IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BAZOOKA-FARMSTAR, LLC, Case No. IPR 2024-00004

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

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

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CONFIDENTIAL VIDEO-RECORDED REMOTE ZOOM VIDEOCONFERENCE DEPOSITION OF

IAN NUHN

Taken on Thursday, September 26, 2024

Scheduled for 8:00 a.m. (CDT)

REPORTED BY: Lori Morrow, RDR, RMR, CRR, CRC

JOB NO.: MW 6914569

CONFIDENTIAL VIDEO-RECORDED REMOTE ZOOM VIDEOCONFERENCE DEPOSITION OF IAN NUHN taken on Thursday, September 26, 2024, commencing at 8:07 a.m. CDT, via a REMOTE COUNSEL ZOOM PROCEEDING, before Lori Morrow, Certified Diplomate Reporter, Certified Realtime Reporter, Certified Broadcast Captioner, and a Stenographic Shorthand Reporter and Notary Public of and for the State of Minnesota.

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ALSO PRESENT: Dave Young, Videographer

****

NOTE: The original transcript will be delivered to Merchant & Gould.

I N D E X

WITNESS:

IAN NUHN

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REQUESTS FOR PRODUCTION: (None)

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(REPORTER'S NOTE: Quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.)

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(The following proceedings commenced at 8:07 a.m.:)

THE VIDEOGRAPHER: Good morning. We're going on the record at 8:07 a.m. on September 26, 2024.

Please note this deposition is being conducted virtually. Quality of recording depends on quality of camera and the Internet connection of participants. What is seen from the witness or heard on the screen is what will be recorded. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video-recorded deposition of Ian Nuhn taken by counsel for the Petitioners in the matters of Bazooka-Farmstar, LLC versus Nuhn Industries Ltd. filed in the United States Patent and Trademark Office before the Patent Trial and Appeals Board. Case Number IPR 2024-00004.

My name is Dave Young. I'm the videographer. Our court reporter today is Lori Morrow. We are both representing Veritext Legal Solutions. I am not related to any party in this action, nor am I financially interested

in the outcome.

If there are any objections to this proceeding, please state them at the time of your appearance.

Will counsel now state their appearances and affiliations for the record beginning with the noticing attorney.

MR. LEACH: This is Tom Leach with Merchant & Gould, and I represent the Petitioner Bazooka-Farmstar, LLC.

MR. LUCHSINGER: My name is Brad Luchsinger. I'm an attorney with the Harness IP Law Firm. We represent the Patent Owner in this IPR, Nuhn Industries.

THE VIDEOGRAPHER: And will the court reporter please swear in the witness, and then we can proceed.

IAN NUHN,

duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LEACH:

Q Good morning, Mr. Nuhn.

A Good morning.

Q Will you please state your name for the record.

A Ian Nuhn.

Q And where are you located today?
A I am at my home in Stratford, Ontario, Canada.
Q And can you provide the address?
A Does this get disclosed publicly, or is there a way to -- I don't want my address --
Q Fair point.
A Yeah.
Q Fair point. What is your work address?
A 4816 Highway 8, Sebringville, Ontario.
Q Okay. And for the record, you requested to take a remote deposition from your location in Canada, right?
A I was the one that requested to do it remotely.
Q Okay. And Petitioner agreed to do the deposition remotely, and Nuhn has no objection to that, correct?
A I have no objection to doing it remotely.
Q Are you represented here today?
A I am.
Q And who are you represented by?
A My patent attorney firm Harness IP, specifically Brad Luchsinger.
Q And real quick, I want to go through just a few formalities of the deposition. Are you on any medication that could impair your ability to understand my questions

and answer them truthfully?

A No, I am not.

Q If I ask a question and you don't understand it, please ask me to rephrase it, and I'll clarify. But if you answer the question, I'll assume you understood it; is that fair?

A That is understood.

Q And we have a videographer and a court reporter here today. The court reporter is going to take down everything we say, and so it's important to provide verbal responses and also that I don't talk over you and you don't talk over me; is that fair?

A Yes, that is fair.

Q And you were just administered an oath, and you understand that that has the same force and effect as if you were in a courtroom in front of a judge or a jury, correct?

A I understand.

Q And you may from time to time hear your counsel object. You still need to answer the questions after he objects unless he instructs you for some reason not to answer the question. Understood?

A I understand.

Q Thank you.

Can you tell me how you prepared for your

deposition today?

A I reviewed my declaration, I reviewed the '835 patent obviously, and then I did have a Zoom call with Brad, two Zoom calls with Brad.

Q How long did the Zoom calls with Brad last? And I don't want you to get into anything that you or he may have talked about.

A Not long. Maybe an hour and a half total between the two calls.

Q Did you meet with anyone else?

A No, I did not.

Q Did you discuss the deposition with anyone else?

A No, I did not.

Q You didn't talk to your father, Dennis Nuhn, about the deposition?

A He knows I'm not here today because I'm doing a deposition, but I didn't talk to him about the details of it.

Q You said you looked at some documents. Other than your declaration and the '835 patent, did you look at any other documents?

A No, I did not.

Q We went through this in your deposition in the prior IPR proceeding, the '425 patent IPR, but I want to

go through the vocabulary a little bit. So in this case, the patent owner is Nuhn Industries Ltd., correct?

A I want to just review the patent here.

(Reading document.)

The applicant is Nuhn Industries Ltd., and the assignee is Nuhn Industries Ltd.

Q Okay. And so given that your father works at the company as well as you, I'll refer to your father as "Dennis Nuhn" or "Dennis"; is that fair?

A Yeah.

Q And I'll refer to you as "you" or "Ian Nuhn"; is that fair?

A That is fair.

Q Okay. And then I'll refer to the company Nuhn Industries as "Nuhn," "Nuhn Industries," or possibly "Patent Owner," fair?

A Yes.

Q Okay. And then for Petitioner, Bazooka-Farmstar, LLC, I'll refer to them as "Petitioner" or "Bazooka" or possibly "Defendant." If I use those terms, will you understand who I'm speaking about?

A Just making a note on defendant. But yes, yeah.

Q So I marked as -- or I've introduced, I should say, an exhibit that was previously marked in this

proceeding, which is Exhibit 2083, and that's the declaration of Ian Nuhn. And that's in your marked exhibits folder if you have that Exhibit Share up.

A Okay.

Q Please open that document and just confirm for me that this is your signed declaration that was submitted in this IPR proceeding.

A That is.

Q Okay. And this is obviously the written portion of the declaration, and it references some exhibits that have been filed in this IPR proceeding as well, correct?

A Yes. It references exhibits.

Q Okay. And then if you go to page 35 of 35 in your exhibit, can you just confirm that that's your signature on page 35 there at the bottom?

A Yes, that is my signature.

Q And did you sign this declaration on July 9, 2024?

A I believe I did, yes.

Q Mr. Nuhn, if you could turn to paragraph 22 of Exhibit 2083 for me, please.

Are you there?

A Oh, yeah, I'm there, yeah.

Q Okay. So in paragraph 22, you provide a table,

different model years.

A I thought it was page 22. What page was it?

Q I'm sorry. It's on page nine, paragraph 22 of your declaration.

A Okay. Yeah, I'm here now.

Q And so in paragraph 22 you provide a table of model year Lagoon Crawlers that Nuhn Industries produced, correct?

A Can you repeat what you called the table?

Q Sure. So on the very bottom of page nine in paragraph 22 there's a table, and it starts with on the left-hand side "Lagoon Crawler Model."

A Yeah.

Q "Model Year, First Public Disclosure, Operator's/Safety Manual, Parts, Catalogs, Brochures," correct?

A Yeah, correct.

Q And so in the column "Model Year," is that the year that that specific model or version of the Lagoon Crawler was released?

A It's the -- what we use to describe each generation, so it's the year that -- for example, 2014 to 2017, you know, they were produced probably late 2013, some of those models, and then all the way into the entirety of 2017 if we look at Gen 1. Gen 2 was made

2018-2019. Probably some were made in 2017, these early prototypes. And same with 2020 to 2022, you know, probably the first one would have been made before that in the factory.

Q Okay.

A And same with --

Q Sorry. I didn't mean to interrupt.

A No. That's okay. I think you get the point.

Q Okay. So turning to page ten of your declaration, Exhibit 2083, for the version or the model of the Lagoon Crawler Gen 1, that was sold between 2014 and 2017; is that correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: The original sales of some of those 2014s would have been made in late 2013.

BY MR. LEACH:

Q Okay. And so on the -- for the 2017 year, would you have stopped selling Gen 1 in 2017 and then started selling Gen 2 in 2018 or maybe a little before 2018 for Gen 2?

A There would have been some overlap. I don't think it was a hard deadline. I don't recall like a hard switchover. We would have had old or inventory that we wouldn't want to have just stopped and wasted. So

there -- I can't say just sitting here without looking at the sales documents where that overlap was.

Q Okay. So I guess what I'm getting at, and I think you've answered it, is you don't -- you're not selling -- after you sell out of Gen 1, when you have moved to Gen 2, you're not simultaneously building Gen 1 and selling that and simultaneously building Gen 2 and selling that. You've moved to a new model, and then what's for sale after the inventory is completed, you're building and selling Gen 2; is that correct?

A No, that's not correct.

Q Okay.

A There is some overlap. Some people we might not tell about a new model so until we know it's somewhat proven and tested, we might not do like a hard cut. Sometimes it's difficult to get components, so it's -- we don't usually do a hard cut. There is a blur.

Q Sure. I understand that there's a blur, I guess. What I'm trying to understand is, like, for example, currently you're not selling Gen 1, Gen 2, Gen 3, and Crawler X, correct?

A Correct. We are not selling Gen 1's or Gen 2's or Gen 3's.

Q Okay. So when you move on to a new model, once the inventory of the old model is depleted, you're then

only selling the current model year or the new model year, right?

MR. LUCHSINGER: Objection as to form; misstates prior testimony.

THE WITNESS: We still need to carry inventory for old machines, so it's not like we need to deplete it. So if someone has a Gen 1 machine now and they break down, there's a good chance we're selling them parts from a prior year.

BY MR. LEACH:

Q Sure. Setting parts aside, I get that. I guess I understand you service the vehicles out in the field. But I think you've answered my question. I'm just trying to understand, when you move on to a new model year, you are then producing that model year, and at some point you stop producing the old model years, correct?

A I don't think it can be covered in a blanket statement across all the generations. I can say we are only selling the Lagoon Crawler X, if that's what you're asking.

Q Okay. So in the table in paragraph 22 of your declaration, are those rough estimates of when those model years were produced and sold then?

A It --

MR. LUCHSINGER: Object to form.

THE WITNESS: It's an approximation of when it was, but there -- the sales report would show that in greater detail, if that's what you're looking for.

BY MR. LEACH:

Q Okay. If we go back to the first Lagoon Crawler model that you identify on page nine of your declaration as the prototype, that was never sold, correct?

A The prototype was never sold, no.

Q Do you still have that prototype, Lagoon Crawler?

A Honestly, I wish I did, but we did cut it up. It was pretty hacked up by the time we had done all the tweaking and changing to it. But it is no longer in our possession.

Q Okay. And when did you hack it up?

A I couldn't say sitting here today. I don't have recollection of an exact date.

Q Was it within the last year, within the last two years?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: If I had to guess, this is

just pure speculating, probably around late 2014 or early 2015, something like that.

BY MR. LEACH:

Q And this Lagoon, the prototype model that you identify on page nine of your declaration, that was displayed in August of 2013 at the Manure Expo in Ontario, Canada, correct?

A Yes. The prototype that I'm referring to in that first row was displayed at the Manure Expo in Guelph kind of mid to late August 2013.

Q And for that prototype, did it drive the fluid pump using a hydraulic drive or a mechanical drive?

A The fluid pump was driven mechanically on the prototype.

Q And can you describe what that mechanical drive was? Was it a driveshaft?

A Yeah, it was a rotating driveshaft and a 90-degree gearbox and a rotating driveshaft to our Header Series manure pump.

Q And did that driveshaft connect to a PTO off the engine?

A Can you define what you're referring to by PTO?

Q Well, what does a PTO mean to you?

A When I hear PTO, I think more of like a tractor PTO. That's how I use it in my day-to-day terms.

Q Like a power takeoff?
A On a tractor.
Q Okay. Well, was there a driveshaft that came out of the engine that was on the Lagoon Crawler on the prototype version that connected to the driveshaft that led to the gearbox, which led to the pump?
MR. LUCHSINGER: Objection to form.
THE WITNESS: The driveline connected to the engine flywheel, to a gearbox, to the driveline, to the pump.
BY MR. LEACH:
Q Okay. So the Lagoon Crawler prototype identified in your table on page nine of Exhibit 2083, your declaration, did not use a hydraulic drive to drive the fluid pump, correct?
A It had a mechanical driveshaft connected to the engine flywheel connected to the gearbox to the fluid pump.
Q Okay. And so it did not use a hydraulic drive to drive the fluid pump; is that correct?
A It was a mechanical drive to drive the fluid pump.
Q I see some hesitation as you not wanting to say it wasn't a hydraulic drive. Is there a reason for that?
A No, no. Just -- I feel like I've answered it

for you on what it is, and you keep poking at it. So I --

Q Well, I guess I'm asking -- you say it's a mechanical drive, but I'm asking, therefore, if it was a mechanical drive, it was not a hydraulic drive to drive the fluid pump on the Lagoon Crawler prototype, right?

A There was a hydraulic pump connected to the 90-degree gearbox on the mechanical drive there.

Q Okay. And so that gearbox also drove a hydraulic pump?

A The gearbox drove a hydraulic pump, yes.

Q Okay. But was the fluid pump driven at all by a hydraulic drive?

A Not in the term that you're referring to, no.

Q Okay. Maybe I misspoke. Was the fluid pump on the Lagoon Crawler prototype driven by a hydraulic drive?

A How would you --

Sorry. Go ahead, Brad.

MR. LUCHSINGER: Obviously, you can ask the questions you want, but I don't know if there's some confusion as to when you're saying fluid pump if you're referring to the manure pump or if you're referring to the hydraulic system pump, because they are right --

MR. LEACH: Right. Brad, I'm going to

need you to just make a proper objection and not interject like that, okay, please?

MR. LUCHSINGER: All right. Fine. Then, you know, I'll just object to all these questions based on form. I'm just trying to make the record more clear.

BY MR. LEACH:

Q Yeah. So let's proceed.

Well, let me ask you this. Maybe this is what's confusing. In the Lagoon Crawler prototype model, was the pump driven by a hydraulic drive?

MR. LUCHSINGER: Objection to form, vague.

THE WITNESS: Can you define hydraulic drive?

BY MR. LEACH:

Q Well, I want to know how you characterize a hydraulic drive. What is a hydraulic drive to you?

A In what context?

Q In the context of your Lagoon Crawler prototype.

MR. LUCHSINGER: Objection, form.

THE WITNESS: I'm not a patent attorney, so I don't want to define a term that is in the patent. I can give a general understanding at what I use hydraulic drive in the day-to-day,

if that's what you're asking.
BY MR. LEACH:
Q Sure.
A When I hear hydraulic drive, I think of something that is driven by a hydraulic motor.
Q Okay. So using that definition, the pump on the Nuhn Lagoon Crawler prototype was not driven by a hydraulic motor?
MR. LUCHSINGER: Objection to form, vague.
THE WITNESS: Which pump are you referring to? There are several pumps on the machine.
BY MR. LEACH:
Q The -- well, describe the two pumps or the pumps that are on the machine.
A There's a hydraulic circuit. There's a cooling circuit. There's the manure pump.
Q Okay. Let's talk about the pump that pumps manure. So going back to my original question. On the Lagoon Crawler prototype was the pump that pumps manure hydraulically driven?
A It was driven mechanically, but I can't go over rotating driveshaft.
Q Okay. And I guess, to follow up on that, no part of it was driven hydraulically?
MR. LUCHSINGER: Objection to form, vague.

THE WITNESS: The wheels were driven hydraulically.

BY MR. LEACH:

Q Sorry. I'm talking about the pump that pumps manure or liquid manure. Was any part of that system driven hydraulically?

A There is a hydraulic pump on the gearbox for recirculating oil for cooling.

Q Did that drive the pump that pumps manure?

MR. LUCHSINGER: Objection to form, vague.

THE WITNESS: No. It was driven off the 90-degree gearbox.

BY MR. LEACH:

Q Okay. And so going back to my question. I understand you're saying it was driven mechanically and -- when we're talking about the pump that pumps the manure. But I guess my question is a little more specific, and I just want to make sure that I'm clear, that for the prototype Lagoon Crawler identified in paragraph 22 of your declaration, the pump that pumps liquid manure was not driven hydraulically; is that correct?

A That is correct.

Q Thank you. So let's go to Gen 1. And so on page ten of your declaration, which is still in paragraph

22, you have identified the model Gen 1 as being produced or sold roughly between 2014 and 2017; is that correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: It was generally characterized to be produced within those years, although production did start earlier.

BY MR. LEACH:

Q Do you still make the Lagoon Crawler Gen 1 today?

A We do not.

Q Do you currently sell any new Lagoon Crawler Gen 1's today?

A After you -- sorry. After you rephrased that question, I do sell used Gen 1's.

Q That's why I said new.

A Yeah. That was my mistake not hearing the question originally. I do sell used Gen 1's today. I do not manufacture any Gen 1's today.

Q So back to my question, I think, is, do you sell any new Lagoon Crawler Gen 1's today?

A Today I do not sell any new Gen 1 Lagoon Crawlers.

Q And so like I asked with respect to the prototype, did the Lagoon Crawler Gen 1 drive the pump that pumps liquid manure hydraulically?

A No, it did not.
Q How did it drive the pump that pumps liquid manure?
A It was mechanically driven with a rotating driveshaft, gearbox, rotating driveshaft.
Q Do you know if you marked the Lagoon Crawler Gen 2 with the '835 patent number?
A The Gen 2?
Q Yes. Sorry. I switched on you. I meant Gen 1.
A The date of patent of the '835 is November 8, 2022.
Q So that would be a no?
A Can you repeat the question?
Q Did you mark the Lagoon Crawler Gen 1 with the '835 patent number?
A The answer is no.
Q Okay. For used Gen 1 Lagoon Crawlers that Nuhn got on trade or purchased and resold, did you apply the '835 patent sticker to those?
MR. LUCHSINGER: Objection to form.
THE WITNESS: Honestly, it has never crossed my mind to update patent stickers on a used piece of equipment. Thanks for the tip.
BY MR. LEACH:

Q That's not surprising. Let's switch to the Lagoon Crawler Gen 2. Do you still make the Lagoon Crawler Gen 2 today?

A I do not manufacture the Lagoon Crawler Gen 2 today, no.

Q Okay. Do you sell new Lagoon Crawler Gen 2's today?

A No. I do not sell any new Gen 2 Lagoon Crawlers.

Q Do you sell used Lagoon Crawler Gen 2's today?

A I do sell used Gen 2 Lagoon Crawlers today.

Q And I assume the same answer applies for updating a patent sticker on the used Gen 2's that you sell today and forward?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I -- correct. I do not update the patent markings on used equipment that I resell.

BY MR. LEACH:

Q And for the Gen 2 model, is it fair to say based on your declaration that Nuhn Industries produced and sold the Gen 2 roughly from 2018 to 2019?

MR. LUCHSINGER: Objection to form.

THE WITNESS: It probably was a little sooner and later than that date range. But

about 2018 to 2019 covers it plus or minus six months.

BY MR. LEACH:

Q Would that plus or minus six months apply to all these time frames provided in your table in paragraph 22?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I would have to look specifically at each to know. Gen 2 sticks out specifically just because of some dealer relationships and whatnot, so.

BY MR. LEACH:

Q And did the Lagoon Crawler Gen 2 drive the pump that pumps liquid manure with a hydraulic drive?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Some did, yes.

BY MR. LEACH:

Q And how would you know if some did -- how would you know which ones did? Was there a specific notation in the model?

A I don't recall how we annotated it, but I can vividly think of the two customers that received them for long-term testing.

Q Was -- well, which customers were those?

A I believe the first one we sold directly to Pit

King located in Ontario, Canada. The other customer was -- the end customer was Jeremy Otto. I don't recall his company name. And it was either sold through Boss Supply or Courtland Waste. I don't remember the details sitting here today. I do -- I'm leaning towards Boss Supply, sold that one. But we did --

Q Sorry. I don't mean to interrupt, but is that Box, B-o-x, Supply?

A B-o-s-s Supply.

Q Boss?

A Yeah. I might -- I'm thinking that he bought from them that particular machine. The reason why I'm confused is later machines he has bought from different dealers, but I believe that particular one was through Boss.

Q Okay. And so when you started to make the switch from a mechanically-driven pump that pumps the liquid manure to the hydraulically-driven pump that pumps the manure, would that have been later in 2019 for Gen 2?

A No. I believe midsummer 2018.

Q So between roughly 2018 and 2019, were there only two sold that had a hydraulic drive for the pump that pumps liquid manure?

A Yes. It was just two units sold. We were doing the start of long-term testing on that drive

system.

Q Okay. And so setting aside the two that you sold for testing of the Gen 2, were the rest of them --

A I just want to --

Q Do the rest of them include a mechanical drive to the pump that pumps liquid manure?

A I just want to clarify. It wasn't really just for testing. Like they were produced units. Both customers, you know, they were pro hydraulic drive, too, so it was a finished unit. It's just we were just cautious in seeing how it would perform before getting a bunch up there, yeah.

Q Okay. And so setting those two aside, did the Lagoon Crawler Gen 2 have a hydraulically powered pump that pumps liquid manure?

A The other units that were produced in that time frame were mechanically driven from the engine, gearbox, to pump.

Q Okay. They were not hydraulically-driven pumps that pump liquid manure, correct?

A Correct. The liquid manure pumps were not hydraulically driven.

Q Okay. And again, I assume you didn't mark the Lagoon Crawler Gen 3 with the '835 patent number?

MR. LUCHSINGER: Objection to form. You

said Gen 3.

BY MR. LEACH:

Q I'm sorry. I meant Gen 2.

A Do you want to reask the question just so it's clear?

Q Sure. And given that the '835 patent had not issued at that point, you didn't mark the Lagoon Crawler Gen 2 with the '835 patent number, correct?

A The Gen 2 does not have the '835 mark on it.

Q Okay. And then same question for the Gen 2 Lagoon Crawlers that you got on trade or purchased back and resold, you didn't update those with the '835 patent sticker for those that were sold after the '835 patent issued, correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I'm not sure I actually resold any Gen 2's since the '835 issued. But I haven't had any opportunity to. I don't -- just sitting here today, nothing comes to mind, yeah.

BY MR. LEACH:

Q Okay. Let's talk about the Lagoon Crawler Gen 3. Do you still make the Lagoon Crawler Gen 3 today?

A We do not make the Gen 3 today, no.

Q And did you stop making the Gen 3 sometime in

2022?

A I'm actually not -- I would have to look through the sales. There was a lot of overlap with the Gen 3 and the X, so sitting here today, I would have to look at the sales to get an exact number. There was more overlap with the X and the Gen 3 than other models I would say.

Q Okay. So in your declaration in paragraph 22 on page 11, you provide that the model year for Gen 3 as being 2020 to 2022. Is that roughly about when that started, that generation Lagoon Crawler started and ended?

MR. LUCHSINGER: Objection to form.

THE WITNESS: It would be an approximation in that window.

BY MR. LEACH:

Q Okay. But I think you confirmed that you don't make the Lagoon Crawler Gen 3 today.

A We do not make the Gen 3 Lagoon Crawler today.

Q Did -- let me ask you another question. Do you sell new Lagoon Crawler Gen 3's today?

A No, we do not sell new Gen 3 Lagoon Crawlers today.

Q Okay. Did the Lagoon Crawler Gen 3 have a hydraulic drive for the pump that pumps liquid manure?

A We manufactured one unit similar drive to the two test units we did in 2018 with hydraulic drive.

Q Okay. The rest of them were mechanically driven then?

A The rest of the units made for Gen 3 were mechanically driven.

Q And so setting aside that one unit, the Lagoon Crawler Gen 3 did not have a hydraulically-driven pump that pumps liquid manure, correct?

A Other than the one hydraulically-driven manure pump unit, the others were all mechanically driven.

Q Do you know whether you marked the Gen 3 with the '835 patent?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I would have to look. Maybe some late ones were. If there was -- I would have to see when they were made. I can't answer that today actually.

BY MR. LEACH:

Q So talking about the prototype through Gen 3, aside from the three units that you produced for testing, for long-term testing, none of the prototype Gen 1, Gen 2, Gen 3 included a hydraulically powered pump that pumped liquid manure, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: There were three units, two built of the Gen 2 chassis, one on the Gen 3 chassis, hydraulically-driven liquid manure pumps. The remaining were mechanical drives.

