

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,

Petitioner,

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

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

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
OF FINAL WRITTEN DECISION
(under 37 C.F.R. § 42.75(c))**

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I. INTRODUCTION

Pursuant to 35 U.S.C. § 318 and 37 C.F.R. § 42.75, the Director should review the Board’s Final Written Decision (“FWD”) finding all claims of U.S. Patent No. 11,491,835 obvious based on multiple erroneous findings of fact and conclusions of law and an abuse of discretion. *See* USPTO, Director Review Process, § 2.B.

First, under 35 U.S.C. § 112(f), the Board misconstrued the claimed “liquid manure mover” which is expressly claimed as “*positioned within the liquid manure.*” The Board improperly accepted Petitioner’s misrepresentation that the specification discloses a pump *or nozzle* positioned within the liquid manure for moving liquid manure—and thus erroneously concluded that the corresponding structure is not limited to an immersible pump. The specification does not disclose an immersible nozzle. It discloses the opposite—nozzles situated to direct liquid through air. The only *immersible* structure disclosed for moving liquid manure is the pump.

Second, in construing the claimed “*liquid manure* mover” and “*liquid manure* pump,” the Board erroneously allowed nearly any pump to qualify as the claimed “liquid manure pump” / “mover”—even if it cannot pump liquid manure.

Third, the Board’s erroneous claim constructions led to the clearly erroneous conclusion that Puck and Bryham disclose the “liquid manure mover,” when neither discloses an *immersible* pump for moving liquid manure. Bryham discloses no pump at all. Puck discloses a pump situated high and dry on the vessel.

Fourth, the Board also committed clear error in relying on an alleged motivation to combine Puck and Bryham to avoid putting Puck’s trailer or one’s feet in the manure lagoon that demonstrably ***did not exist*** in Puck.

Finally, the Board abused its discretion in relying on Petitioner’s alleged expert testimony as support for its claim constructions and obviousness findings despite failing to qualify Petitioner’s expert as a POSITA.

II. ARGUMENT

A. The Board Clearly Erred in Construing “Liquid Manure Mover”

The ‘835 Patent is directed to a new class of remote-controlled manure lagoon agitation equipment that drives into and through a manure lagoon, while also agitating and mixing the contents of the manure lagoon. *See* Paper 23 at 1-7. The independent claims recite a “liquid manure mover positioned within liquid manure when the vehicle is floating.” Each claim also recites “a wireless remote control configured to . . . control a flow of liquid manure from a liquid manure pump” (cls. 1 and 39) or “the liquid manure mover” (cls. 17 and 40).

It was undisputed that: (1) “liquid manure mover” invokes § 112(f); (2) the corresponding structure not only moves liquid manure, but—as claimed—is also “***positioned within*** the liquid manure when the vehicle is floating;” and (3) the corresponding structure is ***at least*** a pump, a conduit, and a nozzle. Disputed was whether the specification’s disclosed structure for moving liquid manure included

an *immersible liquid manure* pump, or as Petitioner argued, merely any “pump.”

1. The “liquid manure mover” must include an *immersible* pump.

The Board clearly erred by adopting Petitioner’s proposal and construing the structure for moving liquid manure to not require an *immersible* pump.

a. The Board erroneously accepted Petitioner’s misrepresentation that the ’835 Patent discloses immersible components for moving liquid manure other than the immersible pump.

First, the Board erroneously concluded that the pump need not be immersible because *any* component of the liquid manure mover (e.g., the nozzle) could be “immersible” to render the liquid manure mover “positioned within liquid manure when the vehicle is floating.” *See* Paper 71 at 20. The Board’s error was based on Petitioner’s misrepresentation that “the ’835 [p]atent describes that the ‘nozzles 13 may be rotated fully downwardly’ *into the lagoon* to drive the vehicle.” *Id.* 20 (quoting Paper 34 at 6) (emphasis added). But the ‘835 Patent does not describe a nozzle—or any other component—rotated *into a lagoon* to move liquid manure. Nor does the ’835 Patent describe an immersible conduit for moving liquid manure. Petitioner did not contend this, and the Board did not find this. Rather, ’835 Patent describes that “nozzles 13 may be rotated fully downwardly *and then upwardly towards the front of the vehicle*.” EX1001 at 7:1-3 (emphasis added). This clearly *does not* describe a nozzle that rotates “into the lagoon” as Petitioner alleged.

