

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 BAZOOKA-FARMSTAR, LLC,

6 Petitioner,

7 v.

8 NUHN INDUSTRIES LTD.,

9 Patent Owner.

10
11 Case IPR2024-00098

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

13
14
15 PORTIONS CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

16
17 VIDEO-RECORDED REMOTE ZOOM VIDEOCONFERENCE

18 DEPOSITION OF IAN NUHN

19 Taken on Monday, October 28, 2024

20 Scheduled for 8:00 a.m. CDT

21
22
23
24 REPORTED BY: DANA S. ANDERSON-LINNELL

25 Job No.: MW 6960926

1 CONFIDENTIAL VIDEO-RECORDED REMOTE ZOOM
2 VIDEOCONFERENCE DEPOSITION OF IAN NUHN taken on
3 Monday, October 28, 2024, commencing at 8:21 a.m.
4 CDT, via a REMOTE COUNSEL ZOOM PROCEEDING, before
5 Dana S. Anderson-Linnell, a Stenographic Shorthand
6 Reporter and Notary Public of and for the State of
7 Minnesota.

8 *****

9
10 APPEARANCES

11
12 On Behalf of Petitioner Bazooka-Farmstar, LLC:
13 Thomas J. Leach, Esquire
14 MERCHANT & GOULD, P.C.
15 150 South Fifth Street, Suite 2200
16 Minneapolis MN 55402
17 Email: tleach@merchantgould.com
18

19 (Appearances continued on next page.)
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21
22
23
24
25

1 APPEARANCES (continued):

2
3 On Behalf of Patent Owner Nuhn Industries Ltd. and
4 the Witness:

5 James "Brad" Luchsinger, Esquire
6 HARNESS, DICKY & PIERCE, P.L.C.
7 5445 Corporate Drive, Suite 200
8 Troy, MI 48098
9 Email: bluchsinger@harnessip.com

10
11 ALSO PRESENT: Brian Ciccone, videographer

12
13 NOTE: The original transcript will be filed with the
14 Merchant and Gould Law Firm, pursuant to the
15 applicable Rules of Civil Procedure.

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19	REPORTER'S NOTE: All quotations from exhibits are	
20	reflected in the manner in which they were read into	
21	the record and do not necessarily indicate an exact	
22	quote from the document.	
23		
24		
25		

1 THE COURT REPORTER: Do all counsel
2 stipulate that I can swear in the witness
3 remotely over the Zoom videoconference?

4 MR. LEACH: Yes.

5 MR. LUCHSINGER: Yes.

6 THE VIDEOGRAPHER: Good morning. We
7 are going on the record at 8:21 a.m. Central
8 Daylight Time on October 28th, 2024. This is
9 Media Unit Number 1 of the video-recorded
10 deposition of Ian Nuhn, taken by counsel for
11 the petitioner in the matter of
12 Bazooka-Farmstar, LLC, petitioner, versus Nuhn
13 Industries Limited, patent owner, filed in the
14 United States Patent and Trademark Office
15 before the Patent Trial and Appeal Board, Case
16 Number IPR2024-0098 [sic], Patent
17 Number 11,541,708. This deposition is being
18 held via remote Zoom.

19 My name is Brian Ciccone, and I
20 represent Veritext Legal Solutions. The court
21 reporter is Dana Anderson-Linnell, and she is
22 also from Veritext Legal Solutions.

23 Will the attorneys please note their
24 appearances for the record.

25 MR. LEACH: This is Tom Leach with

1 Merchant and Gould on behalf of petitioner,
2 Bazooka-Farmstar. And if I could just make one
3 quick correction, it's Case Number
4 IPR2024-00098. Mr. Ciccone, I think you may
5 have just missed one of the zeros in that case
6 number.

7 THE VIDEOGRAPHER: Thank you.

8 MR. LUCHSINGER: And this is James
9 Bradley Luchsinger. I'm an attorney with the
10 Harness IP law firm. We represent the patent
11 owner, Nuhn Industries Limited, and the
12 witness.

13 THE VIDEOGRAPHER: Will the court
14 reporter please swear in the witness.

15 IAN NUHN,
16 called as a witness, being first duly sworn,
17 was examined and testified as follows:

18 MR. LEACH: Thank you.

19 EXAMINATION

20 BY MR. LEACH:

21 Q. Good morning, Mr. Nuhn.

22 A. Hey, Tom.

23 Q. For the record, can you just state your
24 name, full name and work address?

25 A. Ian Nuhn. And the work address is 4816

1 Highway 8, Sebringville, Ontario, N0K 1X0.

2 Q. And that's the address for Nuhn
3 Industries Ltd., correct?

4 A. That is correct.

5 Q. And that's who you're employed by?

6 A. That is correct, yes.

7 Q. And you're also an owner of Nuhn
8 Industries, correct?

9 A. That is correct.

10 Q. Sir, are you on any medication today
11 that would impair your ability to understand my
12 questions and answer them truthfully?

13 A. No, I am not.

14 Q. And so if you don't understand a
15 question that I ask, could you please ask me to
16 clarify?

17 A. Yes.

18 Q. And if you answer a question I ask, I'll
19 assume you understood the question, is that
20 fair?

21 A. Yes.

22 Q. And I know we've gone through this a few
23 times, but for the court reporter we need
24 verbal responses, which you've been providing
25 and I appreciate. We also need to make sure

1 that I don't talk over you and you don't talk
2 over me so she can get down what both people
3 are saying. And at times if I ask you to read
4 something, please try to do it slowly so we can
5 get that all down. Sometimes it goes pretty
6 fast and it's hard to keep up.

7 And you were just administered the oath.
8 You understand that the testimony you're giving
9 today is under oath and it has the same force
10 and effect as if in a courtroom in front of a
11 judge or jury or in front of the Patent Trial
12 and Appeal Board?

13 A. I do.

14 Q. And like last time, your counsel may
15 object, but you still need to answer unless
16 your counsel for some reason instructs you not
17 to answer and you decide to follow that
18 instruction. Do you understand that?

19 A. I do.

20 Q. Can you tell me how you prepared for
21 your depo today, sir?

22 A. I had a -- I believe an hour or
23 hour-and-a-half-long meeting with Brad
24 Luchsinger and Scott Yackey, I believe, last
25 Thursday.

1 Q. Did you talk with Dennis Nuhn about your
2 deposition today?

3 A. I -- not in detail. I told him, you
4 know, I wasn't going to be in or available.

5 Q. Anything else?

6 A. No, not -- not really.

7 Q. Did you look at any documents in
8 preparing for this deposition today?

9 A. I have some in front of me here. I
10 reviewed the -- my declaration for the '708 --
11 the '708 patent and the declaration of Ernie
12 Sundstrom.

13 Q. And you have all three of those
14 documents in front of you?

15 A. I do. And they are clean.

16 Q. Okay. And so just for the record, when
17 we say '708, you're referring to U.S. Patent
18 Number 11,541,708, correct?

19 A. Correct. 11,541,708.

20 Q. And so we've been referring to that
21 patent as the '708 patent, correct?

22 A. I've been referring to it as the
23 '708 patent, yeah.

24 Q. Okay. And I'll refer to it as the
25 '708 patent as well. And you'll understand

1 that that's the patent we're talking about?

2 A. Sure. Just to keep things brief.

3 Q. Yes. I'll try to do that today, sir.
4 So let's talk about vocabulary a little bit. I
5 already mentioned Dennis Nuhn. Because you
6 both have the same last name, I'll refer to
7 Dennis Nuhn as Dennis sometimes or Dennis Nuhn.
8 And you'll understand that that's who I'm
9 talking about, correct?

10 A. In context, yes.

11 Q. And who is Dennis Nuhn?

12 A. Dennis Nuhn is my father.

13 Q. And is he also an owner of Nuhn
14 Industries?

15 A. Yes, he is.

16 Q. And, Mr. Nuhn, I'll refer to you as Ian
17 Nuhn or just you or Ian, I guess, but I'll try
18 to use Mr. Nuhn. And you'll understand then
19 I'm referring to you, is that fair?

20 A. Yes.

21 Q. And then I will refer to the company as
22 Nuhn Industries or sometimes just Nuhn or
23 patent owner, is that fair?

24 A. Yes.

25 Q. And you mentioned the declaration of

1 Ernie Sundstrom. Can you spell Mr. Sundstrom's
2 last name, please?

3 A. Just going off of this declaration,
4 S-u-n-d-s-t-r-o-m.

5 Q. Thank you. Going back to the
6 definitions, I'll refer to petitioner as
7 Bazooka-Farmstar, LLC or sometimes just Bazooka
8 or possibly defendant. If I do that, will you
9 understand who I'm referring to?

10 A. Yes.

11 Q. And that would be the person -- or the
12 entity that I'd be referring to is the
13 petitioner, Bazooka-Farmstar, LLC, correct?

14 A. Yes.

15 Q. And you submitted a declaration in this
16 IPR for the '708 patent, correct?

17 A. Correct.

18 Q. That's Exhibit 2083, correct?

19 A. Exhibit 2083. That's correct.

20 Q. Okay. So I was going to mark that as an
21 exhibit. So let me see if I've got that up
22 yet. I don't see --

23 A. Yeah, I don't have any new folders.

24 MR. LUCHSINGER: I just received an
25 email a minute ago.

1 MR. LEACH: Should we go off the
2 record and see if we can get this figured out,
3 if we got an email? Okay?

4 THE VIDEOGRAPHER: The time is
5 approximately 8:31 a.m. We are going off the
6 video record.

7 (Off the record 8:31 to 8:46.)

8 THE VIDEOGRAPHER: The time is
9 approximately 8:46 a.m. We are back on the
10 video record.

11 Go ahead.

12 BY MR. LEACH:

13 Q. Mr. Nuhn, thanks for your patience while
14 we took a break to get some of the documents
15 and the folder filled with exhibits so you can
16 access them. I have provided you through
17 Exhibit Share what has been previously marked
18 as Exhibit 2083. Can you please take a look at
19 that document and tell me what it is?

20 A. (Views document.) This is the
21 declaration in support of patent's owner. This
22 is my declaration.

23 Q. Okay. It's the Declaration of Ian Nuhn
24 in Support of Patent Owner's Response, correct?

25 A. Correct.

1 Q. It was submitted as Exhibit 2083 in
2 IPR2024-00098, correct?

3 A. That's correct.

4 Q. Okay. And can you just look through the
5 exhibit and make sure that this is a true and
6 accurate copy of your declaration?

7 A. Yeah, I'll take a scroll through right
8 here, make sure it's all there. (Views
9 document.) Yeah, looks like it's all good.

10 Q. Okay. Mr. Nuhn, if you could turn to
11 paragraph 22 of your declaration, which is on
12 page 11 of 38 in Exhibit 2083. So let me know
13 when you are there.

14 A. Yeah, I'm here.

15 Q. Okay. Can you tell me generally what
16 information you're providing in Exhibit 22?

17 THE COURT REPORTER: Exhibit 22?

18 MR. LEACH: Sorry.

19 BY MR. LEACH:

20 Q. Paragraph 22 of Exhibit 2083.

21 A. Basically what we're providing here is
22 the operator safety manuals, the parts
23 catalogues for, you know, different generations
24 of the Lagoon Crawler.

25 Q. If you turn to page 12 of 38 of

1 Exhibit 2083, in the top far right column, it
2 says, "However, my CAD model design of the
3 prototype are the basis for the Figures in the
4 '708 Patent. The '708 Patent Figures
5 accurately describe the design, configuration,
6 function, and manufacture of the Prototype."

7 Do you see that?

8 A. I do.

9 Q. Is that correct?

10 A. Yeah, I'd say that's pretty accurate.

11 Q. And, Mr. Nuhn, you also produced in the
12 litigation CAD model designs or drawings, CAD
13 drawings in the district court litigation
14 between Nuhn and Bazooka for the prototype,
15 correct?

16 A. I'm not sure the specifics, where
17 they've been produced or not. I do know that I
18 have given basically all Lagoon Crawler CAD
19 models to my attorneys. I'm not sure the
20 details or specifics of where they have and
21 haven't been used, but certainly the ones for
22 the prototype were given.

23 MR. LEACH: Can we go off the record
24 really quick?

25 THE VIDEOGRAPHER: Time is

1 approximately 8:51 a.m. We are going off the
2 video record.

3 (Off the record 8:51 to 8:58.)

4 The time is approximately 8:58 a.m.
5 We are back on the video record.

6 Go ahead.

7 BY MR. LEACH:

8 Q. Mr. Nuhn, thanks again for your
9 patience. We just had another issue with the
10 Exhibit Share, but I think we're back on track.
11 We were talking about page 12 of 38 of
12 Exhibit 2083, which is your declaration, and
13 the top right-hand corner of the last column
14 where you talk about your CAD model design of
15 the prototype are the basis for the figures in
16 the '708 patent. I want to pull up an exhibit
17 that -- and have you take a look at these.

18 MR. LEACH: So let me -- this is a
19 new exhibit. So let me introduce this exhibit.
20 So this will be 1079.

21 (Exhibit Number 1079 marked for
22 identification.)

23 MR. LEACH: Give me a second here.
24 I'm just trying to get the stamp on here that
25 has the right number.

1 BY MR. LEACH:

2 Q. Mr. Nuhn, I'm introducing Exhibit 1079.
3 Could you please take a look at this? And can
4 you confirm that these are the CAD models you
5 developed of the prototype Lagoon Crawler?

6 MR. LUCHSINGER: And I'm just going
7 to state on the record here that this has been
8 marked highly confidential, attorneys' eyes
9 only. So this portion of the deposition is
10 confidential under the protective order entered
11 in the IPR. Also, object to form.

12 THE WITNESS: (Views document.)
13 This appears to be very similar to the CAD
14 files of the prototype. There's a few things
15 that look a little off, but for the most part
16 it's similar.

17 BY MR. LEACH:

18 Q. When you say there's a few things that
19 look off, is it -- can you tell me what those
20 are?

21 A. The top picture on the top left is kind
22 of -- I don't know, like a pipe or something
23 kind of floating in front of the wheel. That's
24 probably about it.

25 Q. Okay. Let me mark another exhibit.

1 Give me a sec here. I'm introducing
2 Exhibit 1080, which is another CAD drawing,
3 Mr. Nuhn.

4 (Exhibit Number 1080 marked for
5 identification.)

6 BY MR. LEACH:

7 Q. Can you please confirm that this is one
8 of the CAD drawings of the prototype Lagoon
9 Crawler that was the basis for the figures in
10 the '708 patent?

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: (Views document.) It
14 looks like a representation of the CAD file.

15 BY MR. LEACH:

16 Q. And, again, was that one of the CAD
17 files that formed the basis for the figures in
18 the '708 patent?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: I think if you go into
22 specifics or want a really detailed answer, the
23 CAD file that this screenshot was made off of
24 is not the CAD file that the originals are made
25 off of. That computer was -- you know, was

1 old, hard drive wiped. But this is a copy of,
2 you know, one of the files moved to a different
3 computer. But as far as the contents of the --
4 you know, the drawing, yes, this is what was
5 used for the figures in the '708 patent.

6 BY MR. LEACH:

7 Q. I'm going to introduce Exhibit 1081.

8 (Exhibit Number 1081 marked for
9 identification.)

10 BY MR. LEACH:

11 Q. If you could take a look at that. Can
12 you just tell me what Exhibit 1081 is?

13 A. (Views document.) Again, it looks like
14 a screenshot of basically the prototype model.

15 Q. So Exhibit 1081 is a CAD drawing of the
16 Lagoon Crawler prototype?

17 A. It looks like a screenshot of a CAD file
18 that was used for the prototype.

19 Q. Okay. And, again, in page 12 of
20 Exhibit 2083, your declaration, this CAD
21 file or screenshot of a CAD file, which is
22 shown in Exhibit 1081, was the basis for the
23 patent figures in the '708 patent, correct?

24 MR. LUCHSINGER: Objection as to
25 form.

1 THE WITNESS: The CAD file that this
2 is a screenshot of is like a copy of the CAD
3 file that was used for the figures in the
4 '708 patent.

5 BY MR. LEACH:

6 Q. Okay. And then if you go back to
7 Exhibit 1079, which I previously introduced,
8 Exhibit 1079 just puts those two CAD files or
9 copies of images of them onto one page,
10 correct?

11 MR. LUCHSINGER: Objection as to
12 form, foundation.

13 THE WITNESS: It looks like they
14 modified with -- whatever's going on on the top
15 left versus, you know, 1081.

16 BY MR. LEACH:

17 Q. Okay. And you're referring to in 1079
18 that the -- whatever that bar is off the top
19 left in front of the top left tire in the top
20 image of Exhibit 1079?

21 A. Yeah, that appears to be one of the
22 major differences. It also looks like, you
23 know, there's a bunch of work claims visible
24 versus the other ones too.

25 Q. Okay. Introduce an exhibit that has

1 been previously marked as Exhibit 1032. Look
2 at this document and tell me what it is.

3 A. (Views document.) This appears to be
4 U.S. Patent 8,944,758.

5 Q. And can you tell me what -- well, you're
6 the inventor on this patent, correct?

7 A. Yes. Inventor: Ian Nuhn.

8 Q. And that's you, right?

9 A. Correct. Yeah.

10 Q. Thank you. And the title is Pump For
11 Emersion Within a Fluid Reservoir, is that
12 correct?

13 A. That is correct.

14 Q. Can you move down to Figure 1, which is
15 on page 2 of 18 of Exhibit 1032?

16 A. Yes.

17 Q. Can you tell me what the reference
18 number 24 is pointing to? What component is
19 that?

20 A. Is there an easier way to rotate this
21 from here?

22 Q. Is there an easier way to what?

23 A. Like, in Veritext, is there a way to,
24 like, rotate this easily?

25 Q. I think you can blow it up. And I also

1 think if you go -- let's see.

2 A. Yeah. I got it, yeah. Can you repeat
3 the question?

4 Q. Sure. Looking at Figure 1 of
5 Exhibit 1032, can you tell me what reference
6 number 24 is pointing to?

7 A. I'm not a patent attorney, so I'm not
8 trained in reading patents. I can tell you
9 what specifically it's pointing to in that
10 particular image.

11 Q. Can you tell me what reference number 24
12 is pointing to, what structure -- strike that.

13 What structure of the pump is reference
14 number 24 pointing to?

15 A. In my day-to-day work, I'd say it's
16 pointing at a two-and-a-half-inch schedule 40
17 short radius 90-degree elbow.

18 Q. Okay. But I'm asking -- okay. What is
19 the function of that structure identified by
20 reference number 24 on the pump?

21 A. If I go to the body of the patent --

22 Q. Sure.

23 A. -- in column 6, around row 3, it says,
24 "The bottom rests 24's position against the
25 bottom of the fluid reservoir."

1 Q. Okay. That was at column 6, line 3 you
2 started to read at of Exhibit 1032?

3 A. Yeah. Like, 3 to 4. "The bottom rest
4 24 is positioned against the bottom of the
5 fluid reservoir." You asked about 24, right?

6 Q. Yep. And I'll just keep reading. It
7 says, "The bottom of the fluid reservoir 27
8 ensuring that the housing 3 is not damaged and
9 keeping a certain minimum spacing between the
10 bottom of the reservoir 27 and the pump inlet 4
11 in the bottom of the housing." Did I read the
12 rest of that sentence correctly?

13 A. "The bottom rest 24 is positioned
14 against the bottom of the fluid reservoir 27
15 ensuring that the housing is not damaged and
16 keeping a certain minimum spacing between the
17 bottom of the reservoir and the pump inlet in
18 the bottom of the housing."

19 Q. Okay. And you omitted the reference
20 numbers when you read that, correct, to the
21 various components?

22 MR. LUCHSINGER: Objection as to
23 form.

24 THE WITNESS: I may have skipped
25 some of the numbers when I was reading it. I

1 can read it again if you want with the numbers.

2 BY MR. LEACH:

3 Q. Yeah, let's just read it again with the
4 numbers, please.

5 A. Sure. "The bottom rest 24 is positioned
6 against the bottom of the fluid reservoir 27
7 ensuring that the housing 3 is not damaged and
8 keeping a certain minimum spacing between the
9 bottom of the reservoir 27 and the pump inlet 4
10 in the bottom of the housing."

11 Q. Okay. So can you tell me -- in the pump
12 disclosed in Exhibit 1032, what is the function
13 of having that bottom rest 24 and keeping that
14 spacing between the bottom and the pump inlet?
15 Why is that used?

16 A. Not all of our pumps have 24.

17 Q. I didn't ask about all your pumps. I'm
18 asking about this one.

19 A. No. But I'm saying our -- basically our
20 header series pumps has -- or our vertical pit
21 pumps, our tractor pumps, they actually have a
22 hitch right there when it's in the horizontal
23 position that you can tow something behind it
24 when you're moving it around. Is that what
25 you're asking?

1 Q. No. I'm asking: What does -- that
2 structure in Figure 1 that's identified as
3 reference number 24, why is that structure
4 there? What purpose does it perform?

5 A. So a lot of our pumps, they have
6 agitation. And when you have such a long pump
7 body that is attached to a -- let's say a
8 tractor, whether it's by two-point or the
9 three-point hitch, when you start blasting, you
10 know, through the agitation nozzle, the pump
11 can really sway. So we use that to rest and
12 hold the pump from moving around in the pit.

13 Q. And so does -- the structure identified
14 as reference number 24, which is the bottom
15 rest is what it's called in the patent, does
16 that rest on the bottom of the reservoir or
17 tank in use?

18 A. Again, I'm not a patent attorney, so I'm
19 not trained --

20 Q. I'm not asking about patent attorney
21 stuff here. I'm asking about a pump that you
22 designed. And this is a picture of a pump.
23 And I'm asking about some of the structure on
24 the pump and what it's used for. So I
25 understand you're not a patent attorney, but

1 I'm trying to get at just in terms of from the
2 inventor of this patent, what is reference
3 number 24 used for?

4 MR. LUCHSINGER: Tom, I'm just going
5 to state that it seems like you're cutting off
6 the witness in mid-answer. So, you know, if
7 you could be a little more patient, I'd
8 appreciate it.

9 MR. LEACH: Sure.

10 THE WITNESS: So, again, like I
11 said, I'm not a patent attorney, so I'm not
12 trained at this, but what I do know is 24 is
13 pointing at a two-and-a-half-inch schedule, 40
14 short radius weld elbow.

15 BY MR. LEACH:

16 Q. Okay. And what is that used for as
17 shown in Figure 1?

18 A. It's a stabilizer to hold the -- it's
19 not specifically the stabilizer, but that
20 certain weld elbow is used to hold the pump
21 stationary so it doesn't kick sideways while
22 you're agitating.

23 Q. Okay. If you turn to Figure 2, can you
24 show me or tell me what's shown in Figure 2 of
25 Exhibit 1032?

1 A. It looks like a cross-section, I would
2 say.

3 Q. Okay. And where is it positioned?

4 A. Can you be more clear with your
5 question?

6 Q. Is this showing the pump positioned
7 within a reservoir with the bottom rest 24
8 resting on the bottom of the reservoir?

9 MR. LUCHSINGER: Objection as to
10 form.

11 THE WITNESS: Again, I'm not a
12 patent attorney. I'd say -- are you asking
13 specifically about 24?

14 BY MR. LEACH:

15 Q. Well, Figure 2 and, yes, the structure
16 that's identified as 24, which is the bottom
17 rest.

18 A. I'd say 24 is still pointing at that
19 same two-and-a-half-inch schedule 40 short
20 radius weld elbow, if that's what you're
21 asking.

22 Q. No. I agree with you that that's what
23 24 is pointing at, the bottom rest. And my
24 question to you is: Is this -- is what is
25 shown in Figure 2 the pump resting on the

1 bottom of a reservoir? Is that what Figure 2
2 is showing?

3 MR. LUCHSINGER: Objection as to
4 form.

5 THE WITNESS: Again, I'm -- like I
6 said, Tom, I'm not a patent attorney. I'd have
7 to look back at what 27 is, you know. A
8 reservoir, in my opinion, usually is enclosed,
9 not just two sides. So I'd have to look at
10 this a little bit longer if you want me to.

11 BY MR. LEACH:

12 Q. Well, if you go back to column 6, it
13 talks about the bottom rest 24 is positioned
14 against the bottom of the fluid reservoir 27.
15 That's in column 6, lines 3 and 4, which you
16 previously read. Given that, looking at
17 Figure 2, can you confirm for me that Figure 2
18 is showing a picture or a drawing, a schematic
19 of the pump with the bottom rest 24 resting on
20 the bottom of a fluid reservoir 27?

21 A. I guess just from this drawing here,
22 sitting here today, all I can really confirm
23 for you is that 24 is a two-and-a-half-inch
24 schedule 40 short radius weld elbow.

25 Q. Well, sir, you can confirm more than

1 that. You can confirm that the patent
2 identifies reference number 24, the piece we're
3 talking about, as the bottom rest, right? It's
4 your patent and that's what it says, correct?

5 A. I can read it for you again if you'd
6 like. It says, column 6, line 3, "The bottom
7 rest 24 is positioned against the bottom of the
8 fluid reservoir 27 ensuring that the housing 3
9 is not damaged and keeping a certain minimum
10 spacing between the bottom of the reservoir 27
11 and the pump inlet 4 in the bottom of the
12 housing."

13 Q. And you designed this pump, correct?

14 A. That is correct.

15 Q. And so if you took off the component,
16 the bottom rest, which is reference number 24,
17 and the bottom of the pump housing rested flat
18 on the bottom of the reservoir, would it work
19 to pump?