BY MR. LEACH:

Q What type of feedback did you get from the three -- the two Gen 2 -- let's start with those. For the two Generation 2 Lagoon Crawlers that you included a hydraulically powered pump for pumping liquid manure, what type of feedback did you get about those?

A Good. The feedback was positive. When someone is buying something like this, they are more concerned, I would say, with the overall performance of the machine, not so much a specific feature such as that. But overall it was positive just as any other Lagoon Crawler.

Q Did you have to make any tweaks to how you designed the -- or how you powered -- strike that.

Did you have to make any tweaks based on feedback on the Gen 2 models that had a hydraulically powered fluid pump?

A Can you re- --

MR. LUCHSINGER: Objection to form.

THE WITNESS: Can you rephrase or reask the question? It was a little chopped.

BY MR. LEACH:

Q Sure. For the two Gen 2 Lagoon Crawlers that included a hydraulically powered pump that pumped liquid manure, did you make any tweaks or changes based on that long-term testing?

A You know what? The original Crawler X's like for two years had the exact same hydraulic drive system as those two 2018 units.

Q So just to be clear, is the answer to my question then no?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Like what changes and tweaks are you looking for, I guess?

BY MR. LEACH:

Q I guess I'm wondering if you made any tweaks to the two Gen 2 Lagoon Crawlers that had a hydraulically powered manure pump.

A No. To the best of my knowledge, the two that we built are still the same way. There's no tweaks or any changes to them.

Q We're finally going to the Lagoon Crawler X in paragraph 22 of your declaration in the chart, which is on page 12 of your declaration. You identify the Crawler X model as beginning in 2022 to the present. Is that roughly the time frame you started making the Crawler X?

A Same answer as the other ones. There's

obviously overlap, so yeah.

Q And do you know what month you started making the Lagoon Crawler X?

A Sitting here today, I would have to -- I would have to go through the CAD files and see.

Q And you still make the Lagoon Crawler X today, correct?

A We make the Lagoon Crawler X today, correct.

Q And does the Lagoon Crawler X drive the pump that pumps liquid manure via a hydraulic drive?

A The liquid manure pump that's on the, again, Crawler X is driven hydraulically.

Q Are any of the Crawler X's pump that pumps liquid manure mechanically driven?

A Actually, there --

MR. LUCHSINGER: Objection to form.

THE WITNESS: There is one Lagoon Crawler X that was driven mechanically, yes.

BY MR. LEACH:

Q And can you tell me about that unit?

A We were playing around with the, you know, different ways to drive the pump. As far as I know, that machine is still operating in -- somewhere in Alberta. I think it has 2,500 hours or something like that, so.

Q And when was that produced and sold?

A I would have to look through the details, through the specifics, but it was sold to Meinema Custom if we go through the list there. I'm pretty sure we sold that one directly to Meinema Custom in Alberta maybe late '21, early '22, somewhere around that time frame.

Q Why did you switch from a mechanically -- a mechanical drive for the pump that pumps liquid manure to a hydraulic power system for the pump that pumps liquid manure?

A We were trying to get more hydraulic power to the rest of the system, not specifically the manure pump. And after looking at different options, different weights, different costs, it seemed like a most cost effective way to get more power to the rest of the hydraulic system was to run the pump hydraulically, the liquid manure pump hydraulically.

Q So it was more of a trying to reduce costs than -- and get -- or I guess, strike that.

Was it more to reduce cost or gain efficiencies than performance of the pump that pumps liquid manure?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Sorry. Can you reask the question?

MR. LEACH: Sure. Maybe, Lori, could you read it back, please?

(The question was read by the court reporter.)

MR. LUCHSINGER: Same objection.

THE WITNESS: No, it wasn't to reduce cost, and it wasn't for efficiencies, either. You know, hydraulic systems are in general not known to be super efficient. But when we try to get a system to get more power to the hydraulics for the rest of the machine when compared to, you know, an expensive pump drive like a Funk drive, Repto drive --

(Court reporter clarification.)

THE WITNESS: Yeah, Funk. I should clarify. I'm not saying a swear word. Funk drive, F-u-n-c [sic], and then Repto is what some would call it, R-e-p-t-o.

There's something that you -- because one of the reasons when we started, you know, we needed a certain amount of hydraulic power to just run the wheels per se, and the original machines actually drove a belt to drive the hydraulic pumps just because the amount of torque we could pull off the engine's integrated pump pad was a little bit on the light side. When we went to the 2018-2019,

like the Gen 2 model, we went up to CAT, and they had an option for an HD auxiliary pump drive, which we then ran a pump, hydraulic pump directly. But even then we were really maxed out on the torque that we were pulling off that pump drive, so we were -- in order to make the machine grow, give everything a little bit more hydraulic power, you know, we were kind of evaluating do we stick a Funk drive or a Repto drive between the flywheel and clutch and run the hydraulics that way, then we would have, you know, infinite amount of torque that we could pull off at least for what we needed, or if we go the hydraulic drive route, then we could just stack another pump behind the hydrostat, which is -- you know, it ended up being the way that we decided to drive the pump.

So there are pros and cons to both the mechanical and the hydraulic setup, I would say.

BY MR. LEACH:

Q Okay.

A Does that answer your question?

Q It does. And so deciding between the hydraulic

drive -- or the hydraulically powered manure pump and the mechanically-driven manure pump, it was basically a matter of just design choices and trade-offs based on equipment --

MR. LUCHSINGER: Objection.

BY MR. LEACH:

Q Is that correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Yeah, there were -- when designing and choosing hydraulic drive, you know, there are pros and cons to each. I think the hydraulic had a little bit more pros even though there were some extra challenges and stuff there, too, so.

BY MR. LEACH:

Q So for the Lagoon Crawler X, you also added a propeller, correct?

A There is an option of the Lagoon Crawler X for a propeller.

Q Do you know about -- I think in your exhibits to your declaration you said you sold to date about, at least at the time of the declaration, about 112 units of the Crawler X. Is that about right?

A I would have to look at the time frame, but --

Q Let's just jump to paragraph 25 of your

declaration.

A Sure.

Q And it says, "As reflected in the report, Nuhn's Lagoon Crawler X sales encompass over 112 units sold." Do you see that?

A Yeah.

Q About how many of those units had a propeller on them?

A Sitting here, I don't know the exact number. If I had to guess, probably 50 percent of them. We can go through the specific sales, and I can identify it further if you need a specific number.

Q Would that be on the exhibit that you provided attached to your declaration that had the sales numbers for the Crawler X?

A I could probably tell from the sales pricing customer which one was which. It's about a $13,000 option.

Q And is there -- I would assume for each Lagoon Crawler there's a sales report that would identify that, maybe on the invoice or something, which ones had the propeller and which ones did not, correct?

A If we dug into each invoice, it would be quite clear which ones had a propeller and which not. It's its own line item. We don't group it in.

Q So aside from the propeller and the hydraulically powered manure pump, how else did the Crawler X generation differ from, say, Gen 3?

A A big part was now that we've got access to more power to the hydraulic system, the hydraulic system -- and when I refer to the hydraulic system, I'm not talking about the closed loop that's driving the liquid manure pump. I'm referring just to the hydraulic system on the machine. We -- the big change is we're able to get a lot more power to the hydraulic system, so.

Q Okay. So aside from driving the pump that pumps liquid manure hydraulically and adding a prop, what else was different on the Crawler X versus Gen 3?

A The open loop hydraulic system went to, you know, like 6,000 psi system versus just a -- I think near the end we were pushing 3600 psi with the old hydraulic system, but now we're able to bump that up to 6,000 psi. So like a more powerful hydraulic system is a pretty big change.

Q And what benefits come with a much more robust hydraulic system, a much more powerful hydraulic system?

A We are able to get better agitation out of the wheels.

Q What about the pump?

A What about the pump? You said aside from the

pump.

Q Ah, okay. But in terms of the more powerful hydraulic system, did that allow, for example, the nozzles to provide more force of liquid out of the nozzles?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I think we're -- I think you're maybe confused about the hydraulic systems I'm talking about. The manure pump is driven by a closed-loop system. What I'm saying, the open-loop system had more power. Like both Crawlers, Crawler X and the Gen 3 had an open loop system. So we were able to get more power to that system.

BY MR. LEACH:

Q Okay. So when you say that system, is one system driving the wheels?

A The open-loop circuit is driving the wheels, yeah.

Q And then there's a different circuit that drives the manure pump in the Crawler X?

A Correct. It's two hydraulic systems, shared oil but two different pumps.

Q Okay.

A Hydraulic pumps, yeah.

Q So the difference between -- one of the differences between Gen 3 and the Crawler X is the prop, correct?

A No. I actually built a Gen 3 with a prop.

Q Okay. When did you do that?

A I would have to look through the pictures and stuff. I think you have actually all my pictures. I don't know if you want to pull it up. We can look at it.

Q I don't have that here. Was it just one Gen 3 that had a prop?

A The hydraulic drive unit in Gen 3 had a prop on it as well.

Q Okay. And do you know about what time frame that was?

A I would have to look through my photos and see here.

Q Okay. So was that -- would you classify that as a commercial product, or was that more your kind of testing as you go to the next version of the Gen X?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I believe in our Facebook post at the time, it is in our Facebook site. I believe we were promoting it as an option on the Gen 3.

BY MR. LEACH:

Q Okay. And was it just one Gen 3 that was made with the prop and the hydraulic power to the pump that pumps liquid manure?

A Sorry. Can you repeat the question, Lori or Tom?

Q Yeah. For the Gen 3, I guess I just want to understand. Did Nuhn Industries build just one Gen 3 that had a prop?

A Yeah. There was just one Gen 3 with a prop.

Q Okay. And so from the -- I want to go back to the differences between Gen 3 and Crawler X. And actually, let me broaden that a little bit. So from the -- Gen 1 to Gen 3 versus Crawler X, did the Crawler X have a much more powerful hydraulic system, at least for the wheels?

MR. LUCHSINGER: Objection to form.

THE WITNESS: The Crawler X had a 6,000 psi hydraulic system. Gen 3 had a 3600 psi. Gen 2 and Gen 1 were like 2900 psi.

BY MR. LEACH:

Q And so tell me what advantages the Crawler X has over the prior generations because of this much more powerful hydraulic system.

A The wheels, surprisingly, are used quite a bit for agitating. And by adding more power to the wheels,

we're actually getting better agitation out of the whole machine. I didn't -- just even personally in the last month or two had some Lagoons where we're using the wheels to mix, and it had never been done before even with like a weaker -- it just improved that agitation, I would say.

Q Do the wheels turn faster with the more powerful hydraulic system?

A They do, but not significantly.

Q Put that in context. Did the Lagoon Crawler Gen 3 turn its wheels at the highest speed of, you know, five miles an hour, and Gen X is seven miles an hour or --

A We're talking like five percent difference in speed. It's not so much speed. It's more the torque behind it. So when I talk about hydraulic pressure, I'm referring more to the torque.

(Deposition Exhibit Number 2046 was marked.)

BY MR. LEACH:

Q Okay. I've introduced what has previously been marked as Exhibit 2046 in this IPR, if you want to take a look at that and tell me what Exhibit 2046 is.

A Yeah. I've got it here.

Q Okay. And can you tell me what Exhibit 2046 is?

A I believe this is an early sales brochure of the Crawler X when we first unveiled it.

Q So would this have been produced sometime in late 2021, early 2022?

A I think mid '21, if I have to guess, maybe earlier '21, the April, May, June '21 sometime. I'm just guessing.

Q Okay. And in the gray box in the lower right-hand corner of page one above the QR code, it says, "Torque Meets Traction. The Lagoon Crawler X has twice the power to the wheels and 83% more rubber on the ground than the standard Lagoon Crawler."

First of all, is the standard Lagoon Crawler you're kind of referring to Gens 1, 2, 3?

MR. LUCHSINGER: Objection to form.

THE WITNESS: When I'm saying standard Lagoon Crawler, at this time we were selling both the Gen 3 and the model, the Lagoon Crawler X at the same time. So the standard Lagoon Crawler here would be referred to as the Gen 3.

BY MR. LEACH:

Q Okay. And so were -- the tires, when it says "83% more rubber on the ground," can you explain what that means for the Crawler X versus the Lagoon Crawler

Gen 3?

A Yeah. Kind of look here. The original standard Crawler had a 19.5-24 tire on it, and the Lagoon Crawler X had a 28Lx26. So by the time you do your surface area calculation, that's probably where that 83 percent came from.

Q So wider wheels, is that what those numbers mean in terms of tire size?

MR. LUCHSINGER: Objection to form.

THE WITNESS: The tire dimensions of the standard one were 53 inches in diameter by 19 inches wide, and the X had a 66-inch diameter tire by 28 inches wide.

BY MR. LEACH:

Q Okay. So I just want to summarize quick. The Crawler X had wider tires, correct --

A Correct.

Q -- than the Gen 3 Crawler?

A 28 inches wide versus 19 inches wide.

Q Okay. What about Gen 1 and Gen 2, did the Crawler X have wider tires than those generation Lagoon Crawlers?

A We have used the same 19-by-24 on Gen 1 and Gen 2 and Gen 3.

Q Okay. And so does the wider tires provide

better agitation as well?

A You know what? I think it does. I think it is a plus.

Q And those tires were powered by twice the power as Gen 3, correct, based on this brochure?

MR. LUCHSINGER: Objection to form.

THE WITNESS: We basically were able to put infinite -- not infinite. But we were able to drastically increase the amount of hydraulic power that was available to us, so it allowed us to put bigger wheels on the machine. If we would have been at the same hydraulic system and just put bigger wheels on, we would have actually lost out on torque. Again, the other machine was sized -- the wheel was sized to the planetary, which was sized to the hydraulic system, and it's kind of a fine balance. So we just go to a bigger wheel, you need to operate your hydraulic system, too, to have even just the same torque to turn it.

BY MR. LEACH:

Q And does the torque help with it getting in and out of a Lagoon as well?

A The bigger tire helps, and then you need the torque behind it to back it up.

Q Okay. So aside from the hydraulics and the bigger tires and the prop, anything else that the Crawler X had that was an improvement over the prior generations?

A We added suspension to the system. We always had a very similar -- I call it an A arm system. So we basically added suspension to that to also help give us more traction.

Q Turn to the next page. You have "Steering" circled in kind of the center of Exhibit 2046. Can you describe what that was?

A That we changed the way that the machine is steered. Actually, after looking closer at this page, the time frame that this brochure was released is later than the time frame I said. The first page, there's parts of it that were on the original brochure, but I was mistaken on the time frame, because that's a newer machine in the picture I'm seeing here. So this is a later brochure. I just want to clarify that.

Q What time frame is this brochure, do you believe?

A This might even be our current sales brochure. I would have to -- I would have to guess. I don't get involved in the end sales, so this might be our current brochure.

Q So you said you marked the Lagoon Crawler X with your '835 patent; is that correct?
A That's correct. The Lagoon Crawler is marked with the '835 patent.
Q So is the Lagoon Crawler X an amphibious vehicle?
A It's an amphibious pumping vehicle, I would say.
Q Okay. Does it have a frame?
A I would say it has a frame.
Q Does it have floatable members?
MR. LUCHSINGER: Objection as to form.
THE WITNESS: I don't use floatable members in my day-to-day term. Could you -- are you trying to get me to define something in the patent or something I use day to day?
BY MR. LEACH:
Q Well, looking at Exhibit 2046, how does the Lagoon Crawler float in a manure Lagoon? What structure provides its buoyancy?
A There are buoyant elements. That's not the only thing providing flotation.
Q In Exhibit 2046, can you identify the buoyant elements?
A Is there a particular buoyant element that

you're looking at or want? Because there's -- any piece there can be -- is displacing liquid, so, are you asking specifically about the foam filled floats? Is that what you're looking at?

Q Sure. Are those what provide buoyancy to the Lagoon Crawler?

A Probably the majority of the buoyancy.

Q Okay. And can you describe, you know, looking at Exhibit 2046, what are the foam-filled floats?

A I think if you can pull up another exhibit, I can probably point it out a little bit clearer, like the exploded view. It's a little bit clearer to see.

Q Well, using this brochure, are you able to describe, you know, what are the foam-filled floats? If you look at page one of 2046, can you describe the foam-filled floats that are shown there?

A I feel like I can do a better job of it with the, you know, the exploded view parts catalog Exhibit 2047 if you want. It would be easier for the transcript if I can just do that on 2047.

Q See if I can get that.

THE VIDEOGRAPHER: Excuse me. We've got about five minutes left on this media.

MR. LUCHSINGER: Do you want to take a break, and then we can pull up the exhibit and

everything?

MR. LEACH: Sure, let's do that. I've got it loading now, so. Go off the record.

THE VIDEOGRAPHER: We are going off the record. The time now is 9:29.

(A break was taken.)

THE VIDEOGRAPHER: We are back on the record. This is the start to Media Number 2. The time is 9:38.

(Deposition Exhibit Number 2047 was marked.)

BY MR. LEACH:

Q Sir, we just got back from a short break, and we were talking about the structure of the Crawler X, and you asked for Exhibit 2047. I've provided you that. Can you take a look at Exhibit 2047 and tell me what it is?

A Yeah. I'm assuming it's the 2022 Lagoon Crawler X parts catalog.

Q Can you look through it and just confirm that it looks to be a true and accurate copy of Nuhn's Lagoon Crawler X parts catalog for 2022?

A Yeah.

Q Before the break we were talking about the floats on the Lagoon Crawler X, and you asked for the parts catalog. Would you turn to page 3 of 47 of Exhibit 2047. Does that show on reference number two the

floats for the Lagoon Crawler X?

A So in this particular page, you know, I'm not a patent attorney. I understand that there's some of this to be defined within the patent. But I'm not speaking to that. But what I do say and refer to in my day to day at work, item two is what we would call a float.

Q Say that again. You broke up on me. But --

A Like I understand that this is, you know, some terms used actually in the patent. I'm not defining that. I'm not a patent attorney, but I'm -- what I am adding here is, in my day-to-day at work, I refer to item 2 as a float, 110-756 is the part number, just to be clear.

Q Okay. So this item has reference number two there --

A Yeah.

Q -- in that column item. And then if you go up into the picture it points to like a box-looking thing, and it has two pointing to it; is that correct?

A Yeah. What's pointing to there, in my day-to-day work I call that a float.

Q Okay. And that's the title in the --

A Is "Crawler - Float - 48 inch by 72 inch by 36 inch."

Q Thank you. If you go to the next page, can you

tell me what items three and four are?

A Again, in my day-to-day work, you know, talking on the shop floor, three and four we would call a float.

Q And so let's just go back up to the first page rather than going back to the brochure. So the 2022, Lagoon Crawler X, the very front page of Exhibit 2047 shows that the Crawler X has wheels, correct?

A You can see what appears to be three wheels.

Q And those wheels engage the ground, correct?

A Again, I know -- I'm not a patent attorney. I know we talk about ground engaging. I'm not speaking to anything within the patent. But the wheels make contact with the ground.

Q Okay. For the Lagoon Crawler X, do the wheels lower and raise to lift the mainframe up and down?

A Can you be a little more clear on your question, I guess?

Q I guess I'm wondering, does the Lagoon Crawler X also have a structure that allows the wheels to go up and down? Can you raise the body up and lower the body?

A On the Lagoon Crawler X, you can raise and lower the wheels.

Q Okay. And raising and lowering the wheels, that basically gives more ground clearance for the machine when coming in and out of the lagoon?

A Not necessarily.

Q Can you tell me why you designed the Lagoon Crawler -- I think all the Crawlers have a feature where the wheels raise and lower, correct?

A All of the Lagoon Crawlers that we have manufactured have the wheels raise and lower.

Q Okay. And what is the purpose of that?

A Added versatility. I do know some guys use the wheels for raising and lowering just so that you know where the solids are in a pit.

Q Can you explain that just a little bit more?

A There's -- some people that operate a Lagoon Crawler, this is what I've been told, they will use the wheels to go up and down, you know, to -- basically to find the solid piles to know where to focus their time on and what areas.

Q So do I understand you correctly, there may be a Lagoon that has like sandbars or manure bars, whatever you want to call it, where the sediment has settled, and there's like a hump under the liquid manure that they want to find using the wheels by lowering the wheels over it to see where that is?

A I've been -- I've been told that some people use that for finding solid piles so they know where to focus their time on. I've heard that.

Q Does the raising and lowering of the wheels provide more ground clearance for exiting and entering the Lagoon?

A It's not a -- not a blanket statement.

Q Well, when the wheels are down, the frame is higher from the ground, correct?

A Makes a higher center of gravity.

Q I didn't ask about center of gravity. I asked, when the wheels are down, is the frame further away from the ground?

A When the wheels are down, the frame is further away from the ground.

Q And that provides more ground clearance for entering and exiting a lagoon, correct?

A Not necessarily. I know some people, they have certain specifically-designed trailers to move around a Lagoon Crawler, and it's nice you can straddle the trailer and set it down on the machine like for floating from, like, pit to pit. It's a nice feature of the wheels going up and down.

Q Okay.

A So like the --

Q Again --

A The way that the trailer is, it's skinny enough that it fits between the wheels, and basically you can

lower the wheels, giving the machine more ground clearance, and you can straddle the trailer and then set it on and -- I do know of some people not even really like strapping the machine down. Just setting it on its belly, picking the wheels up and going to the next job. So it's a very convenient feature for moving around.

Q And having the wheels raise and lower, that's part of your invention, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. It's on the invention. I don't think it changes the fact of what it does, or I don't think it changes the scope of the invention, whether it has it or not.

BY MR. LEACH:

Q What do you mean by that?

MR. LUCHSINGER: Objection to --

THE WITNESS: It's a --

MR. LUCHSINGER: -- form, calls for a narrative.

THE WITNESS: It's a -- it's a feature that's a nice feature, but it doesn't change the meat and potatoes of what the machine is and does and performs.

BY MR. LEACH:

Q Does the Lagoon Crawler X have a power source

mounted to the frame?

A There's a diesel engine on the Lagoon Crawler, if that's what you're asking.

Q Is it mounted to the frame?

A Which model specifically are you talking about?

Q Crawler X.

A In my -- I'm not speaking about the patent, but in my experience day to day, the engine is mounted to the frame of the Lagoon Crawler.

Q And I think you said -- that was my next question. What type of power source is it?

A We use a diesel engine.

Q Does the power source provide power to the wheels?

MR. LUCHSINGER: Objection to form.

THE WITNESS: It is a hydraulic pump connected to the diesel engine, which is the main power source for propelling the machine.

BY MR. LEACH:

Q And does the Lagoon Crawler X have conduits to move the manure?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't use conduit in my day-to-day vocabulary.

BY MR. LEACH:

Q What do you use?
A I use piping, plumbing.
Q I think you said the Crawler X includes, at least as an option, a propeller.
A Is that a question or --
Q Yeah. Does the Crawler X have a propeller?
A There's an optional propeller on the Lagoon Crawler X.
Q Okay. And is the propeller connected to the power source?
A The propeller is on the same open-loop hydraulic system that is connected from a hydraulic pump to the engine, that same circuit that's driving the wheels. It's on that same hydraulic circuit.
Q So the propeller is hydraulically driven?
A On the Lagoon Crawler X, the propeller is driven hydraulically.
Q Okay. What is the propeller on the Nuhn Lagoon Crawler X used for?
A It's an additional agitation source.
Q And where is it located?
A What I call the, you know, personally in my day to day, I refer to that as the front of the machine.
Q Is where you have the bracket and nozzle that swivels and rotates, is that typically what you consider

to be the front of the Lagoon Crawlers?

A When I talk about the Lagoon Crawler in my day to day at the shop, I personally refer to that as the front. Some other people refer to the engine end as the front. Some people switch the hydraulics around so the engine is the front. But me personally, I refer to the cannon end and the propeller end as the front.

Q Okay. And so if you go down to page 3 of 47 in Exhibit 2047 and you look at the frame, it says, "Front" and "Rear." Do you see that?

A I do.

Q Is that front, is that the same orientation as what's shown on the front page of Exhibit 2047?

A The "Front" label there, front in that picture is the end that has the propeller on it and the cannon on it.

Q Are there -- are there nozzles where the propeller is too on the Nuhn Crawler X --

MR. LUCHSINGER: Objection to form.

BY MR. LEACH:

Q -- at the front of the boat?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Again, I understand that nozzle is a touchy term in this -- in the patent case. So I'm not a patent attorney.

I'm not defining what a nozzle is. But I can offer, you know, some insight as to what I believe here. What I would call the front cannon is on that end of the machine, and then also our front steering assembly is also on the front of the machine.

BY MR. LEACH:

Q And the front steering assembly, does that include nozzles as well?

A There's a fluid outlet point on the front steering assembly.

(Court reporter clarification.)

THE WITNESS: I call it a -- I'm not sure what I said. Front fluid outlet.

BY MR. LEACH:

Q And so why did you place the propeller where it's placed?

