

Meet and Confer
September 05, 2024

Omega Liner
vs.
Buergofol, GmbH [IPR2023-01372]



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OMEGA EX1074, 1 of 37

Omega Liner Company, Inc. v. Buergofol GmbH

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3
4 OMEGA LINER COMPANY, INC.,)

5 Petitioner,)

6 vs.)

7 BUERGOFOL GmbH,) IPR2023-01372

8 Patent Owner.) Patent 9,657,882 B2

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15 TRANSCRIPT OF MEET AND CONFER

16 VIA TELECONFERENCE

17 Thursday, September 5, 2024

18 11:04 a.m. - 11:36 a.m.

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23 Reported by Andy Rodriguez, CSR No. 14226

24 Pages 1 - 29

25 Job No. 10149106

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Patent 9,657,882 B2

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22 TRANSCRIPT OF MEET AND CONFER, taken via teleconference
23 on Thursday, September 5, 2024, from 11:04 a.m. to
24 11:36 a.m., before Andy Rodriguez, CSR No. 14226.

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A P P E A R A N C E S

(All parties appearing telephonically)

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P R O C E E D I N G S

THURSDAY, SEPTEMBER 5, 2024

11:04 a.m. - 11:36 a.m.

- - -

MR. MCKEOWN: This is Scott. The purpose of the call is to just get an understanding of what you're proposing to request from the PTAB. You know, from your email, we understand that you'd like to submit at least one of the letters that has been sent over regarding violations of duty of candor, so we're sort of wondering why you're not submitting all of the letters and then what your justification is for submitting the letters in the first instance.

MR. DOODY: I'm not really sure what other letters you're talking about, but I can look at those. If they implicate something in the IPR or anything that I've done, an allegation of violating the duty of candor by myself personally, then I have to submit it, and I will.

The authority is set forth pretty clearly in the rules that this would be routine discovery. This is information that is alleging -- obviously, we believe incorrectly -- but it's alleging that we've made false statements and inconsistent statements in the IPR, and according to 37 CFR 42.11(c), we have to submit it.

1 MR. MCKEOWN: Well, we can agree to disagree on
2 that, but let's get back to the letters.

3 There was a letter sent August 23, there was
4 another letter sent August 27, and then there was a
5 letter sent September 3. All of those letters relate to
6 duty of candor issues that are going on in the IPR, so
7 we just want to make sure we're talking about the same
8 thing before we get into any more details.

9 MR. DOODY: August 23rd --

10 MR. MCKEOWN: Okay. Do you have copies of the
11 August 27 and September 3 letters?

12 MR. DOODY: I'm looking for them.

13 Would they have come from you, Michael?

14 MR. NEUSTEL: Yes. Yeah, you were on the
15 emails, Pat.

16 MR. DOODY: All right.

17 Yeah, August 23. That's inequitable conduct.
18 I guess I saw the title of it and -- all right. No.
19 That's the one I'm -- is that the one I'm talking about
20 now?

21 Yeah. August 23. Okay.

22 And then I have an August 27 letter about
23 complaints. So I don't know -- this, I thought, dealt
24 with the litigation. I know that it appears that you
25 were contending that they should be designated something

1 other, and I don't know who Saertex is or what these
2 complaints are, but evidently there's documents that
3 Buergofol had designated attorneys' eyes only, and you
4 want the Court to -- you wanted them to agree to not
5 have them designated and submit them in these
6 proceedings.

7 So I don't know -- I don't know anything about
8 the Saertex complaints. I'm not on the litigation. I
9 have nothing to do with the litigation. I haven't
10 signed the protective order, so I can't see them.

11 MR. NEUSTEL: Pat --

12 MR. MCKEOWN: The other attorneys are -- just
13 so we're -- so, at the bottom of page 2, the -- this is
14 Scott McKeown.

15 The bottom of page 2, "failure to disclose
16 Saertex complaints in the IPR proceeding, that would
17 apply to any attorneys of record in this proceeding, so
18 I just think we have more than one letter to talk about
19 here. So that's my concern is that we're making sure
20 we're talking about the right group of documents.

21 MR. DOODY: All right. Well, I think there's
22 something referenced in the August 23 letter about some
23 complaint with that name, Saertex. That's in the
24 August 23 letter, as is the failure to disclose it to
25 the patent offices being some form of violation of

1 42.51.

2 MR. NEUSTEL: Pat, do you have the -- Michael
3 here. Do you have the September 3 letter that was
4 addressed directly to you about the Saertex customer
5 complaints?

6 MR. DOODY: That's on page 10 of the August 10
7 letter?

8 September what?

9 MR. NEUSTEL: September 3. That one was
10 addressed -- directed directly to you.

11 MR. DOODY: Oh, boy. Who sent it?

12 MR. NEUSTEL: I did.

13 MR. DOODY: Who is "I"?

14 MR. NEUSTEL: Michael Neustel.

15 MR. DOODY: Oh, sorry, Michael. You guys talk
16 to each other enough that you can tell each other's
17 voices, but I can't, unfortunately.

18 Let me look. November 3 --

19 MR. NEUSTEL: September 3.

20 MR. DOODY: Yeah. All right. September 3.
21 Correct.

22 Email -- yeah. All right. To Darien and
23 Lester? Correct.

24 MR. NEUSTEL: And you, also.

25 MR. DOODY: Yeah, I know I'm on it --

1 MR. NEUSTEL: Okay.

2 MR. DOODY: -- but you said it was directly to
3 me, which it's not.

4 MR. NEUSTEL: Well, it includes your
5 co-counsel, of course, too.

6 MR. DOODY: Yeah. All right. I thought it was
7 just a single letter to me alone. That's what I
8 interpret "directly to me" to mean.

