

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 -----

5 BAZOOKA-FARMSTAR, LLC,

6 Petitioner,

7 v.

8 NUHN INDUSTRIES LTD.,

9 Patent Owner.
10 -----

11 Case IPR2023-01161

12 U.S. Patent No. 11,358,425
13 -----
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16

17 CONFIDENTIAL VIDEO-RECORDED REMOTE ZOOM

18 VIDEOCONFERENCE DEPOSITION OF IAN NUHN

19 Taken on Thursday, May 30, 2024

20 Scheduled for 8:00 a.m. EDT
21
22
23

24 REPORTED BY: DANA S. ANDERSON-LINNELL

25 Job No.: MW 6718670

1 CONFIDENTIAL VIDEO-RECORDED REMOTE ZOOM
2 VIDEOCONFERENCE DEPOSITION OF IAN NUHN taken on
3 Thursday, May 30, 2024, commencing at 8:06 a.m. EDT,
4 via a REMOTE COUNSEL ZOOM PROCEEDING, before Dana S.
5 Anderson-Linnell, a Stenographic Shorthand Reporter
6 and Notary Public of and for the State of Minnesota.

7 *****

8
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10
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20 (Appearances continued on next page.)
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1 APPEARANCES (continued):

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10
11 ALSO PRESENT: Kyle Peterson, videographer

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

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1 REPORTER'S NOTE: All quotations from exhibits are
2 reflected in the manner in which they were read into
3 the record and do not necessarily indicate an exact
4 quote from the document.
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1 THE COURT REPORTER: Do all counsel
2 stipulate that I can swear in the witness
3 remotely over the Zoom videoconference?

4 MR. LEACH: Yes.

5 MR. LUCHSINGER: Yes.

6 THE VIDEOGRAPHER: Good morning. We
7 are going on the record. The time is 8:06 a.m.
8 Today's date is May 30th, 2024. Please note
9 that this deposition is being conducted
10 virtually. Quality of recording depends on the
11 quality of camera and Internet connection of
12 participants. What is seen from the witness
13 and heard on screen is what will be recorded.
14 Audio and video recording will continue to take
15 place unless all parties agree to go off the
16 record.

17 This is Media Unit 1 of the
18 video-recorded deposition of Ian Nuhn taken by
19 counsel for the petitioner in the matter of
20 Bazooka-Farmstar, LLC versus Nuhn Industries
21 Ltd., filed in the United States Patent and
22 Trademark Office, Case Number IPR2023-01161.
23 This deposition is being conducted remotely
24 using virtual technology.

25 My name is Kyle Peterson,

1 representing Veritext Legal Solutions. I'm the
2 videographer. The court reporter is
3 Dana Anderson from the firm Veritext Legal
4 Solutions. I am not authorized to administer
5 an oath, I am not related to any party in this
6 action, nor am I financially interested in the
7 outcome.

8 If there are any objections to the
9 proceeding, please state them at the time of
10 your appearance. Counsel please state your
11 appearances and affiliations for the record
12 beginning with the noticing attorney.

13 MR. LEACH: Tom Leach with Merchant
14 and Gould on behalf of the petitioner,
15 Bazooka-Farmstar. And with me is my cocounsel,
16 Taylor Stemler, of Merchant and Gould, also
17 behalf of Petitioner Bazooka-Farmstar.

18 MR. LUCHSINGER: Thanks, Tom. James
19 Bradley Luchsinger. I'm an attorney with the
20 Harness IP law firm representing the patent
21 owner in this action, Nuhn Industries, Ltd.

22 THE VIDEOGRAPHER: Would the court
23 reporter please swear in the witness.

24 And counsel may proceed.

25 IAN NUHN,

1 called as a witness, being first duly sworn,
2 was examined and testified as follows:

3 EXAMINATION

4 BY MR. LEACH:

5 Q. Good morning, Mr. Nuhn.

6 A. Good morning. How are you, Tom?

7 Q. Good. How are you?

8 A. Pretty good.

9 Q. Good. Can you please state your full
10 name for the record?

11 A. Ian Dennis Nuhn.

12 Q. And can you provide your home address?

13 A. 74 Neal Avenue, Stratford, Ontario.

14 Q. And your work address?

15 A. Physically, 4816 Highway 8,
16 Sebringville, Ontario.

17 Q. And are you represented here today?

18 A. I have Brad Luchsinger in the room, if
19 that's what you're asking.

20 Q. Yes. And he's your counsel?

21 A. Correct.

22 Q. Okay. And so I want to go through a few
23 quick preliminary matters here. And don't be
24 offended on some of these questions, but I just
25 want to ask: Are you on any medication today

1 that would impair your ability to understand my
2 questions and answer truthfully?

3 A. No, I am not.

4 Q. And if I ask a question and you provide
5 an answer, I'll assume you understood the
6 question, is that fair?

7 A. Yes, it is.

8 Q. And if I ask a question and it's
9 unclear, please ask me to rephrase it or
10 clarify, okay?

11 A. Yep. That's clear.

12 Q. And so for the court reporter it's
13 important that she be able to get down on the
14 record everything we say here today. So to do
15 that I'll make sure I don't speak over you, and
16 I ask that you please wait until I'm done and
17 not to speak over me so the court reporter can
18 get everything down, fair?

19 A. Sounds good.

20 Q. And you were just administered an oath.
21 You understand that that oath has the same
22 force and effect as if we were in court in
23 front of a judge or jury, correct?

24 A. I understand.

25 Q. Now, your counsel, Mr. Luchsinger, may

1 object from time to time. After he objects,
2 and I'm sure he's instructed you to give him
3 some time to object after I ask a question, but
4 then you have to answer the question regardless
5 of his objection unless he instructs you not to
6 answer for some reason. Is that understood?

7 A. Okay. Understood.

8 Q. Can you tell me quickly how you prepared
9 for the deposition today?

10 A. I came in yesterday to the office here
11 in Troy.

12 Q. Anything else?

13 A. Nope, just met in the same room with
14 counsel.

15 Q. Who did you meet with?

16 A. Brad, in the room. And Scott Yackey
17 phoned in not for the entire thing but just
18 here and there.

19 Q. Okay. And about how long did you meet?

20 A. From around 9:00 to 5:00, if I remember
21 correctly, somewhere like that.

22 Q. Okay. And did you look at any
23 documents?

24 A. Yes.

25 Q. Did any of the documents that you looked

1 at refresh your recollection as to any of the
2 events that occurred that are relevant to this
3 matter?

4 MR. LUCHSINGER: Objection as to
5 form.

6 You can answer.

7 THE WITNESS: Sure. I'm going to
8 say no.

9 BY MR. LEACH:

10 Q. I also want to go through a little bit
11 of vocabulary here because we've got --
12 obviously your last name is Nuhn, the company's
13 name is Nuhn. Your father is involved and his
14 last name is Nuhn as well. So I'm going to
15 refer to Nuhn Industries as the patent owner in
16 this case. I will refer to Dennis Nuhn as
17 Dennis or Dennis Nuhn. And I will refer to you
18 as you or your, you know, as if we're just
19 having a discussion, is that fair?

20 A. Sounds good.

21 Q. And if I refer to the company, I will
22 refer to the company as Nuhn Industries, Nuhn
23 or patent owner, clear?

24 A. Okay.

25 Q. And then for petitioner, I'll refer to

1 them as Bazooka or maybe Bazooka-Farmstar or
2 possibly defendant, as they are a defendant in
3 a related matter, but I'll try to keep it to
4 petitioner or Bazooka. And if I do that, will
5 you understand who I'm referring to?

6 A. I will.

7 Q. Okay. One last thing is if at any time
8 you need to take a break, just let me know. I
9 only ask that you don't take a break or ask for
10 a break when there's a question pending. We
11 can finish that answer, and then we can take a
12 break, okay?

13 A. Understood.

14 Q. Okay. How old are you?

15 A. I'm 34.

16 Q. You started working at Nuhn Industries
17 when you were 12 years old, is that correct?

18 A. That is correct.

19 Q. And can you tell me: At 12 years old
20 what were you doing for Nuhn Industries?

21 A. I was operating a CNC plasma cutter and
22 drawing up two-dimensional parts.

23 Q. And just to back up another quick bit,
24 does your father, Dennis Nuhn, own Nuhn
25 Industries, or is he a part owner of Nuhn

1 Industries?

2 A. He's a partner.

3 Q. Okay. Do you know whether he has a
4 controlling interest in the company?

5 A. He does not.

6 Q. Are you an owner of the company?

7 A. I am.

8 Q. Do you have a controlling interest in
9 the company?

10 A. I do not.

11 Q. Who has a controlling interest in the
12 company?

13 A. We both have to vote together. It's
14 50/50. So it's not 51/49. It's 50/50 --

15 Q. I see. So --

16 A. -- as far as common shares.

17 Q. Okay. So when you say "as far as common
18 shares," are there another class of shares that
19 someone else owns?

20 A. Nonvoting shares.

21 Q. And who owns those?

22 A. Dennis and myself.

23 Q. And how many shares of nonvoting stock
24 does Dennis Nuhn own?

25 A. I don't know the answer to that.

1 Q. How many shares of nonvoting stock do
2 you own?

3 A. I also don't know the answer to that
4 sitting here today.

5 Q. Is there anyone else that owns nonvoting
6 shares aside from Dennis Nuhn and yourself?

7 A. I'd have to look at the minutes to see.
8 On the record I can't answer that with a
9 hundred percent surety.

10 Q. Okay. But generally speaking in terms
11 of voting shares, you and your father, Dennis
12 Nuhn, own the company 50/50?