A On the front there? Is that what you're asking?

Q Yeah. I'm looking at the front page of Exhibit 2047, and it looks like the propeller is kind of the black bracket thing with the -- I guess there's a bracket. It looks like a motor and then the propeller. And it's underneath the articulating structure, and within the articulating structure a conduit nozzle. Do

you see that?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I see the propeller on the front located just underneath the front cannon and above the front steering assembly.

BY MR. LEACH:

Q Okay.

A Why is it located there?

Q Yes.

A It's similar to how it's located on our 50-foot lagoon pumps. It's in a nice spot where the cannon can almost work in assisting bringing material towards the propeller. So the two work nicely together.

Q If you were to look at the Lagoon Crawler X shown in Exhibit 2047 on the very first page dead on, looking at the front of it, is the propeller between the two front wheels?

A If you're looking at the Lagoon Crawler directly from the front, the propeller is -- from that view, it would be between the front left and front right wheel. I would say it's -- if you look at it from the side, it's probably ahead of the wheels.

Q Does the propeller unit move?

MR. LUCHSINGER: Objection to form, vague.

BY MR. LEACH:

Q Good objection. Let me rephrase that.
A The propeller rotates.
Q The propeller spins. I get that. Does the propeller unit, on the Lagoon Crawler X move up and down?
A On the Lagoon Crawler X, yes, the propeller moves up and down.
Q And what allows the propeller to move up and down?
A There's a hydraulic cylinder for moving a parallel length. It's not perfectly parallel but approximately parallel link to raise and lower the propeller.
(Court reporter clarification.)
THE WITNESS: Parallel link, yeah.
BY MR. LEACH:
Q And what direction is the propeller orientated in terms of how it moves liquid manure?
MR. LUCHSINGER: Objection to form.
THE WITNESS: Can you repeat the question?
MR. LEACH: Sure. Maybe, Lori, could you please read that back?
(The question was read by the court reporter.)
MR. LUCHSINGER: Same objection.
THE WITNESS: I would say -- that's a very

strange question. More or less a vertical axis, not perfectly -- not perfectly vertical though.

BY MR. LEACH:

Q And so when the propeller is operating -- well, strike that.

Can the propeller operate in both clockwise and counterclockwise direction?

A Yes. You can spin clockwise or counterclockwise the propeller.

Q Okay. And so in one of those directions, does it propel the liquid manure towards the bottom of the lagoon?

A In one of the directions, liquid manure is being moved downward, relatively downward.

Q I think you characterized it as a cannon. Is the front cannon, the articulating structure and nozzle, is that adjustable?

MR. LUCHSINGER: Objection to form.

THE WITNESS: The front cannon can be rotated left, right, and up and down, if that's what you're asking.

BY MR. LEACH:

Q And is -- I assume when in operation the Lagoon Crawler X, when it's in a manure lagoon, the cannon is

above the surface of the manure lagoon?

MR. LUCHSINGER: Objection to form.

THE WITNESS: Are you referring to what's located above the propeller there?

BY MR. LEACH:

Q Yes.

MR. LUCHSINGER: Same objection.

THE WITNESS: Not -- not all the time. You can see there's a little ring lock on the end of the cannon. And some people put like an extension on so that it actually is discharging below the liquid.

BY MR. LEACH:

Q As shown though in the first page of Exhibit 2047, without an extension, would the nozzle be above the liquid manure?

A Are you talking the whole structure, or what are you referring to? If you're driving in a steep lagoon, that whole front end can get dunked.

Q Sure. Once it's in the lagoon and floating though, is the nozzle above the surface of the manure lagoon?

A The structure of the whole nozzle assembly. I referred to the cannon, and that also has a nozzle. That's something in my day-to-day work I refer to it as

both. That whole structure in its entirety is above the liquid level --

Q Okay. And --

A -- when it's normally floating.

Q So why is it -- is it beneficial to have the nozzle above the surface of the liquid manure and spraying liquid manure into the lagoon?

MR. LUCHSINGER: Objection to the form.

THE WITNESS: Sorry. Can you ask that again?

MR. LEACH: Sure. Lori, can you read it back, please?

(The question was read by the court reporter.)

MR. LUCHSINGER: Same objection.

THE WITNESS: There's -- I think very generally -- you know, every lagoon is different. You know, there's pros and cons for what works. And what one works for one lagoon doesn't work for the other. I've seen the cannon assembly used many different ways. I've seen people even have -- sometimes you have lagoons parked like cell to cell to cell, and they will even just shoot over from one lagoon to the other, so there's many different uses

for that assembly.

BY MR. LEACH:

Q In operation does the propeller provide agitation at the surface of the manure lagoon?

A It does -- the propeller, it does a good job with surface agitation I would say, yes.

Q And I think you said they work well in combination. So I assume the propeller can be functioning, agitating, and the cannon can be shooting liquid manure down at the surface of the liquid manure lagoon as well, right?

A The two structures are completely independent and can be operated independently of each other.

Q So they both can be on or they both can be off?

A One on, one off. They are independent.

Q Both on at the same time?

A You can have both on at the same time.

Q Would you turn to page 19 of 47 of Exhibit 2047. In that diagram, what is reference number three, or item number three pointing to?

A So page 19? The name of it is "Agitator Nozzle - 6 inch to 4 inch, 7 and a half square flange. 18 and 5/16th inch long.

Q If you go down to page 20 of 47 of Exhibit 2047, is that an exploded parts view of Nuhn's

propeller for the -- propeller unit for the Crawler X?

A This is labeled propeller option. It says basically all the components of the propeller option.

Q So it includes the AR mount, upper cylinder linkage and so forth?

A When I hear propeller option, I think of this whole assembly, same way when I hear front nozzle on page 19, that encompasses that whole front nozzle assembly.

Q Let's go back to your declaration, if you would, please.

I've actually provided you Exhibit 1001, which is U.S. Patent No. 11,491,835, also known as the '835 patent here. Can you take a look at Exhibit 1001 and confirm for me that that's the '835 patent that's at issue in this IPR proceeding?

A Yeah, it appears to be the '835 patent.

Q Can you confirm for me that independent claims 1, 17, 39, and 40, all require a hydraulically powered liquid manure mover?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I'm not a patent attorney, so I can't comment on that.

BY MR. LEACH:

Q Well, let's go to claim one, which is in column

8 on page 13 of 15 of Exhibit 1001. Do you see claim one?

A Which row and column?

Q It's column 8, line 40 -- sorry, 37 is where claim one starts.

A Okay.

Q Do you see that?

A I'm there.

Q If you go down to line about 43, claim one requires, at least in part, "a hydraulically powered liquid manure mover," correct?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: Do you want me to read the patent?

BY MR. LEACH:

Q Well, can you look at claim one on around line 43 of column eight, and can you just confirm for me that claim one in part requires "a hydraulically powered liquid manure mover"? Do you see that?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I'm -- obviously, I'm not a patent attorney. But if you would like me to read it, I can.

BY MR. LEACH:

Q Sure.

A You want me to read it? Okay. "A hydraulically powered liquid manure mover separate from the ground engaging propulsion structure, the liquid manure mover positioned within liquid manure when the vehicle is floating."

Q Okay. Let me ask you this. In the Crawler X, is the pump that pumps liquid manure a component of the liquid manure mover?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: Again, I'm not a -- I'm not a patent attorney, and I know the liquid manure mover is a term here in the claims. I'm not here to define what that is or isn't. But I can tell you liquid manure mover is not a term that I do use in my day-to-day business.

BY MR. LEACH:

Q Okay. In this patent, the '835 patent, what does liquid manure mover mean to you?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: The -- again, I'm not a patent attorney, so I'm -- my answer is the

same. I can read the patent a little bit further if you would like to get some context of what it's referring to when it's talking about liquid manure mover.

BY MR. LEACH:

Q Okay. Go ahead.

A Okay.

Q Would you be more comfortable just speaking in terms of the Lagoon Crawler product itself?

A I just know that liquid manure mover is -- the attorneys in the claim, and again, I'm not a patent attorney, so I don't feel comfortable defining it --

Q Sure.

A -- for you, yeah.

Q What structure or structures on your Lagoon Crawler moves liquid manure?

A I think there's a --

MR. LUCHSINGER: Just objection to form. Go ahead.

THE WITNESS: The -- I would say that it's a, you know, there's a combination of, you know, manure pump, liquid manure pump kind of in connection and in conjunction with the fluid outlets that's moving liquid manure. But again, that's just my day-to-day, you know,

experience saying that I'm not defining the term in any means.

BY MR. LEACH:

Q Sure. But in terms of your Lagoon Crawler X, the structure that moves liquid manure would include the pump; is that correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: There's several pumps on the machine. Which pump are you referring to?

BY MR. LEACH:

Q Sorry. The pump that pumps liquid manure.

A That would be the main starting point of the liquid -- of what's moving liquid manure.

Q Okay. And that would pump it through piping, I think you said?

A We have piping connected to the fluid outlet.

Q Okay. And then the manure would come out of the fluid outlet for agitation or propulsion, correct?

A We use the flow of liquid manure for agitation and/or propulsion.

Q Okay. Now let's go back to your declaration, which is Exhibit 2083. Go to paragraph 11. It's on page 6 of 35 in Exhibit 2083. Can you read paragraph 11, please?

A "In 2009 to 2010, prior to my Lagoon Crawler

Invention, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon. Depending on the size of the lagoon, as many as four pump/tractor combinations were required to adequately mix the lagoon, and not leave any solids behind. To the extent this pump/tractor method was not sufficiently effective, lagoon operators would be required to scoop out residual solids from the pit."

Q Okay. When did you start working on the original Lagoon Crawler prototype that became the product that you showed at the trade show in August of 2013?

MR. LUCHSINGER: Objection to form, vague.

THE WITNESS: So the -- some rough, you know, what I would call non-amphibious, you know, two wheels, unpowered wheels, again, this is just in -- this is just a guess. I don't have dates or anything in front of me to go by, but sometime, you know, late summer 2012. And then what really took shape as the, you know, the Lagoon Crawler as it's made and debuted in the Manure Expo in 2013, I want to say the beginning of that summer, like June, July, something like that.

BY MR. LEACH:

Q So in paragraph 11, you qualify what the best solution for pumping out a manure lagoon was by stating in 2009 or 2010. Why did you qualify it as in 2009 and 2010 versus '11, '12, right up until August of 2013?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I think the easiest way is, you know, people did start the, you know, agitating with both, I believe. I believe pump was around 2011. It's debatable if it worked better than a lagoon pump or not. I don't know the details. Like I think I said in our last deposition, we're still selling lagoon pumps like crazy, and I don't believe they are hardly selling any Puck boats. But I don't think it's as clear. I think it's definitely clearer to say in 2009, 2010, you know, the best solution was tractor driven because it was really mainly the only option, and then the introduction of people starting to use agitation boats was around 2011, and it's not -- I don't think I could confidently say in 2011 the best was an agitation boat.

BY MR. LEACH:

Q So in paragraph 11 of Exhibit 2083, I just want to make sure I understand what you meant by this. Were

you saying "In 2009-2010 and prior to my Lagoon Crawler Invention, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon," or are you saying, "In 2009 to 2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon"?

A Sorry, can you repeat that? I didn't see the difference.

Q Sure. What I'm getting at is, it seems a little bit -- I'm not sure if what you're talking about is in 2009-2010 the best solution were these tractor mounted pumps, or, prior to my Lagoon Crawler invention the best solution for pumping out a manure lagoon was a tractor mounted manure pump. What are you trying to say there is what I'm asking.

A I think it's pretty clear. It's saying, "In 2009 to 2010, prior to my Lagoon Crawler Invention, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon."

Q Okay. So in paragraph 11, you were excluding 2011, 2012, and half of 2013, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: The time period I'm saying

is 2009 to 2010, prior to my Lagoon Crawler invention.

BY MR. LEACH:

Q Okay. And did you do that because they weren't the best from 2011 until your invention sometime in August of 2013?

MR. LUCHSINGER: Objection to form.

THE WITNESS: No. And again, I don't think that's -- that that is the case just because we continue to sell lagoon pumps today, like many lagoon pumps today. When I say lagoon pump, I'm -- that's what I refer to as like a "pump driven by a tractor along the bank of a lagoon." That's what I'm referring to there.

(Deposition Exhibit Number 1081 was marked.)

BY MR. LEACH:

Q Okay. I'm going to introduce a new exhibit, which is Exhibit 1081. It will take a second to upload here. While we're waiting for that, I guess I just want to follow up on paragraph 11 of your declaration, which is Exhibit 2083. Again, why did you exclude 2011, '12, and half of 2013 when talking about the best solution for pumping out a manure lagoon?

MR. LUCHSINGER: Objection to form; asked

and answered.

THE WITNESS: Yeah, I'm going to say I feel like I've answered that before. It's -- I can say with a hundred percent clarity, not clarity, certainty, that 2009 to 2010, a lagoon pump was the best way for agitating a manure lagoon.

BY MR. LEACH:

Q And you're not so sure if that's a true statement when you include 2011, '12, and half of '13, correct?

MR. LUCHSINGER: Objection to form; misstates prior testimony.

THE WITNESS: The -- how do you say, the competitive market changed, and I can't comment on that because I really don't have firsthand experience with the alternative, yeah.

BY MR. LEACH:

Q Okay. Let's look -- I want to talk about these shore-based agitators, the ones that required a long pump driven by a tractor along the bank of a lagoon. So if you pull up Exhibit 1081. Can you tell me first off, what is Exhibit 1081?

A Looks like the Manure Manager magazine from September/October of 2009.

Q Can you just look --

MR. LUCHSINGER: Yeah, look through it, Ian. I was just going to ask, it doesn't look like this has the IPR label, so is this the same Exhibit 1081 that's in IPR? All I see is an exhibit stamp that looks like a deposition stamp, but it doesn't have the normal, you know, IPR label with the page numbers in the lower right-hand column, so -- lower right-hand corner, so I'm just confused as to, you know, whether this is an exhibit in the IPR or not, and --

MR. LEACH: I just marked it as a new exhibit. I don't believe this has been marked in the '835 IPR yet.

MR. LUCHSINGER: Okay. All right. I got it. So it looks like the last exhibit marked perhaps was 1080?

MR. LEACH: Yes.

MR. LUCHSINGER: So we're starting with the next number? All right. I just wanted some clarification on that.

THE WITNESS: All right. Which page would you like me to go to?

BY MR. LEACH:

Q Can you first just look through it and confirm for me that you believe this is the September/October 2009 edition of Manure Manager?

A Do you want me to read the magazine?

Q Well, you don't have to read it all, but if you can just scroll through it and tell me if this looks like the September/October 2009 Manure Manager publication was.

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I don't have firsthand experience or involvement with this issue of Manure Manager, but, you know, just looking at the front cover, it's saying Manure Manager September/October 2009. I think I have to go by that, so.

BY MR. LEACH:

Q And this is a publication that you're familiar with, correct?

A We did some advertising in Manure Manager. I don't see a Nuhn ad in here.

Q Go to page 17. There's an ad for what I believe is your company, Nuhn Industries.

A Yeah, so we were advertising at the time. I know we don't now, yeah.

Q Okay. So if you go to page 11 of 40, and it's -- every other page is marked in the publication. So if you go to page 11, there's an ad for a GEA Power Take Off Pumps. Do you see that?

A I see an ad for GEA, and it says Power Take Off Pumps below their logo.

Q Okay. In your declaration in paragraph 11 where you talk about "in 2009-'10, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon," is this one of the such pumps you're referring to?

A No, it's not.

Q Okay. And how was it different from the pump you're referring to in paragraph 11 of your declaration, Exhibit 2083?

A I guess what I'm talking about in paragraph 11 is more of a -- I say a manure lagoon. These vertical style pumps that I'm seeing in this ad here traditionally aren't used in a lagoon.

Q And what were they typically used for?

A I can't speak to GEA Houle. We make what I call vertical powerful PTO take off pumps, and they are used for pumping and mixing, you know, storage that has vertical walls as opposed to, you know, like a lagoon.

Q Okay. If you turn to page 13 of Exhibit 1081, do you know what's advertised there by Vaughan, V-a-u-g-h-a-n?

MR. LUCHSINGER: Objection as to form, foundation.

THE WITNESS: Do you want me to read the ad or --

BY MR. LEACH:

Q I'm asking if you're familiar with this product.

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: I'm familiar with the brand. I believe I call them Vaughan. Maybe it's Vaughan. I believe sometime in the last year or two we've gone against them with our electric drive pumps. That's really my only interaction with them.

BY MR. LEACH:

Q And for the pontoon style product in the lower right-hand corner of Vaughan's ad on page 13 of Exhibit 1081, can you tell me what that product is, what it does?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I don't know what you're talking about when you say pontoon. I'm not -- it's not clear what you're referring to.

BY MR. LEACH:

Q Well, do you see the product in the lower right-hand corner that has kind of two pontoons and then a frame connecting them?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I'm not familiar with this company. I don't know what -- it's hard to see with the size and everything what that product actually is. It's unclear.

BY MR. LEACH:

Q Well, if you want, you can blow it up a little bit. There's a plus and minus that allows you to blow it up.

A Yeah. I just don't see anywhere where it says pontoon or anything here.

Q Okay. So you're not -- you can't tell what this product is based on the picture and the advertisement?

A No. No. It's too unclear.

Q What's unclear about it?

A It's still small. I've blown it up quite

large.

There's no description about it. I've never seen that product before. I didn't take that picture. I didn't make this ad. It's not --

Q Okay. It says to the left of the two -- you can see the two green pontoons with a black frame between them. Do you see that structure?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I don't see the structure that you're referring to.

BY MR. LEACH:

Q Well, in the bottom of their ad there is a picture of a structure. It has two green tubular-shaped structures connected by a black frame. Do you see that?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I'm not going to speculate as to what this product is or the structure.

BY MR. LEACH:

Q I'm asking if you see it.

A I see a product in the bottom right corner of this ad.

Q Okay. Okay. And to the left of it, it says, "Thousands of proven applications, including: Direct

flush water, irrigation, transfer to lagoon, digester feed, digester mixing, pit recirculation, tanker loading, heat exchanger feed, separator feed."

What does pit recirculation mean to you for a product like this?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I'm not going to speculate what that product is just sitting here and --

BY MR. LEACH:

Q So for "Transfer to lagoon," do you understand what that means in relation to the product that's shown in this advertisement?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I'm not going to speculate on what "transfer to lagoon" means in that application.

BY MR. LEACH:

Q Okay. This is in the magazine Manure Manager, right?

A It appears to be an advertisement in the magazine Manure Manager.

Q And this is the same publication that Nuhn advertises in, correct?

A We have an ad in this magazine.
Q Okay. And so is it fair to say that, you know, from time to time you review and look at the ads that Nuhn places in Manure Manager?
A In 2009, I can't recall if I was involved or not.
Q So if you go to page 17 of Exhibit 1081, is that an advertisement that Nuhn Industries placed in Manure Manager?
A I would assume so, seeing that it's in there.
Q Okay. And what product is that advertising?
A That's one of our liquid manure spreaders.
Q And can you describe that product a little bit?
A It's for taking manure from a pit, whether it's a lagoon or a vertical storage or under barn storage. This is a top fill tank, so it needs an external pump to top fill it. It's driven by a tractor, and then it's towed to the field, and you can either put the injector bar on the back or top spread. This particular one looks like it is just set up for top spread. So they use this to actually land apply liquid manure.
Q And what -- is it gravity fed that the manure comes out of the tank, or is there a pump that pumps the manure out of the tank?
A There is a pump on the front of the tank to

pump off the load.

Q And what kind of pump is that?

A It's a liquid manure pump.

Q Okay. Can you tell me what type of structure that pump had?

A It has an inlet. It has a rotating shaft with a sealed bearing. It has like a pump impeller.

Q Is it a centrifugal pump?

A Yes.

Q Does it have more than one outlet?

A This is like a single outlet design, yeah.

Q Okay. Did any of your tankers ever use a dual or triple outlet pump?

A Yes.

Q In what year did that start?

A If I had to guess, mid 20 -- this is a total guess, 2015, something like that.

Q Okay. And to the right of Nuhn's ad is an ad for product by Puck Custom Enterprises, Inc. Do you see that?

A I see the ad, yes.

Q Okay. And what are they advertising there? What is Puck advertising there?

A The main headlines of the ad, it says, PCE Hose Carts, Angus Hose Dealer, and PCE Pump Trailers. Also

says Cornell Pump Dealer in the headlines.

Q Okay. Let's jump to page 18 of Exhibit 1081. Do you know what an aeration pump is?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't.

BY MR. LEACH:

Q Do you know what a floater pump is?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't use that term in my day-to-day.

BY MR. LEACH:

Q Okay. Are you familiar with Fisher Pumps?

A I've since ran into them after this ad, but I don't know if I've actually sold head to head against them even to this day.

Q Okay. If you go back to paragraph 11 of your declaration talking about "the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon." And that was in 2009-2010. If you look at the lower left-hand corner, the Tractor PTO Trailer Pump by Fisher Pumps, is that one of the tractor driven shore-based systems you were talking about in your declaration in paragraph 11?

A No, it wasn't.

Q Was that the type of product that you were talking about in paragraph 11 of your declaration?

A No, it wasn't. I've actually never seen a pump quite look like that.

Q Okay. Go down to page 22, please, of Exhibit 1081. You're familiar with Husky, correct?

A Yeah, I know Husky.

Q Yeah, and they are in Alma, Ontario, Canada, right?

A I believe they are in Alma.

Q And is that about 45 minutes to an hour from where Nuhn is located?

A Something like that. Maybe closer to an hour.

Q And so going back to paragraph 11 of your declaration where you say "In 2009-2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon," is the product shown on the left-hand side of page 22 in the Husky ad of Exhibit 1081 one of the tractor driven pumps you're talking about in your declaration in paragraph 11?

A I don't know the specifics of that pump that's in the ad here.

Q I'm trying to put in context what you're talking about when you say "an agitator that required a

long pump driven by a tractor along the bank of a lagoon." Is that what you were thinking of when you drafted paragraph 11 of your declaration?

A I can show you -- you know, I can't speak to other products, but I can speak to at least what we make and I can show you.

Q If you go down -- well, so just for the record though, the product -- tell me what the product, the Husky product on page 22 of Exhibit 1081 the PL490 Lagoon Pump, how is a product like that used?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I don't know if I have personal experience with the PL490. I'm not sure -- I don't really know Husky's, how to code their terminology or their --

BY MR. LEACH:

Q So you can --

A I don't know what the reference of those numbers would mean.

Q I'm not asking what the reference to those numbers mean. But you can see a picture of the product, right?

A I see the product in the bottom left corner.

Q Okay. Do you know what that product is used

for?

MR. LUCHSINGER: Objection, form and foundation.

THE WITNESS: I'm not going to speculate on what that product is used for. I don't know the specifics of it. I didn't make that ad. I didn't take that picture. What I can tell you is it does say "Lagoon Pump," it does say "Walking Legs," it says "1000 RPM," and it's in a Manure Manager magazine. But I don't know the specifics of that pump.

BY MR. LEACH:

Q Would this be a tractor powered pump that is used to pump or agitate a manure lagoon?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: From just looking at this ad, it's impossible to say.

BY MR. LEACH:

Q So you've been in the manure industry and working at Nuhn for how long now?

A A long time.

Q Decades?

A Oh, part-time for decades, yeah.

Q And you sell against Husky products, correct?

A Not really. We don't really view Husky as competition. They kind of stepped back a bit. I think the owner is in the process of selling. They're not doing very well, I don't believe.

Q Back in 2009 did you compete with Husky?

MR. LUCHSINGER: Objection to foundation.

BY MR. LEACH:

Q And when I say you, I mean Nuhn Industries.

MR. LUCHSINGER: Same objection.

THE WITNESS: I don't really recall competing against their lagoon pumps. I don't know much about the Husky lagoon pump.

BY MR. LEACH:

Q Does Nuhn Industries have a pump that competes with the pump shown in the Husky ad on page 22 of Exhibit 1081?

A I like to think we're in a box of our own for everything we make.

Q Okay. That wasn't really my question.

A Sure. Sure. What's your question?

Q Do you compete against products such as those shown on page 22 of Exhibit 1081, and specifically the Lagoon Pump shown there by Husky?

A I don't know the specifics or the details on the Lagoon Pump. I compete against that Liquid Manure

Spreader. And then for truck mounts, we don't really -- we're not really in that market.

Q Okay. Turn to page 35, please. There is an ad on page 35 of Exhibit 1081 for The Bull. Are you familiar with The Bull?

A We talked about it in the last deposition. Is this the same magazine or the same ad?

Q I'm not sure. If you look at the bottom picture, it shows an engine or power source with a long pump going into a manure lagoon. Is that the type of product you were referencing in your declaration at paragraph 11 that "In 2009 to 2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon"?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: From looking at this ad here today, it's impossible to speculate as to what we're seeing in that picture. That doesn't look like a tractor to me.