9 MR. NEUSTEL: Did you read that letter?

10 MR. DOODY: No. I read parts of it. I saw
11 that it was removal of AEO designation. This looked
12 more like litigation-related stuff, which I'm not going
13 to get involved in, but providing false statements to
14 the PTAB, which, I believe, is not any different than
15 what you said in the August 23 --

16 MR. NEUSTEL: It's actually quite different
17 because it's regarding the Saertex complaints.

18 MR. DOODY: Yeah.

19 MR. NEUSTEL: I encourage you to read it.

20 MR. DOODY: I don't understand what -- the
21 relevance of the Saertex complaints. Perhaps you can
22 elucidate.

23 You've made a statement that Dr. Boutrid
24 falsely testified that there weren't any customer
25 complaints and cite portions of his declaration that

1 don't say that. I mean, are you trying to say that
2 Buergofol, who's been selling over a hundred thousand
3 liners for many decades, has never had a customer
4 complaint?

5 MR. NEUSTEL: Dr. Boutrid did.

6 MR. DOODY: No, he didn't. Why don't you read
7 what he said. What was the complaint? It's in the
8 patent, too, and it's in every other declaration and in
9 our response. It's a specific complaint about tearing
10 of the film when withdrawn. It's not about pinholes or
11 roughness of the surface or whatever other complaint
12 might be lodged by a customer, which I'm sure there were
13 many, as any manufacturer would receive. This is a very
14 specific complaint.

15 MR. NEUSTEL: So, Pat, have you talked to
16 Buergofol about these complaints?

17 MR. DOODY: Boutrid never once complained --
18 never once stated that no one ever complained
19 about any -- there were never any complaints about the
20 inner film prior to 2012. Prior to 2012, he was not
21 aware --

22 MR. NEUSTEL: Have you seen -- sorry, Pat.

23 MR. DOODY: Yeah. He was not aware of any
24 customer complaining about the inner film tearing when
25 it was withdrawn from the pipe. That's the problem.

1 MR. NEUSTEL: Pat --

2 MR. DOODY: So if you want to --

3 MR. NEUSTEL: Let me know when you're done.

4 MR. DOODY: If the Saertex complaints have
5 anything to do with that problem, then, yeah, they're
6 probably relevant, but I don't know what they pertain
7 to.

8 MR. NEUSTEL: Okay. So you have not looked at
9 any of the Saertex complaints, Pat?

10 MR. DOODY: No. I can't.

11 MR. NEUSTEL: Why can't you?

12 MR. DOODY: Attorneys' eyes only, and I'm not
13 on the -- I haven't signed the protective order.

14 MR. NEUSTEL: The protective order doesn't
15 prevent you from looking at these documents.

16 MR. DOODY: There's the patent prosecution
17 bar --

18 MR. NEUSTEL: You're counsel for Buergofol.

19 MR. DOODY: Yeah, but there's the patent
20 prosecution bar as well.

21 MR. NEUSTEL: Are you prosecuting patent
22 applications for Buergofol?

23 MR. DOODY: No, but I'm handling this IPR,
24 where we could have amended the claims, but we didn't.
25 You didn't even want --

1 MR. NEUSTEL: Right.

2 MR. DOODY: -- you didn't even want Lester or
3 Darien to even be on the IPR because of it.

4 MR. NEUSTEL: I don't recall what you're
5 talking about.

6 But back to the Saertex documents. These are
7 highly relevant because they actually -- as we said in
8 our letter -- I encourage you to read both of my
9 letters, the August 27 letter and the September 3
10 letter, which discuss how the Saertex complaints
11 contradict Dr. Boutrid's testimony about tearing
12 problems. So I think this is something you should be
13 investigating with your client.

14 MR. DOODY: Well, Michael, I didn't read
15 anything in your letter that said that any of the
16 Saertex complaints dealt with tearing, and it's my
17 understanding -- my co-counsel had told me they don't,
18 but I haven't looked at them.

19 MR. NEUSTEL: It's your choice, Pat, what you
20 do. I can't force you to do anything.

21 MR. DOODY: Yeah. Well -- and excuse my
22 bluntness here, Michael, but I'm not going to believe
23 practically anything you write because your letter makes
24 so many statements that are incorrect it's hard for me
25 to believe it.

1 MR. NEUSTEL: What's incorrect in my letter?

2 MR. DOODY: Well, first of all, you say that
3 the patent unequivocally states the Con-Stab PE 27A is
4 ethylene EBS wax. It doesn't ever say that. You also
5 say the comparative example says there was no wax. It
6 doesn't say that either. It says there was no wax
7 additive agents. Big difference.

8 MR. NEUSTEL: Anything else --

9 MR. DOODY: You say Dr. Boutrid falsely
10 submitted false testimony by stating that there were no
11 problems with the inner film prior to 2012, and that's
12 not even remotely close to what he stated. It's replete
13 throughout this letter. You paraphrase what we say
14 instead of quoting it, like what most people do. Quote
15 what we said, and then prove to me that it's wrong. And
16 even if --

17 MR. NEUSTEL: Are you talking about my
18 August 23 letter?

19 MR. DOODY: Yeah.

20 MR. NEUSTEL: Okay. Are you on page --
21 starting on page 2, I quote the patent there. Page 3, I
22 quote the patent two more places. Page 3, at the
23 bottom, I quote Dr. Brant's declaration, like, a whole
24 paragraph section. Page 4, I quote an entire section of
25 your brief that you wrote. And then in page 5, I quote

1 Dr. Brant's testimony word for word from the transcript.
2 There's no paraphrasing there.

3 Is there anything incorrect in those quotes, or
4 is it all truthful in those quotes?

5 MR. DOODY: You know what? You can quote part
6 of a document and pretend that it means what you think
7 it means, but the document's read in its entirety. The
8 portions you've quoted are portions after the definition
9 of Con-Stab PE 270A, or whatever it's called, as being
10 made with or made from EBS wax. And then those quotes
11 also include, in parentheses, reference to the example.
12 So when it says "6 percent wax, Example 6," look at
13 Example 6 and what's used. It's 6 percent Con-Stab.

14 You also haven't provided any evidence that a
15 person of ordinary skill in the art would have construed
16 the patent in such a manner. In fact, I think it's
17 quite unbelievable that it would be construed that
18 way --

19 MR. NEUSTEL: Really? When did you know about
20 the --

21 MR. DOODY: Well, you don't have any
22 evidence --

23 MR. NEUSTEL: When did you know about the true
24 content of Con-Stab PESA 270?

25 MR. DOODY: Who cares --

1 MR. NEUSTEL: Did you know about it prior to
2 filing your brief?

3 MR. DOODY: I didn't need to know --

4 MR. NEUSTEL: I think it's highly relevant.
5 Since you're claiming I'm making these false statements
6 and a POSITA would know what's going on here in the
7 patent and I'm making these false statements, you're
8 accusing me now of making false statements, so I think
9 it's important to know when did you know.