13 A. That's correct.

14 Q. So let's step back to when you were
15 12 years old. You said you operated a CNC
16 plasma cutter and you drew 2D parts. Did you
17 do anything else around the company at 12 years
18 old? I mean, did you sweep floors? Did you
19 get things for people? What other types of
20 things were you doing for people at 12 years
21 old?

22 A. I -- it was a small company. So we -- I
23 did pretty much every job there just to get a
24 taste of it, but my primary responsibility was
25 the plasma cutter.

1 Q. Okay. And so when you were 12 years
2 old, you said it was a small company. How big
3 a company was it, how many employees?

4 A. I don't have the exact number. I would
5 be guessing. Less than 25, though. Less
6 than 20.

7 Q. So would you say less than 20 but more
8 than ten?

9 A. That would be accurate to say.

10 Q. At 12 years old were you paid for your
11 time?

12 A. Yes. Yes.

13 Q. And about how much an hour, if you
14 recall?

15 A. I'd be guessing. I vaguely remember \$6
16 an hour, something like that.

17 Q. At some point did you start taking on
18 other responsibilities kind of as the years
19 went by, 12, 13, 14, 15?

20 A. Yes, I did more equipment design as the
21 years went on.

22 Q. When do you think you started doing
23 equipment design?

24 A. I'd be guessing. 15, 16, 17, somewhere
25 in that time frame.

1 Q. Did you also have other responsibilities
2 given it was a small business at the time?

3 A. Yes, mainly on the computer. The
4 company website was also my responsibility,
5 making brochures. Those are the few that come
6 to mind.

7 Q. And would you say the company website
8 and making brochures would fall under kind of
9 the advertising category?

10 A. I agree with that.

11 Q. Okay. I'm trying to think back to when
12 you were 15, 16, 17 if there was a social media
13 presence. If so, were you involved in any of
14 that?

15 A. No, that's -- that was before then,
16 so --

17 Q. Okay.

18 A. Yeah.

19 Q. And so was this during a time when you
20 were in -- would you call it grade school?

21 A. I started in, you know, grade seven,
22 grade eight, and then all the way through
23 until, like, grade nine to grade 12, high
24 school. This was part-time, not full-time just
25 for the record.

1 Q. Sure. About how many hours a week did
2 you work?

3 A. Just guessing, 20. It would be two
4 hours after school for five days and then
5 Saturday mornings. So two, three hours after
6 school, yeah.

7 Q. Okay. Did you play any sports in grade
8 or high school?

9 A. I did.

10 Q. What sports?

11 A. Baseball until grade 11 and curling,
12 grade 11, grade 12. I'm from Canada. That's a
13 popular sport.

14 Q. Sure. I used to be on a curling league,
15 so I'm familiar with it.

16 A. Okay.

17 Q. So when you were playing sports in
18 grades 11 and 12, and it looks like in grade 11
19 you played baseball and curling, did that
20 reduce the amount of time you were spending
21 working at Nuhn Industries?

22 A. I don't believe so. I think I made it
23 up. I made up the time.

24 Q. Okay. And so after high school, after
25 grade 12, did you go to university?

1 A. I did.

2 Q. How old were you when you went to
3 university?

4 A. Just trying to think back to what year
5 that was. I would have been 19.

6 Q. And so your birthday is May 1990? Is it
7 May 26, 1990?

8 A. May 23rd, 1990. So I believe I went to
9 university in 2009, fall of 2009.

10 Q. And when did university start where you
11 went, what month?

12 A. September.

13 Q. And where did you go to university?

14 A. Wilfrid Laurier.

15 Q. Where is that located?

16 A. Waterloo, Ontario.

17 Q. How far is -- is it Wilfrid?

18 A. Wilfrid Laurier, yeah.

19 Q. Laurier. How far is that from Nuhn
20 Industries driving?

21 A. Less than 45 minutes.

22 Q. When you say "less than 45 minutes," is
23 it about 45 minutes? I Google mapped it, so I
24 kind of got a sense of --

25 A. It's about 45 minutes. There's some

1 back roads to speed it up. And depending on
2 traffic and whatnot, I'd say about 45 minutes.

3 Q. Okay. And did you work at Nuhn
4 Industries during university?

5 A. I did.

6 Q. Do you call it university or college?

7 A. We -- here we call it university.

8 Q. Okay. And so that's the same -- I guess
9 that would be the same as in the U.S.? We call
10 it college typically.

11 A. I -- to my understanding, yes.

12 Q. Okay. And so did you work at Nuhn
13 Industries during university, when you were at
14 college?

15 A. That is correct.

16 Q. Okay.

17 A. Part-time.

18 Q. Okay. And about -- well, let me ask you
19 this: During school, did you work different
20 hours or less hours than during maybe your
21 summer break at Nuhn Industries?

22 A. That's correct.

23 Q. Tell me how many hours you worked
24 typically while you were in university, while
25 you were studying or in school.

1 A. This would be pure speculation. I'm
2 just guessing. Friday, I would work full-time
3 because I usually didn't -- my schedule didn't
4 line up with classes. So Friday would be a
5 workday that I would most of the times go to --
6 go back to the office to work. And then
7 usually at night I would do a few hours of work
8 on my computer and then sometimes Saturday
9 morning. So it would really vary. I wouldn't
10 have an exact answer.

11 Q. Okay. How about during the summer
12 break, did you work at Nuhn Industries during
13 your summer breaks?

14 A. Yes, I did.

15 Q. And would that be true for each of the
16 summer breaks that you had during university?

17 A. That is correct.

18 Q. You said you started in the fall of
19 2009. When did you graduate?

20 A. My last exam would have been, oh,
21 probably April 2013.

22 Q. Did you study abroad during college at
23 all?

24 A. No.

25 Q. What was your major in university,

1 college?

2 A. Honors business.

3 Q. Can you describe what the honors
4 business courses or degree entailed?

5 A. Basically over the four years various
6 classes to do with accounting, finances,
7 business law, math.

8 Q. Did you take any formal engineering
9 classes?

10 A. No, I did not.

11 Q. Did you take any mechanical engineering
12 classes?

13 A. No, I did not.

14 Q. Did you take any chemical engineering
15 classes?

16 A. I did not.

17 Q. Did you take any physics classes?

18 A. I did not.

19 Q. Did you take any heat and mass transfer
20 courses?

21 A. I did not.

22 Q. Did you take any statics or dynamics
23 courses?

24 A. I did not.

25 Q. Did you take any pump design classes?

1 A. I did not.

2 Q. Did you take any fluid dynamics courses?

3 A. I did not.

4 Q. Did you take any classes in marine or
5 off-road vehicle design?

6 A. I did not.

7 Q. Did you take any courses in
8 manufacturing?

9 A. I did not.

10 Q. So you said you graduated in April of
11 2013. How old were you then?

12 A. I would have been 22.

13 Q. And so after graduation, what did you
14 do?

15 A. I worked now full-time for Nuhn
16 Industries.

17 Q. And so when did you start full-time for
18 Nuhn Industries?

19 A. Would have been late April 2013.

20 Q. And what was your title when you started
21 working full-time at Nuhn Industries in April
22 of 2013?

23 A. I would be speculating. I would have to
24 look back exactly, but I do believe vice
25 president at that time.

1 Q. Was that vice president of the whole
2 company or vice president of a division?

3 A. The whole company.

4 Q. As vice president of Nuhn Industries,
5 did anyone report to you?

6 A. I'm just trying to -- in which time
7 frame are you referring to?

8 Q. In late April 2013 when you started at
9 Nuhn Industries.

10 A. Not directly, no.

11 Q. And who did you report to?

12 A. Dennis Nuhn.

13 Q. And Dennis Nuhn is your father?

14 A. That is correct.

15 Q. Since April of 2013 when you started
16 full-time at Nuhn Industries as vice president,
17 have you had other titles?

18 A. Just vice president.

19 Q. Are you currently vice president of Nuhn
20 Industries?

21 A. That is correct.

22 Q. Do you have people reporting to you now?

23 A. I do.

24 Q. Can you tell me who those people are?
25 Let's start with generally who they are.

1 A. Yeah. I'd say manufacturing kind of
2 division heads would be the main ones.

3 Q. Any others?

4 A. Mainly the division heads.

5 Q. Who are the division heads of
6 manufacturing?

7 A. Is that something that is relevant for
8 this or --

9 Q. Yeah.

10 A. Okay. We have different department
11 leaders for what we manufacture. So that would
12 be the main people that would report to me,
13 so...