BY MR. LEACH:

Q Okay. So it may not be a tractor, but maybe it's just an engine that provides power. Can you tell what the rest of the structure is that's hooked to it

that's spraying the liquid manure into the lagoon?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: Yeah, I'm not going to sit here and speculate on what's shown in this ad.

BY MR. LEACH:

Q Let's turn to the second to the last page of Exhibit 1081. And this is a full-page ad for Jamesway. Do you see that?

A Yeah. I see a big ad here for Jamesway.

Q Were you familiar with -- are you familiar with Jamesway and their products?

A I am.

Q Okay. So in the upper right-hand corner of that ad it says, "Commercial Series Lagoon Pump with Power-Boom." Do you see that?

A I see where it says "Commercial Series Lagoon Pump with Power-Boom."

Q Are you familiar with Jamesway's lagoon pumps such as the one shown there in the upper right-hand corner of the ad?

A So Jamesway is actually since been sold -- or maybe they were owned by Valmetal at that time. But they have since done a total rebrand, redesign. So what I'm familiar with from Valmetal, it's hard to say if that's

anything remotely close.

Q I guess what I'm asking is, going back to your declaration where you state, "In 2009 to 2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon," is that the type of product that you were referring to in paragraph 11 of your declaration?

A I don't know the specifics of this pump that's shown in this ad here to comment on that. I'm more than happy to show you what I'm referring to based on my own product I can share.

Q I guess what I'm wondering is, are these the class of products or the types of products that the Jamesway Commercial Series Lagoon Pump with Power-Boom that you were thinking of when you were providing your declaration, specifically in paragraph 11, in the IPR here?

A I'm not going to speculate on what I'm looking at in this photo here from an ad from 2009.

THE VIDEOGRAPHER: Excuse me. We've got about five minutes left on this Media 2.

MR. LEACH: Let's take a break while I load two more exhibits.

THE VIDEOGRAPHER: We are going off the record. The time now is 11:01.

(A break was taken.)

THE VIDEOGRAPHER: We are back on the record. This is the start of Media Number 3. The time is 11:19.

(Deposition Exhibit Number 1082 was marked.)

BY MR. LEACH:

Q We took a short break there, Mr. Nuhn. If you could turn to Exhibit 1082, which I have introduced. And can you tell me what Exhibit 1082 is?

A It looks like, if I guess, it's Manure Manager November-December 2010, 2011 Buyers Guide.

Q Okay. If you can go to page seven of Exhibit 1082. And this is another ad by Jamesway, correct?

A Just at first glance, it appears to be the same ad that we were looking at before.

Q Okay. And it has the same pump in the upper right-hand corner that says "Commercial Series Lagoon Pump with Power-Boom," right?

A Yeah. It says "Commercial Series Lagoon Pump with Power-Boom."

Q So I assume your response to whether this is one of the pumps you were talking about in paragraph 11 would be the same?

A You are correct.

Q If you go down to page 18 of Exhibit 1082, at the bottom there's an ad for a Nuhn product, right?

A Yes.

Q In the lower right-hand corner it shows two tanks on wheels and a boom arm or pipe going out over what appears to be a manure lagoon. Can you describe what's happening there?

A I'm not actually sure if that's a manure lagoon or not. I actually didn't take that picture, so I'm not sure if that is a manure lagoon or not.

Q Well, in that product, is there a pump on the end of that, or does it pull liquid out of that reservoir, whatever lagoon, using a vacuum type suction?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: This would be one of our -- it's labeled Quad Train Vacuum.

BY MR. LEACH:

Q So is there a pump on the end of that boom arm at all, or is it just using vacuum suction to pull liquid out of the reservoir?

A We've done multiple configurations, so I don't know which one this particular unit is.

Q Okay. If you go down to page 20 there's another ad by Vaughan similar to the ad or the same as the ad we saw in the prior Manure Manager, the 2009

Manure Manager, correct?

A Sitting here, at first glance it looks like the same ad or similar ad to what we just talked about before the break.

Q Okay. And again, the product shown in the lower right-hand corner with the two green tubular pontoons connected by a black frame, you're not sure what that product is for?

A I have never seen this product in person or have any experience with this product, any knowledge of this product. I can't say the specifics of the construction of it. It's not mine.

Q In 2010 have you seen ads for this product before?

A Sitting here 14 years later, I -- I can't say.

Q Well, let me ask you this, did you page through Manure Manager back in 2009, '10, '11 when Nuhn was advertising in its magazine?

A I can't say. I, you know, I was at -- I was at school around November, December, so it wouldn't -- you know, it wouldn't be something I would come across unless I was looking for it, I think.

(Deposition Exhibit Number 1083 was marked.)

BY MR. LEACH:

Q Let's go to Exhibit 1083. Can you tell me what

Exhibit 1083 is?

A It looks like Manure Manager July/August 2011.

Q If we go to page 11 in Exhibit 1083, it's another Jamesway ad. Do you see that?

A I do. I see Jamesway at the top.

Q Okay. And if you look at the bottom half of the ad, it says, "Manure Application Equipment," correct?

A It says, "Manure Application Equipment."

Q And it talks about "PTO-Driven Pumps," do you see that?

A I see "PTO-Driven Pumps."

Q Okay. And the two center products, the two center products in that lower half ad at the top underneath "PTO-Driven Pumps," it says, "Ultra-Pump 3PH Pumps & Props; Ultra-Pump Trailer Lagoon Pumps & Props." Again, are these the types of systems you were referring to in paragraph 11 of your declaration, Exhibit 2083?

A Sorry, Tom. This picture is even smaller than the previous one. It's even more difficult to speculate on what it is.

Q Okay. So based on all your decades long experience working in the manure industry, working for a company that produces manure application equipment, you just don't know what those products are, what they do or how they function?

MR. LUCHSINGER: Objection as to form, argumentative.

THE WITNESS: Sitting here today, I'm not going to speculate what this tiny -- very tiny picture is in this ad of my competition.

BY MR. LEACH:

Q Okay. Let's keep going. If you go to page 19, again, we have that Vaughan Chopper Pumps ad. Do you see that?

A I see an ad here for Vaughan.

Q So this was in -- this ad for Vaughan products was in the 2011 edition of Manure Manager as well, correct?

A Looks like the July/August 2011 edition.

Q Okay. And then if you go to page 21, and the ad in the upper right-hand corner of that page of Exhibit 1083 is an ad for Puck Custom Enterprises, correct?

A Yeah. It looks like the top right corner there's an ad for Puck Custom Enterprises.

Q And it's showing a "New! Lagoon Agitation Boat," correct?

A There's a comment in the back bottom right corner that says "New! Lagoon Agitation Boats."

Q So as of 2011, were you familiar with the Puck

agitation boats?

A I don't -- I honestly can't say when the first time I was aware of them. I don't think in 2011 I was. I would have to look through notes and whatnot, but I actually am not too sure when I was first familiar with them. I don't think I was familiar at this time.

Q And if you go down to page 23, there's a Nuhn advertisement, correct?

A That is correct.

Q And can you tell me what's shown in the Nuhn advertisement on page 23 of Exhibit 1083?

A This is a -- basically a long pump driven by a tractor along the bank of a lagoon. This is the lagoon pump that I'm referring to.

Q Okay. And this -- was this sold prior to 2011?

A No. But this style of pump, you know, with the PTO-Driven, driveline along the middle, pump at the end.

Q So I guess what I'm trying to understand is, in your declaration, you say, "In 2009 to 2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of the lagoon."

Is what is shown in Exhibit 1083 on page 23, the Nuhn pump there at the top, is that what you were referring to?

A No, not this exact pump but a pump with similar construction. And when I say that, I'm not talking about the housing or multi outlets, just to be clear. But I'm talking more so just the construction of the drive tube and the long discharge pipe and the agitator at the end.

Q Okay. And so who were some of your competitors at that time, 2009-2010, that were making similar style pumps?

A The main one that comes to mind is GEA Houle. They would be our main competitor for -- I would just call this a 50-foot long lagoon pump.

Q And so not Jamesway, not Fisher?

A Like I said, I've never -- I don't think I've ever gone head to head against Fisher. Jamesway a little bit, but not -- even to today's date, it's -- GEA Houle is still our number one competition in that market.

Q Okay. So just to be clear, the Nuhn pump shown in Exhibit 1083 on page 23 at the top, that is the style of pump you were referring to in paragraph 11 as the best solution for pumping out a manure lagoon?

A I'm not saying the Header Series of lagoon pump, if that's what you're asking, but --

Q No. That style.

A The style of, you know, the 50-foot length agitator at the end, pump housing at the end, that style

lagoon pump is what I'm referring to when I say lagoon pump in 11.

Q And if you look at the bottom right-hand corner of your ad, it shows that product mounted to a tractor in a manure lagoon, correct?

A It shows this particular lagoon pump, the Header Series Lagoon Pump operating.

Q Okay. And so just to be clear, back to my question in your paragraph 11 in your declaration, that picture in the lower right-hand corner of Exhibit 1083 in the Nuhn ad, is that how the shore-based tractor-mounted lagoon pumps were used?

A The picture isn't really showing it being used. No one really blows in the air like that. But being, you know, the tractor parked on the bank and a long 50-foot pump backed into the lagoon, that's what I'm referring to in paragraph 11.

Q Okay. And then if you go down below, you see in Exhibit 1083 on page 23 a Fisher Pump ad, correct?

A There is a Fisher Pump ad below our ad.

Q Yeah. Do you remember in 2011 seeing your Nuhn advertisement here and also the Fisher Pump advertisement?

A I don't -- I don't recall seeing this Fisher Pump ad, if that's what you're asking.

Q Well, let me ask you this, back in the 2009, '10, '11, '12 time frame, did you look at the ads that Nuhn placed in Manure Manager?

A I can't say for certain if I ever really looked at Manure Manager. You know, we advertised in a bunch of different magazines, so I can't say for certain which magazines I looked through.

Q Would Manure Manager have been one of the magazines that you would have looked through at that time?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I honestly can't recall.

BY MR. LEACH:

Q Did Nuhn subscribe to Manure Manager in the 2009, '10, '11, '12 time frame?

A I think -- I don't think we actively subscribed to it, but I believe -- I believe it was shipped to us. I don't know if the whole magazine was shipped to us, but for sure our -- I'm just speaking generally now. Whenever we run an ad, usually the magazine will, like, do a cut of the page and put it through with the invoice, so, you know, we -- I'm just going to say off the top of my head we -- you know, based on my experience with many magazines, we probably have this particular page stapled to an invoice. But I can't say for certain if we

actually subscribed to Manure Manager or if they also shipped the magazine with the invoice. That I don't know. And again, I'm generally speaking. I can't say if that's exactly how Manure Manager operated, but I do know usually when we ran an ad we would get a cut of the page stapled to the invoice.

Q Let's go back to your declaration, Exhibit 2083. I'm going to direct your attention to paragraph 12. You personally attended the 2012 North American Manure Expo in Prairie du Sac, Wisconsin, correct?

A That is correct.

Q Can you tell me generally what you did at the trade show in 2012?

A I operated our lagoon pump, remoted it and talked about it during a lagoon agitation demonstration. And then there's a separate trade show at which I exhibited in.

Q When you say a separate trade show, is it kind of part of the same show; it's just different sections of it?

A Yeah. Like it's the same show, but they have like an agitation, and then they have like a trade show portion of it, so. I can't recall that one in particular, but sometimes they have it on the same site,

you know, people are able to walk, but sometimes they bus people in, so. I can't remember how that particular show was set up, but we -- I was there demonstrating equipment, and I was there exhibiting afterwards.

Q Okay. So you were at both locations if there were two?

A Yeah. Yeah.

Q Okay.

A Correct. Yeah.

Q So let's start with why do you -- why did you go to the 2012 North American Manure Expo?

A I was proud of my lagoon pump, and I wanted to show it off.

Q Okay. Do you also go to the trade shows to see what the competition is doing?

A No. I think I was -- I was proud of -- proud of my invention, the Header Series Lagoon Pump, and I wanted to show it off. I remember I drove there all by myself. It was a very -- it was a big step for me actually.

Q Did you walk around the trade show to just generally look at different people exhibiting?

A Nothing -- nothing is sticking out. The exact details of it I can't quite remember. You know, that's 12 years ago now.

Q Sure. Were you -- did you man Nuhn's booth at all at the trade show?

A Yeah. I think because I was by myself I was pretty much there the whole time. I didn't want to leave the booth unmanned. You know, maybe before or after I probably walked around, but I -- I don't recall anything specific.

Q Do you recall who else was with you in the booth? Would your father Dennis have maybe been there with you?

A No. He doesn't do live shows.

Q What do you mean he doesn't do live shows? I've seen a lot of videos where he's at trade shows giving interviews.

A Yeah. I mean shows where there's demonstrations that he -- it's just not his thing. So I think from 2012 on, I don't think he's been to a manure expo. He can't handle the -- he's probably at one point, but other than that, he just can't handle the, kind of the stress of it really. It's stressful doing a live demo like -- you know, it's one thing to just park equipment at a show. But when you're actually operating it, demonstrating it, have a crowd, it's stressful, and it's just something that he just kind avoids I guess.

Q Okay. But would he be at the booth talking to

potential customers and people that are interested in your equipment?

A No. I went into that one all alone.

Q Well, who would have been manning -- if Nuhn had a booth -- well, did you have a booth there?

A I'm pretty sure we had a booth. I would have to look up and see. Whether it was a dealer booth or our booth I would have to see.

Q Okay.

A I don't know who paid for the booth, yeah.

Q If Nuhn had a booth there though and you were doing a demo, wouldn't there be someone else at the booth manning Nuhn's booth?

A No. The way these Manure Expos worked is you have to kind of move with the crowd. So the trade show portion of it isn't really the main thing. Like they will have tours, agitation demos. You know, they will have different activities, and the crowd literally moves around. So the trade show portion of the show is not really the main part of the show, so. Basically, to have a successful expo you have to kind of go with the crowd.

Q Okay. And so they do the demo at one time, and then it kind of moves to the booth so people can walk around and look at booths and --

A Yeah.

Q Okay. What specifically did you demonstrate to the crowd -- or the attendees, I should say.

A Yeah. I showed off the Header Series Lagoon Pump. We were in a, like a manure pit somewhere in the middle of Wisconsin, and we were showing it off.

Q Okay. And who were the other people demonstrating manure agitation equipment along with you?

A So for sure like definitely Puck was there showing their agitation boat. There was another agitation boat there. And then --

Q What was the other agitation boat that was there?

A That was the Sundstrom's Pit Pumping boat. They were there.

Q Is that the Stir Dredge that they called it?

A I --

MR. LUCHSINGER: Sorry. Objection to form.

THE WITNESS: I don't know the specific. I don't know much about their boat or how they marketed it or what they called it or anything that way. But Sundstrom Pit Pumping, Ernie Sundstrom was there showing a agitation boat.

BY MR. LEACH:

Q Okay. Can you describe the agitation boat that

Sundstrom was exhibiting or demoing?

A Yeah. All I really remember or recall of Ernie's is either it had a power winch on it or there was an external power winch, but it wasn't actually -- it didn't actually like power itself or navigate itself through the lagoon under its own power, to the best of my knowledge. Like it had to be pulled. Whether it pulled itself or something on shore pulled it I can't recall. But it had a, you know, it -- I think you'll see in articles and stuff I talk about people putting barges on and pulling through pits. That's what I envision is that, you know, floating structure being pulled through a lagoon.

Q Okay. Do you recall back in 2012 when you were watching Ernie Sundstrom demonstrate his manure agitation boat, whether it had four wheels?

A I don't recall. I feel like he was already in the pit. I think everyone was already in the pit. So I don't think we were able to see it.

Q During that show, you -- in 2012 at the North American Manure Expo in Prairie du Sac, Wisconsin, you attended the demonstrations and then manned the booth at the trade show as well, correct?

A Yeah. I demonstrated the lagoon pump, and I, you know, showed it off at the trade show, too. Yeah.

Q And back to -- you know, what are some of the reasons that Nuhn would attend the North American Manure Expo aside from advertising Nuhn's products?

A I was just going to say advertising our products. You know, Wisconsin is a -- it's a huge market, so it only makes sense to go there and show -- it was a new pump. We probably had only ever sold, you know, a handful at the time as we were showing it off. Maybe one or two in Wisconsin. So, you know, we had to show people how good a pump it was, yeah.

Q Is part of the reason you went to the North American -- the 2012 North American Manure Expo to see what the competition is doing?

MR. LUCHSINGER: Objection, form, asked and answered.

THE WITNESS: No. I think I was just proud to show off my pump.

BY MR. LEACH:

Q Sure. I understand you're proud to show off your pump, but you were also looking at what are the competing products to your pump, correct?

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

THE WITNESS: No. I -- I don't -- I don't think that that's the reason why I went. We

were there to show off what we've got.

BY MR. LEACH:

Q Well, you said --

A It's not like we --

Q Sorry.

A It's not like we, you know, made any changes to the pump after the trade show or anything. You know, the pump was what it was, and, you know, I was proud to show it off.

Q Sure. I understand that. But in business, you know, aren't you interested or weren't you interested in what your competition was doing, you know, to make sure you're keeping up or able to compete with your competitors? Isn't that the point of going to a trade show --

MR. LUCHSINGER: Objection --

BY MR. LEACH:

Q -- to see new products?

MR. LUCHSINGER: Objection to form.

THE WITNESS: My dad actually has a pretty good saying. Like he almost actively avoids looking at the competition so you don't get pigeonholed into what they have already done. So he's kind of engrained that into me. I mean -- yeah, I'll leave it at that.

BY MR. LEACH:

Q Okay. Setting that aside, you went to the 2012 North American Manure Expo, correct?

A I went to the 2012 North American Manure Expo, yes.

Q And you demonstrated one of Nuhn's pit pumps, correct?

MR. LUCHSINGER: Objection, form.

THE WITNESS: I demonstrated a Header Series Lagoon Pump.

BY MR. LEACH:

Q And you also watched others such as Puck and Sundstrom demonstrate their manure agitation vehicles, correct?

A They were agitating and showing off their equipment in the same manure pit as I was operating the Header Series Lagoon Pump.

Q Okay. Did they do them one at a time? For example, did you show yours, and then Puck showed theirs, and then Sundstrom showed theirs?

A Yeah. They do kind of one at a time and then kind of everyone at the same time, something like that, yeah.

Q Do you remember who went first?

A Oh, I have no idea. I couldn't tell you.

Q Okay. But you stayed for the whole thing, all the people that were demonstrating?

A Yeah. I was there operating the lagoon pump.

Q To be clear though, each person demonstrated individually one at a time, and then they all did simultaneously after that, correct? Just trying to understand how this went down.

A It was a very fascinating show. We -- we each get five, ten minutes to show off the product that we bring in the same lagoon. And then once everyone has done, then they -- we all go at the same time, and then the crowd moves on to the next thing.

Q When you were watching Sundstrom demonstrate its boat for five to ten minutes, what were you -- if you can recall, what were you thinking about the product?

MR. LUCHSINGER: Objection --

THE WITNESS: Sorry. Go ahead, Brad.

MR. LUCHSINGER: Go ahead. You can answer.

THE WITNESS: I thought the product was a joke, honestly. I thought it was -- I thought it was a joke. I couldn't believe anyone would buy this, let alone I couldn't believe anyone would market it or advertise it.

BY MR. LEACH:

Q And why did you think that? Because of how it looked?

A No.

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. Just I thought it was an insanely awkward, cumbersome way to agitate it.

BY MR. LEACH:

Q And so I think in your prior deposition you mentioned that you saw a homemade looking agitation boat. Is that the Sundstrom boat you were referring to then?

A Yes, that's correct. Yeah.

Q Okay. So what made it look homemade?

A I couldn't tell you. Like it -- I don't even think the PTO had a guard on it, like -- I mean, just that's the only thing I'm like vividly remembering like just sticking in my head is, you know, this guy is showing off his product at a show, and, you know, like that's a big safety hazard.

Q So I assume it didn't have a bright red paint job on it.

A No. I wouldn't say that. I just thought the concept was very homemade. You know, you've got to tie off a boat and have it winch itself across, like it just -- that concept isn't very polished, in my opinion.

Q Did it have a --

A I think it had a -- like it was painted in like a saleable product. It's just the concept of it pulling itself across a pit, it seems very homemade to me.

Q Okay. Does --

A I don't even think he could control the engine. I think he -- I think he just start it, fired it up, and pull it across. Like I think it's very crude in how it operates, too.

Q Well --

A I'm just guessing, yeah.

Q Was he operating it from shore via remote control?

A That's where I -- I don't know. I was over by my pump, so I don't know how he was operating it.

Q Well, was he sitting on shore or was he riding on the boat? How about that? Let's start there.

A Well, I can't quite remember, but I kind of feel like he had to be on it, and then he jumped off, and then it started pulling itself across -- like it was ridiculous. Like I don't know how to say it any other way. Yeah.

Q Okay. So he was able to control it remote control from shore though?

MR. LUCHSINGER: Objection as to form and

foundation; misstates prior testimony.

THE WITNESS: I have no idea. I wasn't paying that close attention to it.

BY MR. LEACH:

Q Well, you testified that everyone had five to ten minutes to demo their boat. So you weren't demoing yours. You were watching Mr. Sundstrom demo his. So my question to you is, was he controlling it from shore?

MR. LUCHSINGER: Object as to form and foundation.

THE WITNESS: Maybe just to paint a little bit of a picture of the event, you know, I'm 22. I'm nervous as hell. I don't know anyone at this event. I really don't. I'm new to the industry, new product, never ran before. If it breaks down, I'll probably never sell a pump ever. It's a high stress situation. I'm not looking around at what the competition is doing. I'm paying attention to myself, making sure I'm staying cool, calm, and collected. And then meanwhile, you still do have people coming up to you and looking at your pump and asking questions even though other people are running. So I'm not there really observing. You know, I might glance over and be like, oh,

yeah, that's -- what a piece of crap, and then continuing on talking to people doing what I'm doing. So it's not like I'm an active person in the crowd.

BY MR. LEACH:

Q Okay. So given all that, or aside from all that, tell me what you could tell standing there watching Sundstrom operate his boat in 2012 at the North American Manure Expo. What features did it have?

A The only thing that I can really vividly say with a hundred percent certainty is that it had a powered winch. I couldn't even tell you if the powered winch was on the boat or if it was on the shore, but it was pulling itself across the pit. That's the only piece of information that I really remember because I wasn't quite interest -- even the Puck boat coat I wasn't really looking at. I was there for my pump and to show it off.

Q Did it have a cannon, as you say, shooting liquid manure at the surface of the manure lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't even recall. It may have just even had a propeller. I don't even know if I've seen any pictures from the show after the fact. And so I actually don't even know how -- I don't know much of the details of

his boat.

BY MR. LEACH:

Q I'm asking you what details do you remember seeing when you were there in 2012.

A Yeah, I --

MR. LUCHSINGER: Objection, form, asked and answered.

THE WITNESS: I've answered that the winch is the only thing in detail that I remember.

BY MR. LEACH:

Q And you can't remember whether it had a cannon on the top shooting liquid manure out of it?

A I cannot recall the exact construction of his boat.

Q I'm asking you if you recall the cannon shooting manure out of it.

A I'm saying sitting here today talking about what he did 12 years ago, I can't recall if it was a cannon or if it was a propeller or how the actual agitation was done. I cannot say.

Q Well, let me ask you this. Did it float?

A To the best of my knowledge, it was floating across the pit, yes.

Q As you walked around the trade show later in the day, did you take any product literature from anyone

that you recall or talk to anyone specifically that you recall talking to?

A Again, this was 12 years ago. I don't recall exactly what I did after the trade show. I remember talking to people about the Puck boat. That's the only recollection I really have of that show.

Q Did you talk to anyone about Mr. Sundstrom's boat?

A No. No one talked about the Sundstrom's boat.

Q Not even to say what a joke it was or --

A Nothing --

Q -- how it worked, anything like that?

A Nothing in particular comes to mind.

Q Can you describe what Nuhn's booth looked like?

A I, again, like sitting here 12 years later, I can't. I can't tell you if I just had a lagoon pump in it or if we had maybe a tank, too. I can't recall the specifics of our booth.

Q So are these outdoor booths that are in like a field --

A Yeah.

Q -- or are they inside an auditorium?

A No. It's outside in a field.

Q And do most of the booths have one of their products or some of their featured products in their

booth or next to their booth?

A I'm not going to speculate on what the trade show is like 12 years ago.

Q Do you recall taking any pictures or having anyone take pictures of you presenting at the 2012 North American Manure Expo?

A I know they had a -- like a media person who was recording, and I feel like they got sprayed with manure, so I -- and I can't recall if it was before or after I presented.

Q Okay.

A I did not spray them with manure, just for the record.

