

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,

Petitioner,

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

Case No. IPR2024-00004
U.S. Patent No. 11,491,835

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

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PATENT OWNER'S EXHIBIT LIST

<i>Exhibit #</i>	<i>Description</i>
2001	Petitioner's <i>Ex Parte</i> Reexamination Requests for U.S. Patent No. 11,358,425 and U.S. Patent No. 10,974,557
2002	Decision Granting Patent Owner's Petition for an Unintentionally Delayed Priority Claim in U.S. Patent. No. 10,124,638
2003	U.S. Patent No. 4,594,006 to Depeault ("Depeault")
2004	Expert Declaration of Douglas S. Prairie
2005	Curriculum Vitae of Douglas S. Prairie and Case List
2006	Screenshots from Patent Owner's YouTube Channel of Patented Product, retrieved on 10-2-23 from https://www.youtube.com/watch?v=fEgvvq9HZkk
2007	Screenshots from Petitioner's YouTube Channel of Accused Product, retrieved on 10-2-23 from https://www.youtube.com/watch?v=3y3bSJJUOps
2008	Screenshots from Progressive Dairyman YouTube Channel of 2014 Manure Lagoon Agitation Boat Demonstration, published on 7-9-14 by Progressive Dairy, retrieved on 10-2-23 from https://www.youtube.com/watch?v=FXRS-9Ip1pE
2009	Patent Classification List for U.S. Patent No. 11,358,425, retrieved on 10-4-23 from https://patents.google.com/patent/US11358425B1/en?q=US11358425
2010	U.S. Patent No. 4,406,413 to Houle ("Houle")
2011	U.S. Patent No. 7,833,071 to Gaither ("Gaither")
2012	U.S. Patent No. 5,176,098 to Royle ("Royle")
2013	U.S. Patent No. 9,462,741 to Puck ("Puck-II")
2014	U.S. Patent No. 9,572,297 to Puck ("Puck-III")
2015	DE2364962 to Kronseder ("Kronseder")
2016	DE3431345 to Lüllmann ("Lüllmann")
2017	CA2002619 to Depeault ("Depeault-II")
2018	U.S. Patent No. 10,118,138 to Tews ("Tews")
2019	Daniel L. Pfoest et al., Univ. of Mo. Extension, Anaerobic Lagoons for Storage/Treatment of Livestock Manure (Oct. 2000)

2020	Screenshots from 2023 North American Manure Expo Website, retrieved on 10-2-23 from https://www.manureexpo.ca/
2021	Dictionary Definitions of “Dredging” and “Agitation”, retrieved on 9-30-23 from https://en.wikipedia.org/wiki/Dredging , https://www.merriam-webster.com/dictionary/dredging#dictionary-entry-1 , https://www.merriam-webster.com/dictionary/agitation , and https://www.lagoonpumping.com/articles-resources/agriculture-articles/manure-articles/
2022	Envtl. Prot. Agency, Primer for Municipal Wastewater Treatment Systems (Sept. 2004)
2023	U.S. Dep’t Agric., <i>Agricultural Waste Management Systems</i> , in <i>Agricultural Waste Management Field Handbook</i> Ch. 9 (Dec. 2011)
2024	Screenshot of 2023 Commercial Manure Applicator Certification, retrieved on 10-3-23 from https://elearning-dnr.iowa.gov/course/index.php?categoryid=2
2025	Joseph Akyeampong et al., <i>Evaluation of hydraulic excavator Human-Machine Interface concepts using NASA TLX</i> , 44 Int’l J. of Indus. Ergonomics 374, 374–82 (2014)
2026	Screenshots of 2023 Truxor Website, retrieved on 10-1-23 from https://truxor.com/en/catalog/node/products and https://truxor.com/en/catalog/node/products-truxor-machines
2027	Screenshots of 2023 Berky (formerly SenwaTec) Website, retrieved on 10-4-23 from https://www.berky.de/en/berky-nereus-240-amphi/
2028	Christian Haas et al., <i>Practical Evaluation of a Control Concept for a Remote Controlled 1.8T Excavator Using a 3D Input Device</i> , BATH/ASME 2022 Symposium on Fluid Power and Motion Control, ISBN: 978-0-7918-8633-5, FPMC2022-88959, V001T01A012-1 thru V001T01A012-7 (2022)
2029	Timeline Showing Bazooka’s Post-Grant Challenges
2030	January 18, 2023 District Court Order Granting Motion to Lift Stay
2031	Reexamination History of U.S. Patent No. 11,358,425