14 Q. Okay. And can you name who they are?
15 How many of them are there about?

16 A. Mainly there would be probably around
17 ten.

18 Q. Ten. Okay. Maybe that's why I'm
19 sensing some hesitation.

20 A. I'm just not sure, I guess, the
21 relevance of that, but that's -- yeah.

22 Q. Sure. I guess in this proceeding you
23 don't really have to worry about what's
24 relevant or not. I get to ask my questions.

25 A. Sure.

1 Q. And if you could -- the process allows
2 me to ask my questions and get answers to them.
3 If your counsel wants to object, your counsel
4 can object if he knows that there's an issue,
5 but --

6 A. Sure. No, that's fair.

7 MR. LUCHSINGER: So, you know, Tom,
8 let me just say this. So, you know, obviously
9 this IPR relates to a specific patent, and that
10 patent relates to a specific product, and Nuhn
11 has other products as well, right? And so
12 we've agreed to make Mr. Nuhn available for
13 seven hours on-the-record time, and we're going
14 to stick to that. And so while I'll give you
15 some, you know, leeway here as far as asking
16 questions that are potentially outside the
17 scope of what's relevant in an IPR, if you're
18 asking him all of these questions about
19 products that aren't at issue, that's going to
20 eat into your time. And if we get to seven
21 hours on-the-record time, you know, we're done
22 and essentially you wasted, you know, time
23 discussing products that have nothing to do
24 with the challenged patent. So, you know, I
25 just want to lay that out so that we all have

1 an understanding that, you know, I'm going to
2 give you some leeway and you can ask questions
3 that you think are relevant, but it could eat
4 into your time, and, you know, it leaves less
5 time for asking relevant questions. So I'll
6 leave it at that.

7 MR. LEACH: Thanks, Brad.

8 BY MR. LEACH:

9 Q. So can you tell me who the manufacturing
10 division head is that's responsible for the
11 Lagoon Crawler?

12 A. So we have a manufacturing head for the
13 Lagoon Crawler that would be what I would call,
14 like, pre-paint. That would be Calvin Flood.

15 Q. Can you spell his name?

16 A. Yep. C-a-l-v-i-n. And then his last
17 name is Flood, F-l-o-o-d.

18 Q. Okay. As of July of 2013, so a few
19 months after you started full-time at Nuhn
20 Industries, did you have any experience
21 designing marine vehicles?

22 A. No, I did not.

23 Q. As of July 2013, did you have any
24 experience designing off-road vehicles?

25 A. Just to clarify the question, are you

1 meaning self-driven, like, self-propelled or,
2 like, pulled by a tractor?

3 Q. Self-propelled.

4 A. Then the answer is no.

5 Q. As of July '13 -- I'm sorry. As of
6 July 2013, did you have any experience
7 designing hydraulic drive systems?

8 A. That's a very broad spectrum, hydraulic
9 drive systems, but I did have experience with
10 hydraulic systems. If you want to define it
11 more clearly, I can be more specific.

12 Q. Sure. Why don't you tell me what
13 experience you had with hydraulic drive
14 systems.

15 A. So in my day-to-day work when I hear
16 hydraulic drive, it's more on the -- like, a
17 manure tanker. So it would be how the -- a
18 pump on a manure tanker is driven. So we --
19 the term "hydraulic drive" to me is more
20 specifically related to a manure pump on a
21 manure spreader in which I have a lot of
22 experience sizing the hydraulics for that
23 system. And more than that. But when I hear
24 specifically hydraulic drive, that's what I
25 think of.

1 Q. Okay. What about more specifically to,
2 like, a hydraulic drive system to drive, for
3 example, wheels or tracks?

4 A. The answer to that is no.

5 Q. Okay. And so as of July 2013, you
6 didn't have any experience designing hydraulic
7 drive systems to drive a vehicle over ground
8 or --

9 A. No, I did not.

10 Q. Okay. And as of July 2013, did you have
11 any experience in structural design?

12 A. Can you be more specific when you say
13 "structural design"?

14 Q. So -- sure. When I think of structural
15 design, I think about how -- stresses and
16 strains and forces, that kind of thing, like,
17 how big of a beam do you need to carry a
18 certain load, that sort of thing.

19 A. Not to the extent that you're referring
20 to, no.

21 Q. So I just want to summarize your
22 education and work experience up until about
23 July 2013. So from 12 years old or so you were
24 working about 20 hours a week running a CNC
25 machine and sweeping floors and just basically

1 doing any number of tasks at Nuhn Industries,
2 which at the time was a small business,
3 correct?

4 A. I would agree with that.

5 Q. And your -- as you went from 12, 13, 14,
6 15, 16 up to about 17, you continued those
7 tasks and then did -- maybe instead of just
8 running a CNC machine you began designing a few
9 parts, is that accurate?

10 MR. LUCHSINGER: Objection as to
11 form.

12 BY MR. LEACH:

13 Q. Is that accurate?

14 A. Can you repeat the question? Can you
15 repeat the question?

16 Q. Yeah.

17 MR. LEACH: Dana, could you please
18 read the question back?

19 THE COURT REPORTER: Yes.

20 (Whereupon, the court reporter read
21 back the previous question.)

22 THE WITNESS: The answer is yes,
23 that is accurate.

24 BY MR. LEACH:

25 Q. And then you went to college or

1 university, which was about 45 minutes away,
2 you continued to work part-time at Nuhn
3 Industries, where you studied business
4 administration, correct?

5 A. That would be correct, yeah.

6 Q. And as part of your business
7 administration degree you didn't take any
8 engineering classes, physics classes, fluid
9 dynamic classes, pump design classes or vehicle
10 design classes, correct?

11 A. That is correct.

12 Q. And you began working full-time at Nuhn
13 around April of 2013 when you were 23 years
14 old, correct?

15 A. At that time, 22. And May 23rd, a month
16 later, I would have been 23.

17 Q. Okay. 22. And you started as vice
18 president of Nuhn Industries and that's your
19 current title today, correct?

20 A. That is correct.

21 Q. I have provided Exhibit 2083, which is
22 the Declaration of Ian Nuhn in Support of
23 Patent Owner's Response. You should have
24 access to that. Can you please take a look at
25 that exhibit?

1 A. I have it here.

2 Q. Is this the declaration that you
3 submitted in support of Patent Owner's
4 Response?

5 A. Let me just scroll through just to --

6 Q. Sure.

7 A. -- verify everything's there. (Views
8 document.) Yes, it is.

9 Q. Okay. I'd like to turn your attention
10 to paragraph 8. Can you take a look at that,
11 please? And that's paragraph 8 of Exhibit 2083
12 on page 5.

13 A. I'm there.

14 Q. Okay. Can you please read that? And
15 you can read it to yourself.

16 A. (Views document.) Yeah, I've read it.

17 MR. LEACH: One quick second here.
18 I'm going to mark another exhibit.

19 (Exhibit Number 1070 marked for
20 identification.)

21 BY MR. LEACH:

22 Q. I've marked Exhibit 1070. Ian, if you
23 go up to your viewer, there should be some view
24 controls, you should be able to rotate it
25 clockwise if you want. It's up in the upper

1 left corner. It's kind of got a page with a
2 little gear in it.

3 A. Yep.

4 Q. And if you hit that -- you got it?
5 Okay.

6 A. Yeah, I do.

7 Q. Okay. So Exhibit 1070 are some
8 clippings from Nuhn's web page. Does that look
9 accurate to you?

10 A. (Views document.) Yeah. This is from
11 our web page.

12 Q. And can you tell me what it is?

13 A. It's a history timeline.

14 Q. Okay. And then I've blown up two of the
15 years, 2009 and 2013, out of the larger
16 timeline so we can read what it says, is that
17 accurate?

18 A. Yeah. I can see -- can see it.

19 Q. And so in 2009 it says, "Dennis' son,
20 Ian, grew up working alongside his dad and had
21 a passion for designing innovative and
22 efficient equipment. At age 19, he designed
23 and patent [sic] the Triple Port Header Series
24 Pump Design."

25 Do you see that?

1 A. I see where it says that, yes.

2 Q. Okay. At age 19, did you design a
3 triple port header series pump?

4 A. No, I did not.

5 Q. Why does it say that there then?

6 A. The person who was making the website
7 must have made a mistake. I don't know where
8 she got that date from.

9 Q. But I thought you were in charge of the
10 website?

11 A. Not when this was made.

12 Q. Okay. Do you know when this was made?

13 A. I'd be guessing. I'm going to say -- I
14 think 2017 is when this was made.

15 Q. So you would have been about 27 at the
16 time?

17 A. Approximately, yes --

18 Q. Okay.

19 A. -- in 2017.

20 Q. Did you design -- I guess I'm wondering
21 is the mistake that you designed -- instead of
22 a triple port header series pump, did you
23 design in 2009 a dual-outlet header pump?