10 MR. DOODY: You are making a false statement.
11 Who cares? I'm not a person of ordinary skill in the
12 art, but I did make film for two years. I know how to
13 read --

14 MR. NEUSTEL: That's not the question.

15 MR. DOODY: PE means polyethylene, just like
16 our witness testified. You actually have testimony from
17 Dr. Brant about how he would go about determining what
18 is or isn't in something that's designated PE 270A from
19 a customer. What did he tell you? He'd call him up and
20 ask him what --

21 MR. NEUSTEL: He told me he didn't -- Dr. Brant
22 told us -- his testimony says he doesn't know what's in
23 Con-Stab PESA 270 --

24 MR. DOODY: Why would he?

25 MR. NEUSTEL: -- in his depo.

1 MR. DOODY: Why would he, though? If he
2 wanted, he would call -- if you were going to redo --

3 MR. NEUSTEL: Why would he?

4 MR. DOODY: -- three, four, five of our
5 patents, you would call the customer to find out what's
6 in it. What difference does it make?

7 MR. NEUSTEL: Because his testimony says
8 otherwise.

9 MR. DOODY: You're failing to remember his
10 earlier testimony. Remember when Monte wouldn't let him
11 answer? He doesn't just look at a data sheet. If
12 you're going to use it, you call the producer, and they
13 tell you. And had you bothered to cross-examine
14 Dr. Boutrid, all of these questions we're raising right
15 now, you would know. You also would know all about the
16 Saertex complaints. You could have if you wanted to ask
17 him. You could have known and asked him what he
18 actually stated in his declaration instead of
19 paraphrasing it, but you specifically chose not to so
20 that you could fabricate this narrative that's a false
21 narrative to try to gin up some motion for sanctions.

22 MR. NEUSTEL: So when I quote the language from
23 the '82 patent where it says "the addition of 6 percent
24 wax" on page 3 of my letter dated August 23, 2024, I'm
25 making a false statement there?

1 MR. DOODY: No.

2 MR. NEUSTEL: It says 6 percent wax. It says
3 "the addition of 6 percent wax."

4 MR. DOODY: You're insinuating a false
5 narrative because you're not considering the entire
6 patent. I can quote little portions of everything you
7 say and say, "I'm quoting you exactly. See what he
8 said?" Big deal. What does the whole patent say?

9 MR. NEUSTEL: I'm just listening.

10 MR. DOODY: Yeah. Well, if this all goes to
11 inequitable conduct or whatever you're trying to
12 contend, it has nothing to do with the IPR. I mean,
13 none of the questions you asked Dr. Brant, nothing in
14 this letter, none of it has anything to do with the
15 merits of your petition.

16 MR. NEUSTEL: So Dr. Boutrid's declaration on
17 paragraph 58, where he says "The addition of 6 percent
18 wax, Example B6, increased elasticity until film splice
19 by up to 2.5 percent compared to Example B1," that's
20 a -- I misstated that somehow?

21 MR. DOODY: No. That's a quote directly from
22 the patent. That entire portion of his declaration is a
23 direct repeat of the patent, which is something we have
24 to do in order to get that evidence into the PTAB.

25 MR. NEUSTEL: Uh-huh.

1 MR. DOODY: And what does it say? Example 6.
2 It refers to Example 6, and what does Example 6 tell
3 you? It contains 6 percent --

4 MR. NEUSTEL: Why didn't --

5 MR. DOODY: -- Con-Stab.

6 MR. NEUSTEL: Well, it says "6 percent release
7 wax."

8 MR. DOODY: Yeah --

9 MR. NEUSTEL: Then it says Con-Stab --

10 MR. DOODY: -- made from EBS wax --

11 MR. NEUSTEL: -- to be clear --

12 (Reporter admonition.)

13 MR. NEUSTEL: In Dr. Brant's declaration, he
14 also -- on page 3 of my letter dated August 23, your
15 expert testified that different amounts of migrating
16 compound -- and he says "far less than the 1 percent
17 used in Example B4 and far more than the 6 percent used
18 in B6." What's misleading about that quote?

19 MR. DOODY: That's the --

20 MR. NEUSTEL: He's talking about the percentage
21 of migrating compound. That's not from the patent.

22 MR. DOODY: Michael, why do you just
23 immediately freak out and misunderstand everything? I'm
24 not saying your quotes are false. I'm saying your
25 conclusions and your paraphrasing of what the people

1 said is false. A quote's a direct quote. It is what it
2 is.

3 MR. NEUSTEL: Did you know about the Con-Stab
4 data sheet, Pat, before the declarations were filed?

5 MR. DOODY: No.

6 MR. NEUSTEL: Okay. I'll believe you.

7 MR. DOODY: But I didn't believe, reading the
8 patent, that Con-Stab PE 270 was 100 percent wax. And
9 I'm a chemical --

10 MR. NEUSTEL: -- it was, though --

11 MR. DOODY: -- films my whole life. It was
12 pretty evident to me. I don't think you'll find a
13 person skilled in the art that would ever construe the
14 patent that way. If I told you I'm using an oil and
15 that oil is Kraft Thousand Island or Italian dressing
16 made with, made from, made of Canola oil, are you going
17 to think that that dressing is 100 percent oil? Nobody
18 would. That's what's stated in the patent.

19 MR. NEUSTEL: So if you knew it wasn't
20 100 percent wax, why didn't you try to find out what was
21 in it?

22 MR. DOODY: Why do I care?

23 MR. NEUSTEL: You should care. You're
24 submitting declarations to the USPTO.

25 MR. DOODY: That quote the patent?

1 MR. NEUSTEL: If a patent has a false statement
2 in it, does that still make it right even if you did
3 quote the patent in a declaration?