20 MR. LUCHSINGER: Objection as to
21 form.

22 THE WITNESS: Can you repeat the
23 question?

24 BY MR. LEACH:

25 Q. Sure. If you remove the component 24,

1 the bottom rest, and that housing laid flat
2 against the bottom of the fluid reservoir,
3 would the pump work to pump fluid?

4 MR. LUCHSINGER: Objection as to
5 form.

6 THE WITNESS: We sell header series
7 vertical pit pumps that are specifically made
8 for each pit depth. Whether it -- if you have
9 an eight-foot-deep pit, you buy an eight-foot
10 pump. If you buy -- if you have a
11 ten-foot-deep pit, you buy a ten-foot pump.
12 So, you know, in those instances the pump's not
13 gonna be on the bottom. It's built for that
14 pit depth when there's a 24 there or not.

15 BY MR. LEACH:

16 Q. Okay. So that didn't really answer my
17 question, but we'll get to what you said there
18 in just a moment. To answer my question,
19 though, if the pump rests on the bottom of the
20 reservoir and it doesn't have that component
21 24, the bottom rest, that would block the fluid
22 from entering the inlet or at least severely
23 hinder it, correct?

24 MR. LUCHSINGER: Objection as to
25 form.

1 THE WITNESS: I believe I just
2 answered your question previously. We build
3 pumps that are the proper length to pit, so I
4 just can't see where they would be on the
5 bottom like that.

6 BY MR. LEACH:

7 Q. Okay. So what you're saying is you
8 would not put that housing shown in Figure 2 of
9 Exhibit 1032 resting it flat against the bottom
10 of the reservoir?

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: What I can say is when
14 we design our pumps, we do not have them
15 directly resting on the pit floor, if that's
16 what you're asking.

17 BY MR. LEACH:

18 Q. Okay. And so the bottom rest shown in
19 Figure 2 as reference number 24 is used to keep
20 a certain amount of space between the bottom
21 inlet of the pump and the bottom of the
22 reservoir, correct?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: I'm not sure if you've

1 seen one of these in action, Tom. It's -- when
2 they're agitating, it's quite violent. There's
3 a lot of force coming out the nozzle. If you
4 don't have some sort of stabilization, the pump
5 can really move (indicating) side to side. And
6 a lot of times these are going in a
7 four-foot-by-four-foot pump opening and you
8 don't have the -- you don't want that thing
9 moving in there and hitting concrete.

10 BY MR. LEACH:

11 Q. For this pump to operate, does there
12 need to be a minimum spacing between the bottom
13 of the reservoir and the inlet on the housing
14 of the pump?

15 A. You know what, Tom? In all of our --
16 whenever this came out, 13 years, 14 years ago,
17 I've never tested it in those conditions, so I
18 don't know. I've always had a space, but I've
19 never tested in the conditions you're talking
20 about, so I don't know the performance that we
21 would see.

22 Q. Okay. You mentioned that you -- you
23 have a number of pumps that are similar to
24 what's shown in Figure 2 that are for an
25 eight-foot-deep reservoir pit, a ten-foot pit.

1 Can you tell me about for, for example, an
2 eight-foot pit, how far off the bottom is the
3 pump designed to be?

4 A. Sitting here today, I don't have the
5 exact number of what that is.

6 Q. Can you give me just an estimate?

7 A. I would guess it would somewhere be --
8 to be specific, I'm talking about our -- let's
9 just say eight-inch header series vertical pit
10 pumps.

11 Q. Yeah.

12 A. So an eight-foot model in an eight-foot
13 pit, I'm just gonna guess that it worked out to
14 be about eight inches to -- eight inches to
15 12 inches of space, somewhere in there between
16 the bottom of the -- what you would call the
17 pump housing or what I would call the pump
18 housing in the floor of the manure pit.

19 Q. Okay. And then let's just look quick --
20 if you look at Exhibit 1032, for example, in
21 column 4, it talks about the pump housing being
22 reference number 3 and the fluid inlet being
23 reference number 4. To go back up to say
24 Figure 2 --

25 A. Sorry. Can you show me where you're

1 looking? I'm just scrolling there.

2 Q. Sure. I was at column 4.

3 A. Okay.

4 Q. Down around line 50 and 51 -- or 49 and
5 50 of Exhibit 1032.

6 A. Sure. Can you repeat what you were
7 reading?

8 Q. Sure. If you look at line 49 of
9 column 4, it says, "A pump housing 3 is mounted
10 to a bottom end of the pump body and comprises
11 a fluid inlet 4 located on a bottom thereof."

12 Do you see that?

13 A. Yep.

14 Q. Okay. And so if you go up to Figure 2,
15 you can see reference number 4 pointing to the
16 bottom inlet and reference number 3 pointing to
17 the pump housing.

18 Do you see that?

19 A. Again, Tom, I'm not a patent attorney,
20 so I'm not trained in reviewing and analyzing
21 patents, but I see 3 and 4.

22 Q. Okay. Well, setting the patent drawing
23 aside, Figure 3 points to a component of the
24 pump. Is that what you would call the pump
25 housing?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: It's kind of hard to
4 see what the -- what 3 is pointing at. It's
5 kind of -- I don't know. Is there a better
6 figure we can look at?

7 BY MR. LEACH:

8 Q. Sure. Let's go up to Figure 1 where
9 that probably shows it much better. You've got
10 the pump housing 3 and the bottom fluid
11 inlet 4.

12 Do you see that?

13 A. I do.

14 Q. And is that how you would refer to those
15 or -- I guess, is that how you would refer to
16 those on your commercial embodiment of the pump
17 shown in Figure 1?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: So, again, I'm not
21 trained in interpreting or analyzing patents.
22 What I can say is if this were part of an
23 exploded view of my pump, I would probably
24 call -- or even if we had pulled up an exploded
25 view of our parts manual or something, what

1 item 3 is pointing at, what I would use in my
2 day-to-day, I would call that the inlet cover
3 of the pump.

4 BY MR. LEACH:

5 Q. And would that be attached to the
6 housing then, the pump housing?

7 MR. LUCHSINGER: Objection as to
8 form.

9 THE WITNESS: Again, just where the
10 arrow is on that, I'm not -- I'm not a patent
11 attorney, but I'm just saying if this was
12 pointing just at that part, I call that the
13 inlet cover of the pump.

14 BY MR. LEACH:

15 Q. And 4 would be the fluid inlet?

16 A. It's hard to say where that's pointing.
17 Like, there's a center hole to our inlet cover.

18 Q. Mr. Nuhn, this is a patent on which
19 you're the inventor, the sole inventor, right?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes. Yeah.

23 Q. Okay. And before you filed this patent
24 on your invention, did you review these
25 drawings and the specification?

1 A. I did. But I -- again, I'm not the one
2 that made these drawings. My patent agent made
3 them on my behalf.

4 Q. Well, how did your patent --

5 A. I'm just --

6 Q. Sorry.

7 A. I'm just trying to tell you what -- you
8 know, what my experience is from day to day.
9 Again, I'm not an expert at analyzing patents.
10 I don't want to define any of the terms you're
11 using. What I can say is what certain
12 components are and what I call them in my
13 day-to-day course of business.

14 Q. I get that. But as the inventor of this
15 patent, Exhibit 1032, your patent agent didn't
16 create this without input from you, correct, or
17 did he?

18 A. I had several meetings with my patent
19 agent on this patent.

20 Q. So how did he know what to call
21 reference number 4 and reference number 3?

22 MR. LUCHSINGER: So I'm going to
23 instruct the witness not to answer questions
24 about what his communications were specifically
25 with his patent agent on the basis of

1 privilege.

2 MR. LEACH: Brad, I don't think
3 that's an appropriate --

4 MR. LUCHSINGER: I'm not asking
5 whether you think it's appropriate.

6 MR. LEACH: -- objection.

7 MR. LUCHSINGER: I'm stating an
8 objection based on privilege. And I'm gonna
9 instruct the witness not to answer questions
10 concerning specific communications that he may
11 or may not have had with his patent agent in
12 preparation of the application for U.S. Patent
13 Number 8,944,758.

14 BY MR. LEACH:

15 Q. Mr. Nuhn, are you going to follow your
16 counsel's instruction?

17 A. I am. I'm not going to talk about what
18 I talked about with my patent agent. I think
19 that's smart advise.

20 Q. Okay. Well, let me ask you this: Did
21 you provide what's shown in Figure 1 to your
22 patent agent, or did he provide the drawing to
23 you?

24 MR. LUCHSINGER: Objection as to
25 form, vague.

1 THE WITNESS: I provided him with
2 the pdf without the numbers and lines, I'm
3 pretty sure. I -- to the best of my knowledge,
4 I don't know if I did the numbers and lines,
5 but I did do the drawing of the pump and sent
6 it to him in a pdf form.

7 BY MR. LEACH:

8 Q. And how did he know how to label, for
9 example, what 3 -- reference number 3 is
10 pointing to in Figure 1, what reference
11 number 4 is pointing to? How did he know that?

12 MR. LUCHSINGER: Objection as to
13 form and foundation.

14 THE WITNESS: I had specific
15 meetings with my patent agent. I'm not gonna
16 go into details.

17 BY MR. LEACH:

18 Q. Well, you were the inventor. Presumably
19 you told him how this pump works and what the
20 components are, correct?

21 MR. LUCHSINGER: Objection as to
22 form, foundation. I mean, I -- that's just
23 asking the question a different way. You're
24 asking about what Mr. Nuhn told his patent
25 agent in connection with preparation of a

1 patent application, so I'll instruct the
2 witness not to answer that on the basis of
3 privilege.

4 MR. LEACH: Brad, I think that's an
5 improper instruction.

6 MR. LUCHSINGER: I didn't ask your
7 opinion on my objection. I'm stating the
8 objection and I'm instructing the witness not
9 to answer.

10 MR. LEACH: Okay. And I'm going to
11 for the record state that I'm merely asking a
12 question about a fact, and it's not getting
13 into, I think, the patent agent's advice on
14 patentability or writing the application. The
15 question is who provided the information about
16 what components are what and called what in the
17 patent application that was the patent
18 application of Mr. Nuhn.

19 MR. LUCHSINGER: Your question, I
20 believe, specifically asked about a
21 communication with an agent. So do you want to
22 have the court reporter read the question over
23 again and have -- you know, and I can
24 reconsider it and make the same objection if it
25 is asking for a particular communication, or do

1 you want to reask your question?

2 MR. LEACH: Dana, could you please
3 read that question back again?

4 (Whereupon, the court reporter read
5 back the previous question.)

6 MR. LUCHSINGER: Same objection.
7 Instruct the witness not to answer based on
8 privilege. It's asking for a particular
9 communication because it's, you know, asking
10 what Mr. Nuhn told his patent agent in
11 connection with the legal work that the patent
12 agent was performing.

13 BY MR. LEACH:

14 Q. And, Mr. Nuhn, are you going to follow
15 that instruction?

16 A. I am.

17 Q. Okay.

18 MR. LEACH: To respond to that
19 objection, Brad, like I said before, I don't
20 think that is a patent agent privileged
21 communication. I'm merely asking the witness
22 did he provide the information about the
23 different structures of what's shown in
24 Figure 1 or --

25 MR. LUCHSINGER: All right. So you

1 just asked a different question than the one
2 that was asked that I objected to. So do you
3 want to ask another question? I've already
4 instructed the witness not to answer, so we
5 might as well move on.

6 MR. LEACH: Okay.

7 BY MR. LEACH:

8 Q. Mr. Nuhn, did you provide your patent
9 attorney -- I'm sorry, your patent agent with
10 what the various structures are that are shown
11 in Figure 1 and referenced in the patent, which
12 is Exhibit 1032?

13 MR. LUCHSINGER: Objection to form,
14 vague.

15 You can answer.

16 THE WITNESS: I -- sorry. Dana, can
17 you read back the question?

18 (Whereupon, the court reporter read
19 back the previous question.)

20 THE WITNESS: I had meetings with my
21 patent agent and we went over the details of
22 the pump. I don't know how to answer it any
23 other way.

24 BY MR. LEACH:

25 Q. Did your patent agent suggest any

1 changes to the structure shown in Figure 1?

2 MR. LUCHSINGER: Objection. Based
3 on privilege, I'm going to instruct the witness
4 not to answer. It's asking about specific
5 communications from patent agent to client.

6 THE WITNESS: I'm going to take my
7 attorney's advice and not answer this one.

8 BY MR. LEACH:

9 Q. Mr. Nuhn, how did your patent agent know
10 how to label the different components of the
11 pump shown in Figure 1?

12 MR. LUCHSINGER: Objection as to
13 form and foundation.

14 THE WITNESS: Do you have the
15 application date of this patent? Was it 2011
16 or 2010 even, something like that?

17 BY MR. LEACH:

18 Q. This application was filed on March 1,
19 2011.

20 A. Yeah. That's more than 13 years ago. I
21 do not recall the specifics in great detail.

22 Q. When preparing the application that led
23 to the patent that's shown in Exhibit 1032, was
24 it a collaborative process to come up with the
25 design of the pump shown in Figure 1 with you

1 and your patent agent?

2 MR. LUCHSINGER: Objection as to
3 form.

4 THE WITNESS: Are you asking if my
5 patent agent was involved in the design of this
6 pump?

7 BY MR. LEACH:

8 Q. Yes.

9 A. No.

10 Q. And so in Figure 1, I'll ask again, who
11 determined how to label the various components
12 and the names of those components?

13 A. I believe we had many detailed meetings
14 and conversations. I -- sitting here today
15 looking back at this patent where specific
16 lines stop and start, you're asking me certain
17 questions about structure. I feel I've
18 answered them based on if this were an exploded
19 parts drawing of what I would call the part. I
20 feel like I've answered this as best I can.
21 How many -- you know, like, I see 123 at least
22 on here.

23 Q. Sir, I'm just asking these questions
24 because you seem to be unable to -- or unclear
25 about what certain components are of this pump.

1 And so I'm just trying to understand why that
2 would be.

3 MR. LUCHSINGER: Objection to form.
4 It's not a question.

5 THE WITNESS: I'm quite familiar
6 with this pump. I've given you specific parts.
7 For example, you've asked what 24 is. I feel
8 like I've accurately described that part as
9 clear as possible. I don't know why you get
10 that impression.

11 BY MR. LEACH:

12 Q. Okay. If you go to Figure 3a, does
13 Figure 3a show the pump resting on the bottom
14 of the fluid reservoir --

15 MR. LUCHSINGER: Objection as to
16 form.

17 BY MR. LEACH:

18 Q. -- via the bottom rest 24, which is
19 attached to the pump housing 3? Is that
20 accurate?

21 MR. LUCHSINGER: Objection as to
22 form.

23 THE WITNESS: Looking at this
24 picture, it appears that a tangent of 24 is on
25 the bottom line of what's labeled 27, if that's

1 what you're asking.

2 BY MR. LEACH:

3 Q. I'm just trying to understand what you
4 as the applicant of this patent and the
5 inventor of this patent was trying to show in
6 Figure 23. So can you more broadly just tell
7 me what you're trying to show in Figure 3a?

8 A. "Figure 3a shows a left side cut-away
9 view of the pump of Figure 1 in a working
10 position."

11 Q. And so Figure A shows the pump in a
12 working configuration in a fluid reservoir,
13 correct?

14 A. Specifically column 4, line 19, it says,
15 "Figure 3a shows a left side cut-away view of
16 the pump of Figure 1 in a working position."

17 Q. And what column were you in?

18 A. I just scrolled away. I'll go back at
19 it. Just wait a second here. Column --

20 Q. I see column 4.

21 A. Column 4, line 19.

22 Q. And are you familiar with the commercial
23 embodiment of the pump disclosed in
24 Exhibit 1032?

25 A. I'm familiar with our header series

1 vertical pit pumps.

2 Q. Okay. And is that what is covered by
3 the patent shown in Exhibit 1032?

4 MR. LUCHSINGER: Objection, form,
5 foundation to the extent it calls for a legal
6 conclusion.

7 THE WITNESS: Yeah, I was going to
8 say I'm not a patent attorney. I believe so.
9 If you want me to answer, I believe that our
10 header series vertical pit pumps are marked
11 with U.S. 8,944,758, but I'm not a patent
12 attorney to give a definite answer on that.

13 BY MR. LEACH:

14 Q. Okay. Can -- your header series
15 vertical pit pump, can that handle liquid
16 manure?

17 A. We market it as a liquid manure pump, if
18 that's what you're asking.

19 Q. Okay. Can it handle higher solid
20 content forms of manure?

21 MR. LUCHSINGER: Objection as to
22 form, vague.

23 THE WITNESS: We design it to work
24 in liquid manure pits, the vertical -- yeah,
25 basically liquid manure pits. We run into all

1 sorts of different conditions of the manure pit
2 and we have success across manure pit to manure
3 pit, so yeah. Is that what you're asking?

4 BY MR. LEACH:

5 Q. Well, I guess I'm wondering: Do some of
6 these manure pits have a higher solid content
7 form of manure than liquid manure?

8 MR. LUCHSINGER: Objection as to
9 form, foundation.

10 THE WITNESS: I think you might be
11 saying two different things there. Like, we
12 have manure that has different percent
13 solids -- sorry. Scratch that.

14 We have liquid manure that has
15 different percent solids and we're able to
16 handle quite a wide range of liquid manure that
17 we run into.

18 BY MR. LEACH:

19 Q. So let me ask you: Can Nuhn's header
20 series vertical pit pump, which is a commercial
21 embodiment of the patent disclosed in
22 Exhibit 1032, handle semisolid manure?

23 MR. LUCHSINGER: Objection as to
24 form, vague.

25 THE WITNESS: I don't use the term

1 "semisolid manure" in my day-to-day.

2 BY MR. LEACH:

3 Q. Can it handle liquid manure that has
4 hooves, pop cans, straw, sticks, sand, mud,
5 dirt mixed within it?

6 A. We design the header series vertical pit
7 pump to handle liquid manure which contains a
8 high percent of solids and large particle
9 sizes, anything that can be found in a liquid
10 manure reservoir.

11 Q. Would that include hooves, pop cans,
12 straw, sticks, sand, mud, dirt as well?

13 A. I don't know if I've ever seen a hoof in
14 a manure pit before.

15 Q. Okay. What about pop cans, straw,
16 sticks, sand, mud and dirt?

17 A. I can't answer the specifics of if we're
18 pumping pop cans or not. We can try it if
19 you'd like.

20 Q. Okay. Scratch pop cans. Can Nuhn's
21 header series vertical pit pump, which is the
22 commercial embodiment of Exhibit 1032, pump a
23 fluid that has straw, sticks, sand, mud and
24 dirt in it?

25 A. The header series vertical pit pump is

1 designed to pump liquid manure and the contents
2 of a liquid manure pit.

3 Q. Okay. Can you describe kind of from the
4 bottom up what a liquid manure pit typically
5 consists of?

6 MR. LUCHSINGER: Objection as to
7 form.

8 THE WITNESS: I would say a liquid
9 manure pit usually consists of liquid manure,
10 pretty obvious.

11 BY MR. LEACH:

12 Q. Well, let me ask you: Does that liquid
13 manure pit -- do the sediments separate out?
14 Is there typically like a bottom sludge layer,
15 maybe a middle layer, and then a top layer in a
16 liquid manure pit that the header series
17 vertical pit pump is used in?

18 MR. LUCHSINGER: Objection to form.

19 THE WITNESS: I've been at some
20 lagoons where it was solid pretty much all the
21 way through, so it's -- it was all liquid
22 manure and the contents of the pit, whatever
23 may end up in there.

24 BY MR. LEACH:

25 Q. And was the header series vertical pit

1 pump that we're talking about here able to pump
2 that pit?

3 A. The header series pumps are designed to
4 pump liquid manure stored in liquid manure
5 reservoirs, lagoons, yes.

6 Q. If a liquid manure pit has a bunch of
7 sediment on the bottom of it as shown in
8 Exhibit 1032 at Figure 3a, if the pump is
9 placed within that sediment on the bottom,
10 would it be able to pump that?

11 MR. LUCHSINGER: Objection as to
12 form, foundation.

13 THE WITNESS: It seems like a very
14 vague question. My understanding of what
15 you're asking could vary from the -- it seems
16 very vague.

17 BY MR. LEACH:

18 Q. What's vague about it?

19 A. Your idea of a manure pit and what
20 solids may be different from what my
21 understanding of it is.

22 Q. Okay. So what's typically on the bottom
23 of a manure pit in your experience?

24 A. Liquid manure.

25 Q. Well, what comprises the liquid manure

1 at the -- that's maybe settled out on the
2 bottom of the pit?

3 A. You could also have, you know, bedding.
4 Bedding that is in with the livestock, it gets
5 kicked in and could also be within the liquid
6 manure pit.

7 Q. Is there sand and dirt sometimes in the
8 liquid manure pit?

9 A. I wouldn't say dirt.

10 Q. Sand?

11 A. My answer is dirt. There is not --
12 like, I've never heard of dirt.

13 Q. What about sand?

14 A. In some lagoons, you know, sand is used
15 for bedding. And that can be in with the -- at
16 the bottom of the liquid manure pit with liquid
17 manure.

18 Q. And can the commercial embodiment, the
19 header series vertical pit pump -- strike that.

20 Can the header series vertical pit pump,
21 which is the commercial embodiment of the
22 patent shown in Exhibit 1032, pump the sand out
23 of a manure pit along with the liquid manure?

24 A. I don't know if we -- I don't know if I
25 can answer that question as asked. I don't

1 know if we've established that the header
2 series vertical pump is a commercial embodiment
3 of this patent or not. Again, I'm not a patent
4 attorney. We can -- what I can say, though, is
5 that our header series vertical pit pump can
6 pump sand-laden liquid manure, if that's what
7 you're asking.

8 Q. Okay. Can it pump sediment that is
9 deposited on the bottom of a fluid reservoir in
10 a liquid manure pit?

11 A. It can pump liquid manure from a liquid
12 manure pit.

13 Q. Well, my question's a little bit
14 different. If there's sediment on the bottom
15 of a liquid manure pit, can it pump that
16 sediment out as well as the liquid manure?

17 A. We'd have to -- I don't know if I can
18 just answer that with a general statement.

19 Q. Well, you understand that some of these
20 liquid manure pits have sediment that gets
21 deposited on the bottom of the reservoir,
22 right?

23 A. Like, when you're saying sediment, can
24 you define specifically what you're talking
25 about?

1 Q. Well, tell me what types of sediment, if
2 any, are deposited or are found on the bottom
3 of these liquid manure pits.

4 A. You know, if we have bedding types that
5 we've talked about before, like, such as sand,
6 we can pump a sand-laden liquid manure slurry,
7 that the pumps are capable of doing that.

8 Q. And would you say that your header
9 series vertical pit pumps can pump sand-laden
10 liquid manure well?

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: I'd say we can pump
14 sand-laden liquid manure. I'd say we're
15 successful at it.

16 BY MR. LEACH:

17 Q. For a liquid manure pit that has a lot
18 of sand in it, does that sand settle towards
19 the bottom of the reservoir prior to agitation?
20 Is there a layer at the bottom that's more of a
21 sludge or the sand?

22 A. That's a very general statement. I've
23 seen some pits where there's like a sand island
24 coming through the surface. I've seen
25 different scenarios.

1 Q. Okay. And so in a pit like that would
2 the header series vertical pit pump be able to
3 pump out that liquid manure reservoir or pit?

4 A. We designed the header series vertical
5 pit pumps to pump sand-laden liquid manure. I
6 don't know how else you want me to answer that.

7 Q. Well, I guess I'm wondering: If there's
8 this island of sand in this manure pit, would
9 your header series vertical pit pump be able to
10 pump out the contents of that manure pit?

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: The header series
14 vertical pit pump is designed to pump
15 sand-laden liquid manure. I feel like I've
16 answered your question.

17 BY MR. LEACH:

18 Q. Okay. If you go back to your
19 declaration, which is Exhibit 2083, and you go
20 to paragraph 8, please, paragraph 8, which is
21 on page 5 of 38, page 6 of 38 and page 7 of 38.
22 Can you let me know when you're there?

23 A. Yep. Yeah. Sorry. I'm here.

24 Q. Okay. So on page 6 of 38 of
25 Exhibit 2083, what is shown there in the

1 picture?

2 A. It looks like a -- sorry. Was someone
3 trying to say something? I heard something.
4 It's -- are you talking about the picture in
5 the center of page 6?

6 Q. Yes.

7 A. It looks like an advertisement to -- for
8 Nuhn Industries.

9 Q. What product?

10 MR. LUCHSINGER: Objection to form.

11 THE WITNESS: Looks like it covers
12 our vertical pit pump, top-load tandem, vacuum
13 transfer boom and the quad-train vacuum.

14 BY MR. LEACH:

15 Q. Okay. Focusing on the G-Force Vertical
16 Pit Pump, can you tell me about what the length
17 of the pump is from the bottom fluid inlet to
18 the top of the discharge tube on the G-Force
19 Vertical Pit Pump?

20 A. It's approximately 11 feet long, I
21 believe, from that point.

22 Q. And you mentioned earlier there's
23 different sizes for different depth pits. What
24 are the various sizes of that G-Force Vertical
25 Pit Pump?

1 A. We do them in two-foot increments.
2 Eight is the smallest. We do ten, 12, 14, 16,
3 18, 20, 22, 24. And then anything over that,
4 we usually just do custom.

5 Q. And so would -- those sizes that you
6 just mentioned, those are in feet, correct?

7 A. Correct. Yep.

8 Q. And would all of those sizes be the
9 length from the fluid inlet, the bottom fluid
10 inlet to the top of the discharge tube on those
11 pumps?