24 A. No, not in 2009. I think it was a
25 simple pump around that time period. But

1 sitting here today, I'd have to look into it.

2 Q. Do you know whether a -- you or Nuhn
3 designed a dual-outlet pump first and then a
4 triple-outlet pump after that?

5 A. Sorry. Can you repeat the question?

6 Q. At some point in time Nuhn Industries
7 designed a multi-outlet pump, correct?

8 A. That's correct.

9 Q. Okay. And in one of the designs I've
10 seen it's a dual outlet, is that correct?

11 A. That's correct.

12 Q. It had two outlets coming out of the
13 housing, right?

14 A. Correct.

15 Q. And in some other designs there's three
16 outlets coming out of the housing, correct?

17 A. Correct.

18 Q. So I'm wondering which one came first.
19 Did the dual outlet come before the
20 triple-outlet pump?

21 A. That is correct.

22 Q. Okay. And so in paragraph 8 of your
23 declaration, which is Exhibit 2083, you talk
24 about "Nuhn developed a multi-outlet pump." Is
25 that the pump you designed and filed the patent

1 on?

2 A. Yes, I believe that's what that's
3 referring to.

4 Q. Going back to Exhibit 2083, your
5 declaration, did you draft that declaration, or
6 did your attorney draft it?

7 A. 2083? My attorney drafted this under my
8 guidance.

9 Q. So did they draft it and you reviewed
10 it?

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: Can you rephrase the
14 question?

15 BY MR. LEACH:

16 Q. I'm asking if they drafted the
17 declaration, your declaration, Exhibit 2083,
18 and then you reviewed it?

19 MR. LUCHSINGER: Same objection.

20 THE WITNESS: I guess that's -- is
21 that privileged?

22 MR. LUCHSINGER: And so I'll just
23 caution the witness, you know, not to reveal
24 the contents of any conversations you had with
25 attorneys --

1 THE WITNESS: Uh-huh.

2 MR. LUCHSINGER: -- but I think you
3 can explain what the -- yeah, at a high level
4 what the process was --

5 THE WITNESS: Uh-huh.

6 MR. LUCHSINGER: -- that -- you
7 know, through which this document was created.

8 MR. LEACH: Brad, can I just
9 interject, though? You know, under the rules
10 you're supposed to limit your objections to
11 nonspeaking objections. And so --

12 MR. LUCHSINGER: Well, under the
13 rules we're allowed to have sidebar
14 conversations discussing whether something is
15 protected by attorney-client privilege with the
16 witness, and that's what I'm doing, Tom. So
17 I'm not instructing the witness not to answer
18 your question, but I'm just cautioning the
19 witness to limit his response to the process
20 through which this document was created
21 generally as opposed to discussing, you know,
22 the actual substance of conversations with his
23 attorneys, which would be privileged.

24 MR. LEACH: Fair enough.

25 THE WITNESS: Uh-huh. Sorry, Tom.

1 Can you repeat the question?

2 BY MR. LEACH:

3 Q. Sure. My question was: Did your
4 attorneys draft your declaration, which is
5 Exhibit 2083, and then you reviewed it? Is
6 that how the process went?

7 MR. LUCHSINGER: Same objections and
8 instruction.

9 THE WITNESS: They drafted this
10 exhibit under my guidance.

11 BY MR. LEACH:

12 Q. I'm asking: Did you get a draft that
13 you reviewed for -- how did the process go?
14 Did you get a draft and review it?

15 MR. LUCHSINGER: Objection to form.

16 THE WITNESS: I reviewed this
17 document several times in the process.

18 BY MR. LEACH:

19 Q. Okay. And so I only ask the question
20 because when I asked about paragraph 8 of your
21 declaration, it sounded like you weren't sure
22 what that paragraph was specifically talking
23 about. And so I guess what I'm asking is:
24 When paragraph 8 says "Nuhn developed a
25 multi-outlet pump," can you describe what pump

1 you were referring to?

2 A. This would be the dual outlet that had
3 the most test data for this.

4 Q. When you say it had the most test data,
5 what do you mean by that?

6 A. The dual-outlet pump was -- the majority
7 of the testing and tweaking time was done on
8 the dual outlet.

9 MR. LEACH: I'm going to pull up an
10 image that I have.

11 (Exhibit Number 1072 marked for
12 identification.)

13 BY MR. LEACH:

14 Q. I've just marked Exhibit 1072, which is
15 a declaration of Morgan Henderson. And what
16 I'd like to direct your attention to is the
17 image of the pump on the second page of
18 Exhibit 1072. Can you take a look at that,
19 Mr. Nuhn?

20 A. Uh-huh. (Views document.) I see it.

21 Q. Is that the dual-outlet pump you're
22 talking about in paragraph 8 of your
23 declaration, Exhibit 2083?

24 A. Yes.

25 Q. And do you know when that pump was --

1 let me ask you this: Was this pump advertised
2 or publicly disclosed prior to March of 2010?

3 A. No, it was not.

4 Q. And how do you know that?

5 A. When this declaration came out, I looked
6 through notes that I had and could clearly see
7 that it was incorrect.

8 Q. And what notes told you it was
9 incorrect?

10 A. Time stamps on pictures.

11 Q. And what were the pictures?

12 A. The testing of this pump and the
13 manufacturing of this exact pump.

14 Q. So when do you believe you designed this
15 pump?

16 A. I'd have to look through my pictures to
17 give you an exact date.

18 Q. Was it while you were in college?

19 A. That is correct. In college. It is
20 the --

21 Q. You're sure it wasn't when you were in
22 high school?

23 A. One hundred percent positive.

24 Q. And how can you be so positive?

25 A. I remember vividly doing it during

1 university and talking about it during
2 university, what I had done in the summer.

3 Q. What type of research did you do when
4 you began designing this multi-outlet pump, the
5 one shown in Exhibit 1072 -- 1071.

6 THE COURT REPORTER: No, it's 1072.

7 MR. LEACH: 1072.

8 THE COURT REPORTER: 1071 was
9 skipped, just FYI.

10 But, Ian, there's a question
11 pending.

12 BY MR. LEACH:

13 Q. Answer the question. I'll get that
14 fixed.

15 A. I looked at this market. And the nice
16 thing about a pump is it's very numerical
17 driven as far as performance. So we tested, I
18 would say, the benchmark pump and basically
19 came out with this design here.

20 Q. What was the benchmark pump?

21 A. It would be a GEA Houle liquid manure
22 pump.

23 Q. What other competitive products did you
24 look at when you began designing this
25 multi-outlet pump?

1 A. Just that pump.

2 Q. What other products were you aware of
3 when you began designing the multi-series or
4 multi-outlet pump shown in Exhibit 1072?

5 A. There's not many competitors in this
6 field. I -- I was aware of Husky, Jamesway and
7 Balzer. Those would be the only other
8 competitors in that field. But I would say
9 [unintelligible] --

10 Q. Were you --

11 A. Go ahead. Sorry.

12 Q. Were you aware of Fisher Pumps?

13 A. No, I was not.

14 Q. When did you become aware of Fisher
15 Pumps?

16 A. During the -- I'm not sure the proper
17 term, but during the IPR process for the
18 '229 -- or the ex parte re-exam for the '229.

19 Q. Do you mean '224?

20 A. '224, yeah. Sorry. There's a lot of
21 patent numbers.

22 Q. Sure. And so you're referring to the
23 '224 patent. And that's a patent that ends in
24 224, correct?

25 A. That would be the one I'm referring to,

1 yes.

2 Q. So prior to designing this dual-outlet
3 pump, can you tell me -- you said you were
4 aware of Husky pumps. Can you describe the
5 Husky pumps you were aware of?

6 A. They are a single-outlet vertical
7 chopper pump.

8 Q. Did they have a nozzle that rotated --

9 MR. LUCHSINGER: Objection --

10 BY MR. LEACH:

11 Q. -- with a valve?

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

14 THE WITNESS: I don't know the
15 specifics of the Husky pump. I only looked at
16 the GEA Houle pump closely when doing this.

17 BY MR. LEACH:

18 Q. Okay. What about -- do a lot of these
19 tractor-mounted pumps include a pipe that has
20 agitation nozzles on it where the pipe rotates
21 the agitation nozzles, the pipes include -- I'm
22 sorry, a vertical pipe includes one or more
23 agitation nozzles, and that vertical pipe
24 rotates clockwise and counterclockwise to
25 agitate?

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

3 THE WITNESS: I'm not sure the
4 specifics of my competitors' pumps and how they
5 operate.

6 BY MR. LEACH:

7 Q. Do you know, the benchmark pump you've
8 talked about from GEA Houle, what model that
9 was or what pump that was specifically?

10 A. I don't know the model specifically.

11 Q. Did you look at a few of them?

12 A. Just one.

13 Q. And you don't know which one that was?

14 A. I don't know the specifics of the model
15 I looked at, no. They have --

16 Q. Can you describe -- I'm sorry.

17 A. They have very long specific model
18 names. I don't know the relevance of their
19 name and how it pertains to the pump.