4 MR. DOODY: Michael, I'm sure the patent has
5 more than one false statement. I'm sure my patent owner
6 response has multiple false statements, and I'm sure
7 everything you've ever filed or stated has false
8 statements. Does that rise to the level of inequitable
9 conduct, and is it a knowingly false statement? Those
10 are the things you have to show to show any kind of
11 sanctionable conduct. And I can assure you that I have
12 never submitted once in my life, and never will, a
13 knowingly false statement.

14 MR. NEUSTEL: You just told me you knew that
15 Con-Stab PESA -- I can't even say it -- Con-Stab
16 PESA 270 wasn't 100 percent wax. So --

17 MR. DOODY: Yeah --

18 MR. NEUSTEL: -- I guess we'll have to differ
19 in opinions on that.

20 MR. DOODY: Yeah. Well, show me where I said
21 it was 100 percent wax, those words, "100 percent wax,"
22 and I'll stand corrected. I quoted from the patent what
23 the patent said, "6 percent wax" --

24 MR. NEUSTEL: Okay.

25 MR. DOODY: -- "(Example 6.)" Go to Example 6.

1 You don't bother to quote Example 6 unless it's in a
2 different place in your letter, at least. In the
3 declarations, it explains it all. You read it all in
4 order, I don't know how you come to that conclusion.

5 MR. NEUSTEL: I'm just reading your words I
6 quote on page 4 of my August 23 letter. It's page 67 of
7 your brief. You said a POSITA would not have reasonably
8 expected using differing amounts of migrating compound
9 to provide dramatically different mechanical properties
10 other than the use of far less than the 1 percent used
11 in Example B4 or far more than the 6 percent used in
12 Example B6. Now, your expert testified --

13 MR. DOODY: Right. And that's --

14 MR. NEUSTEL: -- yeah, that's directly from
15 your brief. And your expert testified that Con-Stab
16 PESA 270 is not 100 percent migrating compound.

17 MR. DOODY: No, he didn't.

18 MR. NEUSTEL: Yes, he did. Go read the
19 transcript.

20 MR. DOODY: No, he didn't --

21 MR. NEUSTEL: Yes, he did.

22 MR. DOODY: -- he said it's not 100 percent
23 wax.

24 MR. NEUSTEL: He said calcium carbonate is not
25 a migrating compound.

1 MR. DOODY: All right. Okay --

2 MR. NEUSTEL: I can email you later the part of
3 the transcript that says that.

4 MR. DOODY: Yeah, knock it off.

5 MR. NEUSTEL: Knock what off?

6 MR. DOODY: The quote you have --

7 MR. NEUSTEL: Knock what off?

8 MR. DOODY: -- the quote you have in the patent
9 owner response. "Oh, I'll email you the response if you
10 want." You did the same thing in the first deposition
11 of your expert, and you were wrong.

12 MR. NEUSTEL: How am I wrong?

13 MR. DOODY: The quote you quoted from the
14 patent owner response is a direct quote from Dr. Brant's
15 declaration.

16 MR. NEUSTEL: So that makes it a true or an
17 okay statement to make if you know it's false?

18 MR. DOODY: I don't know if it's false.

19 MR. NEUSTEL: You just told me you knew that
20 Con-Stab's not 100 percent wax --

21 MR. DOODY: So what?

22 MR. NEUSTEL: -- prior to filing your brief.

23 MR. DOODY: Does the patent say that the
24 migrating compound of Con-Stab PE 270 is made from EBS
25 wax?

1 MR. NEUSTEL: Are you asking me a question?

2 MR. DOODY: I don't know. I would think it
3 would say that. I believe it does. This is talking
4 about the migrating compound. It doesn't say wax.

5 MR. NEUSTEL: I'm giving you a chance here,
6 Pat. You seem like a nice guy, and I'm just giving you
7 a chance to explain some of this stuff, because, quite
8 frankly, I want to believe that you didn't have a part
9 in this. But from the way you're acting right now and
10 how you're getting angry and the way you're responding,
11 it's concerning to me.

12 MR. DOODY: Oh, thanks for the concern. I
13 appreciate it. You sound concerned in your letter and
14 your email.

15 MR. NEUSTEL: I was willing to give you the
16 benefit of the doubt.

17 MR. DOODY: If there's something that's false
18 here and I know it's false, I already told you, without
19 question, I will fix it. But so far, you haven't proven
20 to me that anything that's in here is false.

21 MR. NEUSTEL: So your position is that
22 nothing's false that was in any of the declarations or
23 Buergofol's response brief? Is that your position?

24 MR. DOODY: I can't find it. I don't see it.
25 I don't see that you supported it.

1 MR. NEUSTEL: I'm just asking a question. If
2 you believe that everything's 100 percent truthful,
3 that's all I need to hear from you. Is everything
4 100 percent truthful?

5 MR. DOODY: No, I can't tell you that.

6 MR. NEUSTEL: Why not?

7 MR. DOODY: All I can tell you is that there's
8 nothing in here that's knowingly false. If it's false,
9 it wasn't made knowingly.

10 MR. NEUSTEL: Okay. So is there anything false
11 that you're aware of today?

12 MR. DOODY: No.

13 How about you? Anything --

14 MR. NEUSTEL: I -- oh, I can tell you
15 everything --

16 MR. DOODY: After today, are there statements
17 in here that are false?

18 MR. NEUSTEL: I assure you, I never make false
19 statements.

20 (Reporter clarification.)

21 MR. DOODY: Yes, I'm asking him the same
22 question.

23 After today, are there statements in your
24 August 23, 2024, letter that you now know are not true?

25 MR. NEUSTEL: I didn't hear his first part.

1 I'm sorry.

2 Pat, could you please restate that.

3 MR. DOODY: Are there statements in your
4 August 23, 2024, letter to me that you now know are
5 untrue after our discussion?

6 MR. NEUSTEL: What statements did you say are
7 untrue here?

8 MR. DOODY: Well, we started with Boutrid's
9 declaration on page 9 of your letter. The declaration
10 by Dr. Boutrid falsely claims that he was unaware of any
11 issues with the inner film used in cured-in-place pipe
12 liners until the -- and then you quote -- "Spring of
13 2012" -- and then you cite the 2004 paragraph, none of
14 which -- your letter says Dr. Boutrid falsely claims
15 that he was unaware of any issues.