12 A. No. That's for the pit depth.

13 Q. Okay. And so what would the
14 corresponding length be of the pump from -- for
15 each of those from the bottom fluid inlet to
16 the top discharge tube on those pumps?

17 MR. LUCHSINGER: Objection as to
18 form, compound.

19 THE WITNESS: Yeah. Can you repeat
20 the question? I just want to make sure I heard
21 it right.

22 BY MR. LEACH:

23 Q. Sure. For the number of pumps that you
24 rattled off in terms of in two-foot increments
25 from 8 to 24 feet, what would the length -- I

1 understood that those lengths were for the size
2 of the pit or the depth of the pit. I'm
3 wondering: What would the corresponding
4 G-Force Vertical Pit Pump length be for each of
5 those?

6 MR. LUCHSINGER: Same objections.

7 THE WITNESS: It depends on where
8 you're referencing. But, you know, basically
9 if you look at my statement here where it says
10 the vertical pit pump pictured in this
11 advertising has an overall length of
12 17-foot-nine, a boom arm that is approximately
13 11 feet long, so the one that's in this
14 advertisement is an eight-foot pump. And from
15 where basically overall length of at least what
16 we call the boom arm is about three feet
17 longer, being 11 feet. I feel like it might
18 even be four feet, like even longer than that
19 too, but --

20 BY MR. LEACH:

21 Q. So when you talk about the boom arm, are
22 you talking about the three-point hitch on it?

23 A. No. No. So the 17-foot-nine that
24 you're seeing there --

25 Q. Yeah.

1 A. -- that's the total length when it's
2 fully horizontally, including the three-point
3 hitch.

4 Q. Okay. So then what is the boom arm that
5 is 11 feet long?

6 A. In the picture, kind of the top right
7 corner of the picture showing it agitating, so
8 that's our eight-foot pit. So you can kind of
9 imagine where the ground plane is that the
10 tractor tires are on --

11 Q. Yep.

12 A. -- basically what I would call floor to
13 floor, so floor that the tractor sits on to pit
14 floor, that would be eight feet. And then you
15 can see the pump is sticking up higher than
16 eight feet, obviously. So that's approximately
17 three feet there. So when we say 11 feet,
18 that's the total length there.

19 Q. Okay. And so the 11 feet is not
20 including the length of the three-point hitch
21 or boom arm, correct?

22 MR. LUCHSINGER: Objection to form.

23 THE WITNESS: It's the vertical
24 height that you see there.

25 BY MR. LEACH:

1 Q. Okay. So the -- looking at the
2 advertisement on page 6 of 38 in Exhibit 2083,
3 the left-hand picture showing the G-Force
4 Vertical Pit Pump, and you're talking about in
5 that picture the upper right-hand photo of the
6 tractor and the pump actually being operated to
7 agitate in that configuration, it's about
8 11 feet from the bottom fluid inlet to the top
9 of the pump where there's the discharge tube,
10 is that correct?

11 A. I'll say it a little different way
12 that's maybe a little more clear. From the pit
13 floor to where the top elbow -- see it's a
14 different color, kind of like an over 90 elbow?

15 Q. Yep. The gray elbow there?

16 A. Yeah. So below the bottom of that gray
17 elbow to the pit floor I'd say is approximately
18 11 -- I might even say 12 feet.

19 Q. Okay.

20 A. Eleven to be conservative.

21 Q. Okay. And so I assume the pump in that
22 configuration shown in Exhibit 1083 on page 6
23 of 38 is less than 11 or 12 feet?

24 MR. LUCHSINGER: Objection as to
25 form.

1 THE WITNESS: Sorry. I feel like
2 we're pretty clear where the 11 feet was. Can
3 you repeat what you're asking?

4 BY MR. LEACH:

5 Q. Sure. I guess what I understood you to
6 say is that from the top of the pump, which is
7 just below the gray 90-degree bend, basically
8 the red portion of the pump down to the bottom
9 of the fluid reservoir is 11 to 12 feet. And I
10 think I understood you previously to say that
11 the pump is not -- it's a little bit shorter
12 than the bottom -- the depth of the reservoir.
13 And so I assume that the pump is not sitting
14 touching the bottom of the reservoir, or is it?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: The pump is resting on
18 the floor.

19 BY MR. LEACH:

20 Q. Okay. On reference number 24, the --
21 whatever that component was called, the bottom
22 rest?

23 A. Yeah, my -- what I use in my day-to-day
24 I would call it like a leg.

25 Q. A leg. Okay. So from the leg up to

1 where that 90-degree attaches to the pump, that
2 is what you say is approximately 11 feet long?

3 A. Yeah. I might even --

4 MR. LUCHSINGER: Objection to form.

5 THE WITNESS: I might even say 12
6 even. Like, there's --

7 BY MR. LEACH:

8 Q. Okay. And so if this pit was 12 feet
9 deep, you would make the pump longer, it would
10 be four feet longer?

11 A. Fifteen to 16 feet long would be what we
12 would call the boom arm.

13 Q. Okay. And, again, the boom arm does not
14 include the three-point hitch, correct?

15 A. Correct. When it's sitting in the
16 horizontal position like you're seeing here,
17 that's different than the boom arm length that
18 I'm calling out separately.

19 Q. Okay. When you say "the horizontal
20 position," now you've switched from in that
21 picture to where it's showing being operated to
22 agitate to just kind of sitting there in the
23 front where the boom arm is horizontal as well
24 as the pump, correct?

25 A. The -- in the ad there's a picture of

1 the G-Force Vertical Pump CAD image that's kind
2 of floating in the center from the --

3 Q. Yep.

4 A. Yeah. If you're looking at it straight
5 from the left, from the furthest left point to
6 the furthest right point, would be 17-foot-nine
7 of the eight-foot pump model, our shortest
8 model.

9 Q. Okay. And so your point in Exhibit 2083
10 on page 6 of 38 is that the overall length is
11 17 feet, 9 inches, that is including the
12 three-point hitch and the boom arm --

13 A. When it's --

14 Q. -- in the horizontal position?

15 A. The picture that's kind of floating over
16 top of all the other pictures in that view, in
17 that orientation from the very far left side to
18 the very far right side, if you're looking at
19 it straight from the side similar to that
20 angle, it is 17-foot-nine.

21 Q. Okay. And that whole component or the
22 whole pump, including the three-point hitch and
23 boom arm, would weigh about 2,560 pounds?

24 A. Our eight-foot pump shipping weight is
25 2,560 pounds.

1 Q. Okay. About how much of that weight is
2 the three-point hitch, if you know?

3 A. Not much of it. It's very -- very
4 light, I would say, if you look at just that
5 picture there that's really not -- not much of
6 the structure.

7 Q. Can you estimate what the three-point
8 hitch would weigh?

9 A. I'm not gonna guess what it weighs.
10 It's not very heavy, though. It's two-by-six
11 tubing that -- like, not anything crazy big or
12 anything like that.

13 Q. Is it something that would require two
14 guys to carry around?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I don't -- I don't --
18 I don't -- don't honestly know.

19 BY MR. LEACH:

20 Q. Well, how do you move those around when
21 you're building the components? Do you use a
22 forklift? Do people carry them around? How
23 are they moved around in the factory?

24 A. Everywhere in our factory we have
25 cranes. We've got cranes all over the place.

1 So I don't know how much it weighs.

2 Q. Okay.

3 A. I can tell you the whole thing weighs
4 2,560 pounds.

5 Q. Okay. So we established that the
6 G-Force Vertical Pit Pump, which is shown on
7 Exhibit 2083, that you make that pump in a
8 number of different sizes, correct?

9 A. Yep. And the one I am talking about in
10 this declaration is my smallest size. My
11 smallest size, it's my lightest size. We have
12 different hitches. So this is my, what I would
13 call, two-point configuration. I make a
14 three-point configuration that's even heavier
15 than that. So this is my smallest, shortest
16 pump and the lightest two-point setup.

17 Q. When you make the vertical or G-Force
18 Vertical Pit Pump in the longer versions all
19 the way up to 24 feet, what changes between,
20 say, an eight-footer and a 12-footer, is it the
21 midsection, the pipe and the frame, is that
22 just longer?

23 A. We -- usually we go up to a -- like a
24 trailer version. So we put it on wheels with a
25 cart. The lift structure changes. Quite a bit

1 of changes go into it. And then it gets quite
2 a bit heavier from that point too.

3 Q. Okay. Looking at the picture shown in
4 Exhibit 10 -- I'm sorry, 2083 on page 6 of 38,
5 the G-Force Vertical Pit Pump, what is the
6 portion of that pump that actually moves a
7 fluid or pumps the fluid, is that the housing
8 with the two outlets?

9 A. Can you repeat the question? Sorry.

10 Q. I'm trying to understand what moves the
11 fluid in the G-Force Vertical Pit Pump. Is it
12 the housing with the impeller in it driven by
13 PTO shaft or a shaft?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: Yeah, like I -- I
17 understand fluid mover is like a term that's at
18 issue in the case, so I'm -- you know, I'm not
19 a patent attorney. I don't want to define or
20 construe what that term means, but I can talk
21 about it in the general sense of -- from my
22 day-to-day if --

23 BY MR. LEACH:

24 Q. Yeah, that would be great. I'm just
25 trying to understand: In that structure, what

1 is the component of the G-Force Vertical Pit
2 Pump that actually does the pumping?

3 A. I'd say the pump, the --

4 Q. What would that be? Can you describe
5 what component of the G-Force Vertical Pit Pump
6 does -- performs that function?

7 A. You know, there's a -- there's an
8 impeller inside the pump.

9 Q. And where is that located? Is that
10 located in the housing?

11 A. There's an impeller located in what I
12 would call the pump housing.

13 Q. Okay.

14 A. Our pump housing in this particular
15 advertisement is what I would call a dual
16 outlet.

17 Q. Okay.

18 A. So our pump housing has two outlets, you
19 know. And that's what I would say is in charge
20 of -- you know, that's kind of the main
21 components of the pump, I would say, in my
22 opinion.

23 Q. Okay. And those two outlets come
24 together just below where the agitation nozzle
25 is?

1 A. In this picture, the two outlets, you
2 can kind of see there's two pipes coming
3 together and there's kind of a Y that's located
4 below the agitator nozzle assembly.

5 Q. Okay. And you were talking about a
6 two-point hitch or a three-point hitch. What
7 does the -- what is the purpose or function of
8 the two-point hitch or the three-point hitch?

9 A. It's how the pump is basically moved,
10 moved around. It's how it is attached.

11 Q. Attached to what?

12 A. These are all tractor driven.

13 Q. Okay. So does the -- two-point or
14 three-point mount, is that what you call it? I
15 guess, what do you call that, the component
16 that mounts the -- or connects the pump to the
17 tractor, hitch?

18 A. Yeah, I call it my -- either the
19 two-point hitch or the three-point hitch
20 depending on the tractor setup. The two-point
21 kind of has like a cantilever system. It goes
22 onto the tractor. It's just the bottom links.
23 You don't need a top third link, kind of pry on
24 it. Then you actually get quite a bit of lift
25 from it that way. The three-point is more

1 specifically for a tractor that has a
2 three-point hitch that can have a quick hitch
3 so you can, you know, quickly attach and detach
4 it.

5 Q. Okay. And so for either the two-point
6 hitch or the three-point hitch, the hitch moves
7 the pump from a horizontal position for moving
8 it around the farm to a vertical position such
9 as to put it into the pit, is that correct?

10 MR. LUCHSINGER: Objection as to
11 form.

12 THE WITNESS: It's basically
13 what's -- you know, it's basically what's used
14 to attach to the tractor would be the best way
15 to describe it.

16 BY MR. LEACH:

17 Q. Sure. But it also performs the function
18 of holding the pump vertical and holding the
19 pump horizontal, right?

20 MR. LUCHSINGER: Objection as to
21 form.

22 THE WITNESS: We have some models
23 where the three-point hitch, you know, doesn't
24 do that.

25 BY MR. LEACH:

1 Q. How do you rotate the pump then from the
2 horizontal position for transporting it to a
3 vertical position into a pit?

4 A. Basically it doesn't go quite vertical.
5 It kind of goes out on an angle. So it's
6 basically mounted to the three-point. You can
7 change the angle, but it's not the same as what
8 you're seeing here in this picture.

9 Q. Okay. Let's stick to what you provided
10 in your declaration, Exhibit 2083, and
11 specifically on page 6 of 38 where you show the
12 ad of the G-Force Vertical Pit Pump. Does that
13 two-point hitch there pivot the Nuhn pump from
14 a horizontal position to a vertical position to
15 place it into the manure pit?

16 MR. LUCHSINGER: Objection as to
17 form.

18 THE WITNESS: I think you can see
19 the picture, that the one position it's
20 relatively horizontal and the other position
21 it's relatively vertical.

22 BY MR. LEACH:

23 Q. Sure. And I guess what I'm asking is:
24 Does the two-point hitch have a hydraulic
25 cylinder on it that can rotate or pivot the

1 pump from a vertical orientation to a
2 horizontal orientation when attached to a
3 tractor?

4 A. There are hydraulic cylinders on the
5 two-point hitch.

6 Q. Okay. And what do they do?

7 A. They rotate from the horizontal to the
8 vertical position.

9 THE VIDEOGRAPHER: Tom, we've been
10 going about an hour and a half when it's a good
11 time for a break.

12 MR. LEACH: Sure. We can take a
13 break.

14 THE VIDEOGRAPHER: Time is
15 approximately 10:25 a.m. We are going off the
16 video record.

17 (Off the record 10:25 to 10:35.)

18 THE VIDEOGRAPHER: Time is
19 approximately 10:35 a.m. We are back on the
20 video record.

21 Go ahead.

22 BY MR. LEACH:

23 Q. Mr. Nuhn, we're just back from a break.
24 We were talking about Nuhn's G-Force Vertical
25 Pit Pump, which is shown on page 6 of 38 of

1 your Exhibit 2083. What -- can you tell me --
2 we talked a little bit about the two-point
3 hitch and the three-point hitch and its
4 function. Can you tell me what -- sorry. And
5 we talked about the function of kind of the
6 pump section of the G-Force Vertical Pit Pump.
7 What is the section above the agitation nozzle
8 and component there of the pump? What do you
9 call that?

10 A. Talking about the return pipe?

11 Q. A return pipe. And then is there
12 also -- but below in the pictures showing the
13 return pipe, is that like a -- I don't know
14 what it's called. A pump body. What do you
15 call, like, where the rotating shaft is?

16 A. That's an eight-by-eight-by-quarter wall
17 square tube.

18 Q. You mean quarter-inch wall? Is it the
19 thickness?

20 A. Yeah. Yep.

21 Q. Okay. So for clarity it's an -- did you
22 say an eight-by-eight square tube that's a
23 quarter-inch thick?

24 A. Yep.

25 Q. And is that what the return pipe is

1 carried on?

2 A. Like, the return pipe is now in a --
3 like, in a parallel axis to the axis of that.

4 Q. Have you ever heard of anyone modifying
5 the G-Force Vertical Pit Pump to use for other
6 applications?

7 MR. LUCHSINGER: Objection as to
8 form, vague.

9 THE WITNESS: I don't believe so,
10 no.

11 BY MR. LEACH:

12 Q. For the dual or triple outlet pump
13 section of the G-Force Vertical Pit Pump, do
14 you use that -- does Nuhn use that on other
15 applications?

16 MR. LUCHSINGER: Objection to form,
17 vague.

18 THE WITNESS: Yeah, can you repeat
19 the question on that?

20 BY MR. LEACH:

21 Q. Sure. We talked about kind of the pump
22 section of the G-Force Vertical Pit Pump as
23 being kind of the housing and the outlet,
24 right?

25 A. Uh-huh.

1 Q. And was that a yes? We just got a --

2 A. Yeah, we've been talking about the
3 pumps.

4 Q. Okay. And so the housing impeller and
5 dual outlet, that design for basically pumping
6 the fluid, Nuhn has used that design, whether
7 it's a dual outlet or a triple outlet, in other
8 applications, correct?

9 MR. LUCHSINGER: Objection as to
10 form, vague.

11 THE WITNESS: To be more specific,
12 if you go to page 7 of my declaration, there's
13 an advertisement showing our Header Series
14 Lagoon Pump.

15 BY MR. LEACH:

16 Q. And that's shown on page 7 of 38 of
17 Exhibit 2083, correct?

18 A. Correct.

19 Q. And then Nuhn also used that pump design
20 in its Lagoon Crawler product, correct?

21 A. We have a multi-outlet pump on the
22 Lagoon Crawler, the liquid manure pump.

23 Q. Let me ask you: Going back to page 6 of
24 38, the G-Force Vertical Pit Pump that's shown
25 there, do you make a version of that pump that

1 is telescopic where it extends and retracts?

2 MR. LUCHSINGER: Objection as to
3 form, vague.

4 THE WITNESS: We make -- it's called
5 a multi-pump and it can be used in different
6 pit depths.

7 BY MR. LEACH:

8 Q. And can you describe that pump and how
9 it works?

10 A. It's a telescoping pump. So the
11 length -- the smallest one that we have, it can
12 be used in eight-foot pits. It can be used all
13 the way up into 12-foot pits.

14 Q. And can you explain how it telescopes?

15 A. It telescopes with a hydraulic cylinder.

16 Q. So can you explain in a little more
17 detail how that hydraulic cylinder extends the
18 pump or retracts the pump?

19 A. In an eight-foot pit the hydraulic
20 cylinder is all the way retracted. And in a
21 12-foot pit the hydraulic cylinder is all the
22 way extended.

23 Q. And so does the return pipe kind of
24 slide on a seal or another pipe that's
25 telescopic or nested within it?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: There's a telescoping
4 discharge pipe.

5 BY MR. LEACH:

6 Q. Okay. Does -- the eight-by-eight
7 quarter-inch-thick housing that the discharge
8 pipe is connected to, does that telescope as
9 well?

10 MR. LUCHSINGER: Objection to form.

11 THE WITNESS: We didn't -- we found
12 different versions of this. In one version
13 there's a telescoping pipe.

14 BY MR. LEACH:

15 Q. Okay. If you go back to Exhibit 1032,
16 which is the '758 patent, and specifically
17 please go to column 6, line 19 to 30, if you
18 could please take a look at that.

19 A. Nineteen to 30, is that what you wanted?

20 Q. Yep.

21 A. Okay.

22 Q. Is that describing how the G-Force
23 Vertical Pit Pump is extendable in some
24 embodiments?

25 A. Again, I'm not a patent attorney, you

1 know, so I'm not -- I'm not an expert at
2 reading and deciphering patents, but I feel my
3 description kind of accurately described it
4 well.

5 Q. Is what's described in column 6, lines
6 19 to 30 accurate? And that's of Exhibit 1032,
7 the '758 patent.

8 A. Just, you know, again, I'm not an expert
9 at this. But just reading this, this describes
10 a version of our -- one of our telescoping
11 pumps.

12 Q. And is your -- one of your versions of
13 your telescoping pump a G-Force Vertical Pit
14 Pump that telescopes?

15 A. We have a -- what's called a multi-pump
16 that's a -- like a header series pit pump
17 that -- that is telescopic.

18 Q. Okay. And what is the reason to make a
19 multi-pump that's telescopic?

20 A. We run into different pit depths. And
21 we make a pump that works for multiple pit
22 depths.

23 Q. Turn back to page 7 of 38 in
24 Exhibit 2083. Looking at the advertisement on
25 that page, can you describe what the Header

1 Series Lagoon Pump is?

2 A. It's -- this particular one, I believe,
3 is our 48-foot model or 50-foot model. It
4 backs into a manure lagoon and it's attached to
5 a tractor drawbar. It's connected to the
6 tractor's PTO shaft.

7 Q. Is the Header Series Lagoon Pump shown
8 on page 7 of 38 in Exhibit 2083 about the same
9 size as the G-Force Vertical Pit Pump that's
10 shown on page 6 of Exhibit 2083?

11 A. Can you repeat the question?

12 Q. Yeah. Is the size of the pump
13 housing -- I'm going to change it a little bit.
14 Is the size of the pump housing on the pump
15 shown on page 7 for the Header Series Lagoon
16 Pump about the same size as what's shown on
17 page 6 of Exhibit 2083 for the G-Force Vertical
18 Pit Pump?

19 A. What I can say is this is a three-outlet
20 pump on page 7. Page 6 has a two-outlet pump.
21 So they're, I would say, fairly different.

22 Q. Okay. Did you adjust the size of the
23 housing to accommodate the different
24 applications from the G-Force Vertical Pit Pump
25 to the Header Series Lagoon Pump shown on

1 pages 6 and 7 of Exhibit 2083?

2 A. The housing is quite different. This
3 one has three outlets. And the one on page 6
4 has two outlets.

5 Q. Okay. So that's one modification that
6 was made. Is the size of the housing for both
7 of those pumps different?

8 A. I think if you were to take a tape
9 measure and measure them, they would be
10 different.

11 Q. Okay. Can you tell me about how
12 different you think they are?

13 A. Sitting here today, I can't give you an
14 exact difference in size. I can tell you
15 they're different, though.

16 Q. Which one's bigger?

17 A. Can be hard to say. They might -- it's
18 hard to know which one would be different or
19 bigger depending on the dimension, bigger
20 looking at it.

21 Q. Mr. Nuhn, are you telling me you don't
22 know the difference between the size of the
23 housing on the G-Force Vertical Pit Pump as
24 compared to the housing on the Header Series
25 Lagoon Pump?

1 MR. LUCHSINGER: Objection to form.

2 THE WITNESS: Yeah, there's
3 different -- there's quite a few differences
4 from the one on page 6 to page 7. Can I rhyme
5 off the exact size difference sitting here with
6 nothing in front of me today? No, I cannot.

7 BY MR. LEACH:

8 Q. Generally, is one bigger than the other?

9 MR. LUCHSINGER: Objection to form,
10 asked and answered.

11 THE WITNESS: Sitting here today, I
12 can't recite the difference in dimensions
13 comparing the two --

14 BY MR. LEACH:

15 Q. How hard would --

16 A. -- [unintelligible] information in front
17 of me.

18 Q. How hard would it be to figure out what
19 the size of the housings are on each of those?

20 MR. LUCHSINGER: Objection to form,
21 vague.

22 THE WITNESS: If you had a tape
23 measure, you could go up and measure the
24 overall dimensions, if that's what you're
25 looking for.

1 BY MR. LEACH:

2 Q. Do you have any documents that would
3 provide the housing for -- like, example, a
4 parts list, would that provide the size or
5 dimensions of the pump housing on the Header
6 Series Lagoon Pump, and then also a document
7 that would show the size of the housing on the
8 G-Force Vertical Pit Pump?

9 A. None of our documentation that we have
10 has dimensions on it.

11 Q. Okay. You said you could name some
12 differences between the two. Can you provide
13 me -- you know, one of the differences you said
14 was three outlets versus two outlets. Any
15 other differences?

16 A. The -- I believe the shaft configuration
17 was different -- a different series on the
18 lagoon pump versus the G-force. I'd have to go
19 back and look at specific dates to say exactly,
20 you know, what changes were done. The housing
21 dimensions are different between the lagoon
22 pump and the vertical pit pump.

23 Q. And why did you make them different?

24 A. They're different pumps.

25 Q. Are they for different applications?

1 A. This one is for a lagoon. And the other
2 is -- it's our Header Series Lagoon Pump. And
3 the one on page 6 is our vertical pit pump.
4 These are different pumps.

5 Q. Okay. And are they different pumps for
6 different applications?

7 A. They both pump liquid manure.

8 Q. Are they different pumps for different
9 applications?

10 A. This one is to be backed down a -- like
11 a bank of a lagoon. And the other one is --
12 could be ran off a -- like a vertical straight
13 wall.

14 Q. And so did you design both of these
15 pumps?

16 A. I did.

17 Q. And so why did -- and so -- well, let's
18 start there. So you designed both of these
19 pumps and you can't tell me, sitting here
20 today, whether one is bigger than the other, at
21 least the housing?

22 A. I think -- I think with a tape measure
23 it can easily be answered, the size
24 differences.

25 Q. Sure. But you designed both of these.

1 And, I guess, what I'm asking is: Do you know,
2 sitting here today, whether the housing on the
3 G-Force Vertical Pit Pump is smaller than the
4 housing on the Header Series Lagoon Pump?

5 MR. LUCHSINGER: Objection as to
6 form, vague.

7 THE WITNESS: I think maybe the
8 lagoon pump might have a narrower dimension in
9 one aspect. And the vertical pump might have a
10 bigger dimension in another aspect. Sitting
11 here today, I can't -- I don't have those
12 numbers in front of me to rhyme them off.

13 BY MR. LEACH:

14 Q. Okay. Let's just talk about the
15 diameter of the housing at the widest point for
16 each of these pumps. Which one would be
17 bigger?

18 A. I --

19 MR. LUCHSINGER: Objection as to
20 form, vague.

21 THE WITNESS: I'd have to -- I'd
22 have to measure them and let you know.

23 BY MR. LEACH:

24 Q. We talked last time a little bit about
25 paragraph 12 of your declaration, which is

1 Exhibit 2083. And you attended the 2012
2 North American Manure Expo show in Prairie du
3 Sac, Wisconsin, correct?

4 A. That's correct, yeah. I was an
5 exhibiter at the 2012 show.

6 Q. And did you exhibit the Header Series
7 Lagoon Pump that is shown on page 7 of your
8 declaration, Exhibit 2083?

9 A. It was a Header Series Lagoon Pump. It
10 was a different one to the one that's shown on
11 this page. But we demonstrated a Header Series
12 Lagoon Pump at the 2012 show.

