing. A POSA looking to improve the efficiency, operating range, pump capacity, and movement capabilities of Puck, would look to a pump, such as the Fisher Pump.

**v. Bradley and Bryham (or Bradley and Bryham and
 Bennett-II) in view of the Fisher Pump**

Bradley and the Fisher Pump share the same field of art, the pumping of fluid. And more specifically, the pumping of liquid manure. A POSA looking to improve pumping and agitation capabilities of Bradley would have looked to the teachings of the Fisher Pump.

The Fisher Pump Brochure discloses the features and benefits of the Fisher Pump. The Fisher Pump provides improved pumping capabilities, such as the double discharge impeller which equalizes case pressure and allows the impeller to center in the case. Likewise, the double discharge case does not require fluid to travel more than 180 degrees before discharging for better efficiency and less internal wear. (Exhibit 20.) The improved efficiencies and pumping capacity of the Fisher Pump would be especially beneficial to the manure agitation vehicle of Bradley, as Bradley relies on its pump for the propulsion of fluid from its jets to mix the lagoon. (Exhibit 26, Col. 9:26-10:7.) Further, improved pumping power would help the design of Bradley reach deep

lagoons and improve lagoon mixing. A POSA looking to improve the efficiency, operating range, and pump capacity of Bradley, would look to a pump, such as the Fisher Pump.

**b. All of the claims cited in prior obviousness grounds plus
Claims 1-2, 21-22, 24, and 26-29**

The claim chart attached hereto as Exhibit DH demonstrates that Claims 1-2, 21-22, 24, and 26-29 of the '708 Patent are invalid as obvious by an exemplary embodiment of the Fisher Pump when combined with Obviousness Grounds 2-7 and 12-14 of the '708 Patent. Each of the Fisher Pump embodiments disclosed in Exhibit 20 may be substituted for this exemplary embodiment as appropriate. Bazooka incorporates Exhibits DB, DC, DD, DE, DI, DJ, and DK.

12. Puck in view of Bryham in view of Bennett II

Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Puck in view of Bryham in further view of Bennett II.

**a. Motivation to combine Puck in view of Bryham in view of
Bennett II.**

Bazooka incorporates by reference the motivation to combine Puck, Bryham, and Bennett II as stated in Ground 5 of *Bazooka-Farmstar, LLC v. Nuhn Indus. Ltd.*, Case No.: IPR2023-011611, Petition for Inter Partes Review (P.T.A.B. filed June 30, 2023), attached hereto as Exhibit BA.

b. Claims 1, 8-17, 21-24, 26-28, and 35-38

The claim chart attached hereto as Exhibit DI demonstrates that Claims 1, 8-17, 21-24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Puck in view of Bryham in further view of Bennett II.

13. *Bradley in view of Bryham*

Claims 1, 8-13, 15-17, 21- 24, 26-28, and 35-38 of the '708 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Bradley in view of Bryham.

a. Motivation to combine Bradley in view of Bryham

Bazooka incorporates the motivation to combine Bradley in view of Bryham in Section V.A.22.a.

b. Claims 1, 8-13, 15-17, 21- 24, 26-28, and 35-38

The claim chart attached hereto as Exhibit DJ demonstrates that Claims 1, 8-13, 15-17, 21- 24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Puck in view of Bryham.

14. *Bradley in view of Bryham in view of Bennett II*

Claims 1, 8-17, 21- 24, 26-28, and 35-38 of the '708 patent are unpatentable under 35 U.S.C. § 103 because such claims would have been obvious to one of ordinary skill in the art at the time of the invention over Bradley in view of Bryham in further view of Bennett II.

a. Motivation to combine Bradley in view of Bryham in view of Bennett II

Bazooka incorporates the motivation to combine Bradley in view of Bryham in view of Bennett II in Section V.A.23.a.

b. Claims 1, 8-17, 21- 24, 26-28, and 35-38

The claim chart attached hereto as Exhibit DK demonstrates that Claims 1, 8-17, 21- 24, 26-28, and 35-38 of the '708 Patent are invalid as obvious by Bradley in view of Bryham in further view of Bennett II.

VI. INVALIDITY UNDER 35 U.S.C. § 112

Bazooka hereby identifies the bases for its contention that the Asserted Claims of the Asserted Patents are invalid under 35 U.S.C. § 112. Bazooka expressly reserves its right to amend these contentions based on any claim constructions decided by the Court. Notwithstanding the foregoing, nothing in these contentions shall be construed so to limit or foreclose any position Bazooka takes with respect to Claim Construction, such positions to be disclosed in accordance with the Court's Scheduling Order. (Dkt. 76.)

Bazooka identifies below all claim terms or phrases that Bazooka's contend render one or more Asserted Claims indefinite.