The ‘835 Patent describes the exact opposite: “fluid nozzle(s)” configured to

move liquid manure by “*direct[ing] fluid through the air*” in a substantially downward direction.” EX1001 at 4:6-7, 1:58-59 (“[A] first fluid nozzle configured to direct fluid through the air . . .”), 3:21-22; EX2094 at ¶ 76. A nozzle that directs fluid downwardly “through the air” clearly *cannot* be positioned within the fluid. If submerged, the nozzle would not direct fluid *through the air*. The Board thus had no basis to conclude that the specification discloses other “immersible” structure “positioned within the liquid manure” besides the pump for moving liquid manure.

An *immersible* nozzle is unnecessary. But without the *immersible* pump, the disclosed structure for moving liquid manure would be unable to move liquid manure.¹ See *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1352 (Fed. Cir. 2015) (“[T]he disclosure must be of ‘adequate’ corresponding structure to achieve the claimed function.”). The ‘835 Patent does not describe a single embodiment where the pump *is not* immersible or a *different* immersible component moves liquid

¹ Puck discloses a non-immersible slurry pump 38 positioned above the surface of the lagoon when the vehicle is floating and a separate, downwardly directed intake pipe to draw liquid manure. See Paper 23 at 13 (citing EX1014 at ¶ 0031); EX2094 at ¶ 386; *see also* EX1014 at 2, 5, 7. But the ‘835 Patent *does not* disclose or clearly link that type of structure to moving liquid manure for the claimed invention and instead limits its disclosure for moving liquid manure to an *immersible* pump.

manure. *See Mettler-Toledo, Inc. v. B-Tek Scales, LLC (B-Tek)*, 671 F.3d 1291, 1296 (Fed. Cir. 2012) (“[A]ny means-plus-function claim limitation will be limited to the single disclosed structure and equivalents thereof.”); *see also, e.g., Bennett Marine, Inc. v. Lenco Marine, Inc.*, 549 F. App’x 947, 954 (Fed. Cir. 2013).

The Board should have adopted Patent Owner’s construction, which correctly includes an *immersible* pump as one of the structures of the liquid manure mover. Of the three structures that correspond to the § 112(f) liquid manure mover limitation (i.e., the pump, conduit, and nozzle), the pump is the only structure described as “positioned within the liquid manure while the vehicle is floating,” as required by the express claim language.² It was clear error for the Board to conclude otherwise.

b. The Board erroneously characterized an “immersible” pump as a non-structural functional limitation.

Second, the Board erroneously concluded that an “immersible” pump is merely a potential use or function of the pump—and not structure. Paper 71 at 19. This is demonstrably incorrect. An “immersible pump” denotes the pump’s *structural position / location* on the vehicle so that the liquid manure mover is positioned within the liquid manure when the vehicle is floating, as claimed, in order to move the liquid manure. *See* Paper 23 at 12-13. This is clear from the specification,

² *See, e.g.,* Paper 40 at 8 (citing EX1001 at 2:65-3:20 (describing the immersible pump structure), 7:20-46 (same)); Paper 23 at 11-23; EX2094 at ¶¶ 69, 76-77.

which discloses the pump 9 on the underside of the vehicle so that the impeller 37 draws the fluid through an enlarged bottom fluid opening 38 of the pump housing 18, obviating the need for priming the pump. EX1001 at FIGS. 3 and 8, 7:20-41.

The ‘835 Patent’s *immersible* pump for moving liquid manure is a critical structural distinction from non-immersible pumps like in Puck, where different inlet/housing locations and configurations with pump priming structures are used. *See* Paper 23 at 13 (citing EX1014 at ¶ 0031; EX2094 at ¶ 386). The Board came to a clearly erroneous conclusion of law in construing the liquid manure mover means-plus-function claim limitation to cover *non-immersible* pumps, when the ‘835 Patent only describes an immersible pump. This conclusion must be corrected.

2. The pump must also be a *liquid manure* pump.

The Board also clearly erred by adopting Petitioner’s proposed structure for moving liquid manure to not require a *liquid manure* pump, instead of Patent Owner’s construction, which correctly includes a *liquid manure* pump for moving liquid manure. *See* Paper 9 at 32-36; Paper 23 at 14-17; Paper 40 at 8-9.