13 Q. So what you demonstrated at the 2012
14 North American Manure Expo, was it similar to
15 what is shown in or on page 7 in Exhibit 2083,
16 the Header Series Lagoon Pump?

17 A. It's similar in that it was a
18 three-outlet pump approximately 48 feet long,
19 PTO tractor driven, had the wheels near the
20 end. I believe the -- I'd have to go back and
21 see the timing of everything. But I believe
22 maybe the agitator cannon was different than
23 this design. But other than that, it would be
24 fairly similar.

25 Q. Was it remote control?

1 A. I can't say for sure. We make remote
2 and, like, manual spool valve control pumps.
3 And I'm not too sure which one we demonstrated
4 there.

5 Q. For the version of the Header Series
6 Lagoon Pump that's not remote control, where
7 are the controls located?

8 A. We have different styles of the
9 non-remote one. One, the -- some people will
10 run the hydraulics straight to the tractor.
11 Another version, the spool valve will be
12 mounted kind of on the top end of the pump near
13 the tractor, so when you operate either in the
14 tractor or on the side.

15 Q. Okay. And do you recall when you were
16 demoing a version of the Header Series Lagoon
17 Pump at the 2012 North American Manure Expo,
18 were you operating it from the cab of the
19 tractor or from outside of the cab of the
20 tractor?

21 A. Again, this is 12 years ago, more than
22 12 years ago. I vaguely remember being kind of
23 beside the wheel of the tractor, but I can't
24 say for certain.

25 Q. I'm going to introduce another exhibit

1 quick.

2 MR. LEACH: Dana, real quick, what
3 new exhibit would we be on, if you know? I
4 think I marked --

5 THE COURT REPORTER: 1082 would be
6 next.

7 MR. LEACH: That's right. Thank
8 you.

9 (Exhibit Number 1082 marked for
10 identification.)

11 BY MR. LEACH:

12 Q. Mr. Nuhn, I'm marking Exhibit 1082,
13 which is the show guide for the North American
14 Manure Expo held in Prairie du Sac, Wisconsin
15 in 2012. Can you take a look at this and
16 confirm that that's indeed what it is?

17 A. (Views document.) I can't say for
18 certain, but it definitely is titled that.

19 Q. Okay. Do you have any reason to believe
20 that this is not a true and accurate copy of
21 the North American Manure Expo show guide for
22 the 2012 North American Manure Expo?

23 A. Well, it doesn't really say it anywhere.
24 Like, this could have been a -- is this maybe a
25 magazine for -- from Manure Manager that's a

1 special edition or something that was printed
2 well in advance, or do you know when it was
3 given out or released?

4 Q. Well, if you turn to page 15, which is
5 Bates numbered BAZ15_0028024, it provides the
6 expo schedule, correct?

7 A. Yeah. But, like, there's a schedule for
8 the expo, but sometimes, I believe, like, they
9 can ship it out to all their subscribers ahead
10 of time too. So it's hard to know if --
11 exactly when this was printed and given out or
12 if this is a rough draft or...

13 Q. Well, is there anything in here that
14 leads you to believe that this is a rough
15 draft?

16 A. There's nothing to lead me to believe
17 that it's the final version, though.

18 Q. Okay. And no doubt you attended this
19 show, though, correct, that's in your
20 declaration, right?

21 A. Yeah, I've been quite forward and up
22 front from day one that I attended that show.

23 Q. And you simply have no memory of
24 receiving this North American Manure Expo
25 brochure or show guide, whatever you want to

1 call it?

2 A. No. I -- Manure Manager, I never really
3 received them. And I don't recall seeing it
4 given out on the day of the show either.

5 Q. Okay. If you look at the front page, it
6 says, to the left of the cow basically, USDA
7 Dairy Forage Research Center, Prairie du Sac,
8 Wisconsin. Do you know -- was that where the
9 demonstrations were held?

10 A. I do not know.

11 Q. Okay.

12 A. I know they had -- it was kind of all
13 spread out. They have an exhibiter ground.
14 They had a field application site that was
15 somewhere. And then they had a separate
16 agitation site as well.

17 Q. Okay. Let's go down to page 18 of the
18 brochure that's Bates numbered BAZ15_0028027.
19 Can you get to that page, please?

20 A. Page 18?

21 Q. Yep.

22 A. Yep.

23 Q. If you look at the bottom towards the
24 center, it says Pit Demo. And that's in red,
25 correct?

1 A. That's correct, yep.

2 Q. And then if you go up to Nuhn
3 Industries, which is in the right side of the
4 page, it says in red Header Series Lagoon Pump.
5 Is that what you demoed?

6 A. Yeah, we ran a Header Series Lagoon Pump
7 at the 2012 show.

8 Q. Okay. And you also recall that Puck
9 demonstrated an agitation boat, correct?

10 MR. LUCHSINGER: Objection as to
11 form.

12 THE WITNESS: Yeah, they had a --
13 some sort of agitation boat in the pit. I
14 think we've been over that the last two
15 depositions.

16 BY MR. LEACH:

17 Q. Yep. And that's in red there as well,
18 right, shown on that page?

19 A. It says Agitation Boat in red beside
20 Puck.

21 Q. Okay. And if you go down to Sundstrom's
22 Pit Pumping, that shows a stir dredge in red,
23 correct?

24 A. It says Stir Dredge in red besides
25 Sundstrom's Pit Pumping.

1 Q. And if you go up to the top, it says
2 Husky Farm Equipment Limited. And it says
3 PL490 24-foot Lagoon Pump.

4 Do you see that?

5 A. I do.

6 Q. And that's in red, correct?

7 A. It says PL490 24-foot Lagoon Pump in
8 red. I do, yep.

9 Q. Do you know what Husky's PL490 24-foot
10 Lagoon Pump was?

11 A. I do not.

12 Q. Do you recall seeing it when you demoed
13 the Nuhn Header Series Lagoon Pump?

14 A. I don't, actually.

15 Q. What about Jamesway Farm Equipment in
16 red, do you see it says Pumpeller Hybrid Lagoon
17 Pump?

18 Do you see that?

19 A. I see Pumpeller Hybrid Lagoon Pump, I
20 do.

21 Q. And that's in red as well?

22 A. It's in red as well, yeah.

23 Q. And do you understand that those
24 products listed in red were demonstrated at the
25 pit demo as it says in red below?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: I'd be making an
4 assumption. But I would imagine that that's
5 how they're signifying it in this document.

6 BY MR. LEACH:

7 Q. If you go to the last page of that
8 document, it shows the Jamesway Pumpeller
9 Hybrid Lagoon Pump.

10 Do you see that?

11 A. I see a full-page ad for Jamesway and it
12 says Pumpeller Hybrid Lagoon Pump.

13 Q. Did you see this pump demoed at the 2012
14 North American Manure Expo?

15 A. Honestly, it does not make a -- it did
16 not make an impression on me that -- I don't
17 recall Jamesway being -- like, I feel like
18 GEA Houle was there. And I don't see their
19 name on the list. I feel like I remember
20 seeing GEA Houle running. But I don't recall
21 Husky or Jamesway just sitting here today.

22 Q. Okay. And can you tell me what's shown
23 in the ad there on the last page of
24 Exhibit 1082, which is on BAZ15_0028033?

25 MR. LUCHSINGER: Objection as to

1 form.

2 THE WITNESS: I see a -- almost
3 looks like a blue propeller.

4 BY MR. LEACH:

5 Q. Well, generally, what type of product is
6 this? Is this a manure agitation pump that
7 competes with, for example, Nuhn's Header
8 Series Lagoon Pump?

9 MR. LUCHSINGER: Objection as to
10 form.

11 THE WITNESS: I don't have much
12 experience with Jamesway. I'm not too familiar
13 with what's shown here.

14 BY MR. LEACH:

15 Q. If you look at it it's got a long shaft
16 and tube, correct?

17 MR. LUCHSINGER: Objection to form.

18 THE WITNESS: I see a propeller, but
19 it's -- like it's obviously different to any
20 lagoon pump that I'm familiar with.

21 BY MR. LEACH:

22 Q. Well, if you look at the lower picture,
23 doesn't that just show a housing with an inlet
24 and an impeller?

25 MR. LUCHSINGER: Objection as to

1 form.

2 THE WITNESS: I see a propeller.
3 It's not really what I would call an impeller.

4 BY MR. LEACH:

5 Q. Okay. For the product shown at the
6 bottom, would you agree with me that that's a
7 centrifugal pump?

8 MR. LUCHSINGER: Objection as to
9 form, foundation.

10 THE WITNESS: It looks like a
11 propeller. There's a -- they definitely -- I'm
12 just not familiar with a pump with a propeller
13 structure like that.

14 BY MR. LEACH:

15 Q. What's the difference between a
16 propeller and impeller?

17 A. Usually I equate propellers for mixing
18 and an impeller is more a feature of a
19 component of a pump.

20 Q. A component of what type of pump, a
21 centrifugal pump?

22 A. In my day-to-day work I call an
23 impeller, it's the rotating component inside or
24 centrifugal liquid manure pumps very different
25 from what you're showing me here.

1 Q. How so -- in the picture at the bottom
2 it shows an impeller in a housing with a bottom
3 fluid inlet, correct?

4 MR. LUCHSINGER: Objection as to
5 form.

6 THE WITNESS: Yeah. See, we make a
7 propeller, and our propeller looks very similar
8 to like what's shown there in blue in the top
9 left.

10 BY MR. LEACH:

11 Q. Setting aside the housing for the pump,
12 would you agree with me that this has an
13 agitation nozzle on it?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: I'm not with Jamesway.
17 I'm not going to comment on the specifics of
18 what's shown in this picture here.

19 BY MR. LEACH:

20 Q. So based on your years of experience
21 working at Nuhn Industries designing pumps that
22 have agitation nozzles, you don't know
23 simply -- you can't opine as to what's shown in
24 this ad?

25 MR. LUCHSINGER: Objection as to

1 form and foundation.

2 THE WITNESS: I'm not going to
3 comment on what I think something is in a
4 picture. I didn't design that pump.

5 BY MR. LEACH:

6 Q. I'm asking you to comment on it, though.

7 A. Uh-huh.

8 Q. Under oath I want you to tell me what
9 you believe that structure as shown in the
10 bottom picture that goes up and does like an
11 upsidedown J, do you believe that's an
12 agitation nozzle?

13 MR. LUCHSINGER: Objection as to
14 form, foundation. This is a fact witness not
15 an expert witness providing opinions.

16 THE WITNESS: Yeah. I can't comment
17 on what that is. I don't have firsthand
18 experience with that.

19 BY MR. LEACH:

20 Q. Well, I don't know if that's necessarily
21 true, because you were at the 2012
22 North American Manure Expo, and it said that
23 this Pumpeller Hybrid Lagoon Pump was demoed at
24 that show in which you were at and demoed a
25 competing product, correct?

1 MR. LUCHSINGER: Objection to the
2 form.

3 THE WITNESS: I can't specifically
4 recall this product running. I was near my
5 product, and I was focused on demoing my
6 product. I wasn't focused on what else was
7 going on. I can't actually recall that being
8 there or not. I don't know what to -- I don't
9 know what else to tell you.

10 BY MR. LEACH:

11 Q. Okay. But looking at the ad there in
12 Exhibit 1082, Jamesway on the last page there,
13 if you look at that and compare it to Nuhn's
14 Header Series Lagoon Pump, would you agree with
15 me that they both have a, on the far left end,
16 a pump housing with a propeller or impeller
17 within, right? Would you agree with that?

18 MR. LUCHSINGER: Objection as to
19 form and foundation.

20 THE WITNESS: I don't agree with
21 that. I'm seeing what to me resembles a
22 propeller, like, what we build and market as a
23 propeller. I'm not -- I'm not with Jamesway.
24 I don't have firsthand experience with this
25 product.

1 BY MR. LEACH:

2 Q. Okay. I understand that this is a
3 hybrid lagoon pump that uses what they called a
4 pumpeller. But in terms of comparing the
5 product that's shown at the bottom of that ad
6 in Exhibit 1082 and Nuhn's Header Series Lagoon
7 Pump, would you agree with me that they both
8 have a pump housing and either an impeller or
9 pumpeller in them?

10 MR. LUCHSINGER: Objection as to
11 form, foundation, asked and answered.

12 THE WITNESS: Yeah, I'm not -- I
13 don't have knowledge about Jamesway's pumpeller
14 system. I don't know what else to tell you,
15 Tom.

16 BY MR. LEACH:

17 Q. Okay. Looking at this product, do you
18 agree with me that compared to yours they both
19 have wheels for backing it down into a lagoon?

20 MR. LUCHSINGER: Objection as to
21 form.

22 THE WITNESS: I see something that
23 maybe reassembles wheels. I can't say for
24 certain what they are. It doesn't even look
25 like they're attached to anything. They're

1 just -- they're just like two wheels just kind
2 of floating there. I -- what I'm assuming is
3 wheels. I don't know, Tom. It's not -- I'm
4 not an expert at Jamesway Equipment. I didn't
5 make this ad. I didn't design this pump. I
6 don't know the specifics of whatever is in
7 front of me here in this ad.

8 BY MR. LEACH:

9 Q. Okay. And like the Header Series Lagoon
10 Pump, it has an agitation nozzle, correct?

11 MR. LUCHSINGER: Objection as to
12 form, foundation, asked and answered.

13 THE WITNESS: I'm just looking at a
14 static picture here. I can't comment on the
15 specifics of what is in this picture.

16 BY MR. LEACH:

17 Q. And on the right-hand side of the
18 product shown, the pumpeller product shown in
19 Exhibit 1082, it looks like it has two legs
20 that go down to stabilize it.

21 Do you see those?

22 MR. LUCHSINGER: Objection as to
23 form.

24 THE WITNESS: I don't know the
25 specifics of this -- of this product.

1 BY MR. LEACH:

2 Q. Does the Header Series Lagoon Pump that
3 Nuhn made, which is shown in Exhibit 2083 on
4 page 7, have two legs that go down to stabilize
5 the pump shown in that picture?

6 A. I think they're being -- we call them
7 heavy commercial outriggers in that ad.

8 Q. Would you agree with me that the
9 Jamesway manure pump, lagoon pump has
10 outriggers on it?

11 MR. LUCHSINGER: Objection, form,
12 foundation, asked and answered.

13 THE WITNESS: I'm telling you I
14 don't know the specifics of this Jamesway
15 pumpeller.

16 BY MR. LEACH:

17 Q. Okay.

18 A. I didn't make the ad. I'm not an
19 engineer at Jamesway. I don't know the details
20 and specifics of this product.

21 Q. And remind me again how long you've been
22 in this industry.

23 A. Full-time, what, 11 years.

24 Q. How many competitors are there to the
25 Header Series Lagoon Pump? How many

1 manufacturers of products that compete with the
2 Header Series Lagoon Pump that's shown in
3 Exhibit 2083 were there back in 2012?

4 A. Jamesway is a company from Quebec. I
5 know they try hard to get out into the rest of
6 North America. They have not had much success.
7 I do not run across Jamesway very often. What
8 I do believe is that they have a good presence
9 in the Quebec market, a market that we aren't
10 really that present in. So I don't -- I don't
11 really compete -- I don't consider Jamesway a
12 competitor to our products.

13 Q. Okay.

14 MR. LEACH: Dana, can you read back
15 my question, please?

16 (Whereupon, the court reporter read
17 back the previous question.)

18 THE WITNESS: I'm going to guess
19 four.

20 BY MR. LEACH:

21 Q. Can you name them?

22 MR. LUCHSINGER: Hold on. Do you
23 consider, like, the identity --

24 MR. LEACH: Brad -- Brad --

25 MR. LUCHSINGER: Hold on, Tom.

1 You're interrupting me.

2 Do you consider the identity of
3 competitors to your lagoon pump highly
4 confidential information?

5 THE WITNESS: No, I do not.

6 MR. LUCHSINGER: Okay. Okay.

7 THE WITNESS: I would say probably
8 the main one would be GEA. That would be the
9 main competitor, especially back in 2012, in
10 that time frame. And that would really be it.
11 Like, Jamesway, Balzer and Husky are also
12 competitors that come to mind, but they just
13 don't -- they just don't have the name or
14 market share or -- I just don't run into them
15 when we're selling. I really don't.

16 BY MR. LEACH:

17 Q. And so you said the four competitors
18 back in 2012 that you were aware of were GEA
19 Houle, Jamesway, Husky. What was the fourth
20 one?

21 A. Balzer.

22 Q. B-a-l-z-e-r?

23 A. Yep.

24 Q. And they all made products that competed
25 with Nuhn's Header Series Lagoon Pump shown on

1 page 7 of Exhibit 2083?

2 A. I'm not sure the time frame. But to my
3 knowledge, at least today they make header
4 series -- not header series, they make lagoon
5 pumps for pumping liquid manure.

6 Q. If you go to page 17 of Exhibit 1082,
7 BAZ15_0028026, there's an ad for Husky.

8 Do you see that?

9 A. I do.

10 Q. Can you tell me -- what's shown in
11 Husky's ad there, what type of products?

12 A. So I don't know the Husky line extremely
13 well, but I can read it, what it says in the
14 ad. It says, "A full line of liquid
15 manure-handling equipment available..."

16 Q. "...for your pit, lagoon..."

17 A. I can read the whole thing.

18 Q. Yep.

19 A. "...for your pit, lagoon or dragline
20 system featuring pit pumps, lagoon pumps, prop
21 agitators, tanks, vacuum tanks, truck mounts."

22 Q. And so in 2012, did Nuhn make pit pumps?

23 A. When I hear "pit pumps," I think of the
24 product that's on page 6 of my declaration,
25 like a vertical pit pump.

1 Q. Yep.

2 A. And we did.

3 Q. And would Husky's version be shown there
4 in its ad in Exhibit 1082 on page 17 on the
5 right-hand side just below the big tank? Are
6 those products that compete with Nuhn's G-Force
7 Vertical Pit Pump?

8 A. It's a very small picture to know the
9 specifics of what's being shown in that ad.

10 Q. You can blow it up a little bit if you
11 need to, sir.

12 A. It's pixilated when you do that.

13 Q. Funny, it's not on mine.

14 A. Okay. Maybe you got a better screen.

15 MR. LUCHSINGER: It is on mine.

16 BY MR. LEACH:

17 Q. Hey, Ian, can you -- I just want to see
18 how pixilated it is. Can you share your screen
19 and --

20 MR. LEACH: Brian, can you capture
21 what Mr. Nuhn is seeing?

22 THE VIDEOGRAPHER: Well, if he
23 shares his screen, let's see what I see.

24 MR. LUCHSINGER: I don't see
25 anything. Oh, there we go.

1 THE VIDEOGRAPHER: There.

2 MR. LEACH: Okay. There it is.

3 THE VIDEOGRAPHER: Can you see it,
4 Tom?

5 MR. LEACH: Yes, I can see it.

6 THE VIDEOGRAPHER: Okay. So that's
7 being videotaped.

8 MR. LEACH: Okay.

9 BY MR. LEACH:

10 Q. And so, Mr. Nuhn, this is what you're
11 seeing that you said was pixilated where you
12 couldn't tell what these products were, and it
13 seems to be zoomed in on exactly what I'm
14 talking about. There's three pumps there that
15 looks like a three-point hitch, maybe a
16 trailer-mounted. Is it your testimony that
17 you, simply looking at that, can't tell what --
18 whether those are Husky's versions of a
19 vertical pit pump?

20 A. I'm not sure how it's coming through on
21 your end, but, like, you should be able to see
22 my screen. I have a 4K screen, and it is
23 pixilated.

24 Q. It looks crystal clear to me, sir.

25 A. Okay. It's -- I'm not with Husky. I

1 don't know in great detail the specifics of
2 Husky. I'm not here to comment on my opinion
3 of something here. I can -- I don't know what
4 pumps or the construction of these pumps that
5 are in this picture.

6 Q. I'm just asking from a guy that's been
7 in the industry for over a decade, and you've
8 identified Husky as a competition. I'm just
9 asking: Are those Husky's products that
10 compete with Nuhn's vertical pit pumps?

11 A. Like, just to be clear, like, I know
12 Husky's -- Husky is very -- like a close --
13 like within an hour. But if you ask anyone in
14 the industry, they just have a small presence.
15 They just -- you know, they -- yes, they make
16 liquid manure pumps. Do I know the details of
17 what's in this picture here on the right? No,
18 I do not. They just -- you just don't run into
19 them. They have a very local customer base
20 that's, you know, kind of north of me and, you
21 know, they get around to shows, but they just
22 don't sell much. I don't think they've -- I
23 don't think they've expanded. I think, if
24 anything, they've shrunk. They just don't come
25 up.

1 Q. I don't know if that was really
2 responsive to my question. I think my question
3 was: Back in 2012, were you familiar with
4 Husky's vertical pit pumps, which are shown in
5 Exhibit 1082 on page 17 there?

6 A. I was familiar that Husky was a
7 competitor. I did not know the exact specifics
8 of the products they were selling.

9 Q. And so if I ask you: Looking at the
10 Husky advertisement there on page 17 of
11 Exhibit 1082, can you identify which of those
12 products are Husky's vertical pit pumps?

13 A. I would be -- I would be speculating. I
14 don't know the specifics of the Husky product
15 line.

16 Q. And so, sir, you can't look at this ad
17 and know based on your decades or more
18 experience in the industry what a competitor's
19 vertical pit pump is?

20 MR. LUCHSINGER: Objection as to
21 form, argumentative.

22 THE WITNESS: I do not compete with
23 Husky.

24 BY MR. LEACH:

25 Q. I didn't ask if you compete with Husky.

1 A. I'm just giving you some examples of why
2 I don't know the specifics. I have had
3 customers come into the office and say: We
4 were told -- we were looking at Husky farm
5 equipment. As soon as they found out -- this
6 is true. As soon as they found out that we bed
7 our cows with sand manure, they said: Go to
8 Nuhn. I do not consider them a competitor.
9 I've never looked too closely at their products
10 to see what they do. I think even in Husky's
11 eyes we are the market leader, so why would I
12 know the specifics of what they make?

13 Q. Okay.

14 MR. LEACH: So, Dana, can you read
15 back that answer for me, please?

16 THE COURT REPORTER: There were two
17 unintelligible words. "I'm just giving you
18 some examples of why I don't know the
19 specifics. I have had customers come into the
20 office and say: We were looking at Husky farm
21 equipment. As soon as they found out -- this
22 is true. As soon as they found out that we
23 'blank' our cows 'blank' manure, they said: Go
24 to Nuhn. I do not consider them a competitor.
25 I've never looked too closely at their products

1 to see what they do. I think even in Husky's
2 eyes we are the market leader, so why would I
3 know the specifics of what they make."

4 BY MR. LEACH:

5 Q. Ian, can you fill in the gaps for the
6 reporter while we're on it?

7 A. Sure. Yeah. Basically what it should
8 have said or what I meant to say was as soon as
9 Husky found out the farmer bed their cows --
10 like, bed, like, used sand bedding with their
11 cows, they basically -- Husky basically told
12 the customer just to go to Nuhn.

13 Q. And following up on that, is that
14 because Nuhn's G-Force Vertical Pit Pump, which
15 is shown on page 6 of Exhibit 2083, is capable
16 of pumping liquid manure that has, as we talked
17 about before, sand in it where they use sand
18 bedding -- cows that have -- that bed in sand?

19 A. I don't know the specifics of why they
20 sent them to us or the limitations of their
21 design versus ours. But I do know that as soon
22 as they find that out, they send them to us,
23 and they have on more than one occasion.

24 Q. And I guess I'm asking you: Did they
25 send them to you because they know that Nuhn's

1 G-Force Vertical Pit Pump can pump liquid
2 manure that has cows that bed in sand and that
3 has sand in the liquid manure?

4 MR. LUCHSINGER: Objection as to
5 form and foundation.

6 THE WITNESS: I don't know the
7 specifics of the conversation between the
8 customer and Husky. I just know that they'd
9 send them our way. I don't know why.

10 BY MR. LEACH:

11 Q. Does -- Nuhn's G-Force Vertical Pit
12 Pump, is it capable of pumping liquid manure
13 that comes from cows that are bed in sand?

14 A. You asked me earlier a similar question.
15 I said our header series liquid manure pumps
16 are capable of pumping a sand-laden liquid
17 manure slurry.

18 Q. Okay.

19 MR. LEACH: And then real quick,
20 Brad, can you share your screen so I can see
21 what you're seeing with respect to the Husky
22 ad?

23 MR. LUCHSINGER: Sure.

24 MR. LEACH: I just want to see how
25 pixilated it is.

1 MR. LUCHSINGER: There you go.

2 MR. LEACH: Yeah. Can you -- zoom
3 out a little bit, Brad, if you would, please,
4 so I can see the full --

5 MR. LUCHSINGER: Well, obviously if
6 I zoom out, then it's less pixilated, but then
7 you can't get the details. So --

8 MR. LEACH: Well, I just want to see
9 what you're seeing.

10 MR. LUCHSINGER: Do you see the
11 pixilation?

12 MR. LEACH: Sure.

13 MR. LUCHSINGER: Okay.

14 MR. LEACH: Thank you. Can you zoom
15 out to the -- nope. Can you please -- please
16 share your screen.

17 MR. LUCHSINGER: Well, you asked me
18 to share my screen to show the pixilation and I
19 just --

20 MR. LEACH: And you're zoomed in
21 quite a bit. I would like to see it with all
22 three pumps showing, please.

23 MR. LUCHSINGER: Why don't we go off
24 the record.

25 MR. LEACH: No. I want this on the

1 record.