2032	Screenshots from YouTube of SenwaTec video, retrieved on January 15, 2024 from https://www.youtube.com/watch?v=ecnlfMf7CH4&t=1s
2033	Printout of Bazooka's webpage for its Wolverine Agitation Boat, retrieved on March 30, 2024 from: https://www.bazookafarmstar.com/equipment/wolverine-agitation-boat/
2034	K. Smith et al., <i>Natural Crusting Of Slurry Storage As An Abatement Measure For Ammonia Emissions On Dairy Farms</i> , 97 Biosystems Engineering 464 (2007)
2035	Brochure for MY2017 of Nuhn's Gen 1 Lagoon Crawler
2036	Operator's/Safety Manual for the MY2017 of the Gen 1 Lagoon Crawler
2037	Parts Catalog for Gen 1 Lagoon Crawler
2038	Brochure for Nuhn's Gen 1 Lagoon Crawler
2039	Brochure for MY2018 of Nuhn's Gen 2 Lagoon Crawler
2040	Operator's/Safety Manual for the MY2019 Gen 2 Lagoon Crawler
2041	Parts Book for the MY2018 Gen 2 Lagoon Crawler
2042	Brochure for Gen 2 Lagoon Crawler
2043	Operator's/Safety Manual for the MY2020 of the Gen 3 Lagoon Crawler
2044	Operator's/Safety Manual for the MY2020 of the Gen 3 Lagoon Crawler
2045	Parts catalog for the MY2021 of the Gen 3 Lagoon Crawler
2046	Brochure for Crawler X
2047	Parts Catalog for MY2022 Lagoon Crawler X
2048	U.S. Provisional Patent Application No. 63/040,562 filed June 18, 2020
2049	U.S. Provisional Patent Application No. 63/104,887 filed October 23, 2020
2050	U.S. Patent Application Publication US 2021/0394571 published December 23, 2021
2051	Notice of Allowance in U.S. Application No. 17,590,125, Mailed April 22, 2022.

2052	Notice of Intent to Issue Ex Parte Reexamination Certificate, Control No. 90/019,107, Mailed November 2, 2022.
2053	Print No. 1 of Nuhn YouTube Video - "Nuhn Lagoon Crawler Unrivaled Lagoon Agitation!", accessed at https://www.youtube.com/watch?v=fEgvvq9HZk
2054	Lagoon Crawler Prototype Brochure, Aggressive Agitation
2055	Intentionally Omitted
2056	Intentionally Omitted
2057	Intentionally Omitted
2058	Intentionally Omitted
2059 (Under Seal)	Lagoon Crawler Sales Report - X Models
2060	Print No. 2 of Nuhn YouTube Video - "Nuhn Lagoon Crawler Unrivaled Lagoon Agitation!", accessed at https://www.youtube.com/watch?v=fEgvvq9HZk
2061	<i>New Lagoon Crawler Demos Will Satisfy Curiosity</i> , Canada's Outdoor Farm Show Official Show Guide for September 9-11, 2014 in Woodstock, Ontario
2062	H. Rivers, <i>Farm show opens with a splash</i> , The Beacon Herald (Sept. 10, 2014)
2063	B. Shypula, <i>Transforming farming</i> , The London Free Press (Sept. 9, 2013))
2064	B. Shypula, <i>Crawler makes manure almost sexy</i> , The Beacon Herald (Sept. 6, 2013)
2065	30th Annual AMC Engineering Conference Brochure for May 5-7, 2015 in Waterloo, Iowa
2066	Certificate of Services Awarded to Ian Nuhn
2067	M. Beitz, <i>Crawler is turning heads</i> , The Beacon Herald at A2 (Jan. 30, 2014)
2068	C. Elmore, <i>Innovative Uses of Horsepower – A real crapshoot</i> , Diesel Progress North American Edition (Dec. 2014)
2069	D. Rankin, <i>Nuhn Industries celebrates employees at expansion grand opening</i> , 100th lagoon crawler unveiling, St. Marys Independent (Aug. 7, 2015)