The Board’s error reflects a misplaced conclusion that “liquid manure” is just fluid with suspended solids—overlooking other *undisputed* characteristics of liquid manure, including that it is highly corrosive and exhibits non-Newtonian shear behavior when pumped. *See* Paper 40 at 8-9 (citing EX2094 at ¶¶ 114-116, 144); EX2004 at ¶ 120; EX1049 at 5; EX1050 at 8. In a similar way that a fuel pump is

different from a water pump, a liquid manure pump is different from a water pump. The Board committed clear error by completely overlooking the evidence demonstrating that a POSITA would understand that a pump for moving liquid manure would need to withstand the corrosiveness and shear properties of the liquid manure being pumped through it. Paper 40 at 8 (citing EX2094 at ¶¶ 114-116, 144). The FWD is silent these points, and the Board’s construction of “liquid manure mover” as simply requiring a generic “pump” is overgeneralized and incorrect.

The claim language itself leaves no doubt that the Board clearly erred. Independent claims 1 and 39 each not only recite a “liquid manure mover,” but also recite a further limitation that “a wireless remote control is configured to control a flow of liquid manure **from a liquid manure pump.**” EX1001 at 8:52-53, 11:29-22; *see also* Paper 23 at 13. Neither the Board nor Petitioner argued that this “liquid manure pump” is different from the liquid manure mover’s pump. Nor can they. Intrinsic evidence does not disclose a configuration where one pump moves liquid manure as claimed, while a flow of manure is controlled from a *different* liquid manure pump. Thus the Board also erred by construing “liquid manure mover” to merely require a generic pump, when the claims are clear that the pump is a *liquid manure* pump. The Board did not even address the inconsistency its construction introduced. This and the Board’s erroneous conclusion of law overgeneralizing the disclosed structure for moving liquid manure must be corrected.

B. The Board Clearly Erred in Construing “Liquid Manure Pump”

Independent claims 1 and 39 recite a *liquid manure pump*. The correct “liquid manure mover” construction for each independent claim also requires a *liquid manure pump*. The Board erred in construing “liquid manure pump” by impermissibly reading the “*liquid manure*” pump out of the claims and instead merely requiring a “a pump with structure that is capable of pumping *liquid* with suspended solids,” as Petitioner proposed. Paper 1 at 24.

The Board should have construed “liquid manure pump” as “a pump that pumps *liquid manure*” (or, alternatively, “a pump with a structure that is capable of pumping *liquid manure* with suspended solids”), as Patent Owner proposed. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”). Patent Owner’s construction is consistent with the intrinsic evidence—including the claims themselves, the Central Reexamination Unit’s (“CRU”) claim interpretation of related U.S. Patent Nos. 10,974,557 and 11,358,425,³ and the order construing “liquid manure pump.”⁴

³ See Paper 9 at 34-36 (citing EX2032 at 26; EX2031 at 6; EX2004 at ¶ 87); Paper 23 at 14-17; Paper 40 at 8-9; EX2094 at ¶¶ 82-84, 114-116, 144.

⁴ See *Nuhn Industries, Ltd., v. Bazooka-Farmstar, LLC*, Case No. 3:22-cv-00015,

Patent Owner’s construction is compelled by the *undisputed* evidence that—in addition containing suspending solids—liquid manure is highly corrosive and behaves as a non-Newtonian fluid when pumped and, thus, that a *liquid manure* pump is not just *any* pump capable of pumping *any* liquid as construed, but instead must be a pump that withstands the corrosiveness and shear properties of the liquid manure being pumped through it—*i.e.*, a liquid manure pump. Paper 40 at 8-9.

The Board incorrectly dismissed Patent Owner’s argument that these important, *undisputed* characteristics of liquid manure compel Patent Owner’s narrower construction. Paper 71 at 23. The Board did not even address Patent Owner’s argument that a liquid manure pump must withstand the highly corrosive environment and the shear properties associated with the non-Newtonian nature of liquid manure. To the extent the Board’s analysis equating salt-water environments (of Bryham) to liquid manure influenced its construction (*id.* at 41 (citing EX1014 at 1:55-58)), there is no record evidence showing that the corrosiveness of salt water is comparable to the highly corrosive nature of liquid manure—or, by extension, that

Doc. 274 at 9, 11 (S.D. Iowa Feb. 18, 2025) (rejecting Petitioner’s “liquid manure pump” construction that merely required the pump to be capable of pumping a “liquid mixture” and correctly finding that pumps for pumping liquid manure are inherently different from pumps for pumping other forms of liquid).

a general-purpose pump can withstand the corrosiveness of liquid manure.

