

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC

Petitioner,

- vs. -

NUHN INDUSTRIES LTD.,

Patent Owner.

Case No: IPR2024-00004

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

PETITIONER'S AUTHORIZED RESPONSE TO DIRECTOR REVIEW
REQUEST

Petitioner (“Bazooka”) opposes Patent Owner’s (“Nuhn”) request for Director review of the Final Written Decision (“FWD”). The Board correctly analyzed the complete record, including the claims, specification, prior art, factual evidence, and expert submissions. The Board’s findings of fact and conclusions of law are not clearly erroneous. It did not abuse its discretion. No Director review is warranted.

I. The Board Correctly Construed “Liquid Manure Mover.”

The Board properly construed “liquid manure mover.” Paper 71 at 18. Both parties agreed that the term is a 112(f) term and that the corresponding function is “to move liquid manure.” *Id.* at 16. Considering the other claims of the ’835 Patent, which describe the liquid manure mover being “hydraulically powered,” “separate from the ground engaging propulsion structure,” “positioned within liquid manure when the vehicle is floating,” and having an adjustable angular orientation, the Board correctly determined that the “liquid manure mover” is the pumping assembly comprising the “pump, conduit and nozzle.” *Id.* at 16-18.

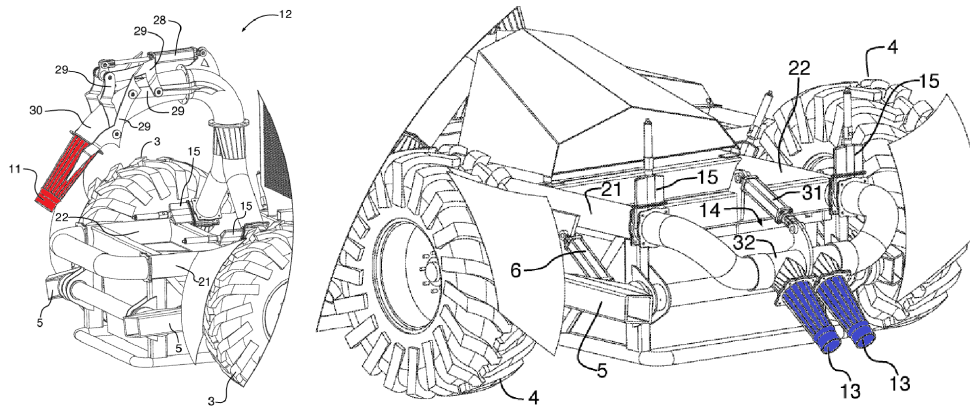
The Board correctly noted that construction of a means-plus-function term does not “permit incorporation of structure from the written description beyond that necessary to perform the claimed function.” *Id.* at 19. Immersible pumps are not necessary for moving or pumping liquid manure. Indeed, the specification discloses a “fluid pump” for this purpose, and all references in the specification to an immersible pump are optional. *Id.* at 19 (“[T]he fluid pump *may* comprise a pump

housing configured for immersion within the fluid[.]” The ’835 Patent discusses many other optional pump features, including, for example that “[t]he pump housing *may* comprise a bottom fluid inlet and at least two tangential fluid outlets[.]” or that the pump may be hydraulically powered. EX1001, 2:56-3:1 (emphasis added). But the Board correctly found that like an immersible pump, these additional details need not be incorporated into the definition of “liquid manure mover.”¹ Similarly, Nuhn’s argument that “liquid manure mover” must include a *liquid manure pump* finds no support in the specification. See Paper 71 at 17-18; see also Section II, *infra*. Accordingly, the Board properly found “the terms ‘immersible’ and ‘liquid manure’ are more appropriately characterized as being related to a potential use or function use rather than structure.” Paper 71 at 19.

Because an immersible pump is not required, the Board properly concluded that any one of the pump, conduit, or nozzle may be positioned in liquid manure to be “a liquid manure mover positioned within liquid manure when the vehicle is floating.” *Id.* at 20. To further illustrate this point, the FWD noted how the ’835 Patent even describes an example where the “nozzles 13 [(shown below)] may be rotated fully downwardly” such that they would be positioned in liquid manure. *Id.*

¹ While not in the IPR record, the claim construction order that Nuhn cites in its Request also found that “liquid manure mover” does not require an immersible pump. See *Nuhn Industries, Ltd., v. Bazooka-Farmstar, LLC*, Case No. 3:22-cv-00015, Doc. 274 at 13-14 (S.D. Iowa Feb. 18, 2025).

Nuhn fixates on this example, accusing Bazooka of misrepresenting the '835 Patent. But Bazooka and the FWD each properly quoted, represented, and understood the '835 Patent disclosure. Nuhn is the one misrepresenting the '835 Patent's disclosure of "direct[ing] fluid through the air." Paper 73 at 3-4. Nuhn cites passages discussing features of the *first* fluid nozzle 11 (red)—not the second fluid nozzles 13 (blue) referenced in the FWD. Any such language discussing other fluid nozzles on the vehicle relates to alternative optional—not mandatory—configurations. *See, e.g.*, EX1001, 4:6-8 ("[F]luid nozzle(s) *may be* configured to direct fluid through the air" (emphasis added)).



EX1001, FIGS. 5-6 (annotated).