2070	B. Reid, <i>Agitator has reclaimed manure lagoons around the world</i> , Ontario Farmer (Aug. 18, 2015)
2071	L. Cudworth, <i>Nuhn marks major milestone</i> , The London Free Press (Aug. 11, 2015)
2072	L. Cudworth, <i>Marking a major milestone</i> , The Stratford Beacon Herald (Aug. 7, 2015)
2073	J. Algie, <i>Made-in-Sebringville lagoon crawler to be featured on Discovery Channel</i> , Betterfarming.com (Sept. 2, 2015)
2074	B. Reid, Self-propelled, Western Dairy Farmer (Oct. 2015)
2075 (Under Seal)	March 21, 2022 Email to Nuhn re: Licensing Lagoon Crawler Technology
2076 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (Sept. 9, 2015)
2077 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (June 20, 2020)
2078 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (Sept. 28, 2020)
2079	Print of Bazooka's YouTube Video - "Meet the Wolverine Agitation Boat," accessed at https://www.youtube.com/watch?v=ehAHKL442as
2080	Discovery Channel's Lagoon Crawler Feature (Sept. 3, 2015)
2081	U.S. Provisional Application No. 61/867,598 (filed August 19, 2013).
2082	U.S. Patent No. 3,384,047 to Remley
2083 (Under Seal)	Declaration of Ian Nuhn
2084	U.S. Patent Application Publication 2010/0144220 to Bailey
2085	Intentionally Omitted
2086	Intentionally Omitted
2087	D. Prairie CV and Case List updated April 2, 2024 (cited here for completeness)
2088	Proposed Protective Order (Redline)
2089	Proposed Protective Order (Clean)
2090	U.S. Patent No. 6,922,922 to Cheramie
2091	Dredge Yard Auger Dredger ECO200-A8-brochure, downloaded

	from https://dredgeyard.com/wp-content/uploads/2021/01/ECO200-A8-brochure.pdf
2092	Hydraulic Dredgers – Dredge Brokers LLC, accessed at https://dredgebrokers.com/equipment/hydraulic-dredgers/dt-horizontal-cutter/
2093	MANURE MANAGER, Jan./Feb. 2011 (Manure-Manager)
2094	July 9, 2024 Expert Declaration of Douglas Prairie Regarding ‘835 Patent (cited here for completeness)
2095	Agriculture – manure storage statistics, eurostat, Sept. 2013, accessed at https://url.us.m.mimecastprotect.com/s/ZSdwCkRw8BHqom10i2tW
2096	Bazooka’s brochure for the Bazooka Wolverine Agitation Boat from: https://www.bazookafarmstar.com/wp-content/uploads/2023/01/Cutsheet-Wolverine-1.pdf
2097	H. Landry et al., Physical and Rheological Properties of Manure Products, Applied Engineering in Agriculture, at 278 (2004)
2098	Hydrostatic Pto’s Run in Reverse, Farm Show, Vol. 1 No. 5, 1977
2099	November 12, 2024 Declaration of Douglas S. Prairie
2100	Intentionally Omitted
2101	US 8,944,758 to Nuhn
2102	Intentionally Omitted
2103	Intentionally Omitted
2104	Intentionally Omitted
2105	Intentionally Omitted
2106	January 13, 2025 Declaration of Douglas S. Prairie
2107	U.S. Patent Application Publication 2013/0145980 to Puck (“Puck II”)
2108	Chart Showing Support For Substitute Claims
2109	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and International Patent Application No. PCT/CA2014/050789
2110	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and U.S. Patent Application No. 15/044,905 (now U.S. Patent No. 9,694,636)
2111	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and U.S. Patent Application No. 15/586,493 (now

	U.S. Patent No. 10,124,638)
2112	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and U.S. Patent Application No. 16/157,950 (now U.S. Patent No. 10,710,422)
2113	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and U.S. Patent Application No. 16/891,627 (now U.S. Patent No. 10,974,557)
2114	Redline Comparison between U.S. Provisional Patent Application No. 61/867,598 and U.S. Patent Application No. 17/201,100 (now U.S. Patent No. 11,491,835)
2115	Nuhn Header Series Vertical Pit Pump Brochure

I. INTRODUCTION

Patent Owner Nuhn Industries Ltd. (“Nuhn” or “Patent Owner”) respectfully moves under 37 C.F.R. § 42.64(c) to exclude (i) the declaration of Reidar Olofsson (EX1008); (ii) the declaration of Ansgar Lonnemann (EX1013); and (iii) the declarations of Petitioner’s expert, Dr. Eric Winkel (EX1004, EX1110, EX1111, and EX1174).