16 MR. NEUSTEL: Have you talked to Dr. Boutrid
17 since our depositions? Have you talked to him to ask
18 him about these problems to see if that statement is
19 correct that he made?

20 MR. DOODY: The statements that he made was
21 that he became -- first became aware, as did
22 Mr. Schleicher, of the problem of tearing while the film
23 was being withdrawn from the pipe.

24 MR. NEUSTEL: Well, you're being very specific
25 in your language. Would it surprise you if I bring in a

1 declaration from a customer that says that they told
2 Buergofol about tearing problems? Would that surprise
3 you?

4 MR. DOODY: Yes. Prior to 2012 --

5 MR. NEUSTEL: Okay. So you haven't -- you
6 haven't talked -- yes. I encourage you to talk to
7 Dr. Boutrid again and Buergofol.

8 We'll work with you --

9 MR. DOODY: No, no. I --

10 MR. NEUSTEL: -- but you got to make an effort.

11 MR. DOODY: No, I understand. And I actually
12 do appreciate that, believe it or not. As snide as I
13 may sound, I do. But I hope you can --

14 MR. NEUSTEL: This isn't about -- this isn't
15 about -- Pat, I have nothing against you, okay? You
16 seem like a nice guy, and we just -- at the end of the
17 day, we just want the truth presented to the board.
18 That's it. That's it. Nothing more.

19 MR. DOODY: I don't disagree with you, but when
20 I get a letter like this -- which I've never gotten in
21 my life and I've never been accused of anything like
22 this -- I have a process within my firm, and I submitted
23 it to my professional responsibility committee and my
24 general counsel. And they both, as well as a number of
25 PTAB practitioners, told me that I -- because of

1 information that's inconsistent, I have to send it in to
2 the patent office, so I don't really have a choice
3 there. And --

4 MR. NEUSTEL: I'll let Scott -- oh, go ahead.

5 MR. DOODY: And I'll wait. I'll talk to
6 Buergofol. I don't know if you submitted something in
7 the litigation with an affidavit from a customer that
8 complained about tearing before 2012 or whether you have
9 that. I don't know. But if they have that and they're
10 not telling me that, then obviously, I'm not going to be
11 pleased about it.

12 MR. NEUSTEL: Did you know they just got hit
13 with a fifth sanctions order in the lawsuit today about
14 not disclosing prior art --

15 MR. DOODY: No -- no.

16 MR. NEUSTEL: Have they talked to you about any
17 other sanctions orders in the litigation?

18 MR. DOODY: No.

19 MR. NEUSTEL: Okay --

20 MR. DOODY: They said that the judge loves you
21 and hates them. I don't know if that's true or not,
22 either. I don't care.

23 MR. NEUSTEL: Yeah, I don't know if that's
24 true.

25 Scott, sorry. I kind of took over there.

1 MR. DOODY: Go ahead, Scott.

2 MR. MCKEOWN: No, no. I'm just trying to
3 understand what the request is, like I said, if it's one
4 letter, all letters, and if it's not all letters, then
5 why we exclude some and not the 23rd letter.

6 MR. DOODY: Yeah. Scott, I don't disagree with
7 you. I would probably -- if I -- I just had -- I
8 haven't had the time, quite frankly, to go through and
9 read them, and I will. And I also will follow up --
10 it's probably not going to be today, it's not going to
11 be tomorrow -- or it might be tomorrow -- with Darien
12 and Lester. And then why don't I email back everyone
13 after I discuss with them, and then we'll decide what we
14 think needs to be done. And if we're going to submit
15 this letter, the 23rd, I don't disagree, if the other
16 ones do talk about the IPR, that we should -- that they
17 all would go in.

18 MR. MCKEOWN: Right.

19 MR. DOODY: Okay? I don't know if there's
20 anything else.

21 So I've got homework to do. I'll get back to
22 you, and then we can discuss whether the -- what needs
23 to be done, whether these letters have to go in, what
24 needs to be in all of them. And then, I guess, you
25 probably -- we'll probably need another meet-and-confer

1 to discuss whether you will be seeking authorization to
2 file a motion for sanctions.

3 MR. MCKEOWN: Right. Okay. Yeah. That sounds
4 like a plan.

5 MR. DOODY: Okay?

6 MR. MCKEOWN: All right. Thank you.

7 MR. DOODY: Sounds good. Thanks.

8 (Off the record at 11:36 a.m.)
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REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

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I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

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Dated: 9-13-2024



Andy Rodriguez, CSR No. 14226

1	4	AEO 8:11	B4 17:17 20:11
1 17:16 20:10	4 12:24 20:6	affidavit 26:7	B6 16:18 17:18 20:12
10 7:6	42.11(c) 4:25	agents 12:7	back 5:2 11:6 27:12, 21
100 18:8,17,20 19:16, 21 20:16,22 21:20 23:2,4	42.51 7:1	agree 5:1 6:4	bar 10:17,20
11:04 4:3	5	ahead 26:4 27:1	believe 4:22 8:14 11:22,25 18:6,7 22:3,8 23:2 25:12
11:36 4:3 28:8	5 4:2 12:25	allegation 4:17	benefit 22:16
2	58 16:17	alleging 4:22,23	Big 12:7 16:8
2 6:13,15 12:21	6	amended 10:24	bluntness 11:22
2.5 16:19	6 13:12,13 15:23 16:2,3,17 17:1,2,3,6, 17 19:23,25 20:1,11	amounts 17:15 20:8	board 25:17
2004 24:13	67 20:6	angry 22:10	bother 20:1
2012 9:20 12:11 24:13 25:4 26:8	8	answer 15:11	bothered 15:13
2024 4:2 15:24 23:24 24:4	82 15:23	appears 5:24	bottom 6:13,15 12:23
23 5:3,17,21 6:22,24 8:15 12:18 15:24 17:14 20:6 23:24 24:4	9	applications 10:22	Boutrid 8:23 9:5,17 12:9 15:14 24:10,14, 16 25:7
23rd 5:9 27:5,15	9 24:9	apply 6:17	Boutrid's 11:11 16:16 24:8
27 5:4,11,22 11:9	A	appreciate 22:13 25:12	boy 7:11
270 13:24 14:23 18:8 19:16 20:16 21:24	a.m. 4:3 28:8	art 13:15 14:12 18:13 26:14	Brant 14:17,21 16:13
270A 13:9 14:18	accused 25:21	asked 15:17 16:13	Brant's 12:23 13:1 17:13 21:14
27A 12:3	accusing 14:8	asking 22:1 23:1,21	brief 12:25 14:2 20:7, 15 21:22 22:23
3	acting 22:9	assure 19:11 23:18	bring 24:25
3 5:5,11 7:3,9,18,19, 20 11:9 12:21,22 15:24 17:14	addition 15:23 16:3, 17	attorneys 6:12,17	Buergofol 6:3 9:2,16 10:18,22 25:2,7 26:6
37 4:25	additive 12:7	attorneys' 6:3 10:12	Buergofol's 22:23
	addressed 7:4,10	August 5:3,4,9,11,17, 21,22 6:22,24 7:6 8:15 11:9 12:18 15:24 17:14 20:6 23:24 24:4	C
	admonition 17:12	authority 4:20	calcium 20:24
		authorization 28:1	call 4:6 14:19 15:2,5, 12
		aware 9:21,23 23:11 24:21	
		B	
		B1 16:19	