20 Q. Can you just describe the pump, the GEA
21 Houle pump that you were looking at that was
22 what you call the benchmark pump?

23 A. It was a vertical pump approximately
24 12 feet long, hooked up to a tractor, driven by
25 a tractor PTO shaft, and had a single-outlet

1 pump housing.

2 Q. Did it have a nozzle connected to the
3 main pipe coming out of the housing?

4 A. I believe it did.

5 Q. Did that main pipe coming out of the
6 housing rotate clockwise and counterclockwise?

7 A. This one was fixed.

8 Q. Were you aware of other GEA Houle pumps
9 at the time that had a pipe that rotated
10 counterclockwise and clockwise?

11 A. I can't recall. I don't know the
12 specifics of how their pump construction is in
13 that sense.

14 Q. Okay. So prior to March of 2010, were
15 you attending trade shows for Nuhn Industries?

16 A. I'd have to -- I don't know
17 specifically. I may have gone when I was a
18 child or something. I'd have to look back. I
19 don't have that specifically in front of me.

20 Q. So in March of 2010 you were in college
21 or university?

22 A. Yes.

23 Q. What about patents, did you do any
24 patent research when you were looking at
25 designing this dual-outlet pump that you are

1 describing in paragraph 8 of your declaration?

2 A. I did not.

3 Q. So in 2009, I think you mentioned you
4 were helping with Nuhn's advertising, is that
5 correct?

6 A. I would have been, yes.

7 Q. And tell me what that entailed.

8 A. In 2009, I would have been doing the
9 website and brochures.

10 Q. When you say "brochures," would that
11 include ads that would be placed, for example,
12 in, like, Manure Manager magazine and
13 publication?

14 A. I don't actually recall doing the ads.

15 Q. When you say you don't recall doing the
16 ads, I guess I want to dig into that a little
17 bit more. When you say you don't recall doing
18 that, did you prepare ads that someone else
19 would then place in Manure Manager, or were you
20 not involved in, like, the copy that would go
21 to the publications?

22 A. That would not have been one of my
23 roles. I may have made one or two even prior
24 to the time period we're talking about, but I
25 believe someone else did that. That was not

1 one of my responsibilities.

2 Q. Did you read Manure Manager or look
3 through it?

4 A. I did not.

5 Q. You never paged through Manure Manager
6 in your time working for Nuhn prior to 2013?

7 A. Prior to 2013, no.

8 Q. How can you be so sure?

9 A. It wasn't really a credible newspaper
10 for ag. It was almost too specific. And I
11 don't think it had much of a -- like, a
12 viewership or subscription base at that time.

13 Q. Nuhn advertised in Manure Manager,
14 though, back in 2009, '10, '11, correct?

15 A. I don't know for certain to say that on
16 the record. Doing the advertising wasn't one
17 of my roles.

18 Q. Who was in charge of advertising in
19 2009?

20 A. I'm not actually entirely sure sitting
21 here today.

22 Q. Did you read any trade literature in
23 2009-'10?

24 A. No, not that I recall.

25 Q. Just give me a second. I'm going to

1 mark another exhibit. Do you need a break?

2 MR. LEACH: Does anybody need a
3 break?

4 THE WITNESS: Nope. I'm good.

5 BY MR. LEACH:

6 Q. Okay. Mr. Nuhn, I'm introducing another
7 exhibit. This might take a bit to load. It's
8 not yet distributing into the file. It's a
9 Manure Manager magazine, so it's a larger file.
10 Just give it a second here.

11 MR. LEACH: Let's take a five-minute
12 break while this thing is loading. It's taking
13 a little bit. Okay. I need to use the
14 restroom.

15 THE WITNESS: Okay.

16 THE VIDEOGRAPHER: We are going off
17 the record.

18 The time now is 9:15 a.m.

19 (Off the record 9:15 to 9:23.)

20 (Exhibit Number 1071 marked for
21 identification.)

22 THE VIDEOGRAPHER: We are back on
23 the record. This is marks the beginning of
24 Media Number 2 in the deposition of Ian Nuhn.

25 The time now is 9:23 a.m.

1 BY MR. LEACH:

2 Q. We just took a break while an exhibit
3 loaded, and I'm wondering if you're able to
4 pull up Exhibit 1071, which is Manure Manager
5 from September/October 2009.

6 Do you see that?

7 A. It's loading.

8 Q. Just let me know when it pops up.

9 A. I have it now. Where would you like me
10 to go?

11 Q. Go to page 11, please.

12 A. I'm sorry. I'm at 11, yeah.

13 Q. Okay. And so page 11 shows an ad for a
14 GEA Houle pump, correct?

15 A. (Views document.) That is correct.

16 Q. Is this one of the pumps that you looked
17 at prior to designing the dual-outlet pump?

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

20 THE WITNESS: The pump that I looked
21 at was a GEA Houle PTO-style pump. It looks
22 similar to this one.

23 BY MR. LEACH:

24 Q. Okay. If you zoom in a little bit on
25 the bottom where it says Super pump, the bottom

1 nozzle, does that have -- the piece attached to
2 the top of the nozzle at the end, is that a
3 valve that shuts off that nozzle or closes that
4 nozzle?

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

7 THE WITNESS: Can you repeat the
8 question a different way?

9 BY MR. LEACH:

10 Q. Sure. For the super pump shown on
11 Exhibit 1071 at page 11, the bottom nozzle, the
12 piece attached to it that kind of caps the end
13 of the nozzle, is that a valve that stops flow
14 from coming out of that nozzle?

15 MR. LUCHSINGER: Objection to form
16 and foundation.

17 THE WITNESS: I'm not familiar with
18 the design of their pump.

19 BY MR. LEACH:

20 Q. In looking at that, though, can you tell
21 me what that piece does that's attached on the
22 top of the nozzle in the super pump at the
23 bottom?

24 MR. LUCHSINGER: Objection to form
25 and foundation, vague.

1 THE WITNESS: This is a GEA Houle
2 pump. I'm not familiar that closely with that
3 feature.

4 BY MR. LEACH:

5 Q. Okay. Let's go to page 18, please.
6 Actually, before you do that, go to page 13.
7 This Vaughan, do you know that company?

8 A. I don't know that company.

9 Q. Okay. Can you tell me what appears to
10 be shown in the ad for Vaughan on page 13 of
11 Exhibit 1071?

12 MR. LUCHSINGER: Objection to form,
13 foundation.

14 THE WITNESS: I don't want to
15 speculate what I see in that ad.

16 BY MR. LEACH:

17 Q. Do you recognize what type of products
18 these are?

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

21 THE WITNESS: I've never looked
22 closely at this company before.

23 BY MR. LEACH:

24 Q. Were you aware of them back in 2009,
25 though, even if you haven't looked at them

1 closely?

2 MR. LUCHSINGER: Objection, asked
3 and answered.

4 You can answer.

5 THE WITNESS: No.

6 BY MR. LEACH:

7 Q. Okay. Let's go to page 18. So on
8 page 18 of Exhibit 1071 it has an ad for Fisher
9 Pumps.

10 Do you see that?

11 A. I see the ad.

12 Q. Prior to 2010, had you seen ads for any
13 of Fisher Pumps' products?

14 A. No.

15 Q. How can you be so sure?

16 A. I didn't see the ad for Fisher Pumps.

17 Q. Were you aware of Fisher Pumps at all?

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

20 THE WITNESS: No.

21 BY MR. LEACH:

22 Q. So looking at page 18 of Exhibit 1071,
23 it says a double discharge design equalizes
24 pressure and maximizes horsepower.

25 Do you see that?

1 A. I see that in there.

2 Q. As someone that's designed a pump, what
3 is that referring to, or what does that mean to
4 you?

5 MR. LUCHSINGER: Objection to form
6 and foundation.

7 THE WITNESS: It could mean -- we
8 make pumps that have a dual discharge off the
9 top of them. If you need to pump to multiple
10 locations, you might have a dual-discharge
11 design.

12 BY MR. LEACH:

13 Q. In looking at the vertical set belt
14 drive pumps that's on the upper left-hand
15 corner, does that look like it has a
16 dual-outlet housing?

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

19 THE WITNESS: It's impossible to
20 tell from this picture.

21 BY MR. LEACH:

22 Q. What about the lower right, the portable
23 hydraulic driven pumps, do you see that? Does
24 that look like it's a centrifugal pump with a
25 dual-outlet housing?

1 MR. LUCHSINGER: Objection to form
2 and foundation.

3 THE WITNESS: It's impossible to
4 tell from this picture.

5 BY MR. LEACH:

6 Q. And so it's your testimony that you
7 weren't aware of Fisher Pumps prior to
8 designing the dual-outlet -- the Nuhn
9 dual-outlet pump, correct?