“[D]esired location” as found in Claims 6 and 8 of the '557 Patent and Claims 8 and 24 of the '835 Patent, and all claims that depend directly or indirectly from Claim 8 (Claims 9-10 and 50-54). During the *ex parte* reexamination of the '557 Patent, the examiner noted that term of preference (“desired location”) was unsupported within the specification by “any discernable boundaries or locations.” (Reexamination Application No. 90/019,076, Non-Final Office Action, at 4 (August 12, 2022) (“Further, the positioning of the various components would impact the center of gravity and the term ‘desired location’ does not provide any discernable boundaries or limitations.”).)

“[F]or priming the fluid pump” as found in Claim 23 of the '557 Patent is unsupported by the specification of the '557 Patent as it does not provide an objective basis whereby a POSA would know where the pump required priming or not. Also, the claim fails to identify to what degree the pump must be submersed to obviate the need for priming or that merely putting a pump in liquid will expel all air, obviating the need for priming.

Claim 24 of the '835 Patent is invalid under 35 U.S.C. § 112(b) because **“[f]luid mover”** lacks an antecedent basis. The claim refers to “the location of the ground engaging propulsion

structure, power source and fluid mover” however, “a fluid mover” is never previously recited in the claim. Nor does this term ever appear in independent claim 17, from which claim 24 depends.

VII. UNENFORCEABILITY DUE TO IAN NUHN’S AND ROBERT A.H. BRUNET’S INEQUITABLE CONDUCT

A. Inequitable Conduct by Ian Nuhn

Bazooka hereby identifies the bases for its contention that the Asserted Claims of the Asserted Patents are unenforceable due to Ian Nuhn’s inequitable conduct.

Bazooka incorporates by reference the following pleadings related to Ian Nuhn’s inequitable conduct:

- Dkt. 85-2 at 18-23, 34-64 (¶¶ 46-141), 67-70 (¶¶ 159-176);
- Dkt. 85-4 at 19-24, 30-59 (¶¶ 20-115), 61-64 (¶¶ 128-145); and
- Dkt. 85-6 at 21-26, 37-63 (¶¶ 43-126), 69-72 (¶¶ 158-174).

Plaintiff’s Asserted Patents are unenforceable due to Ian Nuhn’s inequitable conduct during the prosecution of U.S. Patent No. 10,974,557 (“the ’557 Patent”), U.S. Patent No. 11,358,425 (“the ’425 Patent”), U.S. Patent No. 11,491,835 (“the ’835 Patent”), U.S. Patent No. 11,541,708 (“the ’708 Patent”), U.S. Patent No. 10,710,422 (“the ’422 Patent”), U.S. Patent No. 10,124,638 (“the ’638 Patent”), U.S. Patent No. 9,694,636 (“the ’636 Patent”) (collectively, the “Lagoon Crawler Patents”), and the *ex parte* reexamination of the ’557 Patent and the *ex parte* reexamination of the ’425 Patent.

Ian Nuhn engaged in inequitable conduct by knowingly and intentionally withholding material prior art relevant to the Lagoon Crawler Patents with the specific intent to deceive the PTO. Specifically, Ian Nuhn has intentionally withheld at least the following prior art: (1) Website Publication (Nuhn Refence, Exhibit 13); the Manure Manager Publication (Exhibit 21); and (3) the Prior Sales (Nuhn Dual Port Header Series Pump, Exhibit 23), which all relate to the multi-

outlet pump incorporated by reference in the common specification for the Lagoon Crawler Patents.

A side-by-side comparison of the pump disclosed in Figure 8 of the Lagoon Crawler Patents and the Website Publication demonstrates that the Website Publication discloses the features of the pump claimed in the Lagoon Crawler Patents:

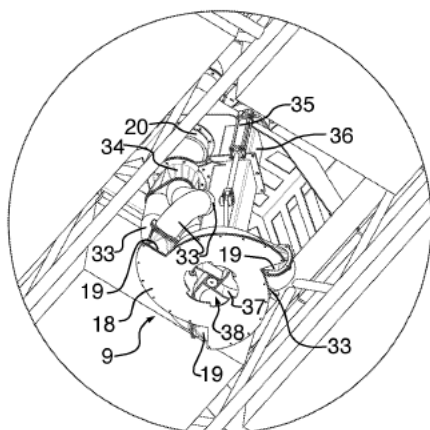


FIG.8



A side-by-side comparison of the pump disclosed in Figure 8 of the Lagoon Crawler Patents and the Manure Manager Publication (Exhibit 21) demonstrates that the Manure Manager Publication discloses the features of the pump claimed in the Lagoon Crawler Patents:

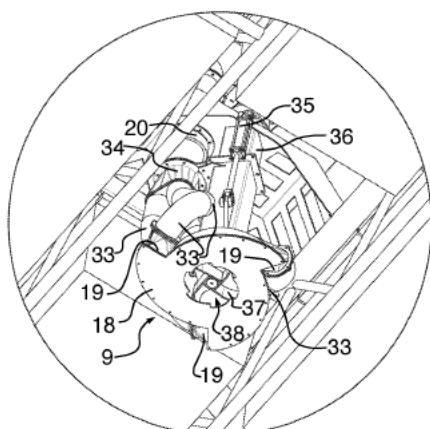


FIG.8



Ian Nuhn had knowledge of the Website Publication and Manure Manager Publication prior to the filing of the Lagoon Crawler Patents. Despite this knowledge, Ian Nuhn intentionally withheld this prior art from the PTO on at least nine (9) occasions—during the prosecution of each of the Lagoon Crawler Patents, and during the *ex parte* reexaminations of the '557 Patent and the '425 Patent.

Similarly, Ian Nuhn had knowledge of the Prior Sales prior to filing the Lagoon Crawler Patents and U.S. Patent No. 11,448,224 (“the '224 Patent”), U.S. Patent No. 8,944,758 (“the '758 Patent”), U.S. Patent No. 10,808,707 (“the '707 Patent”), U.S. Patent No. 10,066,629 (“the '629 Patent”), and U.S. Patent No. 9,488,190 (“the '190 Patent”) (collectively the “Nuhn Pump Patents”). Ian Nuhn intentionally withheld the Prior Sales from the PTO on at least thirteen (13) occasions—during the prosecution of each of the Nuhn Pump Patents and Lagoon Crawler Patents, and during the *ex parte* reexamination of the '557 Patent and the '425 Patent.

But for Ian Nuhn’s non-disclosure of the Website Publication, claims of the Lagoon Crawler Patents would not have been granted; but for Nuhn’s non-disclosure of the Manure Manager Publication, claims of the Lagoon Crawler Patents would not have been granted; and but for Nuhn’s non-disclosure of the Prior Sales, claims of the Lagoon Crawler Patents would not have been granted. These claims include, for example, at least all claims of the '835 Patent, at least claims 2, 3, 4, 19, 29, 30, and 31 of the '708 Patent, independent claim 21 and dependent claims 9 and 10 of the '636 Patent, independent claim 10 and dependent claim 11 of the '638 Patent, independent claim 1 of the '557 Patent, and independent claim 1 of the '425 Patent.

Furthermore, despite Ian Nuhn’s knowledge that the Nuhn Pump Patents are invalid due to the Prior Sales, he deliberately incorporated one of the Nuhn Pump Patents—the '758 Patent—into each of the Lagoon Crawler Patents. Ian Nuhn further relied on the incorporation of the '758

Patent to overcome the examiner's rejection during the *ex parte* reexamination of the '557 Patent. Ian Nuhn has filed, and upon information and belief, will continue to file, serial continuations of the Nuhn Pump Patents and Lagoon Crawler Patents, perpetually deceiving the PTO by withholding material prior art and attempting to capture Bazooka's non-infringing products.

Ian Nuhn, who is the named inventor on both the Nuhn Pump Patents and Lagoon Crawler Patents, had a specific intent to deceive the PTO which can be reasonably inferred from at least the following conduct:

- Despite having knowledge of the Website Publication, failing to disclose the Website Publication to the PTO on at least nine occasions;
- Despite having knowledge of the Manure Manager Publication, failing to disclose to the PTO the Manure Manager Publication on at least nine occasions;
- Despite having knowledge of the Prior Sales, failing to disclose the Prior sales to the PTO on at least thirteen occasions;
- Despite knowledge of this material prior art, making affirmative arguments to the PTO that the prior art pump was different from the pump disclosed and claimed in the Lagoon Crawler Patents to overcome claim rejections in the reexaminations of the '557 Patent and '425 Patent, all while withholding from the PTO the fact that the very features that are allegedly distinguishing over the prior art pump were present in Nuhn's own prior art; and
- Despite knowledge of material prior art, filing serial continuations in an attempt to broaden the claims to capture Bazooka's non-infringing Wolverine Series Agitation Boat, including drafting claims covering the

multiple tangential outlet pump disclosed as part of the invention while intentionally withholding from the PTO the fact that the multiple tangential outlet pump was prior art.

Ian Nuhn's pattern of conduct, taken as a whole, demonstrates a lack of candor and his intent to deceive the PTO. Ian Nuhn's conduct did deceive the PTO into granting the Lagoon Crawler Patents with claims directed to a pump with multiple tangential outlets. The Lagoon Crawler Patents are unenforceable due to Ian Nuhn's inequitable conduct and his continued inequitable conduct and intentional withholding of material prior art in an attempt to deceive the PTO.