2 MR. LUCHSINGER: I shared my screen,
3 Tom. I don't think I even had to do that. I
4 showed you the pixilation that I was looking
5 at. I'm not the witness here.

6 MR. LEACH: I understand that, Brad.

7 MR. LUCHSINGER: It's not --

8 MR. LEACH: This happened in
9 Prairie's deposition too. He couldn't see
10 things. But I want to see what people are
11 seeing now. So --

12 MR. LUCHSINGER: I just showed you.

13 MR. LEACH: Yeah. I'd like to see
14 it zoomed out to show all three of those pumps.

15 MR. LUCHSINGER: I'm not the
16 witness. I don't have to share my screen with
17 you. I did it --

18 MR. LEACH: I'm asking you to do it,
19 Brad.

20 MR. LUCHSINGER: I did it out of
21 good faith. I already did it, Tom. I think we
22 should go off the record if you want to make
23 this --

24 MR. LEACH: I don't want to go off
25 the record. And I want the record to reflect

1 I've asked Mr. Luchsinger to show what me his
2 screen is seeing with it zoomed in to just the
3 three pumps that we're talking about so we
4 could see the level of pixilation.

5 MR. LUCHSINGER: Okay. And so to
6 make sure the record's clear, I voluntarily
7 shared my screen to show the pixilation that I
8 was looking at, and I was looking at the same
9 pump that Mr. Nuhn was looking at when he
10 shared his screen, so I think I've been, you
11 know, more than accommodating.

12 MR. LEACH: And I disagree with
13 that. I think you were showing -- you zoomed
14 in to one part versus all three.

15 MR. LUCHSINGER: I didn't ask your
16 opinion. I was trying to factually state on
17 the record what happened.

18 MR. LEACH: And so for the record,
19 you're unwilling to show your screen with those
20 three pumps [unintelligible]?

21 MR. LUCHSINGER: I just shared -- I
22 don't know what's not clear about this. I
23 showed it on the record.

24 MR. LEACH: No, you didn't. You're
25 not showing what I asked you to show. You

1 showed zoomed in --

2 MR. LUCHSINGER: What are you
3 asking --

4 MR. LEACH: -- really close to one
5 pump. I want you to show what it looks like on
6 your screen with the three pumps, the three pit
7 pumps, zoomed into those three, not just one
8 really close.

9 MR. LUCHSINGER: But the one that I
10 was looking -- when Ian said he couldn't see
11 with clarity the specifics of a particular
12 pump, he zoomed in on the one in the center of
13 the three that are shown, right?

14 MR. LEACH: How do you know that?

15 MR. LUCHSINGER: I confirmed -- I
16 confirmed that it was also pixilated on my
17 screen. I shared that image with you out of
18 good faith, not that I even had to.

19 MR. LEACH: Okay. Well, I'm asking
20 you to share --

21 MR. LUCHSINGER: Move on. Move on.

22 MR. LEACH: -- zoom in to the three
23 pumps, and my understanding is you're not
24 willing to do that.

25 MR. LUCHSINGER: All right. Well, I

1 don't think there's a question pending, so
2 let's just take a break right now.

3 MR. LEACH: I'm not willing to take
4 a break.

5 THE WITNESS: I wouldn't mind using
6 a bathroom break.

7 MR. LUCHSINGER: Hold on a second.
8 So let me get this clear. So I'm asking for a
9 break --

10 MR. LEACH: Oh, you can take a
11 break.

12 MR. LUCHSINGER: There's no
13 question --

14 MR. LEACH: I just want to make sure
15 you don't want to go off the record.

16 MR. LUCHSINGER: There's no question
17 pending, and you're saying that we can't take a
18 break?

19 MR. LEACH: We can take a break.
20 But I just want to make clear that this is just
21 a break. Fine. Got no problem with that. I
22 just wanted to make sure you didn't want to go
23 off the record and then share your screen.
24 That's --

25 MR. LUCHSINGER: No.

1 MR. LEACH: Okay.

2 MR. LUCHSINGER: That's not what I
3 plan on doing.

4 MR. LEACH: All right. We'll take a
5 break.

6 THE WITNESS: Do you want to do
7 lunch now or -- it's 12:40 here.

8 MR. LEACH: Sure. I can do lunch.

9 MR. LUCHSINGER: Let's go off the
10 record.

11 THE VIDEOGRAPHER: Why don't we go
12 off the record.

13 MR. LUCHSINGER: Yeah.

14 THE VIDEOGRAPHER: The time is
15 approximately 11:41 a.m. We are going off the
16 video record.

17 (Off the record 11:41 to 12:17.)

18 THE VIDEOGRAPHER: The time is
19 approximately 12:17 p.m. We are back on the
20 video record.

21 Go ahead.

22 MR. LEACH: Thank you.

23 BY MR. LEACH:

24 Q. We just got back from our bunch break.
25 I wanted to follow up on a few things.

1 Mr. Nuhn, if you could turn to Exhibit 1082 at
2 page 16. And this is the North American Manure
3 Expo show guide or brochure.

4 A. See, it's like -- it's words like this
5 that make me wonder if this was published in
6 advance because it's almost like an ad, you
7 know, "See our pump in action at the
8 North American Manure Expo." Like, I
9 vaguely -- in other manure expo events, like,
10 it's almost something that they send out like a
11 month or two in advance --

12 Q. Okay.

13 A. -- from my recollection.

14 Q. Okay. Do you remember receiving it,
15 something in advance for the show you were
16 going to?

17 A. Not -- like, I'm not saying specifically
18 for this one. But, like, I vaguely remember, I
19 don't know if it was '15, '16, '17,
20 something -- I just -- I recall they would,
21 like, just mail out, you know, like, this is
22 the Manure Expo guide or something.

23 Q. Okay. Anyways, looking at page 16,
24 which is -- of Exhibit 1082, which is
25 BAZ15_0028025, which is the Bates number in the

1 lower right corner, is this the pump -- the
2 Header Series Lagoon Pump that you demonstrated
3 at the 2012 Manure Expo?

4 A. I don't know if that's the exact pump,
5 but it would be very similar. And that's what
6 I was thinking of. We did a change to our
7 cannon design. And I'm pretty sure it's more
8 of the one that's in the top of this picture
9 rather than the one that's actually in the
10 bottom picture there.

11 Q. When you say "cannon design," you mean
12 the agitation nozzle?

13 A. I realize that, you know, nozzle's a
14 term at issue here in the case. You know, in
15 my day-to-day work, you know, I'll call that
16 a -- that assembly an agitator gun, cannon
17 nozzle. I use the terms interchangeably.

18 Q. Okay. So do you know one way or the
19 other whether this is the product shown on
20 page 16 of Exhibit 1082 that you demonstrated
21 at the North American Manure Expo in 2012?

22 MR. LUCHSINGER: Objection as to
23 form, asked and answered.

24 THE WITNESS: It would be, I would
25 imagine, very similar to what's in this

1 picture. Again, I don't know if it's the exact
2 one, but I can say it was probably very similar
3 to this one.

4 BY MR. LEACH:

5 Q. Okay. Let me look here for a second.
6 So I want to talk a little bit about the
7 G-Force Vertical Pit Pump and the Header Series
8 Lagoon Pump. Do you know the limit for the
9 total solid content that those two pumps can
10 pump in terms of solid content of the liquid
11 manure?

12 MR. LUCHSINGER: Objection as to
13 form, vague.

14 THE WITNESS: I do not. When we are
15 advertising or talking with our customers,
16 we -- it's not like a fact that we spell out or
17 advertise or anything.

18 BY MR. LEACH:

19 Q. So in some publications they talk about
20 liquid manure, slurry, semisolid and solid. On
21 that range of scale of liquid manure, would
22 your pump design shown in Exhibit 2083 -- the
23 G-Force Vertical Pit Pump on page 6, and then
24 the Header Series Lagoon Pump on page 7, would
25 that design, the multi-outlet pump, be able to

1 pump liquid manure?

2 MR. LUCHSINGER: Objection as to
3 form and foundation.

4 THE WITNESS: I think I know the one
5 really obscure article that you're referring
6 to. No one that I talk to, you know, breaks it
7 down in such a way. Quite honestly, when a
8 customer calls and is impressed by what's going
9 on, you know, he just calls it really thick
10 liquid manure. And you -- sometimes even says
11 a swear word, which I don't want Dana to have
12 to write down. But we don't break it down the
13 way that you're breaking it down. We call it
14 thick liquid manure.

15 BY MR. LEACH:

16 Q. Okay. Would -- thick liquid manure,
17 would you say that that would be like a slurry?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I just call it liquid
21 manure. I don't --

22 BY MR. LEACH:

23 Q. Not just liquid manure, you're talking
24 about really thick liquid manure?

25 A. I call it really thick liquid --

1 MR. LUCHSINGER: Objection to form.

2 THE WITNESS: Then I call it really
3 thick liquid manure. I don't -- I don't use
4 the terms that you kind of try to categorize
5 thicknesses of manure into. I call it two
6 things, either solid manure or liquid manure.
7 And if we -- you know, it's -- in the industry
8 that's, I think, the dividing line of manure.

9 BY MR. LEACH:

10 Q. Okay. But within liquid manure then you
11 say it can be really watery liquid manure and
12 really thick liquid manure, is that -- I mean,
13 you obviously have some different degrees of
14 the thickness of the liquid manure?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: There are different
18 thicknesses of liquid manure that I bring it
19 into.

20 BY MR. LEACH:

21 Q. Okay. And can you give me an example
22 of -- when you talk about really thick liquid
23 manure, is that something I can scoop up with
24 my hand and hold it and it'll kind of slowly
25 run out or --

1 A. I would love to see that.

2 Q. A shovel? I'm just trying to understand
3 the consistency.

4 MR. LUCHSINGER: Objection to form.

5 THE WITNESS: In my experience,
6 if -- you know, if it flows, you can pump it.

7 BY MR. LEACH:

8 Q. Okay. Using one of -- the G-Force
9 Vertical Pit Pump or Nuhn's Header Series
10 Lagoon Pump design, right?

11 A. The only experience I have of pumping
12 liquid manure is with my own pumps, and they
13 can pump liquid manure.

14 Q. So all forms of liquid manure that flow
15 is what you're saying?

16 A. I don't know how to, you know, verbally
17 describe it.

18 Q. Well, you said they can pump liquid
19 manure if it can flow. And I guess I'm just --
20 want to clarify that these pumps can pump all
21 forms of liquid manure that can flow, is that
22 accurate?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: I think just to

1 visually describe it, if you had a pile of
2 solid manure and it retains its shape, that
3 might be a good way to call it solid. And if
4 you had a pile of very thick liquid manure and
5 over time it changed shape and had a flow, I
6 don't know if you want to call it ooze or
7 something, that would be the -- a way to
8 describe somewhat of a difference. And, again,
9 I'm not a patent attorney. I'm not trying to
10 define liquid manure here. I'm just saying
11 from my experience, you know, what our pumps
12 can pump.

13 BY MR. LEACH:

14 Q. And so to finish your thought, are you
15 saying you got solid manure that retains its
16 shape, and then everything else that flows or
17 oozes or that doesn't retain its shape, the
18 Nuhn G-Force Vertical Pit Pump can pump, fair?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: Again, I'm not
22 defining any terms. I'm just trying to -- you
23 know, sitting here right now, try to most
24 accurately describe, you know, what this thick
25 liquid manure would consist of or look like.

1 And so the best that I can describe it is, you
2 know, even if it takes, you know, a long time
3 to change its shape, I still -- I've seen --
4 I've seen it where we can, you know, pump that.

5 BY MR. LEACH:

6 Q. Okay. And when you say "pump that," you
7 mean with your G-Force Vertical Pit Pump or
8 your Header Series Lagoon Pump?

9 A. The only pumps that I have experience
10 with for pumping liquid manure.

11 Q. Are those two pumps?

12 A. The Header Series Lagoon Pump and the
13 G-Force Series Vertical Pit Pump.

14 Q. Okay. Does -- the G-Force Vertical Pit
15 Pump does that clog, get plugged?

16 A. I'm sure there can be instances that it
17 can.

18 Q. Would you say that it performs better in
19 terms of clogging than some of the competition
20 back in 2012?

21 A. No, I don't think -- like, that's not a
22 selling feature that we would have come out and
23 said. If anything, people looked at our design
24 and maybe indicated that they thought it would
25 clog more than a -- you know, all the pumps

1 that we talked about were single-outlet pumps.
2 I'm not saying if that's true or not. I'm just
3 saying at the time, if anything, people were
4 probably more concerned with clogging just by
5 looking at the design.

6 Q. Why do you say that?

7 A. Some people looked at the multi-outlets
8 that we did and immediately felt like they
9 would -- they would clog. I'm not saying that
10 that was the case or not, but that was -- it's
11 certainly comments that people made at these
12 shows.

13 Q. Can you name someone that made those
14 comments?

15 A. I actually can. There was a customer
16 that I knew, John Staple from Michigan. He
17 was, I believe, at the 2012 Manure Expo as
18 well. He even tried -- he even got in the
19 tractor and he tried putting the pump into the
20 crust to see if it would clog because he was
21 sure it would clog. I'm very confident that it
22 was him that was doing that or I'm pretty sure
23 it was him.

24 Q. And did it clog?

25 A. Not during the demo, no. No.

1 Q. Okay. And so, I guess, would you say
2 that the G-Force Vertical Pit Pump is able to
3 pump liquid manure with the crust on top and
4 suck that in and pump it without clogging?

5 A. There's instances that it can. You
6 know, it's kind of a case-by-case scenario.

7 Q. What about the flow rates through the
8 G-Force Vertical Pit Pump compared to your
9 competition, did it have better flow rates?

10 A. It had better flow rates with the same
11 or less horsepower is a fair statement to say.

12 Q. And so would it be more fuel efficient
13 then in your view?

14 A. Yeah, pumping more with less horsepower
15 would be less fuel.

16 Q. And did you advertise the flow rates
17 back in 2012 and prior against the competition?

18 A. I don't know if we went out and said
19 what the competition did, but I believe there's
20 probably ads where we said what we would do and
21 how we would perform.

22 Q. Okay.

23 A. Usually we try not to mention
24 competitors' products or alone even in ads.

25 Q. What about fuel efficiency, did you tout

1 the fuel efficiency of your pumps?

2 A. I believe there's -- I believe there's
3 an ad that talks about fuel efficiency, if I
4 remember correctly, from that time period,
5 something along the lines of saves fuel or
6 something like that.

7 Q. I'm gonna mark another exhibit.
8 Although I accidentally marked it without
9 putting a stamp on. And it's got the wrong
10 exhibit on it. It's from a different document.
11 Let me mark another one. We'll just scratch
12 that exhibit for now. Try it this way.

13 (Exhibit Number 1083 marked for
14 identification.)

15 BY MR. LEACH:

16 Q. So, Mr. Nuhn, I've marked Exhibit 1083,
17 and it's an affidavit from Internet Archive
18 about a date stamp for one of Nuhn's products.
19 And if you could go down to page 6 of 12 on
20 there and just confirm that this is a message
21 from a web page about a Nuhn product?

22 A. (Views document.) This was originally
23 made in a Microsoft Word file, I believe, and
24 then screenshotted and then put on the -- our
25 web page.

1 Q. Okay. And is this in Exhibit 1083
2 basically the G-Force Vertical Pit Pump?

3 A. The picture in the center is basically
4 the same picture that's on -- in the ad that's
5 on page 6 of my Exhibit 2083, my declaration.
6 I think that's the same picture.

7 Q. If you look at the bottom left-hand
8 corner of Exhibit 1083 on page -- and sorry, it
9 does have the wrong exhibit number up on the
10 upper left-hand of the document because it was
11 marked as a different exhibit. But if you go
12 down to page -- I guess that would be 5 of 11
13 where it shows the picture of the pump. In the
14 lower left-hand side it says, on page 5 of
15 11 --

16 A. Oh, 5 of 11. Okay.

17 Q. Yeah. "Dual Ported, Lofted Housing,
18 Having the liquid leave the housing in two
19 spots allows for a narrow, large diameter fan
20 that increases the velocity of the liquid and
21 reduces the amount of input power."

22 Do you see that?

23 A. I see where it says that.

24 Q. What are you trying to tell the public
25 with that statement?

1 A. Basically, I'm just describing a detail
2 in, you know, saying why that decreases the
3 input power.

4 Q. And so is this basically touting the
5 efficiency of the pump?

6 A. I think we're talking about a feature of
7 the dual outlet.

8 Q. Okay. But specifically are you talking
9 about the efficiency of the dual outlet?

10 A. I think I'm talking more about the
11 narrow large diameter fan that's reducing the
12 amount of input power.

13 Q. So would you agree with me if you have
14 less input power required to move the liquid,
15 that that's a more efficient design?

16 A. Not necessarily. Like, in the pump
17 world a lot of people talk about pump
18 efficiency. And just because you have a
19 high-efficiency number doesn't really relate
20 to, you know, your effective run time. You
21 know, the more -- sometimes the more efficient
22 a pump, kind of the more prone to clogging it
23 can be. I think that's a valid statement. So
24 in that sense sometimes it's not a selling
25 feature.

1 Q. Okay. In this advertisement is Nuhn
2 trying to tout the efficiency of the pump, or
3 is it talking about clogging?

4 MR. LUCHSINGER: Objection as to
5 form.

6 THE WITNESS: I think we're talking
7 about the narrow, large diameter fan reducing
8 the amount of input power that the pump
9 requires.

10 BY MR. LEACH:

11 Q. Okay. In the next bullet it says, "The
12 dual exit points also reduce side thrust on the
13 bottom bearings, increasing seal and bearing
14 lives." Are you touting the longevity of this
15 pump and the increased seal and bearing life
16 due to the design?

17 A. I think we're talking about it. I think
18 there's other features that go into that as
19 well, even just the bearing construction, the
20 bearing choice, seal choice. You know, there's
21 many factors that go into that.

22 Q. Sure. But one of the factors is the
23 dual outlet increases the seal and bearing
24 life, right, you're touting that in this
25 advertisement?

1 A. It says, "The dual exit points also
2 reduce side thrust on the bottom bearings,
3 increasing seal and bearing life." Not really
4 sure what else to comment there.

5 MR. LEACH: Dana, could you read my
6 question back, please?

7 (Whereupon, the court reporter read
8 back the previous question.)

9 THE WITNESS: I guess I'm not really
10 understanding what else I need to say about
11 this for you, Tom.

12 BY MR. LEACH:

13 Q. Well, Mr. Nuhn, I'm asking if in this
14 advertisement you're touting the benefits of
15 the dual exit points increasing the seal and
16 bearing life of the product, is that true?

17 MR. LUCHSINGER: Objection to form,
18 asked and answered.

19 THE WITNESS: The ad says, "The dual
20 exit points also reduce side thrust on the
21 bottom bearings, increasing seal and bearing
22 life." I'm not really sure what else to add.

23 BY MR. LEACH:

24 Q. In the far right-hand side it says,
25 "6,000 U.S. gallons per minute." Is this an

1 example where Nuhn is touting the amount of
2 fluid this pump can pump per minute?

3 A. I think it's pretty clear what it's
4 doing. It's showing the -- basically the
5 throughput that this pump is doing. I don't
6 really know how to say it any other way. It
7 says it does 6,000 U.S. gallons per minute.

8 Q. Okay. If you go down to page 7 of 11 in
9 Exhibit 1083, can you tell me what is shown
10 here in terms of the web page?

11 A. It appears to be the Nuhn Header Series
12 Vertical Pit Pump. I'd have to check the -- I
13 know you have an affidavit from the Wayback
14 Machine. But before I comment too much about
15 the timing of it, I have ran into where it is
16 wrong. And I think we've got pretty good facts
17 to prove that it's been wrong. Before I
18 comment too much of if this is actually from
19 June 5th, 2011, you know, I don't want to -- I
20 don't want to comment to say that that's true,
21 because I'd like to look at that a little
22 closer.

23 Q. Well, let's just go down to housing. It
24 says, "Having the liquid leave the housing in
25 three locations allows for the liquid to get in

1 and out of the housing at a high rate."

2 Do you see that?

3 A. Yeah, I see where it says, "Triple port
4 design. Having the liquid leave the housing in
5 three locations allows for the liquid to get in
6 and out of the housing at a high rate."

7 Q. Below that it says, "This also uses the
8 input power very efficiently, as it is not
9 wasted by moving liquid around in the housing."

10 Do you see that?

11 A. "This also uses the input power very
12 efficiently, as it is not wasted by moving
13 liquid around in the housing." I'll zoom in a
14 bit on it. Hey, I don't want to say if it's
15 blurry or not, but it's a little small.

16 Q. You can blow it up a little bit if you
17 hit --

18 A. Yep. I have it.

19 Q. Okay. And so in this web page Nuhn is
20 touting the efficiency of this dual outlet
21 design, correct?

22 MR. LUCHSINGER: Objection as to
23 form.

24 THE WITNESS: I believe this one's
25 talking about the triple port design

1 specifically.

2 BY MR. LEACH:

3 Q. Sure. Okay. I'm sorry. It's talking
4 about the efficiency of the triple port design?

5 MR. LUCHSINGER: Objection as to
6 form.

7 THE WITNESS: Yeah. Basically it
8 says, "Triple port design. Having a liquid
9 leave the housing in three locations allows for
10 the liquid to get in and out of the housing at
11 a high rate. This also uses the input power
12 very efficiently, as it is not wasted by moving
13 liquid around in the housing."

14 BY MR. LEACH:

15 Q. The next bullet point, it says, "Lofted
16 housing with tapered fan." And then a bullet,
17 "The housing backplate is formed to allow the
18 liquid to be directed upwards with the tapered
19 fan, rather than just outward like traditional
20 manure pumps."

21 Do you see that, Mr. Nuhn?

22 A. I see where it says that.

23 Q. What are you telling the public there in
24 this advertisement?

25 A. See, I -- we never made that for very

1 long. And I don't even know if we made it on
2 the triple outlet pumps. That's why I'm a
3 little confused. It's like there's just
4 something about this text, like the spacing
5 between text seems weird. You know, there's a
6 YouTube link to some Panda site that has
7 1.1,000 [sic] subscribers. Like it's just
8 very -- it seems very cut and paste. I don't
9 recall making any triple port with that
10 feature.

11 Q. So are you suggesting that this is not a
12 version of Nuhn's website?

13 A. I've never seen a YouTube link to Panda
14 before. I don't even know what that is.

15 Q. Well, that may be an ad that is laced in
16 with different websites.

17 A. I really don't like the Wayback. Like,
18 it -- for whatever reason, it really chops and
19 cuts back like -- I think on like a G-force
20 lagoon pump that uses evidence, like, almost
21 two years ago, and it was, like, just totally
22 cut and paste. And just looking at this here,
23 like, I -- I can share my screen. But even
24 like the text, it looks -- no matter how I zoom
25 in on it, like, the text is, like, squished.

1 It doesn't even look like it's -- I'll share it
2 just if we're -- it seemed to be a big deal
3 before. Like, the text looks like it's, like,
4 cut and paste in. And the tapered fan was not
5 a feature of the triple port. We didn't do it
6 other than the dual port. You can kind of see
7 what I mean. Doesn't this text look distorted?
8 Like, this isn't normal web text. I can zoom
9 in and out. Like, it doesn't change. And then
10 this Panda, like, I don't know what the heck
11 that is. Like, this -- I don't feel
12 comfortable commenting on this. Like, I don't
13 think that this is an accurate representation
14 of what our website looked like in June 5th,
15 2011.

16 Q. Well, this is part of a declaration from
17 the Wayback Machine. And this is what was
18 captured from --

19 A. This -- okay.

20 Q. -- www.nuhn.ca. Is that your website?
21 Was that your web address back in 2011?

22 A. We've had Nuhn.ca back from 2011. But
23 what I'm saying is I don't think this is an
24 accurate representation. This Panda link here
25 is, like, totally false. And then the way that

1 this text is here, it doesn't -- it's all
2 distorted. I'm saying that it looks odd,
3 especially when you consider that that's not a
4 feature of the triple port pumps that we made.
5 So I'm just saying that it -- this seems very
6 cut and paste. I think I'm allowed to have
7 concerns.

8 Q. Sure. I mean, I understand that maybe
9 the Wayback Machine wasn't able to capture the
10 YouTube video link that you had on your page at
11 the time and there was something else, some
12 sort of ad that was -- that YouTube put in its
13 place, but --

14 A. That doesn't look like an ad to me.
15 That looks like a -- it's done mismatched link.
16 I've seen it done mismatched pictures. Like, I
17 don't feel comfortable commenting on what
18 Nuhn.ca looked like in the past based on what
19 the Wayback Machine says it is.

20 Q. That's all right.

21 A. I've solid facts to prove that it's been
22 wrong in the past, so why would I talk about it
23 now without investigating it further,
24 especially when I see such blatant things that
25 I can clearly see -- surely you see this text

1 and can see that that looks -- it looks even,
2 like, crooked compared to everything else. If
3 you look at the lines of the text for below
4 driveline agitator, you name it, like, the text
5 is different and crooked for that section. It
6 looks like it's been cut and paste in. I'm not
7 commenting on it. I can share again so people
8 can see if that's a thing. I'm sorry. I feel
9 pretty strongly that --

10 Q. Can we just strike all that as
11 nonresponsive? I'd like to just get to my
12 questions and have you answer my questions
13 because I only have so much time here. So when
14 you go off on these tangents, that doesn't
15 really help us be efficient here. So I want to
16 go down to --

17 MR. LUCHSINGER: Tom, you asked a
18 question. The witness was trying to answer and
19 you interrupted him again, which, you know,
20 lacks courtesy.