The Board's construction, which strips the "liquid manure pump" of the critical limitation that it must pump (or be capable of pumping) *liquid manure*, was a clearly erroneous conclusion of law. Patent Owner's correct construction should be adopted. Absent correction, the Board's broad constructions impermissibly broaden the claims beyond their plain language and effectively read "liquid manure" entirely out of the claims, as shown for example in marked-up Claim 1 below:

1. An amphibious vehicle comprising:

a floatable vehicle body;

a ground engaging propulsion structure comprising a plurality of ground engaging elements powered by a hydraulic motor;

a hydraulically powered [pump, conduit, and nozzle] separate from the ground engaging propulsion structure, the [pump, conduit, and nozzle] positioned within [liquid with suspended solids]⁵ when the vehicle is floating;

a power source connected to a hydraulic pump, the power source configured to provide power to both the ground engaging propulsion structure and the [pump, conduit, and nozzle]; and,

a wireless remote control configured to enable an operator who is remote from the vehicle to: (1) control the ground engaging propulsion

⁵ Based on its construction of "liquid manure pump," the Board effectively took the position that "liquid manure" is nothing more than "liquid with suspended solids."

structure; (2) control a flow of [liquid with suspended solids] from a [pump with a structure that is capable of pumping liquid with suspended solids]; (3) control at least one of the speed and direction of the vehicle when the vehicle is ground engaging; and, (4) control at least one of the speed and direction of the vehicle when the vehicle is floating.

EX1001 at 8:37-57 (annotations and emphasis added).

C. The Board Clearly Erred in Concluding the Puck and Bryham Combination Discloses the Same “Liquid Manure Mover” Structure Described in the ‘835 Patent Specification

Properly construed, the “liquid manure mover” § 112(f) limitation requires a liquid manure mover with an *immersible* pump for moving liquid manure. Petitioner relied on Puck’s slurry pump 38 to disclose the liquid manure mover’s pump. Paper 1 at 84-86. But in contrast to the immersible pump described in the ‘835 Patent, Puck’s slurry pump is *not* an “immersible” pump or otherwise “positioned within the liquid manure while the vehicle is floating,” as claimed. Paper 23 at 61-63; *see also* EX1014 at 2-3; EX2094 at ¶¶ 221-223. Puck’s slurry pump is mounted high and dry on the vessel hull, above the surface of a manure lagoon when Puck’s boat is floating. *Id.* It is undisputed that Bryham does not resolve Puck’s deficiency. In fact, the Board’s recent FWD in IPR2024-00098 (Paper 49 at 19-21) recognizes that Puck’s slurry pump is not immersible. The Board committed clear legal error in finding the claims obvious based on its erroneous finding of fact that the Puck and

Bryham combination discloses the requisite structure for the liquid manure mover.

D. The Board Clearly Erred in Finding a POSITA Would Have Been Motivated to Modify Puck's Boat with Bryham's Powered Wheels

1. It is uncontroverted that the problem allegedly motivating the combination of Puck and Bryham did *not* exist.

The Petitioner incorrectly asserted that a POSITA would have been motivated to combine the Bryham's retractable wheels with Puck's boat to facilitate launching and retrieving Puck's boat "without having to put the trailer (let alone one's feet) in the corrosive manure lagoon." Paper 1 at 80; EX1004, ¶ 333. Yet, Puck describes a system of launching and retrieving Puck's manure agitation boat *without backing Puck's trailer* into the manure lagoon. This is clear from annotated Figure 9 of Puck that the Petition included. Paper 1 at 81. As such, a POSITA would have recognized that launching and retrieving Puck's boat did *not* require "exposing a trailer (or vehicle) to highly corrosive environments" or placing "one's feet" in a manure lagoon as Petitioner incorrectly asserts. EX2094, ¶¶ 236-240. Thus, Petitioner's alleged "problem" simply did *not* exist in Puck.

If a POSITA was concerned about *potentially* exposing Puck's trailer (with unpowered wheels that *did not need to be submerged in a manure lagoon*) to corrosive liquid manure, the last thing they would do is mount powered wheels from Bryham to Puck's boat (where they would be submerged in liquid manure for *hours on end* during manure lagoon agitation and/or pump out). Paper 40 at 23-24;

EX2094, ¶ 240. The combination of Puck and Bryham would not solve—but would rather *exacerbate*—the alleged problem of equipment exposure to corrosive manure lagoon environments. *See* EX2094, ¶ 241; EX2099, ¶ 63 (discussing corrosion problems due to the “repeated and prolonged exposure to the corrosive liquid manure”). Petitioner’s motivation is a fiction of its own creation, reeks of nothing but impermissible hindsight, and identifies a concern that teaches away from the combination. It was clear error for the Board to follow Petitioner down this path.