Q Anything else you can remember?

A No. No.

MR. LEACH: We're at 12:00. Do you guys want to take a break for lunch?

MR. LUCHSINGER: Sure.

MR. LEACH: Is that good with you, Mr. Nuhn?

THE WITNESS: Yeah. I'm good to go a little bit longer, at least to the halfway point or something if you want, whatever you guys want.

MR. LUCHSINGER: Yeah, fine with me.

THE WITNESS: Why don't we take it to the halfway point.

BY MR. LEACH:

Q Okay. Let's keep going.

Going back to your booth, you can't recall whether anyone else was with you in the booth? You believe it was just you at that trade show?

A So I can't recall if it was a Nuhn booth or if it was my dealer's booth. I do know the salesman for that dealership, he was in and out, but he wasn't there the whole time. But as far as that goes, that would be just it.

Q What is the salesman's name for that dealership?

A It was Chris Biese.

Q Can you spell his last name?

A I think it's B-i-e-s-e.

Q And what was the name of the dealership?

A Vanderloop Equipment.

Q So how long would you say you were in the booth during the 2012 North American Manure Expo?

A I would say the -- other than the -- and this is just me guessing because I can't say for certain. But if it's just like any other trade show other than the agitation, I'm pretty much there the whole time other

than to go to the bathroom. I don't even really leave to get food.

Q Do you know who was around you, what exhibiters were around you?

A No, no clue. I would have to look at a trade show map. I have no recollection.

Q Do you have a trade show map?

A No, not that we've -- not that we would have kept or anything.

Q Would you have received it as part of your packet by having a booth or attending?

A I can't say for certain. I would have to even see if it was our booth or if it was Vanderloop's. I don't even know if we were just in Vanderloop's corner or something. I actually don't know.

Q Can you spell the dealership's name?

A Yeah. Vanderloop, V-a-n-d-e-r-l-o-o-p.

Q And where are they located? Wisconsin?

A Somewhere in -- I think they have two or three locations in Wisconsin, yeah.

Q Did you take any photos or videos of your booth? You know, when the booth gets set up, do you usually take a picture of it so you kind of have a record of what did it look like, what we're doing?

A I usually do, but that's kind of before, you

know, iPhone cameras were good, so I probably used -- I would probably also travel with a, like a little, I don't know in particular, what do you call them, digital phone or -- not digital phone. Like a digital camera. But I had none of that.

Q You don't think you kept any of that if you took photos?

A No. I think I've already looked. I think one of your rog or RFPs was like pictures of trade shows and stuff, so you would have everything.

Q Do you know how many days the 2012 North American Manure Expo went for?

A No. Sitting here today, I don't know the length of the show.

Q Were you there for the whole show though, kind of beginning to end?

A Yeah. I would have been there for the whole show.

Q I think you said earlier you talked to customers.

A Yeah. Yeah.

Q Are some of the other exhibitors or some of the other attend -- I'm sorry. Some of the other exhibiters customers of Nuhn, too? You said one of them was a dealership. Is one of the reasons you'd walk around the

show floor to maybe make some new contacts for potential sales?

A My viewpoint is always to basically stay in the booth to sell what we have. So I don't really -- I don't venture out of the booth often, especially then when it was just me representing my pump.

Q Who would be your competitors at the 2012 North American Manure Expo?

A I feel like GEA Houle was there operating. I can't recall anyone else though. There could -- there may have been more, but I just don't -- I don't recall specifics.

Q Puck would be a competitor, correct?

A Yeah, I guess 0at the time they weren't though. We never -- you know, they were starting to make the agitation equipment. But prior to then, I never sold against them. We made different products completely. They never were in the agitation market. You know, we're focused on pumps -- or sorry, we're focused on newer tanks. They were focused on pumps and drag line equipment. So we never actually had direct competing products.

Q Well --

A I didn't even really know much about them.

Q Didn't it spark your attention when you're

demoing a shore-based agitation pump, and Puck is demonstrating a floating agitation vehicle and Sundstrom is demonstrating a floating agitation vehicle? Didn't that get your attention, like, whoa, this is a different type of product?

A Not -- not really, because I didn't -- you couldn't -- I didn't get an impression that either were doing a good job. A, the pump one wasn't wired right. Like it sprayed the crowd. We've been over that. And then the Sundstrom one, it just was being dragged across. Like it just didn't -- it didn't sell the technology very well that show, in my opinion, so.

MR. LEACH: Let's take a break for lunch now. I need to --

THE VIDEOGRAPHER: We are going off the record. The time now is 12:10.

(A lunch break was taken.)

THE VIDEOGRAPHER: We are back on the record. This is start to Media Number 4. The time is 12:43.

(Deposition Exhibits 1084, 1085, and 1086 were marked.)

BY MR. LEACH:

Q Good afternoon, Mr. Nuhn. We just took a short lunch break and back. Quick question, during the break did you have any discussions with your counsel?

A No.
Q Did you guys call each other or talk to each other?
A No.
Q If you go to marked exhibits, can you see if you see Exhibit 1084?
A Yeah, 1084 and 1085 are there.
Q Okay. Can you click on Exhibit 1084, please.
A Do you want me to listen to it, too? Will that give you get weird feedback or --
Q No. You can listen to it. And listen. There's someone talking at the beginning of it. I want you to pick up what he's saying because I want to ask you some questions about that. Okay?
A Sure. I'll start over here.
Q Okay.
(Reporter's Note: There was a pause while witness views Exhibit 1084, a video file.)
BY MR. LEACH:
Q So were you able to watch a little bit of the video?
A Yeah, I watched the whole thing. I couldn't really hear what he was saying at the beginning though. Can I play it again?
Q Please, try it.

(Reporter's Note: There was a pause while the witness views the video file.)

BY MR. LEACH:

Q Were you able to hear what he said?

A No. Can you hear what he's saying?

Q I can, yes. But that's all right. We can pull this video. It's still publicly available. I think we can get it -- there's a transcription available, I think, on YouTube, so we'll do that.

But let me just for, I think, the recording here, I'm going to share my screen and play it here. So let's see if this works. Can you see my screen now?

A Yes.

It's very choppy.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q So I believe he's saying this is a Stir Dredge operation, and he says the remote control stirring the pit. So, Mr. Nuhn, does the structure of this boat, the Sundstrom boat, does this look like what you saw at the 2012 North American Manure Expo?

A Looking at this here, it's very hard to say, yeah.

Q Does it look like it had some of the same features?

MR. LUCHSINGER: Object to the form, vague.

THE WITNESS: It's very hard to say. I can't quite recall what he actually showed there other than it was being pulled with a cable.

BY MR. LEACH:

Q Okay. Well, let's play this a little bit more.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q If I stop there. Does this show a cannon shooting manure back into the lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's impossible to see. It almost looks like it's going right into liquid, and I don't even know if this is a, you know, what type of pit this is.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q Can you see the two wheels on the side of the boat that's facing us?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's a very --

BY MR. LEACH:

Q .25 seconds out of the 1.38 seconds. Do you

see that in the lower left-hand corner of the boat?

MR. LUCHSINGER: Same objection.

THE WITNESS: You know, the way that we're looking at it here -- you know, I didn't take this video, so I don't -- I wasn't there. I don't know what -- I don't know what the structure of what Ernie is showing here.

BY MR. LEACH:

Q Does what we're looking at here, does that look like a wheel on the corner of the boat?

A From this view here, it's -- I would be speculating.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q Does that look like a typical manure lagoon?

MR. LUCHSINGER: Objection to form.

THE WITNESS: You know, I can see in his comment that he says, you know, manure pit. But other than that, I would be purely speculating.

BY MR. LEACH:

Q Based on your experience, do you know what this equipment is?

MR. LUCHSINGER: Objection to form, foundation.

THE WITNESS: It looks like a car trailer. I think it says H&H on the front. I think they make car trailers.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q Did you hear him say this would be our eight inch pump, gets noisy?

A No, I did not. I heard him -- it sounded like he was taking heavy fire or something. It was quite loud.

(Reporter's Note: The video is played.)

BY MR. LEACH:

Q Okay. Let's go -- if you could pull up Exhibit 1085, please. Please take a look at that video.

(Reporter's Note: There was a pause while witness views Exhibit 1085.)

BY MR. LEACH:

Q Okay. I'm going to share my screen a little bit. Can you see my screen, Mr. Nuhn?

A Sorry. Are you talking?

Q Yeah. Can you see my screen?

A No. I was watching the video.

Q Can you see my screen now up on --

A Yeah, I can see it, yeah.

Q Okay.

(Reporter's Note: The video is played.)
BY MR. LEACH:
Q Can you see the cannon or nozzle on the front? The linkage adjusts the orientation of the nozzle. Did you see that.
MR. LUCHSINGER: Objection as to form, foundation.
THE WITNESS: Yeah.
(Reporter's Note: The video is played.)
BY MR. LEACH:
Q Can you see that, Mr. Nuhn?
MR. LUCHSINGER: Same objection.
THE WITNESS: Yeah, I'm not going to speculate on what I'm looking at in this video. I didn't take this video. I wasn't at this site.
BY MR. LEACH:
Q I understand that. But I'm asking you to watch the video and confirm for me that the cannon or the agitation vehicle is able to adjust the orientation of the nozzle on the front of the boat or vehicle. Do you see that?
MR. LUCHSINGER: Objection as to form, foundation.
THE WITNESS: I would just be purely

speculating.

(Reporter's Note: The video continues to play.)

BY MR. LEACH:

Q Let's go back to -- we're at about 56 to about one minute.

Did you see the adjustment of the cannon and front nozzle on the agitation vehicle there?

MR. LUCHSINGER: Objection, foundation, asked and answered.

THE WITNESS: The way it's coming through on the site, it's like extremely choppy. I don't know if it's the same for other people the way you're showing it.

BY MR. LEACH:

Q Okay. Let me stop sharing and have you pull it up on yours. Go to about 45 seconds into the four-minute video and tell me what -- tell me if you can see the front cannon or the nozzle being adjusted vertically and horizontally. Can you confirm you can at least see that?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I don't know. It's going to be hard to see from this angle, Tom.

(Reporter's Note: There was a pause while

the witness views the video.)

BY MR. LEACH:

Q Well, let me ask you this. Does what's shown in Exhibit 1085 look like what Mr. Sundstrom demonstrated at the 2012 North American Manure Expo that you saw?

A Like I said earlier, I don't recall the exact specifics of what his vehicle looked like.

Q Okay. In looking at the video, if you go to about two minutes 30 seconds in, you're seeing a side view of the video. Would you agree with me that at least for the side facing the camera, there's two wheels on each corner of the agitation vehicle there?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: The way it's in the pit there, it's -- I would be speculating on what it is. It's not clear.

MR. LEACH: Okay. I'll mark another exhibit. Let's see. Are we on Exhibit 2087?

MR. LUCHSINGER: 2085, I think. I'm sorry. 1085.

MR. LEACH: I'm sorry?

THE WITNESS: The new one should be 1086.

MR. LEACH: It's 2087.

MR. LUCHSINGER: I think you mean 1087

should be the next one.

BY MR. LEACH:

Q 1087 is what the next one is. Yeah, 1086 is what the last one. Okay. 1087.

(Deposition Exhibit Number 1087 was marked.)

BY MR. LEACH:

Q Okay. I'm loading that. For some reason, it's locking up on me. Just a second. You should have that now, Mr. Nuhn.

Do you have Exhibit 1087 in front of you now?

A Yeah.

Q Can you tell me what Exhibit 1087 is?

A Looks like Manure Expo 2012 show guide.

Q Okay. And is that the North American Manure Expo held in Prairie du Sac, Wisconsin in 2012?

A I would assume so. I've never seen this -- I don't think I've ever seen this before.

Q Well, this is the show you attended, correct?

A Yeah. I just don't think I've ever seen the show guide for it.

Q You don't think back in 2012 when you attended this show you wouldn't have looked through the show guide?

A I don't think so. This doesn't look familiar to me.

Q Do you have any reason that -- you can look through it. Do you have any reason to believe that this is not the North American Manure Expo show guide for the trade show that was held in Prairie du Sac, Wisconsin, in 2012?

A I have no reason to believe it's not.

Q Okay. And is this the type of brochure that are provided at trade shows such as this?

A They usually have some sort of guide or something.

Q And you attended this trade show in 2012, correct?

A Yeah. I was at the Manure Expo in 2012.

Q And you walked the grounds, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I said earlier I don't recall if I specifically was walking around. Nothing comes to mind in particular.

BY MR. LEACH:

Q Okay. But it would have been your common practice to walk around the grounds, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No.

BY MR. LEACH:

Q Would you have at least walked from your booth,

Nuhn's booth, to the demonstration area or at least traveled to and from that area?

A I would have had to have gone from the booth to the demonstration area.

Q And as we talk about earlier before lunch, you saw Puck's agitation boat be demonstrated at the 2012 North American Manure Expo, right?

A I did.

Q And you saw Sundstrom demonstrate its manure agitation vehicle at the 2012 North American Manure Expo, correct?

A I saw something that Sundstrom demonstrated. I don't know the specifics of it. But he demonstrated an agitation boat though, a floating agitation boat.

Q Right. If you go to page 12 of the brochure, which is Exhibit 1087, what do you see at the top?

A It looks like an ad for Puck Custom Enterprises.

Q Is this the Puck agitation boat that you saw demonstrated by Puck at the 2012 North American Manure Expo?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I can't say for certain if this is the exact unit or model that they ran.

Puck ran an agitation boat. I don't know the specifics of what they ran that day.

BY MR. LEACH:

Q Okay. And if you look down under "Lagoon Agitation Boats," it says, "PCE Agitation Boats mix with 3 downward, high pressure outflows, and are remotely controlled from the shore." Do you see that?

A I see, "PCE agitation boats mix with three downward, high pressure outflows, and are remotely controlled from shore ."

Q Okay. During the demo, did you see the Puck boat being operated by someone from shore? Did he have a remote control?

A I can't remember the specific, but I feel like they even had to go on it, like -- they were having technical difficulties, like they sprayed the crowd accidentally. So I can't remember the specifics of what they were doing. I just remember being very close to the shore because I think they were troubleshooting on it.

Q How far away do you think you were from the Puck boat?

A Oh, I was on the other side of the lagoon where we were situated from where they were situated.

Q Okay. So about how far away?

A Oh, I don't know, a couple hundred meters.

Q And when Sundstrom demonstrated their Stir Dredge agitation vehicle, about how far away were you?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: If I remember correctly, Puck was on that side of the lagoon to my left, I was up in the tractor, and Sundstrom was kind of an equal distance to my right. I was kind of in the middle of both of them. They were on one side, and Puck was on the other side.

BY MR. LEACH:

Q How big of a lagoon was this?

A It was a decent size lagoon. It wasn't one of the bigger lagoons I've been at, but it was a good size. I would say it's your average, average lagoon.

Q So about how -- I just want to understand. You were in the center of it, and Puck was on one side when it demonstrated, and Mr. Sundstrom was on the other side of you when they demonstrated their agitation vehicle. So in total, how big was the manure lagoon?

A I would be guessing. I couldn't even say a number. I would be guessing on how big it was. This is 12 years ago.

Q Okay. So going back to page 12 of Exhibit 1087. Where Puck's advertisement says, "Lagoon Agitation Boats," after it says they are "remotely

controlled from shore," it says "Easily access all areas of any size of lagoon." Do you see that?

A Yeah.

Q Was that a problem faced by the shore-based manure pumps that you referenced in Exhibit -- or I'm sorry, in paragraph 11 of your declaration?

A I think it's actually even -- I think it's actually a bigger issue even for the Puck boat. If I recall correctly, there was actually a pretty nasty crust on this lagoon, and I feel like the Puck boat couldn't even -- I feel like the Puck boat couldn't even actually really get, like, into the lagoon. It was that crusted over. So I find that line actually not accurate.

Q You mean that line in their advertisement?

A Yes, yeah.

Q Okay. Do you have a specific recollection of whether that lagoon had a crust on it or not?

A It did. I remember it being heavily crusted over.

Q If you turn to page seven of Exhibit 1087, do you see the bottom advertisement from Sundstrom's Pit Pumping LLC?

A I do.

Q Would Sundstrom be a customer of Nuhn?

A I don't think they ever were.

Q Would Sundstrom be a competitor of Nuhn?
A Not to -- not at the time of this publication, no.
Q Well, the publication is the 2012 brochure for the North American Manure Expo, and Nuhn is providing lagoon agitation equipment, correct?
A We make lagoon pumps, lagoon agitation pumps.
Q Okay. And Sundstrom is making a lagoon agitation vehicle, correct?
A They are, yeah.
Q And Puck is making a lagoon agitation vehicle, correct?
A They are, but for some reason I didn't really think of them as direct competition for the lagoon pump.
Q But all three of those, you, Sundstrom and Puck, are selling lagoon agitation equipment, correct?
A We're making lagoon agitation pumps, and they are making lagoon agitation boats. Honestly, when I was at that show, I did not really view either of them as my competition. A year later when we made agitation boats, then I considered both of them, but at the time in 2012 I did not.
Q And so when you were making or launching your prototype Lagoon Crawler, then you believe you were competing with Puck's boat and Sundstrom's boat. Is that

fair?

A I never really considered Sundstrom a competitor really at any point. I don't really know if they sold any of those other than to themselves. Not that I know of. That's just my gut feeling. I feel like they only ever just made it for themselves because they own a pumping business.

Q Would you pull up Exhibit 1086. And these are screenshots from the videos of the Sundstrom Stir Dredge. Can you take a look through the various photos in Exhibit 1086, screenshots?

A Yeah.

Q Okay. Can you at least confirm for me based on your experience in the industry that what's shown on the first page is a linkage and nozzle that is shooting out some sort of a liquid. And I realize you're not going to agree that it's a liquid manure. But is that fair?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: Yeah. I'm not going to speculate what I'm seeing in this picture here.

BY MR. LEACH:

Q So any questions about any of the structure in this picture you're just not going to answer is what you're telling me?

A I'm not going to speculate on anything in this photo. Like I said, I wasn't involved in the manufacturing of this, I'm not involved in the shooting of this video, I wasn't there, so I don't think I -- any comment I would be adding would be pure speculation.

Q Okay. Go to the last page, if you will. And will you agree with me that the corner of the boat has a tire on it? Can you see that in the picture?

MR. LUCHSINGER: Objection [inaudible] --

THE WITNESS: I do not.

(Court reporter clarification.)

MR. LUCHSINGER: Yeah, it was to form and foundation. And then I have the same objection to the follow-up.

BY MR. LEACH:

Q Sure. Mr. Nuhn, looking at the last page of Exhibit 1086, which is a close-up photo of Mr. Sundstrom's Stir Dredge agitation vehicle, can you see the structure that's in the bottom right-hand corner of the vehicle? Does that look like a tire with tire treads?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I would be speculating as to what that is.

BY MR. LEACH:

Q What's your best guess of what that is?
A I don't feel comfortable speculating.
Q Can you just guess at what you think that looks like to you?
A I don't feel comfortable speculating what that is.
Q Okay. And going above that, there's a black tubular structure with kind of a shiny smaller tubular structure connected to a linkage on the cannon. Do you see that?
MR. LUCHSINGER: Objection to form, foundation.
THE WITNESS: Can you clarify where you're looking?
BY MR. LEACH:
Q It connects the -- kind of the vertical pipe, and then it extends horizontally over to a bracket on -- or a linkage on -- that's around the pipe. Do you see that?
MR. LUCHSINGER: Objection to form, foundation. Sounds a lot like you're testifying.
THE WITNESS: If you -- it's a little unclear what you're describing. I don't know if you want to highlight it and reupload it,

then I can maybe be a little clearer what you're actually describing.

BY MR. LEACH:

Q Sure. I guess what I'm asking, do you see a hydraulic cylinder there that moves or redirects the nozzle?

A I'm not going to speculate what's in this photo.

Q Okay. So anything I ask about this photo, you just will not speculate as to what it is is what you're telling me?

A I don't know the facts of this photo. I am not going to speculate on that.

Q What does a hydraulic cylinder look like, and what does it do? Let's start with, what does a hydraulic cylinder look like?

A There's many versions of hydraulic cylinders. A lot of the hydraulic cylinders that I've had experience with, they have a cynlinder. They have a piston that slides in and out. Usually the caps are connected by four long tie rods, so the body of the cynlinder has -- there's almost five cylinders on the main body, the main one that's filled with fluid for going in and out, and then you've got these long tie rods connecting the caps together, and then you have your rod sort of extending

and retracting and two pivot points, so.

Q Okay. Looking at Exhibit 1086, do you see something that looks like a hydraulic cynlinder?

A Not to the structure I just described.

Q Okay. Let's go back to Exhibit 1087. If you look at page 13 of Exhibit 1087, in the right-hand column it talks about "Demonstrations." Do you see that?

A Which page? Sorry.

Q Page 13 of Exhibit 1087, which is the show guide for the North American Manure Expo held in Prairie du Sac, Wisconsin in 2012.

A Yeah, I'm on page 13.

Q Okay. In the right-hand column, it says, "Demonstrations." Do you see that?

A Uh-huh.

Q And so were -- the "Lagoon Equipment Demonstrations," did those include a propeller and pump agitation demonstration?

A We did not have a propeller.

Q Was the pump agitation, was that your demonstration? Where it says "Propeller & Pump Agitation," was that your demonstration of the Header Series pump?

A I'm not too sure. We would have been in the lagoon equipment demonstrations. I'm just not sure how

or where it would have been classified.

Q Okay. And so there were five demonstrations. The "Boat Vertical Agitation," was that the Puck boat?

A I would be speculating on what they're -- you know, their titles here and what they are implying for the demonstrations.

Q Well, of those five, which one do you believe was describing Nuhn's demonstration, yours?

A We were probably in the first category.

Q The "Propeller & Pump Agitation"?

A If I had to guess, that probably would cover what we were demonstrating.

Q Okay. And then you had a "Boat Vertical Agitation" demonstration, and then there was a "Dredge Agitation"; is that correct? Can you tell me what the dredge agitation demonstration was?

A I actually don't -- I don't recall a dredge agitation.

Q What about the "Mechanical Arm Cutterhead" agitation demonstration. Do you know what that consisted of?

A No, I do not.

Q Okay. What about the "Manure Pump Monitoring & Control with Mobile Computer and Communication Devices"? Do you know what that was?

A No, I don't.

Q So if you go to page 15 of Exhibit 1087, does this provide kind of the schedule of the day for the trade show of the North American Manure Expo in 2012?

A It would be a rough overview, I would say.

Q 7:30 a.m., it says, "Registration/Trade Show Opens at Expo Field Site." Do you see that? Can you describe what the Expo Field Site was?

A To the best of my recollection, it was an outdoor exhibit area, and it -- possibly in a field or -- I can't remember the specifics of how the show was set up.

Q So underneath that it says, "Commercial vendor displays and poster sessions open throughout the day." Does that mean people can just kind of wander around the trade show throughout the day?

A I don't know what they mean by that.

Q So if you go to 8:00 a.m. to 10:30 a.m., it says, "Lagoon Agitation Demonstrations." And so this had a shuttle service to farm site. Do you see that?

A Yeah.

Q So do you recall that there was maybe an off-site lagoon that you went to?

A Based on that text, I'm assuming it was off-site.

Q Okay. And then, again, if you go down to the five different demonstrations that were held, the first one says, "Lagoon prop & pump agitation. Do you believe that was Nuhn's demonstration of the Header Series pump?

A I think that's a blanket term for, like there -- I know for sure GEA Houle was agitating there, I believe, so it would have been -- maybe that's what they mean by the prop. I thought it was their lagoon pump, but again, I could be mistaken. But I think that that would classify, you know, the category we were running in.

Q So when you say the category you were running in, it was these 50-foot long structures with a pump at the end that were tractor driven to agitate a manure lagoon?

A Or a propeller.

Q Or a propeller? And is that what you were referring to in your declaration at paragraph 11 that was the best solution in 2009 and 2010 for pumping out a manure lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I would say the, you know, shore-based pump like our -- at the time it was called the G-Force Series Lagoon Pump, you know, was the best agitator.

BY MR. LEACH:

Q Okay. And then the next one down is "Boat with remote control vertical agitation." Do you believe that was the pump -- or I'm sorry, the Puck demonstration?

A These names and headlines are silly. I don't know what they're referring to. I do know that the Puck ran their agitation boat there. Whether it was classified with that heading or not, I have no idea if that's what they're talking about.

Q Okay. It says, "Solids removal with truck mounted boom-arm cutterhead dredge." Do you know what that is?

A I have no idea what that is.

Q Okay. And then below that it says, "Stir Dredge floating agitator incorporating crust & settled solids." Do you see that?

A I see where it says that.

Q Do you understand that Sundstrom called its manure agitator, the floating manure agitator, the Stir Dredge?

A I -- I saw in the last exhibit they called it Stir Dredge.