Olofsson’s declaration (EX1008) discusses the Truxor vehicle and associated printed publications (EX1006, 1009, 1020-1022) and therefore pertains to Ground 2 of the Petition. Olofsson testified during his September 5, 2024 deposition that he signed a declaration (EX1008) that was drafted by a different witness – Jan David Arnoldsson (Olofsson’s boss at the time) – and that the declaration includes information that Olofsson does not have personal knowledge of. Olofsson’s declaration (EX1008) is therefore improper and should be excluded because the statements contained in his declaration are not his own, they are Arnoldsson’s, and Olofsson lacks personal knowledge of the subject matter discussed in his declaration as revealed by his deposition testimony.

Lonnemann’s declaration (EX1013) discusses the SenwaTec vehicle and associated printed publications (EX1012, 1025-1027) and therefore pertains to Ground 3 of the Petition. Lonnemann testified during his September 6, 2024 deposition that he originally drafted his declaration in German and then used

software translation tools (Google Translate and DeepL) and the help of a colleague to translate his declaration into English. Lonnemann required a translator during his deposition, testified to his limited understanding of the English language, and therefore was not qualified to translate his German declaration into English. Lonnemann's declaration (EX1013) is therefore defective and should be excluded because there is no certified translation of the declaration by a German to English translator. This is not simply a technicality because Lonnemann's declaration uses the word "manure" and it is clear from Lonnemann's deposition testimony that he did not understand that this term refers to livestock excrement as opposed to human waste. (EX1131, 180:6-183:2).

Winkel's declarations (EX1004, EX1110, EX1111, and EX1174) are cited throughout Petitioner's filings and pertain to each of Grounds 1-5 of the Petition and in opposition to Patent Owner's Motions to Amend the '835 Patent. Winkel does not have the qualifications necessary to be considered an expert because he has no experience with manure agitation equipment. Further, Winkel offers opinions on properties of liquid manure and pumps for pumping liquid manure that he has no experience with or expertise in. Thus, he is not qualified to offer opinions related to these matters. Winkel's declarations (EX1004, EX1110, EX1111, and EX1174) are improper and should be excluded because he is not a POSITA under Patent Owner's definition and because he offers opinions and

testimony that falls outside the scope of his qualifications as an expert.

II. IDENTIFICATION OF EVIDENCE AND OBJECTIONS

In accordance with 37 CFR § 42.64 and the Patent Trial and Appeal Board Consolidated Trial Practice Guide 79 (Nov. 2019), the Patent Owner identifies each objection to the evidence and the basis for the objection in the chart below.

<u>Exhibit</u>	<u>Objection Made</u>	<u>Basis for Objection</u>
EX1008 Olofsson Declaration Cited in Petition (Paper 1)	Patent Owner's Objection to Evidence (Paper 38) Lack of personal knowledge - objection could not have been made previously because information concerning who drafted the declaration is not contained within the four-corners of the declaration itself.	FRE 802 FRE 602 Objections were discovered during deposition of Mr. Olofsson taken on September 5, 2024
EX1013 Lonnemann Declaration Cited in Petition (Paper 1)	Patent Owner's Objection to Evidence (Paper 38) POPR (Paper 9, 64-71) Improper translation - objection could not have been made previously because information concerning translation of the declaration is not	37 C.F.R. § 1.69 37 C.F.R. § 42.63(b) 35 U.S.C. § 311(b) FRE 602 FRE 802 Additional objections were discovered during deposition of Mr. Lonnemann taken on September 6, 2024

	contained within the four-corners of the declaration itself.	
EX1004, EX1110, EX1111, and EX1174 Winkel Declarations Cited in Petition (Paper 1); Petitioner’s Reply to Patent Owner’s Response (Paper 34); Petitioner’s Opposition to Motion to Amend (Paper 36); and Petitioner’s Opposition to the Revised Motion to Amend (Paper 47)	Patent Owner’s Objection to Evidence (Paper 14) Patent Owner’s Objection to Evidence (Paper 38) Patent Owner’s Objection to Evidence (Paper 49)	37 C.F.R. §42.61(a) and one or more of FRE 401, 402, 403, 702, 703 and/or 705 because Dr. Winkel is not qualified to opine as a POSITA and does because Dr. Winkel offers opinions on facts and data that he has not personally observed and/or lack personal knowledge about (<i>see</i> Paper 14)