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

12 THE WITNESS: That's correct. I've
13 never seen it.

14 BY MR. LEACH:

15 Q. Go to page 22. And there's an ad for a
16 Husky. And you said that you were familiar
17 with Husky farm equipment?

18 A. I know of Husky farm equipment.

19 Q. Okay. And they're in Alma, Ontario,
20 Canada, correct?

21 A. It appears so.

22 Q. How far is Alma, Ontario from Nuhn
23 Industries?

24 A. I don't actually know. I'd be guessing.
25 Do you have that in front of you?

1 Q. I don't. In any event, in the trade
2 shows you've attended, have you run into Husky
3 displaying their equipment?

4 A. What time period?

5 Q. Prior to 2010.

6 A. I recall when I was a young child my
7 father would take me to some farm shows in
8 Stratford, and they would also be exhibiting
9 there, yes.

10 Q. If you go down to page 35, there's an ad
11 for The Bull.

12 Do you see that?

13 A. I do.

14 Q. Can you describe -- in that ad, kind of
15 the middle picture, left side with the green
16 pump on that power unit, can you describe what
17 it's showing there?

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

20 THE WITNESS: It's unclear to say
21 exactly what's in the photo.

22 BY MR. LEACH:

23 Q. So given your experience working at Nuhn
24 Industries for decades, looking at the ad in
25 page 35 of Exhibit 1071, you're not sure what

1 that shows?

2 MR. LUCHSINGER: Objection to form,
3 foundation, asked and answered.

4 THE WITNESS: Without looking at it
5 closer, it's impossible to answer.

6 BY MR. LEACH:

7 Q. Well, is that a trailer-mounted manure
8 pump shown there?

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

11 THE WITNESS: Can you reask the
12 question more specifically?

13 BY MR. LEACH:

14 Q. Sure. In the middle two pictures, the
15 one on the left with the green structure
16 mounted to the back of that trailer, is that a
17 manure agitation pump?

18 A. From looking at this picture, I can't
19 answer that.

20 Q. Okay. What about the picture on the
21 bottom, what is that showing?

22 MR. LUCHSINGER: Objection to form,
23 foundation.

24 THE WITNESS: Can you reask the
25 question more specifically?

1 BY MR. LEACH:

2 Q. Sure. The picture on the bottom, kind
3 of the long image towards the bottom, can you
4 tell me generally what that is showing, type of
5 equipment?

6 MR. LUCHSINGER: Objection to form,
7 foundation.

8 THE WITNESS: Just going off this
9 picture, I can't say specifically.

10 BY MR. LEACH:

11 Q. Let's go down to page 39. You mentioned
12 that you were aware of Jamesway products prior
13 to 2010. Are these the products from Jamesway
14 that you were aware of prior to 2010 generally?

15 MR. LUCHSINGER: Objection to form.

16 THE WITNESS: I can't answer to
17 what's shown in here, but in general I was
18 aware of their manure spreaders and liquid
19 manure pumps, yes.

20 BY MR. LEACH:

21 Q. If you zoom in on the pump on the
22 bottom, the electric pump, 5 to 100 horsepower,
23 can you generally describe how a pump like that
24 functions or works?

25 A. I'm not familiar with the Jamesway

1 product to answer to that.

2 Q. Okay. Do you know what a gate valve is?

3 A. Can you define your definition of gate
4 valve?

5 Q. I'm asking you what a gate valve is.

6 A. I use -- in my day-to-day work I do use
7 the word "gate valve."

8 Q. Tell me what a gate valve is, please.

9 MR. LUCHSINGER: Objection to form.
10 You can answer.

11 THE WITNESS: Sure. Can you be more
12 specific? In what context?

13 BY MR. LEACH:

14 Q. On a manure pump.

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I would say a gate
18 valve controls flow on or off with a knife.

19 BY MR. LEACH:

20 Q. And so when you say "with a knife," is
21 that like a knife or a blade that cuts off the
22 flow in a pipe?

23 A. That is what -- if I heard gate valve,
24 that is what I would refer to it as, yes.

25 Q. Okay. And then in looking at the

1 bottom, second from the left in Exhibit 1071 on
2 page 39, right next to where it says Electric
3 Pumps 5 to 100 Horsepower, does it look like it
4 has a gate valve on the agitation nozzle?

5 MR. LUCHSINGER: Objection to form,
6 foundation.

7 THE WITNESS: There's no way to say
8 for certain looking at this photo.

9 BY MR. LEACH:

10 Q. What does it look like to you, though?

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

13 THE WITNESS: I'm not speculating
14 what it looks like.

15 BY MR. LEACH:

16 Q. Given your experiences designing pumps
17 and looking at that picture and the structure
18 that's on the nozzle on the pump I'm referring
19 to, wouldn't you agree with me that that's a
20 gate valve?

21 MR. LUCHSINGER: Objection to form,
22 foundation, asked and answered.

23 THE WITNESS: I can't -- I would be
24 speculating what it is just going by this
25 photo. It's a bad angle.

1 BY MR. LEACH:

2 Q. Were you aware that Husky made a
3 dual-outlet pump back in 2009?

4 MR. LUCHSINGER: Objection as to
5 foundation.

6 THE WITNESS: I don't believe they
7 ever did.

8 BY MR. LEACH:

9 Q. And why do you say that?

10 A. I have not seen one.

11 Q. So going back to your declaration, in
12 paragraph 8 you say, "As yet another example,
13 Nuhn developed a multi-outlet pump..." And if
14 you go down to paragraph 9, you state that
15 you're the inventor of the '425 patent. And in
16 doing so you kind of highlight a little bit of
17 a difference. In paragraph 8 you suggest that
18 Nuhn developed the multi-outlet pump. And in
19 paragraph 9 I think you're more personal in
20 saying that you're the inventor. So I guess
21 what I'm asking is: When you were designing
22 the dual-outlet pump, who else helped with that
23 design?

24 A. No one.

25 Q. Did your father help you at all with the

1 design of that dual-outlet header pump?

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

4 THE WITNESS: He did not.

5 BY MR. LEACH:

6 Q. Tell me again when you believe you came
7 up with the idea of the dual-outlet header
8 pump.

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

11 THE WITNESS: I don't have the exact
12 date range here in front of me.

13 BY MR. LEACH:

14 Q. Okay. Were there -- back in 2009-2010,
15 did Nuhn have any engineers working for it?

16 A. No.

17 Q. In 2012 and 2013, did Nuhn have any
18 engineers working for it?

19 A. No.

20 Q. Does Nuhn have any engineers working for
21 it currently?

22 A. No, not actually -- I believe in Canada
23 the term is MIT. So they've done engineering
24 school, but aren't actually a full-fledged
25 engineer.

1 Q. Okay. What does MIT stand for?

2 A. I don't know.

3 Q. Do you have any MITs working for Nuhn
4 Industries currently?

5 A. I would be speculating, but I know of
6 one MIT, yes.

7 Q. Okay. Do you know --

8 A. There might be one more, but I would be
9 speculating what their degrees are.

10 Q. Do you know in 2010, '11, '12 whether
11 Nuhn employed any employees that had an MIT
12 degree or were MITs?

13 A. Can you rephrase the date range? I
14 didn't hear it.

15 Q. Sure. From 2010 to 2013.

16 A. No.

17 Q. Nuhn's G-Force Lagoon Pump, is that a
18 multi-outlet pump?

19 A. Do you have a picture of what you're
20 referring to by G-Force Lagoon Pump?

21 Q. Let's see if I can find one. Give me a
22 second.

23 MR. LEACH: So we're on Exhibit 1073
24 now, correct, Dana?

25 THE COURT REPORTER: Yep.

1 MR. LEACH: Thank you. I'm
2 introducing Exhibit 1073.

3 (Exhibit Number 1073 marked for
4 identification.)

5 BY MR. LEACH:

6 Q. You might have to blow this up a little
7 bit to see it.

8 A. (Views document.)

9 Q. Was this Nuhn G-Force Lagoon Pump a
10 multi-outlet pump?

11 A. No.

12 Q. How do you know?

13 A. Because that's the pump I designed in
14 2009.

15 Q. And can you describe this pump?

16 A. It's a single-outlet liquid manure pump.

17 Q. And what was new about this design?

18 A. Our previous pumps we made had wood
19 block bearings, and this was our first pump
20 that deviated from that.

21 Q. So what about design gave it this new
22 high-volume, high-performance aspect?

23 A. It was in relation to our previous
24 design, not necessarily the industry.

25 Q. Okay. Thank you. I read in some

1 articles that you won a gold medal in 2009 for
2 a mechanical computer-aided drafting
3 competition for Skills Canada. Do you recall
4 that?

5 A. I'd have to check the year on it. But I
6 did win gold for mechanical CAD in Skills
7 Canada.

8 Q. And what was it that you designed or
9 drew?

10 A. There was no design aspect to it. It
11 was -- there's four different challenges in the
12 competition.

13 Q. So I want to jump to paragraph 9 of your
14 declaration, which is Exhibit 2083. You're
15 listed as the inventor of U.S. Patent
16 Number 11,358,425, correct?