B. Inequitable Conduct by Ian Nuhn and Robert A.H. Brunet

Bazooka hereby identifies the following bases for its contention that the Asserted Claims of the Asserted Patents are unenforceable due to at least Robert A.H. Brunet and Ian Nuhn's inequitable conduct. Robert A.H. Brunet was acting on behalf of Nuhn, including Ian Nuhn.

The '638 Patent includes a defective priority claim because it does not properly list the filing dates of the provisional application and PCT application to which the '638 Patent claims priority. (*See* Exhibit BA ('425 IPR), Section VII.D. (Priority).) As a result, the priority claims of the '557 Patent, the '425 Patent, the '835 Patent, the '708 Patent, and the '422 Patent, which each depend from the '638 Patent, are all also defective. In recognition of its defective priority claims, Nuhn filed a petition with the PTO to accept its unintentionally delayed priority claim. Because the petition was filed more than two years after the date the priority or benefit claim was due, the PTO required Nuhn to file an additional explanation of the circumstances surrounding the delay and certifying that the entire delay was unintentional. (Exhibit 28, 2.)

Nuhn’s additional explanation took the form of a sworn declaration signed by Robert A.H. Brunet, the patent agent who filed the ’638 Patent and signed the Application Data Sheet with the defective priority claim. In his declaration, Robert A.H. Brunet certified:

5. I was unaware of this inadvertent and unintentional typographical error in the Application Data Sheet (ADS) until it was brought to my attention through *Inter Partes* Review Petition No. IPR2023-01161, which was filed on June 30, 2023. To my knowledge, neither the Applicant/Patentee nor anyone else at my firm was aware of this mistake prior to June 30, 2023.

(Exhibit 29 (Declaration of Robert A.H. Brunet), 2.) This is significant because without a *valid* explanation for the delay well past the deadline to claim priority, the patents claiming priority to the ’638 Patent would be invalid—including all the Asserted Patents in this case.

Robert A.H. Brunet’s certification is demonstrably false. Nuhn and its counsel (including Robert A.H. Brunet) were previously notified of this error in the priority claim of the ’638 Patent by both the PTO and Bazooka. As shown below, the PTO notified Nuhn and its counsel of the error on the filing receipt for the ’638 Patent, mailed on *May 12, 2017*, which indicated that the priority information provided by Robert A.H. Brunet was incorrect:

Domestic Priority data as claimed by applicant
This application is a CON of 15/044,905 02/16/2016
which is a CON of PCT/CA2014/050789 08/19/2014
which claims benefit of 61/867,598 08/19/2013 *
(*)Data provided by applicant is not consistent with PTO records.

(Exhibit 27 (Filing Receipt for ’638 Patent).)

Nuhn and its counsel were again notified of the defective priority claim when Bazooka served Nuhn and its counsel (including Robert A.H. Brunet) with its request for *ex parte* reexamination of the ’557 Patent on *May 6, 2022*. (See Exhibit AJ, 8 (Certificate of Service), 16 n.2 (“The priority claim for the ’557 patent is inconsistent . . .”).)

The materiality prong of inequitable conduct is met by the filing of a false affidavit. *Intellect Wireless, Inc. v. HTC Corp.*, 732 F.3d 1339, 1344 (Fed. Cir. 2013); *see also TouchTunes Music Corp. v. Rowe Int'l Corp.*, 847 F. Supp. 2d 606, 622 (S.D.N.Y. 2012). Here, the statements made by Robert A.H. Brunet, with Nuhn's approval, to the PTO in his declaration were demonstrably false. This establishes but-for materiality. Indeed, without this sworn statement, which was required to obtain a Certificate of Correction, Nuhn knew the asserted patents would be found invalid over its own commercial embodiment.

Nuhn and Robert A.H. Brunet's specific intent to deceive the PTO can be reasonably inferred from the consequences that would have resulted if the PTO had refused to issue the certificate of correction—the entire continuation chain of the '638 Patent, the '557 Patent, the '425 Patent, the '835 Patent, the '708 Patent, and the '422 Patent would all be rendered invalid based on the defective priority claim attributable to Robert A.H. Brunet's mistake. Despite knowing of the broken priority chain back in 2017 and again in May of 2022, and not doing anything to fix the error on those two occasions—likely hoping no one would notice the issue—Robert A.H. Brunet and Nuhn sought to avoid the harsh consequences by filing a false declaration attempting to fix the broken priority chain only when, without it, the claims of the Nuhn's patents would have been invalidated by Nuhn's commercial embodiment. Therefore, the Lagoon Crawler Patents are unenforceable due to Robert A.H. Brunet's inequitable conduct and false representations of fact in the application for a Certificate of Correction specifically intended to deceive the PTO.

Date: August 29, 2023

By:

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CERTIFICATE OF SERVICE

I, Jeremy Miller, hereby certify that on August 29, 2023, I caused a true and correct copy of the foregoing document to be served upon the following counsel for Plaintiffs via electronic mail:

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