Petitioner filed the Olofsson and Lonnemann declarations and the first Winkel declaration with its Petition for Inter Partes Review on October 13, 2023. Petitioner relies on Olofsson’s declaration to support the statement “All these publications are prior art under at least 35 U.S.C. § 102(a)(1) because they published and were publicly accessible before the effective filing date of the ‘835 Patent” with respect to the DM5000 product of Truxor. (Paper 1, 36). Petitioner relies on Lonnemann’s declaration to support the statement “SenwaTec is prior art under at least 35 U.S.C. § 102(a)(1) because SenwaTec published and was publicly accessible before the effective filing date of the ‘835 Patent.” (Paper 1, 37). Petitioner relies on Winkel’s declaration (EX1004) to support statements

throughout its Petition (Paper 1) and filed additional declarations by Winkel (EX1110, EX1111, EX1174) to support statements throughout Petitioner's Reply to Patent Owner Response (Paper 35), Petitioner's Opposition to Patent Owner's Motion to Amend the '835 Patent (Paper 36), and Petitioner's Opposition to Patent Owner's Revised Motion to Amend the '835 Patent (Paper 47).

On September 5, 2024, a deposition of Olofsson was taken in the related District Court litigation. (*see* EX1132). Patent Owner conducted a cross-examination of Olofsson at this deposition. On September 6, 2024, a deposition of Lonnemann was conducted for the related District Court litigation. (*see* EX1131). Patent Owner conducted a cross-examination of Lonnemann at this deposition. Deficiencies in the Olofsson and Lonnemann declarations were discovered during these depositions.

III. OLOFSSON DECLARATION (EX1008)

A. Olofsson's Declaration is Inadmissible Under FRE 802

Olofsson testified in his deposition that he simply signed a declaration that was prepared by Arnoldsson, who was Olofsson's boss at the time. EX1132, 211:5-17. Olofsson further admitted that he did not collect or prepare the exhibits to his declaration because Arnoldsson did that too. EX1132, 211:21-22. Because EX1008 contains the statements of Arnoldsson rather than Olofsson, it should be excluded as inadmissible hearsay under FRE 802.

B. Olofsson's Declaration is Inadmissible Under FRE 602

Relatedly, Olofsson's declaration (EX1008) is inadmissible under FRE 602 because Olofsson does not have personal knowledge of the material included therein.

Olofsson states in his declaration that "Truxor's DM 5000 and DM 4700 amphibious vehicle products and their associated dredging capabilities were the subject of news publications prior to August 19, 2013" (EX1008, ¶5) and cites to Exhibit C (EX1008, 36-41). However, when asked about Exhibit C during his deposition, Olofsson admitted that the first time he saw this document was "when Mr. Arnoldson [Truxor's CEO] come with this document to me." (EX1132, 216:14-23). Further, when asked during his deposition if he had "any facts to support that [news publications] increased traffic to Truxor's website," Olofsson testified "Facts, no, I -- nope. I haven't done a search searching about that." (EX1132, 218:9-14).

It is clear in view of this deposition testimony that many of the statements in Olofsson's declaration (EX1008) were not made with personal knowledge and should be excluded under FRE 602.

IV. LONNEMANN DECLARATION (EX1013)

A. Lonnemann's English Declaration is Inadmissible Because it is Not a Certified Translation

Lonnemann required a German to English translator at his deposition. EX1131, 6:11-12. During his deposition, Lonnemann testified that he initially wrote

his declaration (EX1013) in German, which he describes as his main language, and later translated it into English using software translation tools (Google Translate and DeepL) and the help of a colleague. (EX1131, 9:14-25, 125:7-22, and 143:11-144:2). Lonnemann used these software translation tools and the help of a colleague because he does not have a full grasp of the English language, which he admitted to during his deposition. Lonnemann did not sign the German-written declaration he drafted and Petitioner did not submit Lonnemann's German-written declaration with a certified translation when it filed the Petitioner, as would have been proper under 37 C.F.R. § 42.63(b), 37 C.F.R. § 1.69 and/or 37 C.F.R. § 1.52(b)(1)(ii).