Q Okay. Do you believe that was the Sundstrom demonstration?

A I don't know why they would break it up so

specifically. Again, the names of these categories, I think, are almost irrelevant.

Q So between 2012, August of 2012 when you were at the North American Manure Expo and when you filed your application in 2013 for your pumping vehicle, did you ever see Sundstrom's vehicle between that day -- between those time periods?

A Like in the flesh or --

Q Yeah. Did you ever see it, see a brochure of it, inspect it, see it work again?

A No. I don't recall.

Q If you turn to page 16 of Exhibit 1087, again, is this the product you were demonstrating at the North American Manure Expo in 2012?

A We were showing off our Header Series Lagoon Pump at the 2012 Manure Expo.

Q Is that the product shown on page 16 of Exhibit 1087?

A Probably not the exact one but a similar one, yeah.

Q That model or a model very similar to it?

A A model very similar to it.

Q Okay. And again, is this type of structure, the one that's shown in the ad on page 16 of Exhibit 1087, is that what you're referring to in

paragraph 11 of your declaration, shore-based tractor driven pump?

A I'm referring to approximately 50-foot long pump, pump at the bottom, agitation, cannon at the bottom, PTO-Driven.

Q And if you look at page 16 of Exhibit 1087, again, we see, I think, a similar image that we looked at in the prior document. You see a green tractor driving a long pump, such as, I would assume, the Header Series Lagoon Pump, spraying manure into the air, correct?

A What was the question on that?

Q So if you look at page 16 of the North American Manure Expo brochure, Exhibit 1087, the Nuhn ad for the Header Series pump shows it in operation in the lower left-hand corner of the ad, correct?

A That's correct.

Q And that's similar to what you were doing at your demonstration in 2012 at the North American Manure Expo, correct?

A That's correct.

Q Okay. And if you turn to the very back page of Exhibit 1087, the Jamesway product there, does this refresh your recollection that maybe it was Jamesway that was -- its Pumpeller that was demoing its agitation product there?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't think they actually ran -- like I know there's an ad here. I don't recall them actually running or being there.

BY MR. LEACH:

Q Now, in 2012, would you consider Jamesway one of Nuhn's competitors?

A I would. They were in a different market though. They were strong in Quebec, which we never really were or even are strong in.

Q Can you tell me what is shown in -- or can you describe what's advertised in Jamesway's ad at the last page of Exhibit 1087?

MR. LUCHSINGER: Objection as to foundation.

THE WITNESS: According to them, "The Pumpeller Hybrid Turbine revolutionizes manure pump performance. Incredible intake suction pulls solids into the cutter knives, reducing the toughest crust to nothing in just seconds. The turbine combines the high-volume mixing of a propeller agitator with the power and reach of a lagoon pump, the resulting hybrid design radically outperforms both."

BY MR. LEACH:

Q And you don't recall one way or another whether the Jamesway product was being demoed at the North American Manure Expo in 2012?

A It's not --

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's not sticking out to me.

BY MR. LEACH:

Q Sir, if you turn to page 19 of Exhibit 1087, the North American Manure Expo brochure, can you tell me where Nuhn's booth was located? Was that 406?

A According to this document, it looks like 406.

Q And who was right next to you in 407?

A It looks like Sundstrom's Pit Pumping.

Q Do you have any reason to believe that that's not accurate?

A I can't say for certain if this is accurate, but there have been many times, even at the Manure Expo in particular, where after the show ad had been printed we had moved to be, you know, near a dealer, you know, maybe got a bigger booth, so.

Q To the best of your recollection, was Sundstrom's Pit Pumping booth right next to Nuhn's booth at the North American Manure Expo in 2012?

A I do not recall.

Q Did Sundstrom have a Stir Dredge sitting next

to Nuhn's booth at the North American Manure Expo in 2012?

A I do not recall.

Q Did Sundstrom have literature about its Stir Dredge agitation vehicle at its booth?

A I do not recall.

Q Did you go over and talk to Ernie Sundstrom? Are you friendly with him? Do you know him? Let's start with, did you talk to anyone in Sundstrom's booth?

MR. LUCHSINGER: Objection as to vague.

THE WITNESS: I do not recall.

BY MR. LEACH:

Q Do you think you would have walked over and looked at Sundstrom's booth and talked to them given that you were next to them at the trade show for the better part of a day?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I do not recall.

BY MR. LEACH:

Q You wouldn't have went over there and talked to them and said, hey, I saw you presented, too, what do you think about Puck's boat spraying people or something like that?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I do not have any specific

recollection of any conversation with Ernie about this demo or --

BY MR. LEACH:

Q Do you have any --

A -- at the whole expo.

Q Do you have any recollection of who was next to Nuhn's booth at that show?

A No. I do not recall.

Q And then next to Sundstrom's booth was booths 408 and 409. And was that was Puck Custom Enterprises, Inc. Do you recall that?

A I do not recall.

Q Do you agree with me that at least in the North American Manure Expo in 2012, the brochure shows that next to Sundstrom was booth 408 and 409, which was Puck Custom Enterprises' booth. Do you see that?

A In the show map, they are to the right of 407.

Q And 407 is Sundstrom's pit pump; is that correct?

A Right, correct.

Q Do you have any reason to believe that this is not the layout that was at the 2012 North American Manure Expo?

MR. LUCHSINGER: Objection as to form; asked and answered.

THE WITNESS: There's -- I can think of particular times where we have moved our booth and not been where it said on the show map, or show guide. I cannot say specifically how the 2012 went down, but I do know of instances where we have been on the show map and not physically at that booth.

BY MR. LEACH:

Q But specific to the 2012 North American Manure Expo, you don't have any recollection of who was next to Nuhn, Nuhn's booth. Is that --

A I don't have --

Q -- correct?

A I don't have any recollection.

Q Okay. And so if the -- if the booth layout is correct, which is shown on page 19 of 2012, North American Manure Expo brochure, which is Exhibit 1087, your booth was next to Sundstrom, Sundstrom's Pit Pumping booth, and that was next to Puck's booth, which occupied two booths basically, correct?

A According to the show guide, Nuhn's is in 406, Sundstrom is in 407, and Puck's is in 408-409.

Q Okay. And despite Nuhn, Sundstrom and Puck all demonstrating at this 2012 Manure Expo trade show, it's your testimony that you can't recall whether you went and

talked to them or looked at Puck's booth or Sundstrom's booth?

A That's correct. That's my testimony. I don't believe I did.

Q And when you say you don't believe you did, why do you say that?

A Ernie is kind of a scary dude, to be quite honest. He's kind of a motor cycle guy. He's got like a three-foot beard. He's not very inviting to speak with.

Q So what about Puck?

A You know, they are not as, you know, intimidating that way. But I think I've only talked with Puck just a handful of times at shows, and definitely 2012 is not one of them.

Q And, again, how can you be sure? If you can't recall much about the show, how can you be sure you didn't talk to Puck at the show, especially given that you both demoed products and your booths were in very close proximity to each other?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I just -- I usually don't talk to my competition at these things.

BY MR. LEACH:

Q Do you know whether Ernie came into Nuhn's booth and spoke with you or looked at your equipment,

Nuhn's equipment?

A I don't have any specific recollection of talking to Ernie at the 2012 Manure Expo.

Q What about Puck, did they come into your booth and talk with you?

A I don't have any recollection of them talking to me at this event.

Q If you turn to page 11 of Exhibit 1087, it says, "Sprinkler Application of Manure." Do you see that? It's actually number 11 on page 11 of Exhibit 1087. Did you attend any of these seminars?

A I don't recall attending any of the seminars, no.

Q Okay. And if you read the abstract for the seminar identified at number 11, "Sprinkler Application Of Manure," it says, "Sprinkler systems are an efficient way to apply liquid manure and offer many advantages over tanker wagons and pull-type applicators - advantages such as application to a growing crop." Do you see that?

A I see where it says the "Abstract," yeah.

Q Okay. And Nuhn was in the business of selling tanker wagons and pull-type applicators, correct?

A Just tanker wagons.

Q Just tanker wagons. And so was one of your competitors or one of your competing products sprinkler

systems that apply liquid manure?

A This is honestly a new term to me. I've never heard that term before, sprinkler application of manure or sprinkler systems for manure.

Q You've never seen liquid manure being applied through irrigation equipment onto fields?

A Are you referring to like drag-lining?

Q Yeah. Did they use irrigation equipment to, like irrigation pumps or irrigation sprinkler heads to apply liquid manure on fields?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I'm not aware of any sprinkler application. I'm aware of drag-lining using high pressure liquid manure pumps. I'm not familiar with this term "sprinkler application."

BY MR. LEACH:

Q Okay. Would you agree with me that at least by -- or at least in August of 2012, Chris Henry was talking about sprinkler systems being used to apply liquid manure onto growing crops?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I'm not going to speculate

on what's being said here. I don't know anything about irrigation or sprinkler systems, let alone its use with manure.

BY MR. LEACH:

Q Okay. I want to summarize a little bit here. So, Mr. Nuhn, you attended the North American Manure Expo in Prairie du Sac, Wisconsin in 2012, correct?

A I was at the Manure Expo in 2012 in Wisconsin, yeah.

Q And you demonstrated a manure agitation -- one of Nuhn's manure agitation equipment or pumps, correct?

A I demonstrated our Header Series Lagoon Pump.

Q And during that demonstration, you also saw Sundstrom demonstrate a floating lagoon agitator, correct?

A They were demonstrating a floating lagoon agitator.

Q And also during that demonstration in 2012, you saw Puck demonstrate their Puck agitation boat, correct?

A An attempt at a demonstration. They had technical difficulties.

Q Okay. But nevertheless, they had an agitation boat that they were attempting to demo or demonstrate, right?

A They had some sort of agitation boat in the

lagoon attempting to demo.

Q Okay. And the Puck boat had a pump on it, correct?

A I don't know -- I don't know the exact specifics of the construction of what they were demonstrating that day.

Q Okay. But in that category, that demonstration, it was all manure lagoon agitation equipment, correct?

A We were demonstrating manure agitation equipment at the Manure Expo.

Q And also at the North American Manure Expo in 2012, Nuhn had a booth, correct?

A We were exhibiting at a booth at the Manure Expo, correct.

Q And right next to Nuhn's booth at the North American Manure Expo in 2012 was Sundstrom's booth, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It shows it on the map, but I can't say for certain where we were located or where Sundstrom's was located.

BY MR. LEACH:

Q At least -- as at least provided in Exhibit 1087, the show guide, it shows Nuhn's booth right

next door to Sundstrom's booth, correct?

A It shows Nuhn's booth being 406 and Sundstrom's Pit Pumping booth being 407.

Q Okay. And then Puck was right next to Sundstrom at 408 and 409, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: The thing I just want to point out here is, you know, Sundstrom's Pit Pumping, their -- you know, their ads are showcasing their application equipment. At the show it wasn't just manufacturers. It was, you know, pumping -- like literally custom pumpers were exhibiting there, showing off their own equipment, you know, like Cooks Countryside Trucking, Phil's Pumping, Eisentraut Ag Service, Tasch Custom, Schmidt's Pumping, Roberts Irrigation Company. So it wasn't just manufacturers. And just going off of the ad there, you know, just because they had a booth beside us, they could have just been showing off their manure pumping equipment and application bars. I just want to make that clear.

BY MR. LEACH:

Q Sure. And in the 2012 North American Manure

Expo guide, which is Exhibit 1087, on page 12, Puck had a half page ad for its lagoon agitation boats, correct?

A What page was that again?

Q Page 12.

A They are showing off lagoon agitation boats on a half page ad on page 12.

Q And in that ad it talks about the boat -- the "PCE Agitation Boats mix with 3 downward, high pressure outflows," right?

A It says, "PCE Agitation Boats mix with 3 downward, high pressure outflows."

Q And you understand that to be using nozzles to produce a high-pressured jet to agitate the manure lagoon?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I'm not going to speculate on their structure on how they align with what they are saying in their ad.

BY MR. LEACH:

Q Okay. Do you agree that it at least also states that it's remote controlled from shore?

A It says remotely controlled from shore.

Q All right. And your experience watching Puck demonstrate its lagoon agitation boat, it was remote

controlled from shore, correct?

A Well, they were having technical difficulties, so it was hard to get an assessment of what they were doing. I do think they had to go on it. So it's hard to say.

Q Okay. And again, the Puck boat, at least in the advertisement, says "easily access all areas of any size of lagoon." Do you see that?

A It says, "easily access all areas of any size of lagoon."

Q So what does that mean to you?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's able to access all areas of any size of lagoon, as it said there.

BY MR. LEACH:

Q And then again at the North American Manure Expo in 2012, you saw Sundstrom's Stir Dredge demonstrated, correct?

MR. LUCHSINGER: Objection --

THE WITNESS: I don't --

MR. LUCHSINGER: -- as to form.

THE WITNESS: I don't know which vehicle or the name of the vehicle that Sundstrom was running, but he was running an agitation boat.

BY MR. LEACH:

Q Okay. And I think we -- I think you testified -- strike that.

It was remote controlled from shore, right?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: Sitting here today, I have no idea how his machine was operated.

BY MR. LEACH:

Q You recall him operating it from shore, though.

MR. LUCHSINGER: Objection as to form, foundation, misstates prior testimony.

THE WITNESS: I feel like he went on it to start it, and then I feel like it -- he started pulling it. I wasn't paying attention to how he was operating.

BY MR. LEACH:

Q Once he started it, did he get off the boat and then operate it from shore?

A I believe so. Again, this is 12 years ago, and I wasn't really paying attention. I was more focused on my own equipment.

Q So speaking about your equipment, so Nuhn is at this 2012 North American Manure Expo, and it's demonstrating a shore-based tractor-mounted pump, right?

A We were showing our Header Series Lagoon Pump.

Q Okay. Is that a shore-based tractor-mounted pump or tractor-powered pump?

A It's driven by a tractor, yes.

Q And I think you testified that those products were out there in 2009 and 2010, correct?

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: Not the exact Header Series Lagoon Pump but similar constructed 50-foot pumps with wheels near the end, pump on the end, cannon assembly on the end.

BY MR. LEACH:

Q Okay. So how did it make you feel when you're demonstrating a 50-foot pump that's shore based and you're watching your competition demonstrate to your customers a floating agitation vehicle or boat that can reach all areas of the lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: You know, I might be biased, but I actually felt like we did the best job that day. You know, to this day, everyone talks about Puck spraying the crowd. That's a very unfortunate thing to have happened to them. But they did not have a good demo. And I don't believe anyone went away talking about

this barge that needed to be pulled across the pit. I actually feel like, you know, we kind of came away from that day with probably the best demo.

BY MR. LEACH:

Q Okay. And, but after that you started designing a floating lagoon agitator, correct?

MR. LUCHSINGER: Objection --

BY MR. LEACH:

Q The one with two unpowered wheels?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Yeah. You know, we -- I think you could see the value in getting over the pit. I think that's a selling point.

BY MR. LEACH:

Q So is that when you realized you needed a product to compete with Sundstrom's agitation boat and Puck's agitation boat?

A No, I don't think it was right at that moment.

Q So do you think Nuhn's shore-based product, the Header Series Lagoon Pump, worked as well as those manure agitation pumping vehicles or boats?

MR. LUCHSINGER: Objection as to form and vague.

THE WITNESS: I actually think we did a

better job that day. I really do.

BY MR. LEACH:

Q Do you think your Header Series Lagoon Pump is an acceptable alternative to those products, meaning Puck's product and Sundstrom's product?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Say that again. I didn't quite get that question.

BY MR. LEACH:

Q Do you think Nuhn's Header Series Lagoon Pump is an acceptable alternative to Sundstrom's agitation boat and Puck's agitation boat or vehicle?

MR. LUCHSINGER: Objection as to form and to the extent it's asking for a legal conclusion.

THE WITNESS: Just speaking on my own opinion, no. I do think they are different classes of agitators.

BY MR. LEACH:

Q Would that be a shore-based class versus a class that can reach the entire lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Yeah, I -- you know, they are both lagoon agitators. But I do think that there may be overlap in the applications that

they can be used and where one would work better than the other, but I do think they are two different classes of equipment.

BY MR. LEACH:

Q I want to turn your attention to the '835 patent. When you were filing this patent back in -- or preparing and filing it back in 2013, you read the application, correct, as the inventor, or the named inventor?

A Sorry. There's something else there. I didn't quite hear.

Q Right. Back in 2013 when you were preparing and filing your patent application that led to the '835 patent, did you read the application and understand it?

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: It was prepared by my patent agent, but I did -- I did read it to make sure that the scope of what we had discussed was covered.

BY MR. LEACH:

Q And did you read it for accuracy, too?

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: Again, you're asking

something that happened 12 years ago. I proofread the -- you know, I read it before it was submitted.

BY MR. LEACH:

Q Okay. And that would have been about a year after the 2012 North American Manure Expo, right?

A We -- yeah, I'm trying to recall the dates of the original application. But sometime in August of 2013 is when the application went in.

Q And who was the patent agent you were working with? What's his name?

A Rob Brunet.

(Court reporter clarification.)

THE WITNESS: Brunet. Brunet is spelled B-r-u-n-e-t.

BY MR. LEACH:

Q That was Rob, right?

A Rob, yeah.

Q Okay. When you were going through the process of filing the original application, you understood that you had a duty of candor with the patent officer to the patent office, correct?

A I'm not sure I'm following what you're saying. I don't --

Q Well, when you go --

A -- know what you mean by duty of candor.
Q You what?
A I don't understand what you're asking. Sorry.
Q Sure. Did you understand that you had a duty to be truthful with the patent office when you're filing your application?
A Of course, yeah.
Q And you understood you had a duty to tell the patent office about the prior art that you were aware of, correct?
A Correct.
Q And so if you pull up Exhibit 1001, which is the '835 patent. Will you do that, please? Just confirm for me that this is in fact the '835 patent of which you're the named inventor.
A It appears that is correct.
Q Okay. So if you can scroll down to column one. And under the "Technical Field," it says, "The invention relates to pumps and vehicles equipped for pumping." Do you see that?
A Uh-huh.
Q And so in this section, are you kind of orientating the patent office about the technical field of your invention?
MR. LUCHSINGER: Objection as to form and

foundation.

THE WITNESS: I'm not a patent attorney, so I don't --

BY MR. LEACH:

Q I get that.

A Yeah.

Q I guess I'm asking --

A I didn't write this, either.

Q Sure. But you reviewed it, right?

A I reviewed it, but I trust my patent agent to -- you know, to -- I trust what he writes.

Q Okay. But I assume Mr. Brunet is not an owner of a manure equipment company, right?

A No. But he lives in a rural area in southwestern Ontario. He has a farming background. He worked with me on the liquid manure pump patent; he's worked with us on liquid manure spreader patents; he's worked with me on Alley Vac patents.

(Court reporter clarification.)

THE WITNESS: A-l-l-e-y v-a-c.

You know, we had many meetings with Rob Brunet, probably annually at least if not semi-annually. So he understood the, I would say, the manure industry quite well, our business quite well, the competition quite

well, if that answers your question.

BY MR. LEACH:

Q Okay. Yeah, but for this application, this specific application, you provided some of the background and details to him, correct?

MR. LUCHSINGER: Objection as to form, vague. Just also going to caution the witness not to reveal, like, the contents of communications with counsel. But if you can answer like yes or no, then that would be fine.

THE WITNESS: Again, this is 12 years ago, so I'm -- you know, I discussed with my patent agent details about the invention and the field and the background and made him aware of the landscape. Like, I think from day one Puck has been on -- to my understanding, Puck's always been mentioned in this patent, to my understanding, I believe. Yeah.

BY MR. LEACH:

Q Do you believe Puck should have been mentioned in the patent?

MR. LUCHSINGER: Objection as to form to the extent it calls for a legal conclusion.

THE WITNESS: If I'm looking at the references cited on the front, Houle is cited,

like GEA Houle, Houle. And I see Puck and Puck on here.

BY MR. LEACH:

Q So let's go to the background. In the background, you describe what manure lagoons are used for, right?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Do you want me to read the background?

BY MR. LEACH:

Q Sure. Let's start with the first sentence. You can read it out loud, if you could, please.

A "Manure produced during animal husbandry, particularly hog and cow manure, is transferred by" --

(Court reporter asks witness to read slower.)

THE WITNESS: I can read slowly. I just don't want to aggravate Tom over here.

BY MR. LEACH:

Q You're not going to aggravate me.

A Okay. I'll start at the beginning.

"Manure produced during animal husbandry, particularly hog and cattle manure, is transferred by washing to a pit or a lagoon for storage prior to removal for land application or further processing."

Q So would you agree with me that in the

background you describe what manure lagoons are used for?
A I think it gives a general description of what manure lagoons are used for.
Q All right. And then you told the Patent Office in the next sentence that these manure lagoons need to be agitated during or before pumping out the manure; is that correct?
A Are you reading the background?
Q Well, go to the next sentence.
A "During storage, a crust can develop on the surface of a pit or lagoon that must be disrupted prior to or during removal of the manure."
Q Okay. So you told the patent office that these manure lagoons need to be agitated during or before pumping out the manure, correct?
MR. LUCHSINGER: Objection as to form.
THE WITNESS: Yeah, it's saying "During storage, a crust can develop on the surface of the pit or -- the surface of the pit or lagoon that must be disrupted prior to or during removal of the lagoon." That's correct.
BY MR. LEACH:
Q Okay. And then the next sentence, you told the Patent Office about certain prior art, correct?
MR. LUCHSINGER: Objection as to form.

THE WITNESS: It says, "Pumps are employed for this purpose with jets that return a percentage of the manure back to the pit or lagoon in the form of a high volume spray to disrupt the crust and recirculate the manure."

BY MR. LEACH:

Q And then you told -- and then it goes on to say, "Pumps for use in recirculating manure from smaller pits are known." Right? Again, you told the patent office that pumps are known for recirculating manure in smaller pits, correct?

A "Pumps for use in recirculating manure from smaller pits are known."

Q And then you told the patent office about the problems with these pumps, correct? "However" --

A "However, these pumps are typically suitable for accessing the pit or lagoon from its edge and are connected to a tractor or similar land vehicle for operational power."

Q And then you told the patent office that these pumps do not work for larger lagoons because they cannot reach the middle of the larger lagoons, correct?

MR. LUCHSINGER: Objection as to form.

BY MR. LEACH:

Q Can you read the next sentence?

A "They are therefore limited in their ability to recirculate manure to the middle of large lagoons, which are becoming increasing common as the size of animal husbandry operations increases."

Q So would you agree with me that you told the patent office that these pumps do not work for larger lagoons because they cannot reach the middle of the larger lagoons, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I would say their -- I agree with what it's saying here. They are therefore limited in their ability to recirculate manure to the middle of large lagoons.

BY MR. LEACH:

Q And then you told the patent office that there is a need for improved pumping and vehicles equipped for pumping, right?

MR. LUCHSINGER: Objection as to form.

BY MR. LEACH:

Q Go to the next sentence.

A It says, "there is a need for improved pumps and vehicles equipped for pumping, particularly pumps and vehicles suitable for use with large manure lagoons."

Q Okay. And so in reading the background, you told the patent office about these land-based shore

tractor-driven pumps, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: If that's described in the background of the patent.

BY MR. LEACH:

Q Okay. And you said there's a problem with these because they can't agitate the center of larger lagoons, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's saying there's a -- "They are therefore limited in their ability to recirculate manure to the middle of large lagoons."

BY MR. LEACH:

Q Okay. And you said that "there is a need for improved pumps and vehicles equipped for pumping, particularly pumps and vehicles suitable for use with large manure lagoons," right?

A I just flipped away from it. Say that again.

Q So you end with the need. The need is, what you're telling the Patent Office is for "improved pumps and vehicles equipped for pumping, particularly pumps and vehicles suitable for use with large manure lagoons." Right?

A "There is a need for improved pumps and

vehicles equipped for pumping, particularly pumps and vehicles suitable for use with large manure lagoons."

Q Okay. So despite seeing Puck's agitation boat in August of 2012 at the North American Manure Expo, you did not include it in the background of your patent when you were explaining to the patent office about the prior art relevant to your alleged invention, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: To the best of my knowledge sitting here today, we did notify the patent office of Puck, as it's on the face of the patent.

BY MR. LEACH:

Q You didn't put it in the background of the patent though, right?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I -- there's nothing about -- we do talk about improved vehicles.

BY MR. LEACH:

Q Well, that's the need.

A Puck is not specifically mentioned in the background, no. But Puck -- to the best of my knowledge, Puck was cited to the patent office.

Q Sure. What about Sundstrom? Do you mention Sundstrom in the background of the patent application,

its manure agitation boat?

A We were just talking about improved pumps. "There's a need for improved pumps and vehicles equipped for pumping."

Q Well, if Sundstrom's boat had four tires, a cannon with an adjustable nozzle, and it was floatable, why isn't that included in the background of the invention?