There is no teaching in the '835 Patent limiting the "liquid manure mover" to an immersible pump. Importing such a limitation is improper and confuses function with structure. Under the proper construction of "liquid manure mover," the combination of Puck and Bryham indisputably discloses a "liquid manure mover." The Board did not clearly err.

II. The Board’s Construction of “Liquid Manure Pump” Is Not Clearly Erroneous.

The Board’s construction properly reflects that the specification does not articulate *any structure* distinguishing a “fluid pump” from a “liquid manure pump.” Paper 71 at 23-24. The specification *never* even uses the term “liquid manure pump.” Nuhn’s arguments relating to its “undisputed” facts were disputed by Bazooka and rejected by the Board. *Id.* at 22-23. Regardless, the Board properly found that the construction of “liquid manure pump” is irrelevant because the parties do not dispute that Puck discloses a liquid manure pump under any construction. *Id.* at 24. The Board did not clearly err.

III. The Board Did Not Clearly Err in Finding a POSITA Would Have Been Motivated to Modify Puck’s Boat With Bryham’s Powered Wheels.

The motivation to combine Puck and Bryham was compelling. The Board found that the problem is not merely one of whether launching Puck’s boat would get a user’s feet wet; it is whether launching Puck’s boat puts users in an unsafe position close to the reservoir, which has steep and slippery embankments. *Id.* at 42-43, 45. The Puck and Bryham combination keeps users safely from the edge of the manure lagoon. There is no hindsight. The Board did not clearly err.

Nuhn cites an office action from the CRU arguing that the combination of Puck and Bryham constitutes impermissible hindsight. Paper 73 at 14. But Nuhn intentionally ignores the CRU’s *most recent office* action that (1) withdrew the cited

office action, (2) combined Puck and Bryham, and (3) rejected all the claims. Office Action in *Ex Parte* Reexamination Nos. 90/019,258, 90/019,290, 90/019,302, and 90/019,428 (April 14, 2025). The Board got it right.

IV. Dr. Winkel Is a POSITA; the Board Did Not Abuse Its Discretion Relying on His Testimony.

Nuhn's POSITA attack on Dr. Winkel fails. Nuhn waived this argument by not making it in its motion to exclude. Paper 54 at 12 (challenging only Dr. Winkel's qualification as a POSITA under *Nuhn's* definition, which the Board rejected); *see also* Paper 71 at 94, n.29. Instead, Nuhn conceded in its motion that if its POSITA definition were rejected, Dr. Winkel would qualify as a POSITA. Paper 54 at 15. Dr. Winkel's "working knowledge" of "livestock manure" is evident through his detailed analysis of over 30 references on the topic. *See, e.g.*, EX1004, ¶¶83-121.

The only other argument Nuhn made was that limited portions of Dr. Winkel's liquid manure testimony should be excluded under FRE 702 and 403 because it alleged "Dr. Winkel is not an expert on liquid manure." Paper 54 at 13-15. But the Board did not need to reach this argument because it did not rely on Dr. Winkel's liquid manure testimony. Paper 71 at 94-95. The testimony that the Board did credit related to amphibious vehicles or mechanical engineering. And in Nuhn's cited "credit[ings]," the Board reached its conclusion before citing Dr. Winkel only as additional support. *See id.* at 41, 44, 45, 46, 50, 63. There is no basis to question the Board's limited citation to Dr. Winkel's declaration, and it is not clear error.

Date: May 30, 2025

Respectfully submitted,
MERCHANT & GOULD P.C.
/Thomas J. Leach/

Thomas J. Leach
Registration No. 53,188
Robert A. Kalinsky
Registration No. 50,471
Michael A. Erbele
(pro hac vice)
Taylor R. Stemler
Registration No. 79,777
MERCHANT & GOULD P.C.
150 South Fifth Street, Suite 2200
Minneapolis, MN 55402
TLeach@merchantgould.com
RKalinsky@merchantgould.com
MErbele@merchantgould.com
TStemler@merchantgould.com

Jeffrey D. Blake
Registration No. 58,884
MERCHANT & GOULD P.C.
191 Peachtree Street NE, Suite 3800
Atlanta, GA 30303
JBlake@merchantgould.com

(Trial No. IPR2024-00004)

ATTORNEYS FOR PETITIONER

CERTIFICATION OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), that service was made on Counsel for Patent Owner as detailed below.

Date of service:	May 30, 2025
Manner of service:	Electronic mail addressed to: bluchsinger@harnessip.com syackey@harnessip.com mcutler@harnessip.com
Documents served:	Petitioner's Authorized Response to Director Review Request
Persons served:	James B. Luchsinger HARNESS, DICKY & PIERCE P.L.C. 5445 Corporate Dr., Suite 200 Troy, MI 48098 Phone: 248-641-1600 Fax: 248-641-0270 bluchsinger@harnessip.com Scott E. Yackey HARNESS, DICKY & PIERCE, P.L.C. 2801 Network Blvd., Suite 600 Frisco, TX 75034 syackey@harnessip.com Matthew L. Cutler HARNESS, DICKY & PIERCE, P.L.C. 7700 Bonhomme, Suite 400 Clayton, MO 63105 mcutler@harnessip.com

/Thomas J. Leach/
Thomas J. Leach, Reg. No. 53,188