37 C.F.R. § 1.69(a) clearly states that if the declarant "cannot understand English, the oath or declaration must be in a language that such individual can understand." Lonnemann was unable to write/translate his declaration without the help of software translation tools and a colleague and could not testify in English during his deposition without the help of a translator. Those facts trigger 37 C.F.R. § 1.69. Because of Lonnemann's shortcomings with the English language and the informal efforts used to translate his declaration, EX1013 must be excluded under 37 C.F.R. § 42.63(b) and 37 C.F.R. § 1.69(b). This failure to comply with translation rules is not mere semantics, but has real consequences in this IPR due to Lonnemann's apparent misunderstandings between the words "manure" and "human waste," as discussed below.

B. Lonnemann's Declaration is Inadmissible Under FRE 602

It is clear from Lonnemann's deposition testimony that he is not familiar with the English word "manure" and has no personal knowledge to accurately make the statements contained in his declaration. For example, when asked in his deposition "What's your -- what's your basis for the statement that Amphi-King was used for pumping manure?" Lonnemann responded by stating Mr. Funck had been using the SenwaTec vehicle in "floating fecal matter" or "schiese" – the German word for human waste. (EX1131, 152:21-154:6). In a follow-up question asking "Did [Mr. Funck] ever tell you that it was animal manure that he was pumping?", Lonnemann responded "No. He always -- he always just used the term "shit"." (EX1131, 154:7-10). Upon further questioning to determine if the machine was used in human wastewater treatment plants or in manure, Lonnemann, through the interpreter, stated "I guess I only saw the videos that you have seen, too. And as far as the exact composition of that sludge that you saw, I don't know. And I have to say I really wasn't all that interested in it." (EX1131, 154:11-155:21).

During his deposition, Lonnemann was also asked "what's the German word for manure?" (EX1131, 180:6-7). After a lengthy back and forth between the questioning attorney, the witness, and the translator, the answer was "dung," "jauche" (slurry), or "mist" (manure mixed with straw). (EX1131, 180:6-182:5). After that clarification, Lonnemann was asked "So have you -- have you ever seen

the [SenwaTec] Amphi-King in -- in dung or mist?” and he responded “No, not in life, no.” (EX1131, 182:7-9). Then after referencing the video [EX1028] attached as Exhibit B to his declaration, he was asked “I’m asking -- I’m trying to focus on animal excrement, you know, manure ... Have you ever seen [SenwaTec] pump that?” and Lonnemann’s response was “No.” (EX1131, 182:21-183:2).

From all of the above, it is clear that Lonnemann did not understand the English meaning and definition of the term “manure” at the time he translated and signed his declaration and that he lacks personal knowledge for his statements that the SenwaTec vehicle was used in manure. Further, it is clear that Lonnemann does not have personal knowledge of the material that the Amphi-King was operating in during the referenced video [EX1028]. Therefore, any attempts by Petitioner to correct this deficiency would be futile.

Lonnemann’s declaration also includes statements related to SenwaTec’s customer, UD Umweltdienste. (EX1013, ¶¶ 2-3). Lonnemann’s declaration does not provide any support or foundation for why Lonnemann has personal knowledge to testify about how UD Umweltdienste, a different company altogether, used the SenwaTec vehicle. To the extent that Lonnemann was relying on what Mr. Funck at UD Umweltdienste told him (EX1131, 152:21-154:10), Lonnemann’s testimony is inadmissible hearsay under FRE 802.