MR. LUCHSINGER: Objection as to form and foundation to the extent it calls for a legal conclusion.

THE WITNESS: I don't know if I knew that Sundstrom had wheels, and I feel like it was -- basically, Puck covered the agitation then. In my head Sundstrom was not -- was not relevant.

BY MR. LEACH:

Q Well, your alleged invention had four wheels, correct?

A We had four powered wheels.

Q Okay. And Puck didn't have any wheels, correct? It used a trailer?

A Puck is just a boat.

Q Yeah. And so you thought Puck was relevant enough that you needed to disclose it to the patent office to meet your duty of candor to the patent office,

correct?

MR. LUCHSINGER: Objection as to form to the extent it calls for a legal conclusion and foundation.

THE WITNESS: Yeah, I -- I felt that by disclosing Puck, that was the agitation boat. I did not think of Sundstrom as an agitation boat. It didn't propel itself around the lagoon. It had a cable to pull it across. I did not know that it had wheels. I don't -- I do not know that it had wheels. I feel that by just citing Puck, that was showing the landscape of what was going on.

BY MR. LEACH:

Q Despite Puck not having wheels and Sundstrom having wheels, an engine, a mechanical drive to the pump, a cannon with an adjustable nozzle, you decided --

MR. LUCHSINGER: Objection --

BY MR. LEACH:

Q -- not to disclose Sundstrom but disclose Puck; is that correct?

MR. LUCHSINGER: Objection as to form, foundation, misstates prior testimony.

THE WITNESS: I don't know all the details of Sundstrom's unit.

BY MR. LEACH:

Q But you made a decision to disclose Puck and not Sundstrom, correct?

MR. LUCHSINGER: Objection as to form, foundation, misstates prior testimony.

THE WITNESS: When communicating with Rob, Sundstrom's wasn't even -- I -- this is pure speculation because I don't recall the conversations I had with Rob. But the product that Sundstrom had was nothing -- like Puck's summed up the agitation boat market to me when I was talking with Rob.

BY MR. LEACH:

Q Were you worried that if you disclosed Sundstrom, you might not get a patent because it was closer to your invention given it had four wheels than Puck's boat?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I have never even thought about Sundstrom's boat, to be quite honest. I have never competed against Sundstrom's boat. He had a demonstration in the lagoon once that I saw, actually twice that I've seen. But other than that, I have never -- I have never put two -- two and two together with Sundstrom.

I did not even consider him.

BY MR. LEACH:

Q But you saw Sundstrom's demonstrate his boat once in 2012. What is the second time you saw his boat?

A He was showing it in Durand at an agitation boat -- there was like an agitation boat day or something in Wisconsin, Durand, Wisconsin, and I'm pretty sure he was there. But I've seen his boat around twice, yeah.

Q And what date was that?

A It was summer of 2014 or summer of 2015. I don't recall.

THE VIDEOGRAPHER: Excuse me. We need to take a break at your earliest convenience.

MR. LEACH: Okay. We can take a break now.

THE VIDEOGRAPHER: We are going off the record. The time now is 2:23.

(A break was taken.)

THE VIDEOGRAPHER: We are back on the record. This is the start to Media Number 5. The time is 2:31.

BY MR. LEACH:

Q Mr. Nuhn, I'm going to upload another exhibit here, 1088. It might take a second here.

(Deposition Exhibit Number 1088 was marked.)

BY MR. LEACH:

Q Can you see Exhibit 1088?

A Not yet.

Yeah, it's here now.

Q So do you have 1088 up, Mr. Nuhn?

A Yeah.

Q Can you watch at least the first part of that? It's a 12-minute video. But in the very beginning at about second number 14, it talks about or shows on the video that it's a "Manure Agitation Boat Demonstration, June 2014, Durand, Wisconsin." I think this was put out by the Progressive Dairyman.

A Yeah, I see it. Do you want me to watch the first of it?

Q Sure.

(Reporter's Note: Pause while the witness views the video.)

BY MR. LEACH:

Q And then if you go to timestamp 10:11, it says, "Sundstrom Brothers Custom Fabrication LLC," and it shows the Sundstrom boat going in. Do you see that?

A Yeah.

Q And so is this the second time you saw the Sundstrom manure agitation vehicle?

A Yeah. I was at this event.

Q Okay. And did you talk to Mr. Sundstrom at this event?

A I don't believe I did.

Q Were you aware that Sundstrom was using this boat prior to 2013?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Yeah, I can't recall what it looked like in 2012.

BY MR. LEACH:

Q But in talking with people or Sundstrom, were you aware that Sundstrom's Stir Dredge, or whatever it was called, this manure agitation boat was being used prior to 2013 or at least August of 2013?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. Actually, kind of the vibe that I got at this event was pretty much all of this had come out since we came out with the Lagoon Crawler. You can see we're in the back corner there.

BY MR. LEACH:

Q Did you ask anyone how long has Sundstrom been using or selling this boat?

A I don't recall having really any specific conversations with anyone about --

Q But you knew you saw Sundstrom's boat demoed in

2012 at the North American Manure Expo, right?

A He had basically the same concept of a winch pulling it across a pit.

Q Okay. And in the video, or in Durand, Wisconsin when you were there, did you see that it had a front cannon with a nozzle on it and a piston for changing the vertical direction of the output?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I didn't look closely at what other people were building there. I felt that we had a -- kind of the best product there, so I wasn't too concerned with basically the -- I didn't consider really any of them competition here, so I wasn't looking too closely at them.

BY MR. LEACH:

Q Well, in looking at the video around timestamp 10:15, does this look like what you saw in 2012 at the North American Manure Expo?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't remember the specifics of the machine I was shown at the 2012 Manure Expo other than it had a cable that pulled itself across the pit.

BY MR. LEACH:

Q So as you look through this video, does this video accurately capture the scene that was -- that you saw in Durand, Wisconsin, in 2014 of the various products that were out there?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: This is a video of the demonstration that we were present at that I was referring to.

BY MR. LEACH:

Q Okay. And you specifically recall seeing Sundstrom's boat there as well, right?

A The only thing I actually remember about Sundstrom's boat from this day was that Puck actually sucked up their cable so couldn't really do a good demonstration either.

Q And so in -- or at this 2014 demonstration of lagoon agitation vehicles, was Sundstrom the only other agitation vehicle that had four wheels, one on each corner?

MR. LUCHSINGER: Objection as to form, foundation.

THE WITNESS: I don't even recall if they had wheels. I wasn't even -- I wasn't looking closely at really anyone else's pieces of

equipment there.

BY MR. LEACH:

Q Okay. If you look at the video at timestamp 10:16, does it look like the Sundstrom product includes wheels?

A I'm not going to speculate as to the construction of their machine sitting here today.

Q Okay. But in any event, you saw it -- this is the second time you saw it and -- at the Durand, Wisconsin demonstration in 2014. And the prior time you saw the Sundstrom boat was at the North American Manure Expo in 2012 when it was demonstrated there. Is that correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I saw Sundstrom operating some sort of agitation vehicle that needed to be pulled by a cable at both this event and the 2012 event. I don't know the specifics of the construction at either event.

BY MR. LEACH:

Q Did you do anything to find out about the Sundstrom boat --

MR. LUCHSINGER: Objection as --

BY MR. LEACH:

Q -- what it looked like, any brochures?

MR. LUCHSINGER: Objection as to form, vague with respect to time.

THE WITNESS: I don't -- I don't and I didn't consider them a competitor in this field.

BY MR. LEACH:

Q Well, you were at a 2012 Manure Expo, and they were one of five people, including yourselves, demonstrating manure agitation equipment, correct?

MR. LUCHSINGER: Objection as to form.

BY MR. LEACH:

Q Is that correct?

MR. LUCHSINGER: Same objection.

THE WITNESS: There was more than five people demonstrating in 2012, like the -- I don't know the specifics of who, but there was definitely more than five people demonstrating.

BY MR. LEACH:

Q Okay. About how many do you think?

A I don't know. There could have been eight to ten maybe.

Q Okay. But that's not what it says on the demonstration schedule in the Manure Expo show guide, which is Exhibit 1087, correct?

A I think you're mischaracterizing --

MR. LUCHSINGER: Objection.

THE WITNESS: Sorry. Go ahead, Brad.

MR. LUCHSINGER: Yeah, objection to form.

THE WITNESS: I think you're mischaracterizing the title. Like each title is not one demonstration. The titles don't have any rhyme or reason to how the demos went that day.

BY MR. LEACH:

Q So are you saying that those titles are categories of different types of products that were being shown?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't even think that it was that many categories. But, you know, I believe there was at least three, you know, lagoon pumps running that day. At least three. Again, I don't recall the specifics. It was 12 years ago.

BY MR. LEACH:

Q Okay. And back to whether Sundstrom was a competitor. So he was one of the people that was demonstrating at the North American Manure Expo in 2012, and then in 2014 you ran into Sundstrom again with a -- with his agitation boat. Given that, what makes you

believe that Sundstrom was not a competitor?

MR. LUCHSINGER: Objection to form.

You can answer.

THE WITNESS: I just felt it wasn't like classified. Just because it had a cable pulling itself for getting around the pit, I just didn't -- I didn't view it that way. At this demo there was, I'd say there were six agitation boats. I only considered two of them as actually competition that day that would -- we would be competing for agitation boat sales, and Sundstrom was not one of them.

BY MR. LEACH:

Q What were the two that you did consider to be a competitor?

A JT Boats and Puck.

Q And neither Puck nor JT Boats had four wheels, correct?

A To the best of my knowledge, no.

Q So let's just go through Puck's boat really quick. It was an agitation vehicle or boat, correct?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I would call Puck's vehicle a manure agitation boat.

BY MR. LEACH:

Q Okay. And I'm talking about the Puck boat that was demonstrated in 2012 at the North American Manure Expo. It had a floatable vehicle body, correct?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I don't know the specifics of the construction of the Puck boat that ran in 2012.

BY MR. LEACH:

Q Well, did it float?

A I think it was just on the bank the whole time. I don't even know if it went 10 feet. Like they -- they did not have a good demo.

Q Do you know if it used dock floats similar to what you used in the Lagoon Crawler?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't know the specifics of how the Puck boat was constructed or is constructed.

BY MR. LEACH:

Q It had wireless remote control, right?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: I don't know the specifics of the construction of the Puck boat.

BY MR. LEACH:

Q Well, do you know whether it was remote control or not?

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't know the particular specifics of how the Puck boat is manufactured.

BY MR. LEACH:

Q I'm asking if you know whether in 2012 it was remote controlled.

MR. LUCHSINGER: Objection to form.

THE WITNESS: I don't recall the specifics.

BY MR. LEACH:

Q Do you know whether it had an engine that drove a manure pump?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't know the specific construction of it at the Manure Expo.

BY MR. LEACH:

Q Well, at the Manure Expo you said that it shot manure all over, correct?

A Yeah. It sprayed manure on the crowd at the Manure Expo in 2012, yes.

Q And was that out of a nozzle?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't know the specific construction of where the fluid came from.

BY MR. LEACH:

Q Do you know whether it had a pump, a manure pump?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't know the specific construction of the Puck boat.

BY MR. LEACH:

Q Do you know how the Puck boat propelled itself or steered itself?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It didn't really move at the 2012 Manure Expo, so I can't comment on that.

BY MR. LEACH:

Q Did you come to learn that the Puck boat used nozzles and fluid to propel and steer itself?

A I've never -- I never paid too much attention to the Puck boat.

Q So despite seeing Sundstrom's agitation vehicle in 2012 at the North American Manure Expo and then again at the demo in Durand, Wisconsin in 2014, you decided not to disclose it to the patent office; is that correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: When I was at the 2014

agitation day that was at -- that's a year -- or almost a year after our patent application, I felt like we were getting a lot of copycat products popping up in the agitation boat market. I don't know the specifics of what Sundstrom's unit looked like, but I felt it looked a bit different the second time I saw it.

BY MR. LEACH:

Q So did you think when you were at the Durand, Wisconsin demonstration that it was a copycat product of Nuhn's Lagoon Crawler?

A No. I just --

MR. LUCHSINGER: Objection, form, vague. Go ahead.

THE WITNESS: No. I just felt like there was a bunch of all of a sudden agitation boats popping up.

BY MR. LEACH:

Q But Sundstrom had an agitation boat before Nuhn, correct? You saw it in 2012, right?

A For some reason, I -- because it had to be pulled with a cable, it never -- I didn't classify it in my head, I guess, as an agitation boat.

Q And likewise, you saw Puck in 2012, their

agitation boat, right?

A I saw them attempting to do a lagoon demonstration at the 2012 Manure Expo.

(Deposition Exhibit Number 1089 was marked.)

BY MR. LEACH:

Q Introducing Exhibit 1089. If you could take a look at this, please. Do you have it?

A I've clicked on it. It hasn't popped up yet though.

Q Okay.

A There we go, yeah.

Q Can you tell me what Exhibit 1089 is?

A Looks like a copy of Manure Manager September/October 2014.

Q And can you look at who the subscriber -- who it was mailed to?

A Katherine Nuhn.

Q At Nuhn Industries Ltd.?

A Nuhn Industries Limited, yeah.

Q And the address 4616 [sic] Line 34?

A Yeah.

Q P.O. Box 160, Sebringville, Ontario?

A Yeah.

Q Is that Nuhn Industries' address, at least as of October of 2014?

A That is the address, correct.
Q Okay. And so this at least shows in 2014 Nuhn was receiving the Manure Manager publication, correct?
A It appears that --
MR. LUCHSINGER: Objection as to form.
THE WITNESS: It appears that it was mailed to us, correct.
BY MR. LEACH:
Q And how many years prior to 2014 do you think Nuhn was receiving the Manure Manager publication?
MR. LUCHSINGER: Objection as to form.
THE WITNESS: I would have no idea.
BY MR. LEACH:
Q Who would know?
A You would have to ask Kate, or Katherine.
Q Who is Katherine Nuhn?
A That's my sister.
Q Does she work at the company still?
A No, she does not.
Q Where does she work?
A She's a stay-at-home mom.
Q How many kids does she have?
MR. LUCHSINGER: Is that really relevant?
THE WITNESS: Yeah, is it?
MR. LUCHSINGER: It's not relevant.

BY MR. LEACH:

Q Are you married, Mr. Nuhn?

A Is that relevant?

Q It is actually.

A I am.

MR. LUCHSINGER: I'll --

MR. LEACH: It's just background, Brad. I think that's a fair question. I don't think it's getting too personal.

MR. LUCHSINGER: So should we talk about your kids and wife and my kids and wife? I don't think it is relevant here at all.

THE WITNESS: Maybe I don't want that on the record.

BY MR. LEACH:

Q Sure.

All right. Do you know whether you told Mr. Brunet about Puck's manure agitation boat?

MR. LUCHSINGER: Objection as to form.

I'm going to instruct the witness not to answer because that would reveal the contents of attorney-client privileged communications.

THE WITNESS: I'm not going to answer that.

BY MR. LEACH:

Q Did you provide Mr. Brunet any pictures or images of the Puck agitation boat?

A I feel like that's --

MR. LUCHSINGER: Objection as to form. Can you answer yes or no or I don't know?

THE WITNESS: I don't know. Um, I don't know.

BY MR. LEACH:

Q Going back to your declaration, Mr. Nuhn, and again, paragraph 11, can you tell me why you qualify paragraph 11 or limit paragraph 11 to 2009 to 2010 and then describe in that period "the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon." Why do you limit it to 2009 and 2010?

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

THE WITNESS: As I said earlier, I can say with a hundred percent certainty that in the time period 2009 to 2010, "the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon."

BY MR. LEACH:

Q Okay. I get that. My question to you is, why

in this declaration in paragraph 11 do you not include products from 2011, '12, and prior to August 2013?

MR. LUCHSINGER: Objection as to form; asked and answered.

THE WITNESS: I believe it's not as clear-cut of a -- it's not a definitive answer for that time period. For "2009 to 2010, the best solution for pumping out a manure lagoon was an agitator that required a long pump driven by a tractor along the bank of a lagoon."

BY MR. LEACH:

Q Do you believe the Puck boat was better than a long pump driven by a tractor along the bank of a lagoon?

MR. LUCHSINGER: Objection as to form; asked and answered.

THE WITNESS: I can think of applications, even the 2012 Manure Expo, where the lagoon pump did a better job of agitating than the Puck boat.

BY MR. LEACH:

Q What about large lagoons? Puck would be better in those applications, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't have any firsthand

experience operating a Puck boat or seeing one actually in a large lagoon.

BY MR. LEACH:

Q And I think we've established this a number of times, but Puck's agitation boat was on the market before you designed the Lagoon Crawler, correct?

A I don't know the exact date that they came out with theirs, but I think we saw that ad today. I don't remember the exact date that that magazine was out.

Q Well, you at least saw Puck's demonstration in 2012, right, at the Manure Expo?

A I saw a Puck agitation boat at the Manure Expo in 2012.

Q Okay. And Sundstrom's agitation vehicle was on the market before you came up with the Lagoon Crawler, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't know if I would call it on the market. Again, I just felt like it was -- he was showcasing a device that he used.

BY MR. LEACH:

Q Well, it was publicly demonstrated and used at the 2012 North American Manure Expo, right?

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: He had an agitation boat that was pulled by a cable operating at the 2012 Manure Expo.

BY MR. LEACH:

Q And that was a public venue, correct?

A The 2012 Manure Expo was a public venue, correct.

Q How many people do you think attended the 2012 --

A I have no idea.

Q -- manure Expo, North American Manure Expo?

A I couldn't even tell you.

Q More than a hundred?

A Maybe to two to three hundred maybe. I have no idea. I'm just guessing when I say those numbers.

Q How many people were at the demonstration when you were there? You said you felt a little nervous when you looked around. How many people were there?

A Probably 200 people, if I had to guess.

Q Did you decide not to tell the patent office about the Sundstrom boat because you thought it would hurt your chances of getting a patent on your design?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No.

BY MR. LEACH:

Q So why didn't you tell the patent office about the Sundstrom boat when you knew you had a duty to disclose relevant prior art?

MR. LUCHSINGER: Objection as to form; asked and answered.

THE WITNESS: I honestly thought the only agitation boat that was somewhat relevant to the invention was Puck.

BY MR. LEACH:

Q And again, you thought Puck was relevant and you needed to disclose it to the patent office despite it not having any wheels, but you made the decision not to disclose Sundstrom's agitation boat which had four wheels; is that right?

MR. LUCHSINGER: Objection as to form, foundation, and misstates prior testimony.

THE WITNESS: I did not know that Sundstrom's boat had four wheels. I still to this day haven't looked closely at a Sundstrom boat. I literally thought it was a pump on a barge being pulled with a cable.

BY MR. LEACH:

Q So when the patent office was evaluating your initial application, it didn't have the Sundstrom manure agitation boat in front of it to evaluate, correct?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I don't know the details as I'm not a patent attorney. I'm not in -- I wasn't involved in the -- in that process.

BY MR. LEACH:

Q Okay. But you didn't provide Sundstrom to the patent office, correct, the Sundstrom agitation boat?

A I did not --

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I did not disclose the Sundstrom vehicle.

BY MR. LEACH:

Q And again, I think we talked about, shortly after the 2012 North American Manure Expo you started designing an agitation boat, correct?

A Yeah. Sometime before I went back to school, I started working on some concepts.

Q And those concepts included a boat that had two unpowered wheels; is that correct?

A The two concepts were a boat with two unpowered wheels.

Q And then sometime later, the design included four wheels, correct?

A Pretty much like just less than a year later

when the project started up again.

Q When you say the project started up again, did it get put on hold a little bit because of school?

A To the best of my recollection, probably, yeah. I may have done a little bit at school, but really once was back full time, that's when I think we could have started it up again.

Q So I think in paragraph 16 you say you were making CAD drawings on Friday, August 9, 2013. When you were making those drawings, were you thinking back to the North American Manure Expo and the demos that you saw in 2012?

A I don't believe so.

Q If you go back to Exhibit 1001, the '835 patent.

A Maybe before you get started, is it okay if we do a quick bathroom break?

MR. LEACH: Sure. Let's just do that now.

THE VIDEOGRAPHER: We are going off the record. The time now is 3:11.

(A break was taken.)

THE VIDEOGRAPHER: We are back on the record. This is start to Media Number 6. The time is 3:16.

BY MR. LEACH:

Q Mr. Nuhn, can you tell me, why was a propeller added to the Crawler X?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: We as a company in late 2019 made the decision to basically add propellers across the whole product line, so we started with adding it to our lagoon pumps. We started making electric agitators, and then we also added it to the Lagoon Crawler X, so it was basically a complementary product to our existing agitation line.

BY MR. LEACH:

Q Is that because you believed that adding a propeller to -- using nozzles and a jet of liquid complemented the agitation of lagoons?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Sorry. I maybe wasn't following there. Can you repeat the question?

BY MR. LEACH:

Q Sure. Did you add the propeller to the Lagoon Crawler X because you thought it complemented or improved agitation when used in combination with the nozzle or the jet of liquid that sprays into the lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: There's some applications

where it, you know, it is a benefit. There's pros to it. There's some applications where there's cons to it.

BY MR. LEACH:

Q Who made the decision to add the prop to the Crawler X?

A I did, as well as the entire product line.

Q Did any customers request that you add a prop to the Crawler, the Lagoon Crawler?

A No. No, they did not.

Q Did you do it in response to Bazooka having a prop on their boat for agitation?

MR. LUCHSINGER: Objection to form.

THE WITNESS: We were already considering adding it across our line. We did hear that they were coming out with something prop based, so that definitely kick started our -- that made us, you know, give a little bit of a push to basically come out with it first. But we were already basically in the process of developing this, I think, back in -- I think November 2019 is when we started the prop project.

BY MR. LEACH:

Q So switching from the prop to the pump, do you

know, is the pump in the middle of the vehicle on the Crawler X?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I understand that this is -- you know, they got a term or a claim in the patents, so I'm not here to define that. But I would say it's generally in the middle of the vehicle.

BY MR. LEACH:

Q And I'm talking about the pump that pumps manure.

A It's -- it's --

MR. LUCHSINGER: Object to the form.

THE WITNESS: It's in the approximate area of the middle of the machine. It's not -- I don't think it's dead center, but it's around the middle of the machine.

BY MR. LEACH:

Q Sure. Do you know why you chose to place the pump in the middle of the vehicle?

A Yeah. It's very well protected there. That is the main reason.

Q Does it help with center of gravity?

A The pump being low, having that weight low on a floating vehicle, that does help the center of gravity

when it's floating. But more so being in the middle of this, you know, we have a lot of the vehicle body kind of protecting that pocket around the manure pump.

Q In the Crawler X, does the pump move up and down, or is it stationary?

A On the Lagoon Crawler X, the pump is stationary.

Q On the Gen 3, is the pump stationary, or can it go up and down?

A On the Gen 3, the pump is stationary.

Q Is it stationary on all the models of the Lagoon Crawler?

A On the prototype, we made the pump go up and down.

Q Okay. And so for -- let's stick with the Crawler X. Is the bottom edge of the pump housing close to the bottom edge of the vehicle, or does it stick down a certain amount?

MR. LUCHSINGER: Objection as to form, vague.

THE WITNESS: I can't say for certain just sitting here. It's approximately flush.

BY MR. LEACH:

Q Okay.

A Maybe just a touch up, if anything.

Q Can you tell me why it's placed in that location instead of maybe sticking down further from the bottom of the frame?

A Again, just for, more or less, you know, protection of that inlet of that pump.

Q Is that so it doesn't hit the ground maybe coming in and out of a lagoon?

A No. Basically, it just -- we're just kind of helping that pocket of manure, like, we're just more protected really, making it less vulnerable even in the lagoon.

Q Would putting the pump down further run the risk of maybe getting hung up on a sandbar in the middle of a lagoon?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I'm not going to speculate sitting here saying that.

BY MR. LEACH:

Q So if you pull up the '835 patent, as you go to, say, Figure 1. I think if you want, you can rotate it clockwise.

A I've got it printed off here.

Q Oh, okay. Actually, maybe go to -- yeah, Figure 1 is fine. Again, where is the front of the boat in Figure 1?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I'm not a patent attorney, so I'm not sure how it's actually defined. I'm not sure how it's actually defined in the patent. But in the day-to-day, I would actually call the front the side that has the engine on it with the cannon.

BY MR. LEACH:

Q Okay. So where is the engine located with respect to the front of the boat and the pump?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Sorry. Can you repeat the question?

BY MR. LEACH:

Q Where is the engine located with respect to the front of the boat as you just described and the pump for pumping the manure on the boat in Figure 1?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Based on what I would call the front, you know, not necessarily in regards to the patent, but it's near the front. It's between the front and the pump.

BY MR. LEACH:

Q Why did Nuhn put the -- what you call the cannon at the front of the boat or where it's at. I'm

not -- I don't care what's the front. But for purposes of this discussion, we'll just assume we're defining the front of the boat where the cannon is. Why did you put it there?