17 A. That is correct.

18 Q. When did you start designing or start
19 working on the design that ultimately became
20 the Lagoon Crawler that's the subject of the
21 '425 patent?

22 A. Can you be more clear on which version
23 you're referring to?

24 Q. Well, I guess I'm wondering when you
25 started the process of designing an agitation

1 vehicle which ended up being disclosed in the
2 '425 patent.

3 A. Assuming -- I'm sure you're aware of the
4 early prototypes and then the prototype that
5 was shown. Are you referring to the prototype
6 that was shown?

7 Q. Describe the early prototypes.

8 A. They were merely design concepts.
9 Neither of which were what I would classify as
10 amphibious.

11 Q. And so can you describe them?

12 A. Mainly a floating structure with at
13 least two wheels, but the wheels were undriven.

14 Q. When you say "at least two wheels," did
15 you contemplate four wheels in that early
16 design?

17 A. Sitting here today, I can't recall when
18 four wheels -- if it was design iteration two
19 or the one that we showed as the prototype. I
20 can't remember just sitting here when it went
21 from two to four. I know the very first one
22 was two undriven wheels.

23 Q. So back around 2009 to 2013, who was in
24 charge of new projects?

25 A. Can you rephrase the time period?

1 Q. In around 2009 to 2013, who was in
2 charge of new projects and how Nuhn would spend
3 money or resources on new projects?

4 A. There's not one single person for that
5 time period. I can't recall when the
6 switchover was. But Dennis Nuhn would have
7 been in charge at the beginning of that time
8 period. And at some point I would have taken
9 the lead on that.

10 Q. And would it also be true that, whether
11 it was Dennis or you, you would get to decide
12 how much to spend or how many resources to put
13 towards various projects?

14 A. Sorry. Can you rephrase that question?

15 MR. LEACH: Dana, could you please
16 read that back?

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

19 THE WITNESS: That's not true.

20 BY MR. LEACH:

21 Q. Okay. Let me rephrase that because I
22 think I didn't ask it how I wanted to. Would
23 it have been Dennis or you that decided during
24 that time frame then what resources to put
25 towards new projects?

1 A. Yes.

2 Q. In 2011, 2012, when you started
3 designing the Lagoon Crawler amphibious
4 vehicle, what did you study?

5 MR. LUCHSINGER: Objection to form
6 and foundation.

7 THE WITNESS: It wasn't that date
8 range.

9 BY MR. LEACH:

10 Q. Okay. So you started with the early
11 design concepts in 2012, correct?

12 A. The first concepts were late summer
13 2012.

14 Q. Okay. Those were the early concepts
15 that ended up leading to the Lagoon Crawler
16 that's shown in the '425 patent, correct?

17 MR. LUCHSINGER: Objection to form.

18 THE WITNESS: It was the thought
19 process, I would say. I'd say it shows the
20 thought process.

21 BY MR. LEACH:

22 Q. Okay. Can you describe the
23 arrangement -- in the early prototypes, can you
24 describe the arrangement that you used for the
25 floats?

1 A. Sitting here today, I don't recall that
2 I could say it accurately.

3 Q. Well, isn't it true that in the early
4 concepts the floats were arranged such that you
5 could put a tire on the front right, front
6 left, rear left and rear right, and that the
7 floats would be in that space?

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

10 THE WITNESS: The way that you just
11 described, I can't comment on it without being
12 clearly shown.

13 BY MR. LEACH:

14 Q. Okay. So in 2012 and 2013, what
15 competing products did you look at when you
16 were designing what became the '425 patent?

17 A. I was at the North American Manure Expo
18 in, I believe, July 2012, and that is when I
19 first saw Puck's boat.

20 Q. So in your view, was Puck's boat kind of
21 the benchmark you were looking to improve upon?

22 MR. LUCHSINGER: Objection to form.

23 THE WITNESS: In 2012, Puck was the
24 only manufacturer of a boat.

25 BY MR. LEACH:

1 Q. Did you ever buy a Puck boat?

2 A. No.

3 Q. Did you ever have an opportunity to
4 inspect one or disassemble one?

5 A. No.

6 Q. Prior to August of 2013, were you aware
7 of, like, an Argo amphibious vehicle?

8 A. I can't recall what time frame and what
9 time I was aware of Argo.

10 Q. Can you describe what Argo is?

11 A. Argo is a manufacturer of off-road
12 vehicles to my knowledge.

13 Q. And not just off-road vehicles but
14 amphibious off-road vehicles, correct?

15 A. I'm not sure the extent of their product
16 range.

17 Q. Well, what Argo product were you aware
18 of in 2012 or 2013?

19 MR. LUCHSINGER: Objection to form,
20 misstates prior testimony.

21 THE WITNESS: I believe I already
22 answered that.

23 BY MR. LEACH:

24 Q. That you're not sure when you became
25 aware of the Argo vehicle?

1 A. Yeah, I'm not sure what time frame.

2 Q. Okay. Is there anything that you would
3 have that would help you identify or zero in on
4 when you became aware of the Argo product?

5 A. No. I don't have any pictures or
6 anything of an Argo to help identify a time
7 frame.

8 Q. And so prior to launching the Lagoon
9 Crawler in August of 2013, were you aware of
10 Truxor amphibious vehicles?

11 A. No, I was not.

12 Q. Prior to launching the Lagoon Crawler in
13 August of 2013, were you aware of Senwatec's
14 amphibious vehicles?

15 A. I was not aware of Senwatec.

16 Q. And so I assume you weren't aware of
17 Senwatec's Amphi-King product?

18 A. I was not aware.

19 Q. Prior to launching the Lagoon Crawler in
20 August of 2013, were you aware of Conver's
21 amphibious vehicles?

22 A. I was not.

23 Q. Prior to launching the Lagoon Crawler in
24 August of 2013, were you aware of Crossland
25 Tankers' product out of the UK?

1 A. Sorry. Can you repeat the name? I
2 didn't --

3 Q. Crossland Tankers' product.

4 A. No. No.

5 Q. Prior to launching the Lagoon Crawler in
6 August of 2013, were you aware of any dredging
7 vehicles or amphibious dredging vehicles?

8 A. No.

9 MR. LUCHSINGER: I was going to say
10 objection to form, vague.

11 BY MR. LEACH:

12 Q. So would you agree with me that the
13 Lagoon Crawler project started in late
14 August 2012?

15 A. No. I would -- what was started there
16 didn't really resemble what the Lagoon Crawler
17 is today and what was produced. I would say
18 late July 2013 is when the Lagoon Crawler
19 project started.

20 Q. Okay. But you would agree with me that
21 in August, early August -- I'm sorry, in late
22 August of 2012 you began starting to sketch out
23 structures or designs that ultimately led to
24 the product disclosed in the '425 patent,
25 correct?

1 MR. LUCHSINGER: Objection as to
2 form.

3 THE WITNESS: Can you be more
4 specific?

5 BY MR. LEACH:

6 Q. I don't know that I can be.

7 MR. LEACH: Can I have the question
8 read back?

9 THE WITNESS: Yeah. Read the
10 question again, yeah. Thank you.

11 (Whereupon, the court reporter read
12 back the previous question.)

13 THE WITNESS: I would say late
14 August I worked on structures that were a
15 stepping stone to the Lagoon Crawler project.

16 BY MR. LEACH:

17 Q. Okay. Who else worked on the Lagoon
18 Crawler project in -- let me -- strike that.

19 Who else worked on the design of the
20 Lagoon Crawler project with you?

21 A. No one.

22 Q. You didn't work with your dad on the
23 ideas around that design?

24 A. No.

25 Q. In 2012, 2013, aside from Puck, were

1 there any other products that you looked at
2 when you were designing what became the Lagoon
3 Crawler disclosed in the '425 patent?

4 A. No.

5 Q. In 2012 and 2013 -- strike that.

6 In 2012 and until August 2013, did you
7 attend any trade shows?

8 A. Sitting here today, I couldn't
9 specifically say. I know the Manure Expo was
10 in August 2013 where we unveiled the Lagoon
11 Crawler, and I was there. But sitting here
12 today, I can't specifically say.

13 Q. So prior to August 2013, you can't
14 recall any trade shows that you attended?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: Yeah, I can't recall
18 any sitting here today.

19 BY MR. LEACH:

20 Q. Well, wasn't it common for you and your
21 dad to go to trade shows, you know, even in the
22 2009, '10, '11 time frame?

23 A. I was in school.

24 Q. You never went on weekends or on a
25 Friday, when you were working at Nuhn

1 Industries, to trade shows?

2 A. The majority our trade shows are Tuesday
3 to Thursday in the week.

4 Q. And was that true back in 2012, 2013?

5 A. I can't say for certain because it
6 wasn't something that I did. But knowing --
7 sitting here today, the majority of trade shows
8 we attend are usually Tuesday to Thursday in
9 the week.

10 Q. Did you and your dad kick around ideas
11 for the Lagoon Crawler product?

12 A. No.

13 Q. Did you bounce ideas off your dad in
14 the, you know, 2012, 2013 time frame when you
15 were designing the Lagoon Crawler product?