The Exhibits (EX1025-1027) to Lonnemann’s declaration fail to provide

support for the argument that they provide Lonnemann with personal knowledge of the averments made within his declaration. Lonnemann's declaration states "SenwaTec's amphibious vehicle products and their associated manure pumping capabilities were the subject of news publications prior to August 19, 2013." (EX1131, ¶6). However, the news article attached as Exhibit A (EX1025-26) to Lonnemann's Declaration does not, on its face, support Lonnemann's statement because the news article contains no references to manure or livestock. Instead, the news articles suggests that the "fecal matter" described used to be in a "sewage pond." (EX1026, 2-3). And while Lonnemann states in his declaration that the video attached as Exhibit B (EX1027) "was publicly accessible" and "was distributed by UD Umweltdienste to SenwaTec at least as early as May 3, 2012," Lonnemann did not testify that he personally accessed, posted, distributed, or received the video prior to Patent Owner's priority date. Nor does Exhibit B [EX1027] contain information on its face establishing the publication date of the video.

For these reasons, Mr. Lonnemann's declaration (EX1013) should be excluded under FRE 602 and/or 802.

C. Objections Under 37 C.F.R. § 42.61, 35 U.S.C. § 311(b), and FRE 401/403

Petitioner inappropriately utilizes Mr. Lonnemann's declaration to make invalidity arguments based on evidence of prior public use, which are ineligible for

consideration in an IPR proceeding under 35 U.S.C. § 311(b). For example, Mr. Lonnemann states in his Declaration that “UD Umweltdienste used the Amphibious King for pumping manure and agitating manure lagoons” (EX1013, ¶5) and cites a series of screenshots allegedly from a video made by UD Umweltdienste, which are attached to his declaration as Exhibit B. (EX1013, ¶ 15; EX1028). But for the reasons discussed above, the UD Umweltdienste video (EX1028) has not been authenticated as a printed publication that pre-dates the Patent Owner’s priority date and therefore cannot be considered prior art in this IPR proceeding. Thus, Mr. Lonnemann’s statements about the public use of the SenwaTec vehicle and Exhibit B [EX1028] to his Declaration are irrelevant and/or prejudicial and should be excluded under 37 C.F.R. § 42.61(a), 35 U.S.C. § 311(b), and FRE 401/403.

V. WINKEL DECLARATIONS (EX1004, EX1110, EX1111, and EX1174)

Petitioner relies on Winkel’s declarations (EX1004, EX1110, EX1111, and EX1174) to support its invalidity challenges to the ‘835 Patent and Patent Owner’s motions to amend. Winkel’s declarations are deficient and should be excluded because Winkel is not a qualified as a POSITA under Patent Owner’s definition and/or because Winkel offers opinions and testimony that are outside the scope of his qualifications, experience, and expertise.

A. Winkel is Not Qualified as a POSITA under Patent Owner's Definition

Patent Owner's definition of a POSITA is proper because, unlike Petitioner's definition, it is tied to liquid manure agitation/pumping equipment. The claims of the '835 Patent recite a "liquid manure mover" and a "liquid manure pump" as limitations and therefore are not directed to general purpose amphibious vehicles. A POSITA is therefore properly defined as "a livestock farmer or a commercial manure applicator familiar with manure agitation equipment or an engineer with at least 2 years of experience designing agricultural equipment and knowledge of manure agitation equipment." (Paper 9, 32; EX2004, ¶64).

Winkel is an engineer with general experience in fluid mechanics, acoustics, and dynamics and vibrations. (EX1004 ¶3). During his professional career, Winkel was a product engineer, worked as consultant, and designed non-agricultural vehicles. (EX1004 ¶¶5-10). Notably, none of Winkel's education or work experience is related to livestock farming, agricultural equipment, or liquid manure agitation/pumping equipment. Winkel therefore lacks "at least two years of experience designing agricultural equipment and knowledge of manure agitation equipment" as Patent Owner's definition requires, so he is not qualified as a POSITA and cannot offer expert testimony under FRE 702.

B. Winkel Offers Opinions Outside the Scope of His Understanding and Expertise in Violation of FRE 702 and FRE 403

If the Board finds that a POSITA does not have to have experience with liquid manure agitation/pumping equipment, such that Winkel qualifies as a POSITA, then his opinions on the properties of liquid manure and the characteristics and capabilities of liquid manure pumps should still be excluded because they are outside the scope of his experience and expertise. Given his background, Winkel cannot offer opinions concerning liquid manure or liquid manure pumps from personal experience. He can only regurgitate information found in Petitioner's Exhibits. In other words, he is not suited to add anything on these subjects over and above what is already discussed in the Exhibits due to his lack of experience. As a result, his opinions on the characteristics of liquid manure and liquid manure pumps should be excluded under FRE 702 and 403.