called 13:9	compound 17:16,21 20:8,16,25 21:24 22:4	D	directly 7:4,10 8:2,8 16:21 20:14
candor 4:10,17 5:6			disagree 5:1 25:19 27:6,15
Canola 18:16	Con-stab 12:3 13:9, 13,24 14:23 17:5,9 18:3,8 19:15 20:15 21:24	Darien 7:22 11:3 27:11	disclose 6:15,24
carbonate 20:24		data 15:11 18:4	disclosing 26:14
care 18:22,23 26:22		dated 15:24 17:14	discovery 4:21
cares 13:25 14:11	Con-stab's 21:20	day 25:17	discuss 11:10 27:13, 22 28:1
CFR 4:25	concern 6:19 22:12	deal 16:8	discussion 24:5
chance 22:5,7	concerned 22:13	dealt 5:23 11:16	document 13:6
chemical 18:9	concerning 22:11	decades 9:3	document's 13:7
choice 11:19 26:2	conclusion 20:4	decide 27:13	documents 6:2,20 10:15 11:6
chose 15:19	conclusions 17:25	declaration 8:25 9:8 12:23 15:18 16:16, 22 17:13 19:3 21:15 24:9 25:1	DOODY 4:14 5:9,12, 16 6:21 7:6,11,13, 15,20,25 8:2,6,10, 18,20 9:6,17,23 10:2,4,10,12,16,19, 23 11:2,14,21 12:2, 9,19 13:5,21,25 14:3,10,15,24 15:1, 4,9 16:1,4,10,21 17:1,5,8,10,19,22 18:5,7,11,22,25 19:4,17,20,25 20:13, 17,20,22 21:1,4,6,8, 13,18,21,23 22:2,12, 17,24 23:5,7,12,16, 21 24:3,8,20 25:4,9, 11,19 26:5,15,18,20 27:1,6,19 28:5,7
cite 8:25 24:13	conduct 5:17 16:11 19:9,11	declarations 18:4,24 20:3 22:22	doubt 22:16
claiming 14:5	considering 16:5	definition 13:8	Dr 8:23 9:5 11:11 12:9,23 13:1 14:17, 21 15:14 16:13,16 17:13 21:14 24:10, 14,16 25:7
claims 10:24 24:10, 14	construe 18:13	depo 14:25	dramatically 20:9
clarification 23:20	construed 13:15,17	deposition 21:10	
clear 17:11	contains 17:3	depositions 24:17	
clearly 4:20	contend 16:12	designated 5:25 6:3, 5 14:18	
client 11:13	contending 5:25	designation 8:11	
close 12:12	content 13:24	details 5:8	
co-counsel 8:5 11:17	contradict 11:11	determining 14:17	
come 5:13 20:4	copies 5:10	differ 19:18	
committee 25:23	correct 7:21,23 24:19	difference 12:7 15:6	
comparative 12:5	corrected 19:22	different 8:14,16 17:15 20:2,9	
compared 16:19	counsel 10:18 25:24	differing 20:8	
complained 9:17,18 26:8	course 8:5	direct 16:23 18:1 21:14	
complaining 9:24	Court 6:4	directed 7:10	
complaint 6:23 9:4,7, 9,11,14	cross-examine 15:13		
complaints 5:23 6:2, 8,16 7:5 8:17,21,25 9:16,19 10:4,9 11:10,16 15:16	cured-in-place 24:11		
	customer 7:4 8:24 9:3,12,24 14:19 15:5 25:1 26:7		

dress 18:15,17 duty 4:10,17 5:6 E earlier 15:10 EBS 12:4 13:10 17:10 21:24 effort 25:10 either 12:6 26:22 elasticity 16:18 elucidate 8:22 email 4:8 7:22 21:2,9 22:14 27:12 emails 5:15 encourage 8:19 11:8 25:6 entire 12:24 16:5,22 entirety 13:7 ethylene 12:4 everything's 23:2 evidence 13:14,22 16:24 evident 18:12 evidently 6:2 exactly 16:7 example 12:5 13:11, 12,13 16:18,19 17:1, 2,17 19:25 20:1,11, 12 exclude 27:5 excuse 11:21 expected 20:8 expert 17:15 20:12,15 21:11	explain 22:7 explains 20:3 eyes 6:3 10:12 F fabricate 15:20 fact 13:16 failing 15:9 failure 6:15,24 false 4:23 8:13 12:10 14:5,7,8,10 15:20,25 16:4 17:24 18:1 19:1,5,6,7,9,13 21:17,18 22:17,18, 20,22 23:8,10,17,18 falsely 8:24 12:9 24:10,14 far 17:16,17 20:10,11 22:19 fifth 26:13 file 28:2 filed 18:4 19:7 filing 14:2 21:22 film 9:10,20,24 12:11 14:12 16:18 24:11, 22 films 18:11 find 15:5 18:12,20 22:24 firm 25:22 first 4:13 12:2 21:10 23:25 24:21 five 15:4 fix 22:19 follow 27:9	force 11:20 form 6:25 forth 4:20 four 15:4 frankly 22:8 27:8 freak 17:23 G general 25:24 getting 22:10 gin 15:21 give 22:15 giving 22:5,6 go 14:17 19:25 20:18 26:4 27:1,8,17,23 goes 16:10 going 5:6 8:12 11:22 14:6 15:2,12 18:16 26:10 27:10,14 good 28:7 gotten 25:20 group 6:20 guess 5:18 19:18 27:24 guy 22:6 25:16 guys 7:15 H handling 10:23 hard 11:24 hates 26:21 hear 23:3,25 highly 11:7 14:4	hit 26:12 homework 27:21 hope 25:13 hundred 9:2 I immediately 17:23 implicate 4:16 important 14:9 include 13:11 includes 8:4 inconsistent 4:24 26:1 incorrect 11:24 12:1 13:3 incorrectly 4:23 increased 16:18 inequitable 5:17 16:11 19:8 information 4:22 26:1 inner 9:20,24 12:11 24:11 insinuating 16:4 instance 4:13 interpret 8:8 investigating 11:13 involved 8:13 IPR 4:16,24 5:6 6:16 10:23 11:3 16:12 27:16 Island 18:15 issues 5:6 24:11,15 Italian 18:15
---	---	---	---