21 MR. LEACH: Yeah. Brad, I'm trying
22 to be efficient because I know you're going to
23 cut this depo off right at seven hours. And so
24 I think I have the right to interrupt the
25 witness when he's not being responsive to my

1 questions and just kind of going off on a
2 narrative. All right?

3 MR. LUCHSINGER: The question asked
4 for --

5 MR. LEACH: I'd like to get to my
6 questions, guys. All right? Okay?

7 MR. LUCHSINGER: Yeah. And I also
8 want to point out right here too with that
9 comment that there's three different IPRs as
10 well as the underlying district court
11 litigation. So it's not like you just get
12 seven hours with this witness. It will be
13 21 hours by the end of today. And then I
14 presume you're going to take his deposition at
15 least once in the district court litigation.
16 So, you know, we think that making him
17 available for that length of time, over
18 20 hours, is more than enough.

19 MR. LEACH: Well, we wouldn't have
20 to spend as much time as we do if I could get
21 answers to my questions instead of just these
22 narratives that go off on tangents.

23 BY MR. LEACH:

24 Q. So with that, I'm going to go down. It
25 says -- if you look at the -- down a little

1 bit, it says -- the agitator, it says, "4-inch
2 nozzle to create 45psi of pressure with 4000GPM
3 volume."

4 Do you see that, sir?

5 A. I do. But my -- the same reservations I
6 have from before apply here to this -- I guess
7 even a -- we would never put something out that
8 is so -- like it says, and nozzle [sic]. Like,
9 we would spell check or something before
10 putting it out. I'm just saying my
11 reservations of the -- I don't know how much I
12 trust this document, and I feel uncomfortable
13 answering questions on it then.

14 Q. Well, you can express your
15 uncomfortableness with answering questions on
16 this. But this is a document that was pulled
17 from your website and archived, and so I want
18 to go through it. So I guess one of the points
19 I want to make here is: When you're talking
20 about a four-inch nozzle to create 45 psi of
21 pressure with 4,000 GPM volume, can you tell me
22 what that means?

23 A. I'm not going to speak to this web file,
24 but I'll speak to it in terms where I've talked
25 about this before in other applications. The

1 diameter of the fluid outlet is four-inch. It
2 doesn't necessarily have to be reduced. It
3 can -- I'm just saying the outlet diameter is
4 four-inch. If you were to measure --

5 Q. In this document -- in this document,
6 the four-inch nozzle, it's a tapered nozzle,
7 correct, or it's a -- the nozzle is a tapered
8 tube, correct?

9 A. I wouldn't say that. For about four --
10 even on this pump here for about four inches,
11 five inches of length, the nozzle is a constant
12 four-inch diameter. It's coming from an
13 eight-inch diameter pipe. So yes, at some
14 point we have to lose diameter, but it is
15 four-inch for about four inches, five inches,
16 something like that, a constant diameter. And
17 if you were to measure the pressure on the
18 pipe, it would be 45 psi. And if you were to
19 put a flowmeter in line there, which is how we
20 did a lot of this, you would see 4,000 gallon a
21 minute moving through this outlet.

22 Q. If you go up to page 5 of 11, the
23 brochure for the dual outlet pit pump, where it
24 says Radio Control, can you tell me -- in this
25 product it says, "Switch from 'agitate' to

1 'fill' without leaving the cab of the tractor."
2 Where is the valve on this product --

3 MR. LUCHSINGER: Objection as to
4 form, foundation.

5 BY MR. LEACH:

6 Q. -- that switches from agitate to fill?

7 MR. LUCHSINGER: Same objection.

8 THE WITNESS: We had it in numerous
9 spots, the valve that switches.

10 BY MR. LEACH:

11 Q. I'm asking on this product, not on -- on
12 the product we're looking at here in
13 Exhibit 1083, again, sir, this is a pump you
14 designed, right?

15 A. Yeah. I've said that we've had it in
16 many different locations.

17 Q. Okay. So I'm asking about this design.
18 Where is the valve that switches from agitate
19 to fill?

20 A. It's where the red line is pointing to.

21 Q. Is it that box that's above the gear?

22 A. It's like a circle with a flat spot to
23 the right of the gear.

24 Q. Okay. And does that box rotate along
25 with the agitation nozzle?

1 A. In this construction, that box rotates
2 with the agitation nozzle.

3 Q. Is -- that box, the radio control circle
4 and then line it's pointing to, does that
5 rotate independent of the pipe above it?

6 A. Not necessarily. Like, in this
7 particular configuration, like, I think there's
8 a pivot up by the gearbox there too.

9 Q. Okay. But I guess what I'm asking is:
10 Is -- that gearbox or the valve box, does
11 that -- is it sandwiched between two slip
12 joints such that it can rotate independent of
13 the pipe above it and the pump below it?

14 A. I can't remember. Around that time --
15 this is, like, a very early CAD file. There
16 was many different configurations. We did some
17 where it was just that that pivoted. We also
18 did some where the whole pipe pivoted. We had
19 complaints about not being able to see, you
20 know, when the cannon assembly is below the
21 liquid level. Like, basically, it was very
22 hard to see where that was pointed. So we had
23 the whole return pipe also pivot with a -- like
24 a linkage so that you could see where it was
25 pointed and if it was pointed up and down. So

1 in order to do that, we had the whole pipe
2 rotate. So I can't -- I can see that this has
3 the pivot kind of up by where the gearbox is.
4 You can see where it says oversized gearbox
5 with oil cooler. That there is a -- is
6 basically like a pivot pushing. So I -- some
7 early ones we didn't have where it pivoted and
8 some we did, so I can't say specifically which
9 one this was.

10 Q. Okay. In terms of your competitors like
11 Husky, do you know how they moved the agitation
12 nozzle with respect to the valve?

13 MR. LUCHSINGER: Objection as to
14 form.

15 THE WITNESS: I do not.

16 BY MR. LEACH:

17 Q. Okay. So going back just to your
18 declaration, the two pumps shown on page 6 and
19 7 of Exhibit 2083, what are some of the
20 benefits of the dual and triple outlet design
21 of that pump?

22 A. Well, I think we've kind of gone over
23 it. It -- we seem to be able to pump more with
24 the same or less horsepower. We -- that was --
25 probably our biggest selling factor was pump

1 performance.

2 Q. What about in terms of its ability to
3 handle the crust or solids in the pump without
4 plugging, was that a benefit of this pump?

5 A. I don't know if we ever specifically
6 went out and said that.

7 Q. I didn't ask if you said it. I asked if
8 it was a benefit of the pump.

9 A. I don't think so. I think -- I think a
10 lot of people were concerned about us -- you
11 know, we talked about a narrow, large diameter
12 fan. I think as soon as people hear that, you
13 know, maybe they start worrying about clogging.

14 Q. Did it clog?

15 A. I think there's probably scenarios that
16 it did.

17 Q. Did the pump have a problem with
18 clogging?

19 A. I don't think it had a problem with
20 clogging, but I can say that it -- you know,
21 depending on the lagoon, they have the
22 potential to clog. It's a very nasty
23 environment.

24 Q. Would that be true of most vertical pit
25 pumps or lagoon pumps, depending on the lagoon,

1 they can clog?

2 A. I can't really speak for others, but I
3 just -- I know what -- kind of know what our
4 pump can handle and what it can't.

5 Q. If you go back to Exhibit 1082, the
6 cover of the North American Manure Expo show
7 brochure, to the left of the cow on the front
8 page it says USDA Dairy Forage Research Center,
9 Prairie du Sac, Wisconsin.

10 Do you see that?

11 A. Yeah, I see where it says USDA Dairy
12 Forage Research Center, Prairie du Sac,
13 Wisconsin.

14 Q. Do you know -- is that where the
15 North American Manure Expo was held?

16 A. I don't know where it was. I know -- is
17 that where the UW-Extension is? Like, I know
18 that they're kind of the main people that run
19 the show. No matter where it is, they seem to
20 be the main coordinators of it. Like, I
21 believe there's a bunch of -- I don't know the
22 specifics of it, but it's always these kind of
23 ag-related schools that have some sort of --
24 like, Extension it's called, and it's some sort
25 of agricultural focus.

1 Q. Okay. I'm going to introduce another
2 exhibit.

3 (Exhibit Number 1084 marked for
4 identification.)

5 BY MR. LEACH:

6 Q. And this is a Google Map of the Dairy
7 Forage Research Center, satellite view of it.
8 And I'm just wondering if you can confirm that
9 the lagoon there in the kind of right, upper
10 right of the facility, that triangular shape,
11 was that the -- does that -- was that the
12 lagoon that you demoed the Header Series Lagoon
13 Pump at the 2012 Manure Expo?

14 MR. LUCHSINGER: Objection to form
15 and foundation.

16 THE WITNESS: I have honestly no
17 idea.

18 BY MR. LEACH:

19 Q. Do you know whether -- do you recall
20 whether that lagoon was triangularly shaped?

21 A. I cannot recall. I remember it had a
22 crust, but I can't remember the specifics on
23 what the actual lagoon looked like.

24 Q. You don't have any recollection of what
25 the lagoon was that you were demonstrating in

1 back in 2012?

2 MR. LUCHSINGER: Objection as to
3 form.

4 THE WITNESS: Yeah, I've been to
5 12 -- maybe not 12, at least 11 manure expos.
6 I cannot recall what -- the details of what
7 they were, especially looking at it from a
8 satellite like this.

9 BY MR. LEACH:

10 Q. All right. Let's talk about commercial
11 success. In your declaration, Exhibit 2083,
12 you provided the sales numbers of the Nuhn
13 Lagoon Crawler, correct?

14 A. That is correct.

15 MR. LUCHSINGER: I'll just add in
16 here this portion of the deposition's gonna be
17 confidential.

18 MR. LEACH: Okay.

19 CONFIDENTIAL PORTION BEGINS

20 BY MR. LEACH:

21 Q. And in the evidence that you provide,
22 Exhibits 2055 to 2059, those financial reports,
23 those provide the total sales in units and
24 dollars, right?

25 A. If you want to load it in, we can go

1 over it together just for clarity's sake.

2 Q. I will. This is Exhibit 2055. I'll
3 just throw them all in there really quick.

4 A. Are we looking at just 2055, or were
5 there some other --

6 Q. Well, I'm gonna mark --

7 A. Okay.

8 Q. You wanted all -- you wanted to look at
9 all of them, so I'm gonna mark all of them --

10 A. Sure.

11 Q. -- or introduce all of them.

12 A. Yep.

13 Q. While I'm uploading them, I'm putting in
14 2058 right now, but go ahead and take a look at
15 them. Mr. Nuhn, have you had a chance to look
16 at Exhibits 2055 to 2059?

17 A. I'm just looking through real quick.
18 (Views document.) Was there a 2059? I don't
19 know if I have that.

20 Q. Sorry. Would it be --

21 A. It's here now.

22 Q. Yeah.

23 A. Yep. I've got it here.

24 Q. And are these the same exhibits that
25 were also provided in the '425 and '835 IPRs?

1 A. That is correct. I believe we haven't
2 updated the new totals yet.

3 Q. Okay.

4 A. I think it's still as of -- yeah, looks
5 like mid-December '23 is the last updated total
6 that you have.

7 Q. Okay. Can you confirm that, for
8 example, Exhibit 2055 shows only the total
9 sales in units and dollars of the Lagoon
10 Crawler?

11 A. Yeah. This is just total sales. And
12 it's even a blended currency too, I'm pretty
13 sure.

14 Q. Okay. And whether we look at
15 Exhibit 2055, 2056, 2057, 2058 or 2059, none of
16 those show overhead costs, correct?

17 A. Correct. None of these have overhead
18 costs.

19 Q. And so I asked you a number of questions
20 about these documents in the prior two IPR
21 depositions that you sat for. Would any of
22 those answers change based that these documents
23 are the same?

24 MR. LUCHSINGER: Objection as to
25 form.

1 THE WITNESS: I don't remember the
2 specifics of what you asked me.

3 BY MR. LEACH:

4 Q. Okay. Well, let's go through. Are
5 there -- in these Exhibits 2055 through 2059
6 there's -- no direct labor costs are provided,
7 correct?

8 A. Correct. There are no direct labor
9 costs.

10 Q. No indirect labor costs, correct?

11 A. Correct. No indirect labor costs.

12 Q. And no warranty claims costs at all?

13 A. Correct. No warranty claims or warranty
14 costs.

15 Q. And you had a number of warranty claims
16 on these products, correct?

17 A. Nothing -- you know, we've had warranty
18 claims, nothing crazy.

19 Q. And the Exhibits 2055 through 2059, you
20 don't provide any profit margins or profit
21 numbers, correct?

22 A. Correct. That's just sales.

23 Q. And I think at one point from the '425
24 IPR declaration you modified a paragraph saying
25 you stopped paying for advertising to you

1 decided to cut substantially all paid-for
2 advertising to the Lagoon Crawler, correct?

3 A. That's correct. I think we went over
4 that in the previous IPR. Since I made that
5 statement, someone in the office let us know
6 that for whatever -- we instructed the ad
7 agency we didn't want to run the ad and they
8 still did. Even though, I should add, the
9 Lagoon Crawler was not in that ad. The other
10 one I do want to say, which is just so minor,
11 is, you know, we might pay for a -- like a
12 boost -- like a boosted ad on Facebook or
13 something, \$20 per boost. So maybe there's --
14 I don't even think it would be \$200 per year.
15 So, again, a very minor number, but for
16 clarity's sake it should be mentioned.

17 Q. Okay. And you don't provide any detail
18 on what you've spent on advertising for the
19 Lagoon Crawler in these sales numbers, correct?

20 A. No. It is just sales numbers, no costs.

21 Q. Okay. And does Nuhn sometimes pay
22 authors to write articles about its products?

23 A. There's only one time we've done that.
24 And I think it even says in the article that,
25 like, basically paid for by Nuhn or Nuhn paid

1 for this. It was an experiment that we did,
2 but it was about the Lagoon Crawler.

3 Q. And so do -- magazines or publications
4 such as Manure Manager, do they provide
5 articles about your products sometimes to maybe
6 thank Nuhn for the money it spends on
7 advertising in its publication, or are you
8 aware of any situations like that?

9 MR. LUCHSINGER: Objection as to
10 form and foundation.

11 THE WITNESS: No, I'm not aware of
12 any -- anything like that.

13 BY MR. LEACH:

14 Q. Are you aware that some of the articles
15 are by the same authors and are similar or
16 identical and appear in different publications?

17 A. I believe in the first deposition you
18 had of me there was, I think, two articles that
19 have the same author. I'm just going by memory
20 of what we kind of found out in it.

21 Q. Sure. Going to your market share
22 research. Since you signed your declaration
23 on -- let me -- let me say this: When you
24 signed your declaration for the '425 patent
25 IPR, since that time until August 14th, 2024,

1 when you signed your declaration in the '708
2 IPR, have you updated your analysis or research
3 on your market share opinions?

4 A. I'd say I've updated it, but it hasn't
5 changed.

6 Q. And when you say you updated it, what do
7 you mean by that?

8 A. Well, I'm still -- you know, I'm an
9 active member in the agitation boat world, and
10 I still feel like I have a good understanding
11 of what the market's doing and -- you know. So
12 I -- I'm just saying nothing to speak of has
13 changed with the statements.

14 Q. Well, nothing has changed with respect
15 to the statements in your declaration?

16 A. In return -- in regards to market share.
17 Like, the numbers are the same.

18 Q. And you didn't do any further analysis
19 to support your opinions or your testimony in
20 Exhibit 2083 since your prior declarations?

21 A. The best way, which I think I have done,
22 I'll still ask dealers over the phone: What --
23 hey, do you know of anyone buying Puck boats?
24 The answer hasn't changed.

25 Q. But no formal market study, no -- you

1 didn't commission any researchers to do a valid
2 study of market share, none of that, correct?

3 A. I feel like the data that you would get
4 wouldn't be as good, honestly. It's such a
5 niche market that I don't think -- I know of
6 someone that's actually paid for something like
7 that, and they said it was just garbage.

8 Q. Yeah.

9 A. It's just such a niche.

10 Q. Sir, again, I'm trying to keep you to
11 just answering my questions and not just going
12 off on, you know, random thoughts about market
13 share studies and analysis. So --

14 A. Right. You were asking me --

15 Q. -- did you commission a market share
16 study, did Nuhn commission a market share
17 study?

18 A. I'm saying that I have conducted my own
19 with people heavily connected in the industry
20 that I have direct contact with.

21 Q. And -- and when you say you conducted
22 your own, that's, again, like we've talked
23 about in prior depositions, basically through
24 talking with people, correct?

25 MR. LUCHSINGER: Objection as to

1 form.

2 THE WITNESS: I would say that it's
3 not -- I think you're overgeneralizing. The
4 people I'm -- I'm talking to industry experts,
5 you know, who have boots on the ground but know
6 exactly what's going on in the marketplace.
7 Like, they're very valuable resources that I'm
8 calling on.

9 BY MR. LEACH:

10 Q. And do you know what products they
11 included in their comments about what products
12 are being sold and what products are not being
13 sold?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: Yeah, basically the
17 agitation boat market, which is myself, Puck
18 and JT Boats, also the Wolverine, but we don't
19 talk about that in -- you know, I specifically
20 set it aside in this.

21 BY MR. LEACH:

22 Q. And so how do you know how many JT Boats
23 have been sold?

24 A. Well, most of the JT Boats -- most of
25 the dealers that sell JT Boats are also Nuhn

1 dealers, so that's a pretty valid source. I
2 called them up and say: Hey, have you sold any
3 JT Boats? And they're pretty honest. You know
4 it's not like they're saying: Oh, no. No, we
5 haven't. Like, they haven't. And, you know,
6 if in the past, maybe five or six years ago
7 when one was sold by them, they were quite
8 honest about it being sold, and they had a good
9 reason why. And I trust my sources. They're
10 industry experts. It's very good sources.

11 Q. And so about -- well, first off, do you
12 know -- are all of the dealers -- did you call
13 all of the JT Boat dealers?

14 A. I've talked to the ones that are also
15 Nuhn dealers that I have a direct connection
16 with. And we have a lot of shared dealers.

17 Q. Do you know how many JT Boat dealers
18 don't carry Nuhn products?

19 A. There may be about, I'm going to say,
20 three that I can think of off the top of my
21 head.

22 Q. And these are just the ones you know
23 about, right?

24 A. Oh, I know the market well. So there's
25 three. And actually the ones that aren't Nuhn,

1 they're actually Bazooka dealers, and I'm
2 pretty sure that they are just selling
3 Wolverines now instead of the JT Boat.

4 Q. When you say you're pretty sure, that's
5 just you speculating about that, right? You
6 don't have any hard facts to prove that, do
7 you?

8 MR. LUCHSINGER: Objection as to
9 form.

10 THE WITNESS: Oh, I could -- I
11 could, you know, after the deposition pull up
12 notes and confirm that. But I can think of a
13 few that, yeah, are JT Boat dealers, that are
14 Bazooka dealers, if they're not Nuhn dealers.

15 BY MR. LEACH:

16 Q. But do you know all the dealers that JT
17 Boats has, and have you contacted them?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I've only contacted
21 the ones that are also Nuhn.

22 BY MR. LEACH:

23 Q. Okay. I'm asking you: Do you know all
24 of the JT Boat dealers?

25 MR. LUCHSINGER: Objection as to

1 form, asked and answered.

2 THE WITNESS: I've got a -- I'd be
3 able to get you that information to answer on
4 the record quite easily in my office.

5 BY MR. LEACH:

6 Q. I'm not asking if you -- if you can get
7 it. As of the date that you signed your
8 declaration here, which was August 14th, 2024,
9 did you contact every one of the JT Boat
10 dealers and ask them how many boats they've
11 sold of JT Boats?

12 A. I contacted the ones that I have
13 constant contact with that are Nuhn dealers. I
14 didn't contact all of them, but I have direct
15 communication and contact with JT Boat dealers
16 that are also Nuhn dealers. I even sent an
17 employee to talk to Jamie Tews personally to
18 talk about agitation boats and see how the
19 market was doing. He's downsizing. It was
20 just him and his sons, and his sons don't have
21 interest in it anymore. He's winding down. I
22 don't know how to say it any other way.

23 Q. What was the name of the employee that
24 you sent to do this?

25 A. It was Isaac Lemmenes.

1 Q. Can you spell his last name?

2 A. Sure. It's L-e-m-e-n-n-e-s [sic].
3 Either single M or double M, one of the two.

4 Q. And so in your declaration -- well, when
5 did you send Mr. -- is it Lemmenes?

6 A. It was -- I'm pretty sure it was this
7 summer. I don't have the exact date. But he
8 was in the area, and basically I sent him there
9 to talk with him.

10 Q. And so is part of what's provided in
11 your market share analysis in your declaration
12 dated August 14th, 2024, what Mr. Isaac
13 Lemmenes reported back to you?

14 A. I would say some of the information that
15 is in here is based on information that he's
16 given me. I don't even mention JT Boats in
17 this, because they aren't doing anything
18 anymore, and I have pretty good evidence of
19 why.

20 Q. And what is that evidence?

21 A. I have an employee that talked to him.
22 He went into his shop and talked to him, and he
23 said he's basically winding down.

24 Q. Do you have any other evidence to
25 support that?

1 A. The dealers that were JT Boat dealers
2 that are also Nuhn dealers have all told me
3 that they have not sold any JT Boats. So I
4 have pretty good -- two different sources, main
5 types, categories of sources getting this
6 information.

7 Q. And all of that is information that
8 someone told you, correct, whether it be the
9 dealers or Mr. Isaac Lemmenes, who also
10 received that information from JT Boats, is
11 that correct?

12 MR. LUCHSINGER: Objection as to
13 form.

14 THE WITNESS: It's all firsthand.
15 It's the best.

16 BY MR. LEACH:

17 Q. Well, let's break this down a little
18 bit. Your market share data is based on
19 information you heard from dealers, is that
20 correct?

21 MR. LUCHSINGER: Objection as to
22 form.

23 THE WITNESS: For what I'm talking
24 about here specifically, what we've been
25 talking about with JT Boats, I know they

1 haven't made any or sold any at least through
2 their major dealers that are also Nuhn dealers.
3 I have that from word-of-mouth firsthand
4 conversations. One step further, sometime this
5 summer my salesman, Isaac Lemmenes, was on the
6 road near JT Boats, and I sent him in there to
7 talk with Jamie Tews directly, and he -- there
8 was no boats being made. There were no boats
9 in the yard. They were -- it was a good
10 conversation that they had, and it basically
11 confirmed that they're winding down.

12 BY MR. LEACH:

13 Q. And you understand that from your
14 conversation or basically what Mr. Isaac
15 Lemmenes told you, correct?

16 A. He did an on-site visit to a competitor
17 and confirmed visually and verbally with the
18 owner that they are basically winding down.
19 Their sons aren't interested.

20 Q. And I just want to understand. The
21 reason you know that is because that's what
22 Mr. Isaac Lemmenes told you Jamie Tews said of
23 JT Boats, right?

24 A. He reported back to me what -- how his
25 site visit went.

1 Q. And do you know about when that was?

2 A. I'd have to ask. It was sometime this
3 summer.

4 Q. In any event, prior to August 14th,
5 2024?

6 A. Yeah, I believe it was early to
7 midsummer, something like that.

8 Q. Okay. From when you filed your
9 declaration in the '425 patent IPR until when
10 you signed the declaration in the '708 IPR,
11 which was on August 14th, 2024, did you do
12 anything more to assess how well known Nuhn is
13 in the agricultural industry back in, you know,
14 2013-2014?

15 A. I did not, no.

16 Q. So your prior testimony on those points
17 would be the same if I went through all those
18 questions again?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: We can go through them
22 again. I don't recall the questions exactly.

23 BY MR. LEACH:

24 Q. Okay. But you just confirmed you
25 haven't done anything else to assess how well

1 Nuhn Industries was known from January -- from
2 November 2013 to about January 2014, correct?

3 A. Since the '425 IPR declaration I have
4 not done any additional research. I felt --
5 you know, firsthand experience being in the
6 market, I felt my firsthand encounters and
7 experiences painted probably the best picture.

8 Q. And, again, going back to that, what you
9 called firsthand experience, that's your
10 talking to people at trade shows about -- and
11 making an assessment of how well known Nuhn,
12 the company, was and how that recognition of
13 the company changed from November 2013 to
14 January 2014?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I think the date range
18 is a little off. But I basically have talked
19 to many people at trade shows. I have quite a
20 large sampling of people that I've talked to at
21 trade shows. And yes, I can speak from
22 firsthand experiences my encounters with all
23 these people, and it changed with the Lagoon
24 Crawler.

25 BY MR. LEACH:

1 Q. Going to paragraphs 29 through 33 of
2 your declaration, Exhibit 2083, you talk about
3 unexpected results. From your prior
4 declarations and prior testimony on these
5 points, have you done anything further that you
6 base your testimony on unexpected results on
7 since those last declarations or depositions?

8 MR. LUCHSINGER: Objection to form.

9 THE WITNESS: No. I feel everything
10 I said illustrated the unexpected results. I
11 feel like it's very clearly laid out in this
12 declaration.

13 BY MR. LEACH:

14 Q. Going to Reception and Praise of Nuhn
15 Lagoon Crawler in your declaration, paragraphs
16 34 through 52. I don't believe you added any
17 new articles or recognition, is that true, from
18 your prior declarations, I should say?