In his declarations, Winkel opines that liquid manure has the same consistency as water with a percent total solids of less than five percent (5%). (EX1004, ¶¶85-96; EX1110, ¶¶22-23, 63-71; EX1111, ¶¶33-41; EX1174, ¶¶15-24). But Winkel is not an expert on liquid manure, so his opinions on the consistency of liquid manure are outside the scope of his expertise and experience. There is no evidence that Winkel had any experience with liquid manure prior to his work on this case. Any testimony regarding the consistency, solid particulate sizes, and liquid viscosity of

liquid manure cannot be based on anything other than what is already found in the Exhibits (EX1056-EX1061). Winkel's characterizations and additions to this record evidence, as found in (EX1004, ¶¶85-96; EX1110, ¶¶22-23, 63-71; EX1111, ¶¶33-41; EX1174, ¶¶15-24) is improper and should be excluded because it is outside the scope of his experience and expertise.

Similarly, Winkel has no experience with liquid manure pumps, yet he provides opinions in his declarations as if he has expertise in liquid manure handling equipment and liquid manure pumps. (EX1004, ¶¶97-113; EX1110, ¶¶51-62; EX1111, ¶¶33-41; EX1174, ¶¶15-24). There is no evidence that Winkel had any experience with liquid manure pumps or liquid manure handling equipment prior to his work on this case. He only familiarized himself with the documents filed by Petitioner for this matter. Any testimony regarding the characteristics and capabilities of liquid manure pumps cannot be based on anything other than what is already found in the Exhibits. Winkel's characterizations and additions to this record evidence, as found in (EX1004, ¶¶97-113; EX1110, ¶¶51-62; EX1111, ¶¶33-41; EX1174, ¶¶15-24) is improper and should also be excluded as outside the scope of his experience and expertise.

The chart below identifies the paragraphs of Winkel's Declarations (EX1004, EX1110, EX1111, and EX1174) that improperly provide factual testimony and opinions that are outside the scope of Winkel's background and experience.

EX1004 – October 13, 2023 Declaration of Eric S. Winkel (supporting Petition)	¶¶88-123, 128, 146-147, 157, 204, 210-214, 261, 296, 304, 336
EX1110 – October 1, 2024 Declaration of Eric S. Winkel (supporting Petitioner’s Reply)	¶¶22-23, 51-72, 76, 79-85, 100-113, 124-125, 140-157
EX1111 – October 1, 2024 Declaration of Eric S. Winkel (supporting Petitioner’s Response to Motion to Amend)	¶¶33-41, 54-57, 74, 120-122, 147-148
EX1174 – December 23, 2024 Declaration of Eric S. Winkel (supporting Petitioner’s Response to Revised Motion to Amend)	¶¶6, 15-24, 37-40, 56, 58, 61, 68, 73, 98-99, 130-131

This testimony should be excluded because Winkel is offering opinions on matters for which he is not an expert.

Winkel’s declarations (EX1004, EX1110, EX1111 and EX1174) should be excluded in their entirety because he is not a POSITA. In the alternative, if the Board finds that a POSITA is not required to have experience with liquid manure agitation/pumping equipment, such that Winkel qualifies as a POSITA, the portions of Winkel’s declarations opining on the characteristics of liquid manure and liquid manure pumps (EX1004, ¶¶85-113) should be excluded because they are outside the scope of his experience and expertise under FRE 702 and 403.

VI. CONCLUSION

For the foregoing reasons, it is respectfully requested that this motion to exclude evidence be granted in all respects.

Dated: January 20, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type volume limitations of 37 C.F.R. § 42.24(a)(1)(v), and that the Motion to Exclude Evidence is 15 pages or less.

The undersigned further certifies this brief complies with the typeface requirements of 37 C.F.R. § 42.6(a)(2)(ii) and typestyle requirements of 37 C.F.R. § 42.6(a)(2)(iii). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO in Times New Roman 14-point font.

Dated: January 20, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 20th day of January, 2025, a true and correct copy of the foregoing **Patent Owner's Motion to Exclude Evidence** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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