J judge 26:20 justification 4:12 K kind 19:10 26:25 knew 18:19 19:14 21:19 knock 21:4,5,7 know 4:7 5:23,24 6:1, 7 7:25 10:3,6 13:5, 19,23 14:1,3,6,9,12, 22 15:15 18:3 20:4 21:17,18 22:2,18 23:24 24:4 26:6,9, 12,21,23 27:19 knowingly 19:9,13 23:8,9 known 15:17 Kraft 18:15 L language 15:22 24:25 lawsuit 26:13 Lester 7:23 11:2 27:12 let's 5:2 letter 5:3,4,5,22 6:18, 22,24 7:3,7 8:7,9 11:8,9,10,15,23 12:1,13,18 15:24 16:14 17:14 20:2,6 22:13 23:24 24:4,9, 14 25:20 27:4,5,15 letters 4:9,11,12,15	5:2,5,11 11:9 27:4, 23 level 19:8 life 18:11 19:12 25:21 liners 9:3 24:12 listening 16:9 litigation 5:24 6:8,9 26:7,17 litigation-related 8:12 little 16:6 lodged 9:12 look 4:15 7:18 13:12 15:11 looked 8:11 10:8 11:18 looking 5:12 10:15 loves 26:20	19:4 migrating 17:15,21 20:8,16,25 21:24 22:4 misleading 17:18 misstated 16:20 misunderstand 17:23 Monte 15:10 motion 15:21 28:2 multiple 19:6	nothing's 22:22 November 7:18 number 25:24 O obviously 4:22 26:10 office 26:2 offices 6:25 oh 7:11,15 21:9 22:12 23:14 26:4 oil 18:14,15,16,17 okay 5:10,21 8:1 10:8 12:20 18:6 19:24 21:1,17 23:10 25:5, 15 26:19 27:19 28:3, 5 once 9:17,18 19:12 ones 27:16 opinions 19:19 order 6:10 10:13,14 16:24 20:4 26:13 orders 26:17 ordinary 13:15 14:11 other's 7:16 owner 19:5 21:9,14
	M making 6:19 14:5,7,8, 10 15:25 manner 13:16 manufacturer 9:13 Mckeown 4:5 5:1,10 6:12,14 27:2,18 28:3,6 mean 8:8 9:1 16:12 means 13:6,7 14:15 mechanical 20:9 meet-and-confer 27:25 merits 16:15 Michael 5:13 7:2,14, 15 11:14,22 17:22	N name 6:23 narrative 15:20,21 16:5 need 14:3 23:3 27:25 needs 27:14,22,24 Neustel 5:14 6:11 7:2,9,12,14,19,24 8:1,4,9,16,19 9:5,15, 22 10:1,3,8,11,14, 18,21 11:1,4,19 12:1,8,17,20 13:19, 23 14:1,4,14,21,25 15:3,7,22 16:2,9,16, 25 17:4,6,9,11,13,20 18:3,6,10,19,23 19:1,14,18,24 20:5, 14,18,21,24 21:2,5, 7,12,16,19,22 22:1, 5,15,21 23:1,6,10, 14,18,25 24:6,16,24 25:5,10,14 26:4,12, 16,19,23 never 9:3,17,18,19 19:12 23:18 25:20, 21 nice 22:6 25:16	P page 6:13,15 7:6 12:20,21,22,24,25 15:24 17:14 20:6 24:9 paragraph 12:24 16:17 24:13 paraphrase 12:13 paraphrasing 13:2