19 A. We can go through it if you'd like.

20 Q. Oh, just can you tell me if you recall
21 adding any new ones?

22 A. I believe a lot of the articles and
23 everything are the same. There was so much
24 praise it was hard to keep track of.

25 Q. Sir, at least one of those articles you

1 paid for, correct?

2 A. I don't believe it's in my -- I don't
3 believe I'm relying on that in my declaration.

4 Q. Okay.

5 A. I'll just confirm. I know the author
6 name, so I just want to verify that. Yeah, the
7 one that we paid for is not in here, I'm pretty
8 sure, just glancing through quickly.

9 Q. What was that author's name?

10 A. It was in -- Progressive Dairyman I'm
11 pretty sure is where it was shown.

12 Q. Do you recall the author's name,
13 Mr. Nuhn, that you paid to write an article
14 about the Lagoon Crawler?

15 A. Not sitting here right now.

16 Q. So how is it that you could look through
17 here by the author name and decide and testify
18 truthfully whether that article is listed in
19 here or not?

20 A. I'm not just looking at the author name.
21 I'm looking at the publication. I'm not seeing
22 Progressive Dairyman in here, like, at the
23 table of contents, page 3.

24 Q. Was it Progressive Dairyman that you
25 paid to include articles?

1 A. No. It was a freelance writer. I knew
2 her -- I can't remember where I knew her from,
3 but I knew her, and I thought we would give it
4 a try. Oh, someone hired her to write an
5 article a long time ago about us, and I thought
6 it was a good article, so I reached out to see
7 if she would be interested in writing an
8 article for Progressive Dairyman. Because I
9 noticed Progressive Dairyman, they had an
10 article and it kind of had little asterisks
11 below that said, you know, this article was
12 supplied by the person the article was about.
13 So I was like: Hey, that would be kind of cool
14 just to get the crawler out there. So I think
15 it was in, like, 2015, something like that, we
16 tried it, and I don't know if it did anything
17 or not. But it was in Progressive Dairyman.
18 And at the bottom of the article it says --
19 again, asterisks, like -- I'm pretty sure it
20 says something along the lines of this article
21 was submitted by Nuhn Industries or something
22 like that. I'm a hundred percent positive it's
23 not in here, because I'm not seeing anything
24 from Progressive Dairyman. So we're not -- I'm
25 not relying on any articles that we bought and

1 paid for.

2 Q. But in Nuhn's advertising of its
3 product, it -- it, at least on one occasion,
4 paid someone to author an article touting the
5 Lagoon Crawler, correct?

6 A. I'd have to refresh the -- I forget what
7 the article was about even. I'd have to look
8 at it to see exactly.

9 Q. And so you can't remember what this
10 article was about, you can't remember the
11 author's name, right?

12 A. I can't remember her name. It was a
13 female. She did freelance writing, and it was
14 in Progressive Dairyman. I don't know how to
15 be -- if you go through -- I could -- I'm
16 pretty sure the lawyers would have it or my
17 team would have it. It's a Progressive
18 Dairyman article, and it says submitted by Nuhn
19 Industries quite clearly on the bottom. It's
20 the only one we've ever done like that.
21 Sitting here, it was about the Lagoon Crawler.
22 I don't know the specifics. And it was written
23 by a female. I can't remember her name sitting
24 here.

25 Q. And so how can you be sure that it was

1 in Progressive Dairyman and not one of these
2 other publications?

3 A. I know it was in Progressive Dairyman.
4 It was the big large format that Progressive
5 Dairyman is published in.

6 THE VIDEOGRAPHER: Tom, we're
7 hitting an hour and a half here. Whenever it's
8 a good time for a break.

9 MR. LEACH: Okay. Just give me one
10 more -- few more minutes.

11 BY MR. LEACH:

12 Q. So, Mr. Nuhn, in terms of some of your
13 prior testimony, I think in one of your
14 declarations it stated that Nuhn stopped paying
15 for ads. And then in the last deposition you
16 corrected that and said: Oh, actually, an ad
17 had run. And now in this deposition you're not
18 only acknowledging that a prior ad had run, but
19 now you had some Facebook ads that also had run
20 recently as well, is that correct?

21 MR. LUCHSINGER: Objection as to
22 form.

23 THE WITNESS: More recently -- so I
24 think I had the exact same answer on the ad in
25 my last deposition and this deposition.

1 It's -- it was brought to my attention by
2 someone in the office that we were -- somehow
3 an ad had still slipped through. But, again,
4 if you look at the ad, it doesn't say anything
5 about the Lagoon Crawler, which is the product
6 that we're arguing over. And then the other
7 one is I've personally started taking over more
8 of the social media stuff at Nuhn Industries
9 more recently. I lost a marketing girl. And
10 I've started doing some boosted posts. Now,
11 granted, I feel a lot of them have been done on
12 my personal Visa. So I don't know if that -- I
13 don't know what the line is of who's paying for
14 what. But I'm just saying there has been some
15 boosted posts on our Facebook and I'm trying to
16 bring attention to. But probably more than
17 half of them have been on -- paid for
18 personally on my own Visa just to add all the
19 details I can.

20 BY MR. LEACH:

21 Q. Okay. And these ads on -- these boosted
22 ads on Facebook, when did they start?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: I know I have been

1 boosting -- our Facebook, we never -- we only
2 maybe did, like, one or two posts a year. It
3 was very, very low. Just in the last couple
4 months we started upping our presence a bit
5 more just in general, not necessarily the
6 Lagoon Crawler. But we're coming out with a
7 lot of new products and we're -- and I
8 personally boosted probably two or three ads
9 and I -- maybe one of them was the Lagoon
10 Crawler.

11 BY MR. LEACH:

12 Q. And do you know what date that happened?

13 A. About a month ago maybe. There was a --
14 if you want to be specific, there was kind of a
15 customer testimonial, kind of a picture of a
16 sunset of a Lagoon Crawler, and I know for a
17 fact that I -- I'm pretty sure I boosted that
18 one.

19 Q. So in paragraph 28 when you write, "Nuhn
20 is particularly proud of the commercial success
21 that the Lagoon Crawler has enjoyed given that
22 we decided to cut substantially all paid-for
23 advertisements for the Lagoon Crawler after
24 2019, but as reflected in the Lagoon Crawler
25 sales reports at Exhibit 2055 through 2059,

1 have gone on to sell over 230 Lagoon Crawlers
2 since 2020" --

3 A. I still feel that the way that I
4 described --

5 MR. LUCHSINGER: Objection as to
6 form. There's no question.

7 BY MR. LEACH:

8 Q. So given -- I haven't asked a question
9 yet, sir.

10 A. Okay. Sorry.

11 Q. Given that when you say you've decided
12 to cut substantially all paid-for
13 advertisements of the Lagoon Crawler after
14 2019, that's not accurate, you're still
15 advertising on Facebook and apparently some
16 other ad for the Lagoon Crawler as you sit here
17 today on Facebook through boosted ads and your
18 website presence, correct?

19 MR. LUCHSINGER: Objection as to
20 form, misstates testimony.

21 THE WITNESS: I still feel the way
22 that I commented, my declaration is accurate.
23 We went from spending, I'm just going to guess,
24 [REDACTED], and then now I've dropped it
25 to [REDACTED]. And you don't think that that's

1 substantial?

2 BY MR. LEACH:

3 Q. Was -- the [REDACTED], was that per
4 year on the Lagoon Crawler?

5 A. I'm -- just sitting here, I'm just
6 guessing what we spend on our advertising. I'd
7 have to look specifically, but our advertising
8 was probably around [REDACTED] on print ads. A
9 lot of it probably was the Lagoon Crawler. I
10 can give you more specifics. If you want more
11 of a breakdown, we can contact my attorneys.
12 I'm just guessing just sitting here we went
13 from [REDACTED]. I think that that's
14 pretty substantial. So I feel my declaration
15 accurately describes that.

16 Q. Okay. And I just want to get the facts.
17 Was that [REDACTED] a year on ads for the Lagoon
18 Crawler?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: If you want the facts,
22 we can -- I can talk to my attorneys after and
23 we can give you more detailed documents on
24 advertising. I don't have exact numbers or
25 anything. But I'm -- sitting here, I'm gonna

1 guess around [REDACTED] a year. And a lot of that
2 would have been on the crawler. But I don't
3 have the exact numbers. If you want documents
4 that detail our costs, you can work with my
5 attorneys on that and we'd be more than happy
6 to provide you that information.

7 BY MR. LEACH:

8 Q. Okay. We will likely follow up on that.
9 Although I have this opportunity to take your
10 deposition based on what's in your declaration,
11 and so I kind of have to stick to that.

12 A. Yeah. My declaration, by the time we
13 cut advertising I'm guessing it was [REDACTED]
14 could be attributed to the crawler and we've
15 cut it to [REDACTED]. So to me that is a substantial
16 drop.

17 Q. Okay. Let's turn to Skepticism and
18 Surprise.

19 A. Did you want to take a break for the
20 video recorder?

21 Q. Oh, yes. Thank you.

22 MR. LEACH: Should we take a
23 five-minute break?

24 THE VIDEOGRAPHER: The time is
25 approximately 1:53 p.m. We are going off the

1 video record.

2 (Off the record 1:53 to 2:04.)

3 THE VIDEOGRAPHER: The time is
4 approximately 2:04 p.m. We are back on the
5 video record.

6 Go ahead.

7 BY MR. LEACH:

8 Q. We're back from a break, Mr. Nuhn. We
9 were talking about your declaration. And
10 specifically I want to turn your attention to
11 the section of your declaration, which is
12 Exhibit 2083, on Skepticism and Surprise. And
13 that's paragraphs 53 through 63. And I
14 compared those with your declaration in the
15 '835 IPR, and I did not see any substantive
16 changes. Do you have anything to add on your
17 prior testimony on those paragraphs?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I do not. I think the
21 declaration is pretty clear.

22 BY MR. LEACH:

23 Q. In terms of the declaration and those
24 paragraphs on Skepticism and Surprise, did you
25 do anything since your declaration that was

1 submitted in the '425 patent or the '835 patent
2 with respect to any of those paragraphs between
3 the time of the '425 declaration and submitting
4 the declaration in the '708 with respect to
5 those paragraphs?

6 MR. LUCHSINGER: Objection as to
7 form.

8 THE WITNESS: What's the question?
9 Did I do anything?

10 BY MR. LEACH:

11 Q. Yeah. Did you -- did you -- good point.
12 Did you investigate those paragraphs further or
13 do anything that bolsters any of those
14 paragraphs from a factual standpoint?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I think this point for
18 this section accurately demonstrates what was
19 going on in that 2013-2014 time period, that we
20 received a lot of skeptical feedback basically
21 on this crazy product, that, you know, it was
22 amphibious and would go into these manure
23 lagoons. It's -- we received a lot of
24 skepticism. And I was there firsthand to
25 experience it, so I feel like the evidence is

1 pretty clear there.

2 BY MR. LEACH:

3 Q. For example, in paragraph 54 of your
4 declaration, Exhibit 2083, you state that
5 yourself and your father, Dennis Nuhn, attended
6 a number of trade shows in 2013 and 2014,
7 correct?

8 A. Dennis and I attended trade shows in
9 2013 to 2014.

10 Q. Then you say, "Despite the praise that
11 the Lagoon Crawler ultimately received, others
12 in the industry expressed skepticism that the
13 Lagoon Crawler would successfully or reliably
14 perform to disrupt the crust and circulate
15 liquid manure in the liquid manure lagoon,
16 reliably driving into and out of and navigate
17 the manure lagoon by wireless remote control."

18 See that?

19 A. Yeah. At the top of page 30?

20 Q. Yes. Aside from you and Dennis -- well,
21 strike that.

22 Aside from you, has anyone provided a
23 declaration that you're aware of regarding
24 Skepticism and Surprise as you detail in your
25 declaration under that section?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: I do not know of any
4 declarations on the matter. I'm the patent
5 owner. I'm the inventor. I was there
6 firsthand and received endless amounts of
7 skepticism at these trade shows from hundreds
8 of people.

9 BY MR. LEACH:

10 Q. Okay. And I think I asked last time:
11 Can you name some of the people that you
12 obtained this skepticism from aside from your
13 father?

14 A. I talked to probably over a thousand
15 people at trade shows. And that's a
16 conservative number, I would say. There was a
17 lot of skeptical people. Do I remember who
18 these people are directly? No. But there was
19 a huge theme of people being skeptical with it.
20 When we were at Agritechnica -- I think that
21 show alone gets, like, 250,000 people through.
22 We talked to a lot of skeptical people at that
23 show. That was a lot of people. I can't
24 remember anything specifically.

25 Q. Did you have a booth at Agritechnica?

1 A. We did. We had an exhibit at
2 Agritechnica.

3 Q. You had your phone there at
4 Agritechnica, correct?

5 A. I did.

6 Q. And I believe I've seen a -- maybe a
7 video that was produced in the litigation. One
8 thing we didn't see is many photos or any
9 photos of your booth. Did you take photos of
10 your booth at Agritechnica?

11 A. Our booth was -- I did. I think there's
12 a video showing the booth. We didn't have any
13 equipment in it. Then there was maybe like a
14 10-foot-by-20-foot-wide booth, just roughly
15 speaking. I believe in there there's some
16 videos of the amount of people stopping at the
17 booth and watching the videos of the Lagoon
18 Crawler and just in shock, amazement,
19 skeptical, you name it. Like, it was a lot of
20 people.

21 Q. Do you have photos or videos of the
22 show, the number of people there, the other
23 booths? Did you take pictures of all that and
24 including Nuhn's booth and how the video was
25 set up?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: I believe -- I believe
4 I have -- I'd have to look and see. But
5 whatever stuck out to me I believe we've
6 produced already from my phone.

7 BY MR. LEACH:

8 Q. When you say whatever stuck out to you,
9 what do you mean by that?

10 A. I mean, vividly what I remember having
11 of that show is some videos of people stopping
12 by the booth. I think that's all I have left
13 on my phone from that time period. But I guess
14 what I'm saying is whatever we had on my phone
15 I gave to my lawyers and we've produced. So
16 whatever there was you have it.

17 Q. Was -- what was on your phone, is that
18 the same as what's in your iCloud photo
19 library?

20 A. Yes.

21 Q. When you were at the show and talking to
22 all these people, did you take pictures of
23 other booths and talk to people in other booths
24 that had similar equipment or manure equipment?

25 A. I don't believe I talked to anyone. I

1 probably would have taken pictures. I just
2 feel probably over the course of time I
3 maybe -- I think earlier pictures around that
4 time I deleted. It's before you could, like,
5 back up to iCloud and all of that. So to save
6 space I would have deleted what I felt like was
7 irrelevant pictures. This is -- obviously,
8 like, I'm talking 2015, '16, '17 time period.
9 I think even since, though, we've produced the
10 types of pictures that I would take at a trade
11 show such as Agritechnica. So I would have
12 taken similar ones at the 2013 one. It's just
13 there's a good chance I deleted them to save
14 space because they weren't important.

15 Q. When was the 2013 Agritechnica show, do
16 you recall?

17 A. November, November 2013.

18 Q. And who was all there with you?

19 A. My father, Dennis.

20 Q. Just you and Dennis?

21 A. Yep. Just Dennis and I.

22 Q. In terms of the number of people at
23 Agritechnica in 2013, did you take any
24 pictures -- did you have someone take a picture
25 of you and your dad at Agritechnica in your

1 booth in 2013? Do you recall that?

2 A. I don't think anyone did. I don't think
3 anyone did.

4 Q. What about just walking around the show
5 with the video camera just showing kind of how
6 big the show was?

7 A. I -- like I said, if I did, I -- I think
8 I may have deleted it to save space.

9 Q. Did your dad have an iPhone at the time?

10 A. I think he did.

11 Q. Okay. Do you know whether he has any
12 photos?

13 A. I don't know.

14 Q. Okay. Do you know whether his iCloud
15 account or phone was searched?

16 A. It was. I just don't know what the
17 contents were.

18 Q. Okay. Do you know -- did Nuhn have just
19 a regular, like, you know, digital camera,
20 digital SLR camera at the time that you brought
21 to shows that had maybe a nice telephoto or
22 something like that?

23 A. We would use, like, digital cameras with
24 SD cards. But I think that at that time it was
25 starting to be more you just traveled with your

1 phone and took pictures with your phone rather
2 than, like, carrying around a separate camera.

3 Q. Okay. Do you remember looking at any of
4 these photos that you took before you deleted
5 them? Can you describe kind of what they
6 showed?

7 MR. LUCHSINGER: Objection as to
8 form, vague.

9 THE WITNESS: Not like -- nothing
10 sticks out in particular. It's just like I --
11 I am quite up front that -- like, you have
12 pictures from probably later Agritechnicas,
13 later trade shows. And I have an interest in
14 farm equipment, and I would have taken
15 pictures. I'm not denying that. It's just I
16 feel like before, like, iCloud storage was a
17 thing, I need to save space, and I have been to
18 Agritechnica since and it wasn't really
19 important to keep some of the pictures. So I
20 do remember deleting pictures from the show
21 merely just to save space on my phone.

22 BY MR. LEACH:

23 Q. Getting back to your declaration and
24 specifically Skepticism and Surprise. Aside
25 from your dad and people you talked to that

1 told you they were surprised and skeptical, do
2 you have any other evidence that supports this
3 Skepticism and Surprise testimony in your
4 declaration?

5 MR. LUCHSINGER: Objection as to
6 form.

7 THE WITNESS: I talked to -- I don't
8 even know how to quantify the number. I've
9 talked to so many people that were skeptical at
10 trade shows. I have firsthand experience
11 receiving skepticism on a, you know, liquid
12 manure amphibious agitator.

13 BY MR. LEACH:

14 Q. When you were at Agritechnica, did you
15 run into UD Umwelt or Truxor or Senwatec?

16 A. No, I did not.

17 Q. How can you be sure?

18 A. I -- the first time I seen them was
19 when -- during this litigation.

20 Q. There's not a chance that maybe you took
21 a photo of them and ended up deleting that?

22 MR. LUCHSINGER: Objection to the
23 form, foundation.

24 THE WITNESS: I find that highly
25 unlikely.

1 BY MR. LEACH:

2 Q. So just to close the loop on the
3 Skepticism and Surprise portion of your
4 declaration, you base your testimony on
5 Skepticism and Surprise based on what people,
6 albeit maybe a lot, told you at these trade
7 shows, is that correct?

8 MR. LUCHSINGER: Objection as to
9 form.

10 THE WITNESS: I have hundreds, if
11 not thousands, of firsthand encounters in that
12 time period with people that were skeptical
13 about the Lagoon Crawler product.

14 BY MR. LEACH:

15 Q. And you based it on knowing they were
16 skeptical based on what they told you, correct?

17 MR. LUCHSINGER: Objection as to
18 form.

19 THE WITNESS: I have firsthand
20 encounters with these skeptical people based on
21 what they told me.

22 BY MR. LEACH:

23 Q. And your father hasn't provided a
24 declaration in this IPR, correct?

25 A. Dennis Nuhn has not given a declaration,

1 no.

2 Q. Do you know why that is?

3 A. I don't. I rely on the guidance of my
4 patent attorneys. You'd have to ask Brad.

5 Q. Let's turn to paragraph 64, Others'
6 Desire to License the Lagoon Crawler. And
7 that's paragraph 64 through 67 of Exhibit 2083.

8 A. Okay. I'm there.

9 Q. Okay. I don't see any change from your
10 prior declarations other than updating the
11 patent number from the '835 to the '708. From
12 your prior testimony and the time you signed
13 your declaration in the '835 IPR, do you have
14 anything to add to your prior testimony on
15 those topics or on that topic?

16 MR. LUCHSINGER: Objection as to
17 form.

18 THE WITNESS: I -- actually, I do.
19 I think even since this declaration there's
20 a -- basically Puck -- do you want me to go
21 into it? I don't like telling all these
22 stories. Sometimes you don't like them, so...

23 BY MR. LEACH:

24 Q. No. I want to get the facts. That's
25 what I'm here for. This is my opportunity.

1 A. Sure. So we make --

2 MR. LUCHSINGER: Objection as to
3 form.

4 THE WITNESS: So we make liquid
5 manure pumps, as you know, and we make booster
6 pumps. There is something that Puck sells that
7 controls engines remotely via a cell phone for
8 these pumps, and you can buy it. If you're
9 building your own pump, you can buy Puck's
10 controls, and they're about 18,000 to \$22,000,
11 something like that. I've had two separate
12 customers tell me that they've wanted to buy
13 ours. Actually, I've had three separate
14 customers tell me this, but two of them
15 specifically said it was in relation -- or
16 retaliation to Lagoon Crawler. But if you buy
17 it and you put it on something that Nuhn makes,
18 they will charge them \$60,000, 6-0-0-0-0. So
19 \$60,000 from 18 to 22. And that is because
20 they are trying to -- I don't want to say
21 blackmail, but trying too get us to license our
22 Lagoon Crawler patents to them. And I've heard
23 that exactly from two different customers. And
24 I've heard the pricing -- now that I'm sitting
25 here, I've heard that price from four different

1 customers, but I've heard from two that the
2 reason why is the -- they are trying to get us
3 to license the Lagoon Crawler patents.

4 BY MR. LEACH:

5 Q. And what are the names of those
6 customers?

7 A. Sure. So the two that said it
8 specifically, one is Travis Walton, the other
9 is Mike Schmidt. And then the two others that
10 said the increase in price, so the four total
11 that's confirmed this price, but they never
12 said anything about the Lagoon Crawler thing,
13 Wayne Hodgins is one, and then the other is
14 Tyler Kramer.

15 Q. So Hodges, how do you spell that,
16 H-o-d-g-e-s?

17 A. H-o-d-g-i-n-s.

18 Q. Hodgins. Okay. And Tyler, what was his
19 last name and how do you spell it?

20 A. Kramer, K-r-a-m-e-r.

21 Q. Okay.

22 A. So I've heard from four people about
23 this \$60,000 when it should be 20 to 22,000,
24 like, 18 to 22,000 range. And then I've heard
25 from the first two that I said that it was

1 because they wanted to license our Lagoon
2 Crawler patents that are doing this to us,
3 so...

4 Q. And so in terms of your testimony about
5 others' desire to license the Lagoon Crawler
6 patent, you heard from, for example, Travis --
7 is it Walton?

8 A. Yeah. W-a-l-t-o-n.

9 Q. Okay. That he spoke to Puck?

10 A. He spoke to Jeremy Puck.

11 Q. Okay. He spoke to Jeremy Puck. And
12 he's relaying on to you what he heard Jeremy
13 Puck say?

14 A. Yes.

15 Q. Okay. And same with Mike Schmidt, he
16 heard something from Jeremy Puck, and Mike
17 Schmidt is relaying on to you what Jeremy Puck
18 said?

19 A. I didn't hear the specifics, if Mike
20 heard it directly from Jeremy or not, but I had
21 two different individuals relay that same
22 message, yeah. But I know Travis' was -- the
23 way he described it to me, he said it was from
24 Jeremy himself, which I believe to be true
25 because I've had this exact same conversation

1 with Jeremy in the past regarding the Lagoon
2 Crawler portfolio.

3 Q. And for Wade [sic] Hodgins, was that
4 something that he heard from Jeremy Puck and
5 then relayed on to you?

6 A. He talked to Jeremy, but it had nothing
7 to do -- the Lagoon Crawler was never brought
8 up in his conversations. But basically he went
9 back and forth with them for a long time on why
10 is this now \$60,000 when he could buy it on its
11 own before for about 18 to 22,000 range. But
12 it was never relayed to me about anything on
13 the Crawler from Wade Hodgins.

14 Q. Okay. And so specifically to Wade
15 Hodgins, you heard from Mr. Wade Hodgins that
16 he spoke to Jeremy Puck and you're relaying
17 what, through Wade Hodgins, Jeremy Puck said,
18 is that correct?

19 A. You might be --

20 MR. LUCHSINGER: Objection as to
21 form.

22 THE WITNESS: Yeah, you might be
23 confusing it a little bit. So there's four
24 instances of Puck jacking the price to about
25 \$60,000 per -- what should cost and what they

1 do sell for 18 to 22,000 because it's going on
2 something of Nuhn. So of the two, Wayne
3 Hodgins and Tyler Kramer, it was -- nothing
4 about the Crawler was said. They don't have --
5 they never relayed to me that: Hey, the jack
6 in price is from the Crawler. It never was
7 brought up. But from the other two, Mike
8 Schmidt and Travis Walton, at least in Travis
9 Walton's case I know he was talking to Jeremy
10 when he was complaining about the price, and
11 that was the reason that was given to him --

12 BY MR. LEACH:

13 Q. Okay.

14 A. -- by Mr. Puck.

15 Q. Whether it had to do with the Lagoon
16 Crawler or price, I guess what I'm trying to
17 understand is: The information that you're
18 receiving from -- whether it be Mr. Walton,
19 Schmidt, Hodgins or Kramer was all a
20 conversation you had with them about a
21 conversation they had with someone else,
22 correct?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: I think they're

1 talking to the main person. I know at least --
2 even in three of those cases, even with Tyler
3 Kramer, all of them were talking with this -- I
4 believe Jeremy signs his email CEO of Puck.

5 His name is Jeremy Puck. So they're calling me
6 up right after they have, you know, this
7 conversation with Jeremy Puck, the CEO of Puck
8 Enterprises, about, you know, this price
9 gouging in retaliation for them trying to get
10 his patents. Now, only Travis Walton was the
11 one that said that specifically and Mike
12 Schmidt, but Travis Walton I know for a fact
13 was talking to Jeremy when he had that relayed.