The Board also erroneously relied on Dr. Winkel’s conclusory assertion that a POSITA would have modified Puck with Bryham to avoid getting “feet wet.” *See* Paper 71 at 41 (citing EX1004, ¶ 335). But again, Bryham was attempting to solve a *nonexistent* problem of Puck. The Board stated that “‘at least one of the occupants of the boat usually needs to get their feet wet’ when beaching a boat where there is not access to a jetty or wharf.” *Id.* (quoting EX1015, 1:17-23). Critically, Bryham was referring to “occupants of the boat”—*there are no occupants of Puck’s boat—it is remote-controlled*. Without occupants boarding or exiting Puck’s boat, it does not present the problem of getting “feet wet.” *See* EX2106, ¶ 123. This could not have motivated a POSITA to combine Bryham with Puck. *Id.*

2. The USPTO recognized in concurrent proceedings that the problem allegedly motivating the combination of Puck and Bryham did *not* exist.

In *ex parte* reexaminations of the ‘557 Patent, the CRU recognized there is no motivation to combine Puck and Bryham and doing so is impermissible hindsight:

However, Puck has no ground engaging propulsion system. While various secondary references teach powered wheels on a boat, there is no motivation to add remote controlled powered ground propulsion to Puck as the reference discloses a preferred method of launching the device on the lagoon. Bryham shows a boat with retractable land to permit the boat to travel on land, but neither reference teaches remote control of a ground engaging propulsion system (which Puck does not require) so the combination is seen as a product of impermissible hindsight to combine and modify the references to derive the claimed features of independent claims 1, 8, 55 and 79.

Notice of Intent to Issue *Ex Parte* Reexamination Certificate in Reexamination Nos. 90/019,258, 90/019,290, 90/019,302, and 90/019,428 (Jan. 13, 2025). The CRU's conclusion that the Puck and Bryham combination is nothing more than the "product of impermissible hindsight" shows that Patent Owner's arguments against this alleged motivation are meritorious and should not have been rejected.

For the reasons discussed above, the Board came to a clearly erroneous conclusion of law—*based on impermissible hindsight*—when it concluded that a POSITA would have been motivated to combine Puck and Bryham.

E. The Board Abused its Discretion in Relying on Dr. Winkel's Testimony as Evidence of a POSITA's Understanding

The Board's errors identified above are exacerbated by its failure to qualify Dr. Winkel as a POSITA under the Board's definition, which required that such person "would have had a working knowledge of . . . livestock manure" and that a

“lack of work experience can be remedied by additional education.” Paper 71 at 14 (adopting this portion of Petitioner’s POSITA definition). Not once did Petitioner purport to present evidence—nor did the Board find—that he met this prong of the Board’s definition—either at the time of the invention or even today. *See, e.g.*, Paper 54 at 13; Paper 59 at 5; EX1003 (“livestock” and “manure” are absent from his CV). Dr. Winkel did not even claim that he was a POSITA. The Federal Circuit has repeatedly stated that “[t]o offer expert testimony from the perspective of a skilled artisan in a patent case—like for claim construction, validity, or infringement—a witness must at least have ordinary skill in the art.” *Osseo Imaging, LLC v. Planmeca USA Inc.*, 116 F.4th 1335, 1340 (Fed. Cir. 2024) (internal quotations omitted). The Board’s failure to find that Dr. Winkel has at least ordinary skill in the art was clear error and infects the Board’s repeated reliance on his declarations for what a POSITA would have known or understood.⁶

III. CONCLUSION

For these reasons, the Director should grant review and modify, reverse, or vacate the FWD and terminate this IPR proceeding.

⁶ The Board gave “credit” to Dr. Winkel’s testimony over *six* times on alleged problems in the art and what a POSITA would have known, all without finding that he qualifies as a POSITA. *See* Paper 71 at 41, 44, 45, 46, 50, and 63.

Dated: May 14, 2025

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CERTIFICATE OF COMPLIANCE

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

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

Dated: May 14, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 14th day of May, 2025 a true and correct copy of the foregoing Request for Director Review was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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