A I was thinking if that's the -- you know, if you're in a heavily crusted pit, you know, you're going to be cutting into the crust. And having the cannon on that side would be an advantage going forward into the crust.

Q So having it close to the edge of the boat allows it to attack the crust better?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No, I wouldn't necessarily say that. Are you talking in regards to the engine or the cannon?

BY MR. LEACH:

Q I was saying the cannon, yeah, why --

MR. LUCHSINGER: Same objection.

THE WITNESS: It's -- mainly, it's opposite your main propulsion. So if you had it on the same side, you know, it wouldn't -- it wouldn't hold you, so the main nozzles, fluid outlets, whatever you want to call it, for propulsion are opposite the cannon.

BY MR. LEACH:

Q I see. That makes sense.

Why do you put the pump rearward of the power source assuming the cannon is in the front?

A Sorry. Can you repeat the question?

Q Why do you put the pump rearward of the power source or the engine?

A I think just on this particular one, it's packaging. We've actually, like on the Lagoon Crawler X it's actually opposite this.

Q When you say opposite this, in the Lagoon Crawler X where is the engine in relation to the front of the boat and the pump?

A Basically, the center section is 180 to what's shown in this figure.

Q And so it goes cannon, pump, engine from front to back?

A Cannon, manure pump, engine.

Q Okay. In your view, would an engineer know where to place these components to make the vehicle stable while floating?

MR. LUCHSINGER: Objection as to form and foundation to the extent it calls for a legal conclusion.

THE WITNESS: Yeah, I'm not going to speculate on what an engineer knows and doesn't

know.

BY MR. LEACH:

Q Let's go to paragraph 23 of your declaration, which is Exhibit 2083. And I'm going to give you Exhibit -- Exhibit 2059.

(Deposition Exhibit Number 2059 was marked.)

BY MR. LEACH:

Q Can you tell me what Exhibit 2059 is?

A I just have to pull it up here. It looks like a Lagoon Crawler sales report.

Q Okay. And --

A More specifically, the Lagoon Crawler X.

Q Sure. And this report, Exhibit 2059, only includes sales of the Lagoon Crawler X; is that correct?

A That is correct.

Q And did you include for the '835 patent only the sales of the Lagoon Crawler X because the other prior generations are not covered by the '835 patent?

MR. LUCHSINGER: Objection as to form, foundation, and to the extent it calls for a legal conclusion.

THE WITNESS: I'm not a patent attorney, so I can't answer that question.

BY MR. LEACH:

Q So Exhibit 2059 does not show what costs were

incurred to make those sales, correct?

A This only shows like revenue.

Q And that's gross revenue, right?

A It's dollars in.

Q So there's no overhead costs included in Exhibit 2059, right?

A There are no costs at all on this.

Q So no direct labor costs, correct?

A No direct labor costs.

Q No indirect labor costs, correct?

A No costs at all. Just --

Q No warranty claims?

A No warranty claims.

Q And it doesn't provide any profit margin, correct?

A No profit margin.

Q So if you to go paragraph 28, you modified paragraph 28 from your prior declaration that was provided in the IPR for the '425 patent, and you change it from "stop paying for advertising" to "decided to cut substantially all paid for advertisements for the Lagoon Crawler after 2019." Why the change? Was there something inaccurate in the prior declaration that was provided in the '425 patent on advertising?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I believe Kristy in my office found that we were paying for one print ad that somehow never got canceled and somehow was slipped through. That being said, it did not advertise the Lagoon Crawler on the ad, to the best of my belief. I think it was one of our, maybe of the manure tanks. But she did find one print ad that had kept running even though we told them to cancel, though.

BY MR. LEACH:

Q Okay. And in paragraphs 25 through 28 in your declaration, Exhibit 2083, you talk about market share and how well-known Nuhn is as a company, correct?

A Correct.

Q And I had a series of questions that I asked you during your prior deposition related to those topics.

A Correct.

Q Has anything changed since you submitted your declaration in the '425 patent and you submitted your declaration in this IPR for the '835 patent --

MR. LUCHSINGER: Objection as to form.

BY MR. LEACH:

Q -- with respect to your market share analysis and your how well-known Nuhn is as a company?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. That remains -- I have the same opinion as last time.

BY MR. LEACH:

Q Okay. I understand you have the same opinion. Did you do anything additional to validate or verify that opinion? Like did you conduct a survey or a formal -- any other activity to base those opinions on, or are they based on the exact same stuff we talked about during your deposition for the '425 IPR?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: They're based on the same information as what we discussed in the IPR for the '425.

BY MR. LEACH:

Q So for "Unexpected Results" on page 15 of Exhibit 2083, which is paragraphs 29 through 33, we talked about unexpected results in your last deposition and the basis for your statements there. Between your declaration provided in the '425 IPR and this declaration, Exhibit 2083, provided in the '835 IPR, did you do anything else to base those statements on other than what we previously talked about?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No, I did not.

BY MR. LEACH:

Q And if you go to Exhibit 2083, your declaration, for "Reception and Praise of Nuhn's Lagoon Crawler," which is paragraphs 34 through 52, we talked in the last deposition about a number of these exhibits and awards and articles. Do you have anything to add to that discussion for reception and praise of Nuhn's Lagoon Crawler?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. I think the declaration here spells it out fairly clearly.

BY MR. LEACH:

Q Okay. And the questions that I asked about your prior deposition -- or about your prior declaration, do these -- do those apply equally to the paragraphs in your declaration here in the '835 IPR?

MR. LUCHSINGER: Objection as to form and foundation and to the extent it calls for a legal conclusion.

THE WITNESS: Can you be more specific? Could you reask what your --

BY MR. LEACH:

Q Sure. Let me ask you this. Are all of the articles that you rely on and the exhibits that you rely on in this section, "Reception and Praise of Nuhn's Lagoon Crawler," were all of these articles prior to

Gen 2 Lagoon Crawler? For example, I looked at all the articles for all the exhibits cited in there, and the latest article I saw was October of 2015.

A That would be prior to the Gen 2.

MR. LUCHSINGER: Objection as to form if that's the question.

THE WITNESS: That would be prior to the Gen 2.

BY MR. LEACH:

Q And so all of these articles that are in the "Reception and Praise of Nuhn's Lagoon Crawler" would be regarding the prototype for Gen 1; is that correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: The time frame of the articles lines up with the prototype of Gen 1.

BY MR. LEACH:

Q Okay. And I think we established that the prototype and Gen 1 all had a mechanically powered manure pump, correct?

A The -- I don't think how the manure pump is driven changes the reception of the machine. It's -- the articles are still the job that it does in the lagoon. I don't think they specifically comment on how the manure pump is driven. So I don't think that that would have had any effect on the outcome of these articles.

MR. LEACH: I appreciate that. But my question was a little more specific.

Lori, could you please read my question back?

(The record was read by the court reporter.)

BY MR. LEACH:

Q Maybe I'll just step back. The prototype generation and Gen 1 of the Lagoon Crawler had a mechanical drive powering the manure pump, correct?

A Correct.

Q And so those generations, the prototype and Gen 1, are not covered by the '835 patent, correct?

MR. LUCHSINGER: Objection as to form, foundation; asked and answered; calls for a legal conclusion.

THE WITNESS: I'm not a patent attorney, so I can't comment on that.

BY MR. LEACH:

Q Okay. Will you agree with me, though, that we've established that the prototype and Gen 1 do not have a hydraulically powered manure pump?

A The Gen 1 and prototype did not have a hydraulically powered manure pump.

Q And so if all the claims of the '835 patent

require a hydraulically powered manure pump, the prototype and Gen 1 Lagoon Crawler would not be covered by the '835 patent, correct?

MR. LUCHSINGER: Objection as to form, foundation, incomplete hypothetical, requires a legal -- calls for a legal conclusion.

THE WITNESS: Again, I'm not a patent attorney, so I'm not going to comment on that.

BY MR. LEACH:

Q Sir, would you agree with me that the section of your declaration "Reception and Praise of Nuhn's Lagoon Crawler" is largely the same as in your prior declaration that was submitted in response - or in the eight -- or I'm sorry, the '425 IPR proceeding?

A I think it might have been even more. I would have to look at the two side by side.

Q Well, I had a redlined version that I was going to introduce, but it seems like the Veritext system is not showing the redlines.

Well, sir, in terms of "Reception and Praise of Nuhn's Lagoon Crawler," it appears that the substantive changes, for the most part, that were made was to remove statements in each paragraph where it said the Lagoon Crawler featured in the article is the Lagoon Crawler prototype and reference to what generation the

articles -- what generation of Lagoon Crawler the article is related to. Does that ring a bell that you deleted those portions of your prior declaration in the '425 patent in this declaration for the '835? Does that ring a bell?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I would have to look at the two side by side to give you the specifics on the edits.

BY MR. LEACH:

Q Move on to "Skepticism and Surprise."

A I apologize. I think I was chugging coffee earlier. Can we take a five-minute break? I know we're so close.

MR. LEACH: Sure, no worries. You don't have to sit there and be in pain.

THE VIDEOGRAPHER: We are going off the record. The time is 3:49.

(A break was taken.)

THE VIDEOGRAPHER: We are back on the record. The time now is 3:55.

BY MR. LEACH:

Q Mr. Nuhn, going back to the "Reception and Praise of Nuhn's Lagoon Crawler" section of your declaration, which starts on page 18 of Exhibit 2083, are

any of those articles specific to the Crawler X?

A None of the articles are specific to the Crawler X.

Q And if you go to page 27 of your declaration, Exhibit 2083, under "Skepticism and Surprise," which is paragraphs 53 through --

A Can I change my answer slightly for the last question?

Q -- 63. Sorry.

A I would like to add something to my answer for page 18, if that's okay.

Q Okay.

A I think it's safe to say that the articles aren't in particular about the Lagoon Crawler X, but all of what the articles are actually about, the contents of the article I think is all relevant to the Lagoon Crawler X.

Q Okay. Anything else?

A No. Just wanted to say that.

Q Okay. So going to paragraph -- or page 27 of Exhibit 2083, under the heading "Skepticism and Surprise," so -- which covers paragraphs 53 to 63, we also covered those paragraphs or similar paragraphs in the prior deposition. And would you agree with me that these paragraphs are largely similar to what was in your

prior declaration for the '425 patent?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: They would be similar, yes.

BY MR. LEACH:

Q Okay. And were the questions I asked about those in the '425 patent, to the extent the context -- or content is similar, would your answers be the same?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I can't recall specifically what you asked actually, just to answer here today and say the same thing.

BY MR. LEACH:

Q Sure. Can you think of anything you would like to change with respect to what we talked about in your last deposition on those topics?

MR. LUCHSINGER: Objection as to form; calls for a narrative.

THE WITNESS: To my knowledge, there's nothing to change on the '425 deposition answers.

BY MR. LEACH:

Q Okay. And so to the extent that the paragraphs are nearly the same in these -- in the paragraphs under Skepticism and Surprise in the '835 patent, do you have anything to add to your prior testimony?

MR. LUCHSINGER: Same objections.

THE WITNESS: I don't have anything to add that's not written in the declaration.

BY MR. LEACH:

Q And going to the next section, "Others' Desire to License the Lagoon Crawler," again, you previously testified about this topic. Do you have anything to add to that testimony about Others' Desire to License the Lagoon Crawler?

MR. LUCHSINGER: Objection as to form; calls for a narrative.

THE WITNESS: I don't have anything to add other than what's stated here in the declaration.

BY MR. LEACH:

Q Okay. And you believe that Mr. Puck, I believe, in his email, that he was seeking to license the '835 patent from Nuhn?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't have the specific email in front of me to comment on.

BY MR. LEACH:

Q I should be able to get that to you.

Okay. I'm providing you Exhibit 2075.

(Deposition Exhibit Number 2075 was marked.)

BY MR. LEACH:

Q I'm providing you Exhibit 2075, which is the same exhibit to your declaration, which is identified in paragraph 65 of your declaration, Exhibit 2083. I'll ask the question again. Do you believe Mr. Puck sought to license the '835 patent from Nuhn in this email?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: He was definitely talking about the Lagoon Crawler patent of families. He may have known about -- looking at the date here, he may have known about the application. I can't say specifics of that.

BY MR. LEACH:

Q You just don't know one way or the other though, right?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I know he was -- he was seeking to, you know, license the Lagoon Crawler patent, families of patent -- patent, whatever the proper term is.

BY MR. LEACH:

Q And that's based solely on the email in Exhibit 2075?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: This email is not the only

communication that we had. We -- I think we talked on the phone two or three times.

BY MR. LEACH:

Q So it would be based on -- this email and what Mr. Puck told you on the phone would be what you base your testimony in your declaration, Exhibit 2083, on this topic?

A Yes.

Q The next section is "Copying." That's on the bottom of page 31 of Exhibit 2083, I think through the last page, page 35 of Exhibit 2083; is that correct?

A That seems to be the Copying section.

Q Again, the Copying section is largely the same as what you provided in your prior declaration in support of the '425 patent IPR, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: It's similar to the previous declaration.

BY MR. LEACH:

Q And so we discussed this section in your prior testimony. Do you have anything to add to your prior testimony?

A I don't think we got --

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I don't think we discussed

this section at all in the previous IPR.
BY MR. LEACH:
Q Okay. You guys ended the deposition short on us?
A No.
MR. LUCHSINGER: It definitely wasn't short. It was over seven hours.
MR. LEACH: I don't know if I would agree with that.
MR. LUCHSINGER: If you're not careful, we may do the same thing here.
MR. LEACH: That wouldn't surprise me. Let me --
MR. LUCHSINGER: You get like, I think, 28 hours of deposition with Mr. Nuhn at least.
THE WITNESS: We'll get to know each other. How many kids --
BY MR. LEACH:
Q We will.
All right. Let me provide -- well, let me ask you this. With respect to others copying Nuhn's Lagoon Crawler, you base this on communications you received from a mechanic at Stutsman's; is that correct?
MR. LUCHSINGER: Objection as to form.
THE WITNESS: Not the entire thing, but it

helped to paint the picture of what went on, I think.

BY MR. LEACH:

Q Sure. Do you remember the name of that mechanic?

A I do.

Q What's his name?

A Roy Felts.

Q F-e-l-t --

A I believe S is the --

Q -- s. Okay. And at least with respect to paragraphs 74 through 76, is this the service mechanic, Roy Felts, that you're referring to in those paragraphs?

A When I'm referring to a service mechanic, it's Roy Felts, correct.

Q Okay. And --

A I don't know if it goes through 76, though, but yeah.

Q At least with respect to the service mechanic, this is all based on information that you believe he said?

A He told me this --

MR. LUCHSINGER: Objection as to form.

THE WITNESS: He told me this over the phone.

BY MR. LEACH:

Q Okay.

A Yeah.

Q And I am introducing Exhibit 1090.

(Deposition Exhibit Number 1090 was marked.)

BY MR. LEACH:

Q And this is a compare doc between, Mr. Nuhn, your declaration submitted in the '425 IPR compared to what is submitted here in the '835 IPR specifically comparing your Exhibit 2083 in the '835 to what was submitted in the '425 patent.

Can you take a look at that and scroll through, and just tell me if that looks about right of what was changed between the two declarations?

A (Perusing document.)

Q Does that look like an accurate comparison of your 20 -- I'm sorry. Your declaration provided in the '425 IPR versus the one you provided in this IPR for the '835 patent?

MR. LUCHSINGER: Objection to form and foundation.

THE WITNESS: It's close. There's some extra characters here at the end. Not sure who they are though, but sure.

BY MR. LEACH:

Q And so in your conclusion that others copying Nuhn's Lagoon Crawler, the heading there in Exhibit 2083 on page 31, you say plural, others. Is -- aside from --

Well, let me ask you this. What is your definition of copying that you're using here in your declaration?

A I'm not a patent attorney, so I'm not going to, you know, define copying in that sense, but I would say what I feel is infringing a patent is copying.

Q Okay. So if a product infringes a patent it's in your mind considered a copy?

A I think that's fair to say.

Q Okay. And is that the definition that you used in your declaration, Exhibit 2083 in Section 9, which is paragraph 68 through 76?

A When I'm saying that Bazooka copied our Lagoon Crawler?

Q Yeah.

A I believe that they infringed our patents.

Q And so you're equating copying with infringement in your declaration, correct?

A I'm not a patent attorney, so I can't speak specifically to that side of things. But I feel that Bazooka copied our Lagoon Crawler, yes.

Q Does Bazooka's wheels go up and down like the

Lagoon Crawler's wheels?

A I'm not here to say specifics of Bazooka's machine. I'm not going to comment on that.

Q Well, sir, if you don't know the specifics of Bazooka's machine, how do you decide whether they infringe or not?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: I'm not going to talk about conversations I've had with my patent attorneys.

BY MR. LEACH:

Q Okay. Let me just ask you this. Do you know whether Bazooka's Wolverine product has wheels that go up and down?

A I can't speak to everything that they have manufactured. Maybe they have some that do; maybe they have some that don't. I'm not going to speculate on the construction of Bazooka's equipment at this time.

Q What color is Bazooka's Wolverine? Can you tell me that?

A You know what, I feel like I've seen a black one and kind of their yellow colored ones, too. So I think they paint it a few different colors, so.

Q Okay. Do you know whether the Bazooka boat has multiple nozzles around the boat for propulsion and

steering?

A I understand, you know, this is a topic within the patents. I'm not a patent attorney, so I'm not going to make any --

Q Some --

A [Inaudible.]

Q Some -- I want to talk --

(Court reporter clarification as there was overtalking.)

THE WITNESS: Sure. We're not going to make any claims or statements about what they have and what they don't have.

BY MR. LEACH:

Q Okay. But in your declaration, you testify that you believe Bazooka copied Nuhn's Lagoon Crawler, right?

A I do. Their, what I believe is a -- you know, maybe not majority owner but a minority owner of Bazooka is a Nuhn dealer. They have access to basically all of our parts diagrams, exploded views. We basically served them the blueprints to our machine on a platter for them to build off of. They were able to talk to service technicians that have firsthand experience working on liquid manure, amphibious liquid manure agitation boats and get access to their experience and knowledge. So I do believe that that is -- in my opinion, that is the

definition of copying.

Q And you base that on what people told you about their dealer and the information that the dealer had about the Nuhn product; is that right?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Yeah, that question is not very clear. Can you maybe reask it?

BY MR. LEACH:

Q Sure. The answer you just provided about service mechanics telling you stuff about what they had and what was done with Nuhn's stuff, you base all that on what someone told you, correct?

MR. LUCHSINGER: Objection as to form.

THE WITNESS: No. Like I -- that's part of it, but that's not the entirety of it. You know, I think their actions speak for copying, you know, like they -- the early releases, they had one of our oilcans that we use for lubricating the bottom seal, and they were trying to buy more for putting on their -- lubricating their liquid manure pump. So it just -- there's a bunch of different aspects that point to copying.

BY MR. LEACH:

Q So let's talk about the differences between the

Nuhn Lagoon Crawler and Bazooka's Wolverine. So one of the differences is Bazooka's Wolverine doesn't have wheels that go up and down, and the Lagoon Crawler does, correct?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: What I can say about their wheels is that it was designed and advertised that it has the same wheelbase, the same vehicle dimensions, the same width, so that their machine fits on trailers that were manufactured and designed for Lagoon Crawlers. Their wheels are in the same location as our wheels so that the trailers are --

BY MR. LEACH:

Q I only have so much time left.

A You're cutting me off.

Q Yeah, I am. I am.

A I'm not --

Q I only have so much time left. And so I just want you to answer the questions that I'm asking here, not go off on some tangent. Okay? Can you just stay focused here with me for a little longer?

A I think that's a pretty relevant case when you're asking questions about copying. The fact that it

has the same wheelbase, the same dimensions, and it's advertised that their machine can be used on our trailers, I think that's another supportive point to the copying con- --

Q Okay. You'll have a chance to put in any statements that you want to, but I do want to get an answer to my question. I want to focus on the differences between the two products. And one of the differences is the Bazooka product, the Wolverine, doesn't have wheels that go up and down, and the Lagoon Crawler does, correct?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: I'm not going to comment on what my -- what the competitor's boat has or does not have.

BY MR. LEACH:

Q Well, sir, you're providing testimony in this IPR proceeding about others copying Nuhn's Lagoon Crawler, and I'm trying to understand these -- your opinion here. And so I think it's very relevant what the differences are. And if you don't know what the differences are, how can you have an opinion as to who copied what?

A As I stated earlier, I'm not here to -- I'm not

going to -- sorry.

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Okay. As I stated earlier, I'm not going to -- I'm not going to define or make a comment on what my competitor has or hasn't. I don't think this is the place for that. I can tell you what we have and what we don't have, but I'm not going to speculate on what my competitor has sitting here today and define that.

BY MR. LEACH:

Q How can you provide testimony on the topic that Bazooka copied Nuhn's product if you're unfamiliar with the features of Bazooka's product?

A I have --

MR. LUCHSINGER: Objection to the form.

THE WITNESS: I've given several examples of copying. I was explaining one, and you actually cut me off while I was explaining one of them.

BY MR. LEACH:

Q But I'm asking a question, and I need an answer to the question. Okay? And so you'll have a chance to provide testimony if you want, but what I want to do is get answers to my questions. And so the Lagoon Crawler

has wheels that go up and down, correct?

A The Lagoon Crawler has wheels that go -- raise and lower.

Q Okay. And Bazooka's Wolverine product does not have wheels that raise and lower, correct?

MR. LUCHSINGER: Objection as to form and foundation.

THE WITNESS: Yeah, I'm not going to comment on their particular machine sitting here today.

BY MR. LEACH:

Q Okay. And at the end of Nuhn's gun is a tapered structure that increases the flow of fluid, right?

MR. LUCHSINGER: Hold on. So, Dave, I think we're probably at seven hours. Correct me if I'm wrong.

THE VIDEOGRAPHER: I have it as 7:01.

MR. LUCHSINGER: Yeah, that's what I thought. All right. So --

MR. LEACH: Can I get an answer to that question? It's pending.

MR. LUCHSINGER: You asked it after the cutoff.

MR. LEACH: I did not. And quite frankly,

I think the witness has been a little unfair here in the last bit.

MR. LUCHSINGER: Tom, if we're going to criticize the witness' responses, maybe we should criticize how you continue to ask the same question over and over again. I don't think it's fair.

MR. LEACH: Well, I think I'm entitled to answer to my questions Brad.

MR. LUCHSINGER: No, you just don't like the answers that he's providing. That doesn't mean he's not trying to answer the question.

MR. LEACH: Well --

MR. LUCHSINGER: The deposition is over. You get 28 hours with him. What more do you need?

MR. LEACH: When he goes off on a complete tangent. There's a question pending, I would like an answer to it.

MR. LUCHSINGER: That's fine. Ian, can you answer the question that's pending, and then the deposition is over.

THE WITNESS: Can you reask the question, Tom?

MR. LEACH: Lori, can you please read it back?

(The question was read by the court reporter.)

MR. LUCHSINGER: Objection as to form.

THE WITNESS: Actually, on the very end of my nozzle, there's what I would call a straight section.

BY MR. LEACH:

Q Okay. And so --

MR. LUCHSINGER: No. That's --

THE WITNESS: That was my answer to the question.

MR. LUCHSINGER: He answered the question.

MR. LEACH: Okay. All right. Mr. Nuhn, thank you for your time.

THE VIDEOGRAPHER: Nothing from you, Brad?

MR. LUCHSINGER: No, no redirect. So that concludes the deposition. The witness will read and sign the transcript.

Before, you know, everyone leaves, let's just see if the court reporter has any questions about spellings and things like that.

THE VIDEOGRAPHER: Let's just go off the

record. This concludes today's deposition. The time now is 4:26 p.m.

(Deposition concluded at 4:26 p.m.)

****

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that I reported the deposition of IAN NUHN on the 26th day of September, 2024, by Veritext Virtual Zoom 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 by the witness was reserved.

WITNESS MY HAND AND SEAL, this 27th day of September, 2024.



_____

Lori Morrow, RDR, CRR, CRC
Notary Public, Hennepin County, Minnesota
My commission expires: January 31, 2025

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

September 30, 2024

To: James B. Luchsinger, Esq.

Case Name: Bazooka-Farmstar, LLC v. Nuhn Industries LTD

Veritext Reference Number: 6914569

Witness: Ian Nuhn Deposition Date: 9/26/2024

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

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6914569
CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries LTD
DATE OF DEPOSITION: 9/26/2024
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: 6914569
CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries LTD
DATE OF DEPOSITION: 9/26/2024
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

ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 6914569

PAGE/LINE(S) / CHANGE /REASON

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Date Ian Nuhn

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

DAY OF _____, 20_____ .

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Notary Public

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Commission Expiration Date

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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.

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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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