14 BY MR. LEACH:

15 Q. Okay. So I guess just to step back one
16 more time.

17 A. Sure.

18 Q. Mr. Walton, Mr. Schmidt, Mr. Hodgins,
19 Mr. Kramer all relayed to you something that
20 Jeremy Puck had said to them, is that correct?

21 MR. LUCHSINGER: Objection as to
22 form, misstates testimony, asked and answered.

23 THE WITNESS: I think from even
24 three of them they showed me invoices that were
25 60,000. So I have, like, visually seen that

1 they're not just full of shit. And they're all
2 on the same page too. It's all the same
3 pricing. And these people are in different
4 geographic areas. Like, Wayne Hodgins is --
5 yeah.

6 BY MR. LEACH:

7 Q. Sure. But I'm trying to understand,
8 though, where this information is coming from
9 and how it's coming to you. And so my question
10 is: Mr. Walton, Mr. Schmidt, Mr. Hodgins and
11 Mr. Kramer all relayed to you, told you what
12 Jeremy Puck had told them, is that correct?

13 MR. LUCHSINGER: Objection as to
14 form, foundation, asked and answered, misstates
15 testimony.

16 THE WITNESS: I had verbal
17 conversations with these four individuals, if
18 that's what you're asking.

19 BY MR. LEACH:

20 Q. Yes. And they told you what Jeremy Puck
21 had told them, is that correct?

22 MR. LUCHSINGER: Objection as to
23 form, foundation, misstates prior testimony.

24 THE WITNESS: I guess what I'm
25 saying is of those with the Lagoon Crawler, the

1 only one that I know for sure talked to Jeremy
2 Puck and the Lagoon Crawler was brought up was
3 Travis Walton. He had a verbal conversation
4 with Jeremy Puck and immediately turned around
5 and talked to me. Tyler Kramer and Wayne
6 Hodgins, I -- they were talking to Jeremy Puck
7 back and forth directly about the increase in
8 price, crawler was never brought up. And then
9 for Mike Schmidt I don't know the details on
10 his communication with Jeremy, but somehow the
11 message was relayed to him that the price was
12 high because of the Lagoon Crawler, and they
13 want to access the Lagoon Crawler --

14 BY MR. LEACH:

15 Q. Okay.

16 A. -- patent portfolio.

17 Q. And so going back to your declaration --
18 and none of that's in your declaration,
19 correct?

20 A. No. The price stuff I started hearing
21 this summer, but there was no connection to the
22 Lagoon Crawler whenever it was said. The
23 Lagoon Crawler being the cause, so the one with
24 Mike Schmidt, the one with Travis Walton, this
25 is only like a few weeks ago that I came across

1 this information.

2 Q. Okay. Back to your declaration,
3 Exhibit 2083. In the section on Others' Desire
4 to License the Lagoon Crawler, which is
5 paragraph 64 to 67, you reference an email,
6 which is Exhibit 2075, which is an email from
7 Mr. Puck, correct?

8 A. Yeah, Exhibit 2075.

9 Q. Yep. And we asked some questions on
10 that last time about that email. Do you have
11 anything to add to what we talked about last
12 time about that email?

13 A. No. I think the --

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: Sorry. Go ahead,
17 Brad.

18 MR. LUCHSINGER: Yeah, just
19 objection as to form.

20 THE WITNESS: I think what I just
21 said for the last -- the story I've just said
22 for the last five, ten minutes, I think that
23 sums up pretty well their intent over there.

24 BY MR. LEACH:

25 Q. Okay. It's not your testimony that that

1 Puck email, Exhibit 2075, was seeking to
2 license the '708 patent, correct? Right? The
3 '708 patent hadn't issued at that time,
4 correct?

5 MR. LUCHSINGER: Objection as to
6 form, compound.

7 THE WITNESS: It's my understanding
8 that they wanted to license the Lagoon Crawler
9 family of patents, you know, that --

10 BY MR. LEACH:

11 Q. And, again, that understanding is coming
12 from what you heard from Mr. Puck and what you
13 heard from now these other four individuals,
14 correct?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: The two individuals, I
18 think that, you know, definitely gives me more,
19 you know, reassurance of what they're doing.
20 But I personally talked with Jeremy on the
21 phone about his desire to license the Lagoon
22 Crawler family of -- patent family, including
23 continuations and thereof, which, you know, is
24 the '708. We have pending applications. You
25 know, we -- it's the Lagoon Crawler family of

1 patents.

2 BY MR. LEACH:

3 Q. Did Puck ever license the Lagoon Crawler
4 family of patents from Nuhn?

5 A. No. I told them I wasn't interested. I
6 told someone at Stutsman the same thing when I
7 was asked.

8 Q. Going to copying, this is another
9 section that --

10 A. Can I add that to -- I did have a verbal
11 conversation with someone at Stutsman, which is
12 the parent company of Bazooka, that -- they did
13 ask if we would consider licensing just to
14 avoid all this. This is back in probably 2021.
15 You know, that's a desire to license, if I can
16 think of one.

17 Q. And was that after the litigation has
18 started?

19 A. No. It was -- I believe we had sent
20 them a cease and desist already, but it was
21 prior to -- I think the litigation started in
22 November. It was sometime in July or August.

23 Q. Okay.

24 A. It was John Yoder that said it at
25 Stutsman. He's VP of Manure Management.

1 Q. So going on to others' copying Nuhn's
2 Crawler, again, it doesn't look like there's
3 any substantive changes between your '835
4 declaration and the declaration you submitted
5 in the '708.

6 MR. LUCHSINGER: Objection --

7 THE WITNESS: The Wolverine still
8 looks the same.

9 BY MR. LEACH:

10 Q. And in the -- in your last deposition we
11 talked about copying. And do you have anything
12 to add to your testimony about copying from
13 your prior testimony on these same paragraphs?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: I don't recall the
17 specifics of what was said in the last IPR, if
18 you want to go through it again.

19 BY MR. LEACH:

20 Q. Well, would you agree with me that
21 Bazooka's wheels do not go up and down?

22 A. I don't know all of the specifics of all
23 the details. I don't know all the machines
24 that they've made.

25 Q. Can you name a Bazooka machine, Bazooka

1 Wolverine product that has wheels that go up
2 and down?

3 A. I only know of one -- I don't know the
4 details specifically of all their machines, but
5 the ones that I do know of the wheels do not go
6 up and down.

7 Q. Okay. So do you base copy on -- your
8 testimony here on copying, is that they look
9 similar?

10 MR. LUCHSINGER: Objection as to
11 form.

12 THE WITNESS: No, I don't -- I'm not
13 just basing that off of they look similar. I
14 think that when you look at the product and
15 what it does and how there was no products that
16 did what the Lagoon Crawler did, it was in a
17 product category all on its own. I think the
18 fact that they had access to our parts books,
19 drawings, they had access to machinery via
20 their parent company, Stutsman's. They had
21 access to repairmen at Stutsman's to -- you
22 know, to consult them on design, what they
23 liked, what they didn't like. I think you can
24 see how the -- in the patent -- from my
25 understanding, their patent application

1 process, how the machine started and how it
2 evolved to have more features of what the
3 Lagoon Crawler had. I think it's pretty clear
4 that we have a pretty cut-and-paste case here
5 of copying.

6 BY MR. LEACH:

7 Q. Okay. And you base that conclusion of
8 copy on that you believe that Bazooka's Lagoon
9 Crawler infringes the '708 patent?

10 A. So similar, you just called --

11 MR. LUCHSINGER: Objection as to
12 form to the extent it calls for a legal
13 conclusion.

14 THE WITNESS: I was just going to
15 say I believe if you have Dana call it back,
16 you just called it Bazooka's Lagoon Crawler.
17 That's how similar they look.

18 BY MR. LEACH:

19 Q. Sorry I misspoke. So is part of your
20 testimony here on copying, is that -- is your
21 testimony based on your belief that Bazooka's
22 Wolverine infringes Nuhn's '708 patent?

23 MR. LUCHSINGER: Objection as to
24 form to the extent it calls for a legal
25 conclusion.

1 THE WITNESS: Can you repeat the
2 question?

3 Sorry. Dana, can you repeat that?

4 MR. LEACH: Dana, can you read it
5 back, please?

6 THE COURT REPORTER: Yep.

7 (Whereupon, the court reporter read
8 back the previous question.)

9 THE WITNESS: I don't think my
10 declaration is -- just on my belief I think we
11 have a lot of pretty good facts that support
12 that, not just my opinion of it. There's so
13 many similarities. If you look at the remote
14 controls, they're very similar in their layout.
15 If the -- the chassis dimensions, you know,
16 it's no coincidence that they fit on the exact
17 same trailers. There's even dealers for
18 Bazooka that advertise that the trailer can fit
19 both the Wolverine and the Lagoon Crawler.
20 Tire sizes are very similar. Pump diameters
21 are very similar. I believe a first few
22 Wolverines that went out even had Nuhn
23 components on them. The cylinders that were
24 used on them, the smart cylinders I believe
25 were the same brand from what I've seen. The

1 GPS Puck that was used is pretty much the
2 identical GPS Puck that was used on earlier
3 versions of our GPS system. I could keep
4 going. It's --

5 BY MR. LEACH:

6 Q. So we already established that Bazooka's
7 Wolverine doesn't have wheels that go up and
8 down, correct?

9 MR. LUCHSINGER: Objection as to
10 form.

11 THE WITNESS: From the best of my
12 knowledge, I don't know of any Wolverines that
13 have wheels that go up and down.

14 BY MR. LEACH:

15 Q. Does Nuhn's Lagoon Crawler have wheels
16 that go up and down?

17 MR. LUCHSINGER: Objection to form,
18 vague.

19 THE WITNESS: The ground
20 propulsion -- the ground-engaging propulsion
21 structure on ours goes up and down. But,
22 again, that's not a feature that makes or
23 breaks the machine. It's an added perk. And I
24 think we went over that in the last IPR.

25 BY MR. LEACH:

1 Q. Okay. And Nuhn uses propellers to
2 agitate the lagoon, whereas the '708 patent
3 uses nozzles and jets, right --

4 MR. LUCHSINGER: Objection as to
5 form.

6 BY MR. LEACH:

7 Q. -- to agitate?

8 A. Are you confusing names again or...

9 Q. Sorry.

10 MR. LUCHSINGER: You said Nuhn
11 propellers.

12 BY MR. LEACH:

13 Q. I said -- well, strike that if I
14 misspoke. Bazooka's Wolverine uses propellers
15 at the front and back of the vehicle to agitate
16 manure lagoons, correct?

17 A. They -- to the best of my knowledge, the
18 start of it, as you can see in the patent
19 application process, they had that, and then it
20 evolved to have a manure pump submerged similar
21 to the Nuhn and to have a cannon similar to the
22 Nuhn.

23 Q. Well, you understand there's a dispute
24 whether Nuhn's product includes a nozzle
25 which --

1 A. Are you misspeaking again?

2 Q. I'm sorry. I am. You understand that
3 there's a dispute whether Bazooka's product
4 includes a nozzle like Nuhn's Crawler, correct?

5 A. I understand that there's a dispute in
6 the '557 patent regarding nozzles.

7 Q. Well, how does Nuhn -- Bazooka's
8 Wolverine uses props to agitate and propel and
9 steer the vehicle, correct?

10 A. No. They have a -- what I would call a,
11 just for simple terms, pumping gun.

12 Q. Are you disputing whether Bazooka's
13 Wolverine uses propellers to agitate and steer
14 and propel the vehicle?

15 A. I'm disputing the way you're saying it.
16 I think that that's very vague. It also has a
17 pumping gun. I'm not disputing that it has
18 propellers, but I'm also adding that it has a
19 pumping gun.

20 Q. Does the '708 patent disclose using
21 propellers for agitation and propulsion?

22 MR. LUCHSINGER: Objection as to
23 form.

24 THE WITNESS: I'd have to look
25 through the '708 if you want me to make a

1 comment on '708.

2 BY MR. LEACH:

3 Q. Sure. We can do that. Mr. Nuhn, you
4 should have the '708 patent in just a second
5 here in your folder. Before we get to that,
6 would you agree with me that for road
7 restrictions a vehicle can have only a certain
8 width? Are you aware of that based on your
9 building and trailering the Nuhn Lagoon
10 Crawler?

11 A. I wouldn't say that necessarily. A lot
12 of these guys are farmers and they'll move it
13 around with a slow-moving vehicle sign. A lot
14 of these places if they're bought by a farm,
15 they don't leave the farm, so transport width
16 is irrelevant. You know, if we were worried
17 about transport width, everyone would build it
18 to be eight-foot-six to be legal for transport,
19 and both the Bazooka and our boats are over
20 that.

21 Q. But you would agree with me that there's
22 a certain size that makes the vehicle
23 transportable via trailer, you want to be under
24 a certain size, correct?

25 MR. LUCHSINGER: Objection as to

1 form, foundation.

2 THE WITNESS: The magic number to be
3 under for road legality is eight-foot-six. The
4 Bazooka and the Nuhn are wider and they have
5 custom wide trailers to -- that they're built
6 for, wider than eight-foot-six.

7 BY MR. LEACH:

8 Q. Isn't it true that the Bazooka Wolverine
9 had larger tires than Nuhn's Lagoon Crawler?

10 MR. LUCHSINGER: Objection as to
11 form, vague.

12 THE WITNESS: I don't know the exact
13 dimensions of what their tire is compared to --
14 is it a -- what is it? Is it a 19.5-26 or 25
15 or something? I'm not too sure. I don't know
16 the details exactly.

17 BY MR. LEACH:

18 Q. Sir, you're the one alleging copying.
19 So do you know whether the tire sizes are the
20 same or not?

21 A. They're similar-sized tires. I don't
22 know the exact number or dimension of them.

23 Q. Based on Bazooka's tire size, did Nuhn
24 change its tire size to match Bazooka's?

25 A. Our tire size now is, I'd say, bigger

1 than theirs. And the main reason why we
2 changed our tire size was we finally had a
3 chassis platform -- I think we went over this
4 quite a bit with our hydraulic system. We're
5 able to add more torque to it, get a little
6 more power, then we're able to power a bigger
7 wheel. So it all kind of came around the same
8 time.

9 Q. Okay. Going back to Exhibit 1001, which
10 you have as the '708 patent, can you just
11 confirm for me that the '708 patent discloses a
12 vehicle that does not use props to agitate,
13 steer and propel the vehicle?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: Do you want me to read
17 this now, Tom, and go through this?

18 BY MR. LEACH:

19 Q. Take whatever -- it's your patent. You
20 take whatever time you need to answer my
21 question.

22 A. Sure. Well, I'm probably going to read
23 it thoroughly then just to answer it properly,
24 because I'm not a patent attorney. I know the
25 product. I know the Lagoon Crawler well. But

1 anything directly to the patent, I'm probably
2 going to have to read the patent to answer your
3 question. So if that's what you would like me
4 to do, I can do that now. But if there's
5 something else --

6 Q. How about this? Can you show me
7 anywhere in there where it talks about or shows
8 a picture of a prop? Let's start with the
9 pictures. Is there any figure in your
10 '708 patent that shows a propeller for steering
11 and agitation and propulsion?

12 A. I don't -- I believe that's not the --
13 with anything related to the claims of the
14 '708. If you want, I can read the claims. I'm
15 just saying there's -- especially on the '708
16 there's a lot of claims here, and I'm just
17 saying this could take a while.

18 Q. Well, let's ask -- let's ask this:
19 Prior to Bazooka introducing its Wolverine, did
20 any commercial embodiment of Nuhn's Lagoon
21 Crawler prior to that date include props for
22 agitation, propulsion and steering?

23 MR. LUCHSINGER: Objection as to
24 form, vague and compound.

25 THE WITNESS: I feel like we went

1 over this in great detail in the previous IPR.

2 BY MR. LEACH:

3 Q. You don't have to wind up like that.

4 I'm just -- can you just answer the question?

5 MR. LUCHSINGER: That's an
6 unreasonable interruption, but go ahead.

7 MR. LEACH: Sorry, Brad.

8 THE WITNESS: Let's be a little
9 respectful here, Tom.

10 BY MR. LEACH:

11 Q. I'm being respectful. But --

12 MR. LUCHSINGER: No, you're not.

13 BY MR. LEACH:

14 Q. You go off on these tangents and you're
15 not answering my questions. All I want is a
16 simple answer to a question.

17 MR. LUCHSINGER: By cutting the
18 witness off you're not being respectful. And
19 I'm surprised that I have to point this out.

20 MR. LEACH: Brad, with all due
21 respect, he --

22 MR. LUCHSINGER: Go ahead.

23 MR. LEACH: -- doesn't answer my
24 question --

25 MR. LUCHSINGER: You're doing it

1 again.

2 MR. LEACH: -- and he goes off on
3 these tangents.

4 MR. LUCHSINGER: You're doing it
5 again. You're being disrespectful to me.

6 MR. LEACH: I'm not being
7 disrespectful.

8 MR. LUCHSINGER: Yes, you are.

9 MR. LEACH: I'm merely trying to get
10 through this deposition so it doesn't take all
11 day. But the problem is we go off on these
12 tangents and the questions don't get answered.
13 So I'm just trying to direct the witness to
14 listen to my question and provide a response.
15 Okay? That's it.

16 MR. LUCHSINGER: He was providing a
17 response. And by constantly interrupting me --

18 MR. LEACH: Brad, I'm not constantly
19 interrupting you or the witness.

20 MR. LUCHSINGER: You just did
21 literally ten seconds ago.

22 MR. LEACH: Sure. Let me ask my
23 questions. Sit there and make objections --

24 MR. LUCHSINGER: I think we
25 understand each other.

1 MR. LEACH: -- and let me ask my
2 questions.

3 MR. LUCHSINGER: I think we
4 understand each other. Stop being
5 disrespectful to me.

6 MR. LEACH: I'm not being
7 disrespectful.

8 THE WITNESS: It felt a bit
9 disrespectful.

10 MR. LUCHSINGER: Add that the person
11 who's being disrespectful doesn't think he's
12 being disrespectful. I mean, that's like
13 insanity. That's the definition of insanity.
14 So why don't we move on.

15 Ian, answer the question.

16 Please be respectful, Tom. That's
17 my ask.

18 MR. LEACH: I will be respectful, as
19 I have been throughout this deposition.

20 THE WITNESS: I didn't feel I was
21 speaking out of tune here. I just was saying
22 as we went over in great detail in the previous
23 deposition, we started our propeller project
24 across the entire line of Nuhn products back in
25 November 2019. That's my answer.

1 BY MR. LEACH:

2 Q. Mr. Nuhn, if you'd turn to column 3 of
3 Exhibit 1001. And if you go to line 56 to 60,
4 it says, "In one embodiment, movement of the
5 vehicle while floating is achieved solely by
6 cooperation of at least the second fluid nozzle
7 and the valve structure. Accordingly, the
8 vehicle does not comprise a propeller."

9 Do you see that?

10 A. I do.

11 Q. Aside from that comment about the
12 vehicle not comprising a propeller, is there
13 anything in the figures or the text of the
14 '708 patent that you can think of that suggest
15 that the '708 discloses a vehicle that uses a
16 propeller to agitate, propel and steer the
17 vehicle?

18 A. Just reading this here, it's saying, "In
19 one embodiment, movement of the vehicle while
20 floating is achieved solely by cooperation..."
21 and so forth. "...the vehicle does not
22 comprise a propeller." That's just saying in
23 one embodiment. Again, I'm not a patent
24 attorney. I'm not a patent agent. I'm not an
25 expert in patents. I'm not going to define

1 what the word "propeller" is and say if my
2 invention has or doesn't have it within the
3 body of the patent. I believe that's up to my
4 legal counsel, claim construction, that whole
5 process to do that. So I'm not going to sit
6 here and do that today.

7 Q. In 2013, when you filed your patent
8 application, which the '708 patent claims
9 priority back to, did you disclose a propeller
10 on the vehicle to propel, agitate and steer the
11 vehicle?

12 MR. LUCHSINGER: Objection as to
13 form.

14 THE WITNESS: I think my answer
15 remains the same as what I just answered. I
16 don't want to define, sitting here, what a
17 propeller is or isn't and what the Lagoon
18 Crawler has or hasn't in terms -- in regards to
19 that term.

20 BY MR. LEACH:

21 Q. Sir, this is your invention, right?
22 You're the sole inventor on this patent,
23 correct?

24 A. I am.

25 Q. You claim to have come up with the

1 design yourself, correct?

2 A. That's a true statement.

3 Q. And you claim to have done it in eight
4 days or ten days, correct?

5 MR. LUCHSINGER: Objection as to
6 form.

7 THE WITNESS: It was a very short
8 time period.

9 BY MR. LEACH:

10 Q. Okay. And I'm asking you: As part of
11 what in your mind was your invention and what
12 you filed on in 2013, did it include a
13 propeller to agitate, steer and propel the
14 vehicle?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I still feel my answer
18 isn't changing. I know what the machine has
19 and doesn't. When it comes to reading this
20 patent and defining what it is in terms of
21 those terms, I don't want to say what it has or
22 hasn't. I don't know if that's --

23 BY MR. LEACH:

24 Q. I'm asking you to set aside the patent
25 legalese and the patent and all that and just

1 tell me: What did you believe your invention
2 was? Did it include at that time a propeller
3 to steer, propel and agitate a manure lagoon?

4 MR. LUCHSINGER: Objection as to
5 form.

6 THE WITNESS: I feel the -- this is
7 just me speaking with my general understanding
8 of the '708 patent. We do not discuss
9 propellers. We talk about an impeller in a
10 liquid manure pump, and we go on about that.
11 And you're talking about something that the
12 infringing product has is propellers. It has a
13 liquid manure pump with a nozzle gun
14 combination as well. So I don't know why we're
15 hyper-focusing on this propeller.

16 BY MR. LEACH:

17 Q. Does your invention that's disclosed in
18 your original application include multiple
19 nozzles around the vehicle to agitate, propel
20 and steer the vehicle?

21 A. Again, I understand that nozzles is a
22 term that's at dispute in all of these patent
23 cases. And I don't feel comfortable defining
24 or talking about nozzles when it's in regards
25 to this patent.

1 Q. Well, let's not talk in regard to the
2 patent. Let's just talk --

3 A. Well, we have the exhibit open of the
4 patent.

5 Q. Well, let's talk about your invention
6 that you made in 2013. Did that use -- and
7 let's not use the word "nozzles." Did that use
8 jets located around the vehicle to steer,
9 agitate and propel the vehicle?

10 A. The prototype that was built in
11 August 2013 had multiple jets on it.

12 Q. And were those jets used to steer,
13 propel and agitate the vehicle?

14 A. Can you repeat how you asked that?

15 Q. Were those jets on the vehicle used to
16 steer, propel and agitate the lagoon -- sorry,
17 steer and propel the vehicle and agitate the
18 lagoon? That's maybe more accurate.

19 A. The jets were used to agitate the lagoon
20 and also maneuver in the lagoon. But not just
21 the jets, the wheels too. We use the wheels to
22 crawl through the lagoons just as much as the
23 jets.

24 Q. I'm going to mark one more exhibit.

25 (Exhibit Number 1085 marked for

1 identification.)

2 BY MR. LEACH:

3 Q. Mr. Nuhn, I've provided an exhibit
4 marked as Exhibit 1085. And this is a compare
5 document of your '835 declaration versus your
6 '708 IPR declaration. Can you just take a
7 scroll through that and tell me if that looks
8 like an accurate compare document of those two
9 declarations?

10 MR. LUCHSINGER: Objection to form
11 and foundation.

12 THE WITNESS: (Views document.) I
13 don't have the '835 in front of me to compare,
14 but I would say it generally is an accurate
15 comparison of the two.

16 BY MR. LEACH:

17 Q. Okay. Going back to your Exhibit 2083,
18 did you sign that document on August 14th,
19 2024?

20 A. I'm assuming that I did. Pretty sure I
21 would have checked the date and made sure that
22 was right.

23 MR. LEACH: No further questions.

24 MR. LUCHSINGER: All right. I don't
25 have any follow-up questions, so that concludes

1 today's deposition of Ian Nuhn. The witness
2 will read and sign.

3 THE VIDEOGRAPHER: Time is
4 approximately 3:08 p.m. We are going off the
5 video record.

6 (Deposition concluded at 3:08 p.m.)

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REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that I reported the remote deposition of IAN NUHN on Monday, October 28, 2024, from Maple Grove, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition transcript by the witness was reserved.

WITNESS MY HAND AND SEAL THIS 31st day of October, 2024.



Dana S. Anderson-Linnell
Notary Public, Hennepin County, MN
My commission expires 1/31/2025

Veritext Legal Solutions
1100 Superior Ave
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Cleveland, Ohio 44114
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October 31, 2024

To: Mr. Luchsinger

Case Name: Bazooka-Farmstar, LLC v. Nuhn Industries LTD

Veritext Reference Number: 6960926

Witness: Ian Nuhn Deposition Date: 10/28/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6960926

CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries LTD

DATE OF DEPOSITION: 10/28/2024

WITNESS' NAME: Ian Nuhn

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date Ian Nuhn

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6960926

CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries LTD

DATE OF DEPOSITION: 10/28/2024

WITNESS' NAME: Ian Nuhn

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Ian Nuhn

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections
in the appended Errata Sheet;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 6960926

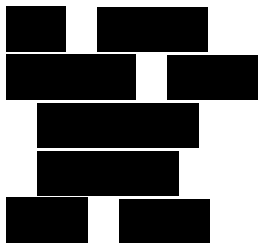
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DAY OF _____, 20____ .

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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