15:19 17:25	plan 28:4	prove 12:15	reasonably 20:7
parentheses 13:11	please 24:2	proven 22:19	recall 11:4
part 13:5 21:2 22:8 23:25	pleased 26:11	provide 20:9	receive 9:13
parts 8:10	polyethylene 14:15	provided 13:14	record 6:17 28:8
Pat 5:15 6:11 7:2 9:15,22 10:1,9 11:19 18:4 22:6 24:2 25:15	portion 16:22	providing 8:13	redo 15:2
patent 6:25 9:8 10:16, 19,21 12:3,21,22 13:16 14:7 15:23 16:6,8,22,23 17:21 18:8,14,18,25 19:1, 3,4,5,22,23 21:8,14, 23 26:2	portions 8:25 13:8 16:6	PTAB 4:7 8:14 16:24 25:25	reference 13:11
patents 15:5	POSITA 14:6 20:7	purpose 4:5	referenced 6:22
PE 12:3 13:9 14:15,18 18:8 21:24	position 22:21,23	Q	refers 17:2
people 12:14 17:25	practically 11:23	question 14:14 22:1, 19 23:1,22	regarding 4:9 8:17
percent 13:12,13 15:23 16:2,3,17,19 17:3,6,16,17 18:8, 17,20 19:16,21,23 20:10,11,16,22 21:20 23:2,4	practitioners 25:25	questions 15:14 16:13	relate 5:5
percentage 17:20	presented 25:17	quite 8:16 13:17 22:7 27:8	release 17:6
person 13:15 14:11 18:13	pretend 13:6	quote 12:14,21,22,23, 24,25 13:5 15:22 16:6,21 17:18 18:1, 25 19:3 20:1,6 21:6, 8,13,14 24:12	relevance 8:21
personally 4:18	pretty 4:20 18:12	quote's 18:1	relevant 10:6 11:7 14:4
pertain 10:6	prevent 10:15	quoted 13:8 19:22 21:13	remember 15:9,10
PESA 13:24 14:23 19:15,16 20:16	prior 9:20 12:11 14:1 21:22 25:4 26:14	quotes 13:3,4,10 17:24	remotely 12:12
petition 16:15	probably 10:6 27:7, 10,25	quoting 12:14 16:7	removal 8:11
pinholes 9:10	problem 9:25 10:5 24:22	R	repeat 16:23
pipe 9:25 24:11,23	problems 11:12 12:11 24:18 25:2	raising 15:14	replete 12:12
place 20:2	proceeding 6:16,17	read 8:9,10,19 9:6 11:8,14 13:7 14:13 20:3,18 27:9	reporter 17:12 23:20
places 12:22	proceedings 6:6	reading 18:7 20:5	request 4:7 27:3
	process 25:22	really 4:14 13:19 26:2	responding 22:10
	producer 15:12		response 9:9 19:6 21:9,14 22:23
	professional 25:23		responsibility 25:23
	properties 20:9		restate 24:2
	proposing 4:7		right 5:16,18 6:20,21 7:20,22 8:6 11:1 15:14 19:2 20:13 21:1 22:9 27:18 28:3,6
	prosecuting 10:21		rise 19:8
	prosecution 10:16,20		roughness 9:11
	protective 6:10 10:13,14		routine 4:21

rules 4:21	snide 25:12	surprise 24:25 25:2	told 11:17 14:21,22 18:14 19:14 21:19 22:18 25:1,25
S	sorry 7:15 9:22 24:1 26:25	T	tomorrow 27:11
Saertex 6:1,8,16,23 7:4 8:17,21 10:4,9 11:6,10,16 15:16	sort 4:10	talk 6:18 7:15 25:6 26:5 27:16	transcript 13:1 20:19 21:3
sanctionable 19:11	sound 22:13 25:13	talked 9:15 24:16,17 25:6 26:16	true 13:23 21:16 23:24 26:21,24
sanctions 15:21 26:13,17 28:2	sounds 28:3,7	talking 4:15 5:7,19 6:20 11:5 12:17 17:20 22:3	truth 25:17
saw 5:18 8:10	specific 9:9,14 24:24	tearing 9:9,24 11:11, 16 24:22 25:2 26:8	truthful 13:4 23:2,4
saying 17:24	specifically 15:19	tell 7:16 14:19 15:13 17:2 23:5,7,14	try 15:21 18:20
says 12:5,6 13:12 14:22 15:7,23 16:2, 17 17:6,9,16 21:3 24:14 25:1	splice 16:18	telling 26:10	U
Schleicher 24:22	Spring 24:12	testified 8:24 14:16 17:15 20:12,15	Uh-huh 16:25
Scott 4:5 6:14 26:4, 25 27:1,6	stand 19:22	testimony 11:11 12:10 13:1 14:16,22 15:7,10	unaware 24:10,15
section 12:24	started 24:8	Thank 28:6	unbelievable 13:17
see 6:10 16:7 22:24, 25 24:18	starting 12:21	thanks 22:12 28:7	understand 4:8 8:20 25:11 27:3
seeking 28:1	stated 9:18 12:12 15:18 18:18 19:7	thing 5:8 21:10	understanding 4:6 11:17
seen 9:22	statement 8:23 14:10 15:25 19:1,5,9,13 21:17 24:18	things 19:10	unequivocally 12:3
selling 9:2	statements 4:24 8:13 11:24 14:5,7,8 19:6, 8 23:16,19,23 24:3, 6,20	think 6:18,21 11:12 13:6,16 14:4,8 18:12,17 22:2 27:14	unfortunately 7:17
send 26:1	states 12:3	thought 5:23 8:6	untrue 24:5,7
sent 4:9 5:3,4,5 7:11	stating 12:10	thousand 9:2 18:15	use 15:12 20:10
September 4:2 5:5,11 7:3,8,9,19,20 11:9	stuff 8:12 22:7	three 15:4	USPTO 18:24
set 4:20	submit 4:8,18,25 6:5 27:14	THURSDAY 4:2	V
sheet 15:11 18:4	submitted 12:10 19:12 25:22 26:6	time 27:8	violating 4:17
show 19:10,20	submitting 4:11,12 18:24	title 5:18	violation 6:25
signed 6:10 10:13	supported 22:25	today 23:11,16,23 26:13 27:10	violations 4:10
single 8:7	sure 4:14 5:7 6:19 9:12 19:4,5,6		voices 7:17
skill 13:15 14:11	surface 9:11		
skilled 18:13			

W	Y	
wait 26:5	yeah 5:14,17,21 7:20,	
want 5:7 6:4 10:2,25	22,25 8:6,18 9:23	
11:2 21:10 22:8	10:5,19 11:21 12:19	
25:17	16:10 17:8 19:17,20	
wanted 6:4 15:2,16	20:14 21:4 26:23	
wasn't 18:19 19:16	27:6 28:3	
23:9	years 14:12	
wax 12:4,5,6 13:10,12		
15:24 16:2,3,18		
17:7,10 18:8,20		
19:16,21,23 20:23		
21:20,25 22:4		
way 13:18 18:14 22:9,		
10		
we'll 19:18 25:8		
27:13,25		
we're 4:10 5:7 6:13,		
19,20 15:14 27:14		
we've 4:23		
weren't 8:24		
willing 22:15		
withdrawn 9:10,25		
24:23		
witness 14:16		
wondering 4:10		
word 13:1		
words 19:21 20:5		
work 25:8		
wouldn't 15:10		
write 11:23		
wrong 12:15 21:11,12		
wrote 12:25		