16 A. No.

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

19 THE WITNESS: The answer is no.

20 BY MR. LEACH:

21 Q. Did you get any help from your dad when
22 you were trying to design the Lagoon Crawler
23 product that --

24 A. No.

25 Q. -- led to the '425 patent?

1 MR. LUCHSINGER: Objection to form,
2 vague.

3 THE WITNESS: The answer is no.

4 BY MR. LEACH:

5 Q. Did you get any guidance on the design
6 from anyone else at Nuhn Industries when you
7 were designing the product that is disclosed in
8 the '425 patent?

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

11 THE WITNESS: I'd say no.

12 BY MR. LEACH:

13 Q. For the two prototypes that you worked
14 on in late August 2012 forward, did anyone such
15 as your dad or any other employee at Nuhn help
16 with that design or those early concepts?

17 A. No.

18 Q. And so turning to paragraph 16 of your
19 declaration, which is Exhibit 2083, you state
20 that you started making CAD models on Friday,
21 August 9th, 2013, and by the morning of Monday,
22 August 12th, 2013, you had enough drawings to
23 start building the first Nuhn Lagoon Crawler
24 product, prototype, is that accurate?

25 A. That is accurate.

1 Q. When you started Friday, August 9th
2 designing this Lagoon Crawler product, did you
3 start with the prior CAD drawings that you had
4 developed months earlier, those prototype
5 designs, did you start with those?

6 MR. LUCHSINGER: Objection as to
7 foundation.

8 THE WITNESS: Sitting here today, I
9 honestly can't say for a matter of fact what
10 you're asking.

11 BY MR. LEACH:

12 Q. I'm asking: When you sat down Friday,
13 August 9th, 2013, as stated in paragraph 16 of
14 your declaration, did you start with the two
15 early prototypes or one of those two early
16 prototypes to continue the design?

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

19 THE WITNESS: To the best of my
20 knowledge and recollection sitting here, you
21 know, 11 years later, I believe it was a blank
22 screen.

23 BY MR. LEACH:

24 Q. Do you recall how many hours you worked
25 from Friday, August 9th, 2013, to the morning

1 of August 12th, 2013, on the design?

2 A. As many as possible. I don't have an
3 exact number, but it was -- it was 12 to
4 16-hour days probably from my best
5 recollection. Not on the Friday. The Friday
6 was -- basically near the end of the day is
7 when that one started until about maybe
8 10:00 at night. But the Saturday and the
9 Sunday were 12 to 16-hour days.

10 Q. So maybe five hours on Friday?

11 A. I wouldn't be able to answer accurately
12 to that.

13 Q. Saturday, you think 12 to 16?

14 A. Sitting here today, that's my best
15 guess. It was long days.

16 Q. And Sunday, 12 to 16?

17 A. Sitting here today looking back that
18 far, that's my best guess.

19 Q. Can you describe for me where you were
20 sitting, working and who was around you?

21 A. I had a private office where I could
22 close the door and just work. There was no one
23 there.

24 Q. And what were you working on, a
25 computer?

1 A. A computer, yes.

2 Q. And what program were you working in?

3 A. Autodesk Inventor.

4 Q. And do you know if you still have the
5 files that you generated between Friday,
6 August 9th, 2013, to Monday, August 12th, 2013?

7 A. I believe the oldest version was
8 produced.

9 Q. I guess that doesn't quite answer my
10 question. Do you know if you still have the
11 files that were created Friday, August 9th to
12 Monday, August 12th?

13 A. Not on the original hard drive of that
14 computer, but those files have been copied to
15 new computers as new computers came along. So
16 what has been produced is the earliest version
17 of those files that we have.

18 Q. Okay. And can you open those files up
19 and see the iterations as it was being built,
20 kind of as the features were being added?

21 A. No.

22 Q. Can you see -- as of Monday morning,
23 August 12th, can you see what the design was at
24 that point?

25 A. Not specifically, no.

1 Q. What do you mean "not specifically"?

2 A. The CAD file is an assembly file with
3 individual parts, and there's no time stamp of
4 that certain date and time. But what you can
5 do is you can see when a part was last
6 modified, and a lot of the components in that
7 assembly were last modified on that weekend.

8 Q. So do you have a file, though, that you
9 can see the whole -- the whole design, spin it
10 around, look at it as a complete structure?

11 A. It's not entirely complete, but it's
12 80 percent complete. The rest was made on the
13 fly, yeah.

14 Q. Okay. And when you say, "The rest was
15 made on the fly," give me an example of the
16 types of things that -- the 20 percent that was
17 made on the fly.

18 A. Because of the time constraints and the
19 limitations of the program, you can't draw
20 every single hydraulic hose, so that would be
21 something that was made on the fly.

22 Q. So someone put together the hydraulic
23 hoses on the product. Anything else?

24 A. That would be the main one that comes to
25 mind.

1 Q. Do you know who put together --

2 A. For --

3 Q. Sorry. I don't mean to interrupt. Go
4 ahead.

5 A. Yeah. For the main structure that was
6 welded, painted and assembled, other than
7 really the hydraulic hoses, it's in that model.

8 Q. And so if I wanted drawings of that
9 model as it existed on Friday, August 9th,
10 2013, could you print out different views,
11 front view, back view, side view, top view?

12 A. Not from that specific date, no.

13 Q. What date could you go back to, do you
14 know?

15 A. I'd have to look at the last date
16 modified of the total file to get an idea of
17 that. I don't have that in front of me.

18 Q. Okay. Would it be around that time?

19 A. I think -- I'm just guessing when I say
20 this, but I'm speculating that the date would
21 probably be around August 20th, 2013, 21st. I
22 don't think it was modified after that, but I'd
23 have to actually look at it to give you a
24 certain answer. But the date modified would
25 match up to that date pretty closely.

1 Q. Okay. And so whether it's August 20,
2 2013, you have a file that you can print off
3 versions of what that thing existed or what it
4 looked like, that design as of that date, top
5 view, bottom view, side views, correct?

6 MR. LUCHSINGER: Objection as to
7 form, misstates testimony.

8 THE WITNESS: That's been produced
9 to you already. You have that file already.

10 BY MR. LEACH:

11 Q. Okay. I want to jump to paragraph 10 of
12 your declaration, Exhibit 2083. Did you write
13 paragraph 10?

14 A. My counsel did.

15 Q. Setting paragraph 10 aside, can you
16 describe what your invention was?

17 A. Can you be more specific on the way
18 you're asking that?

19 Q. Why don't you just generally describe
20 what your invention was that's disclosed in the
21 '425 patent.

22 A. That's an amphibious vehicle that's
23 especially adapted for the particular purpose
24 of disrupting the crust and recirculating
25 liquid manure in a manure lagoon, where the

1 vehicle can drive into, out of, and navigate
2 the manure lagoon by wireless remote control.

3 Q. Okay. And you just read what your
4 counsel wrote there in paragraph 10, correct?

5 A. Which was taken down when I originally
6 read it to them for the purpose of making this
7 document.

8 Q. Okay. Let's talk about this
9 specifically, "adapted for." You would agree
10 with me that not all lagoons have crusts,
11 correct?

12 A. No, I don't agree with that.

13 Q. Okay. Do -- are there some manure
14 lagoons that don't have crusts?

15 A. There's many different types of manure
16 lagoons. Every lagoon that I've personally
17 been at has had some sort of crust, whether
18 it's small, large, thick, thin. From my
19 experience on lagoons for my field, my time in
20 the field I've seen crusts.

21 Q. Okay. Have you been at any large hog
22 farms that have a manure lagoon?

23 A. I personally have not.

24 Q. And you grew up in Ontario, right,
25 Canada?

1 A. I grew up in Ontario, Canada, yes.

2 Q. And Nuhn Industries, Inc. or -- is it
3 Ltd.?

4 A. Ltd., yes.

5 Q. Is located in Ontario, Canada, right?

6 A. That is correct.

7 Q. And so when you were designing this
8 amphibious pumping vehicle, were you
9 specifically designing it for manure storage
10 facilities located in Ontario, Canada?

11 A. No.

12 Q. Okay. Was that at least one aspect of
13 where you wanted this thing to be used?

14 A. No.

15 Q. Where were you designing -- or what were
16 you designing it for then?

17 A. The midwestern states. It's illegal to
18 build a lagoon in Ontario, so any of the
19 lagoons that are here are grandfathered, and
20 there's not many of them.

21 Q. Do people in Ontario purchase the
22 commercial embodiment of the '425 patent, your
23 Lagoon Crawler, for agitating their manure
24 storage facilities?

25 A. That is correct. But it's not what you

1 envision as a lagoon.

2 Q. Describe it, please.

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

5 BY MR. LEACH:

6 Q. Well, describe generally one such
7 structure.

8 A. Most commonly in this area is concrete
9 holding tanks. That's the primary manure
10 storage. There's many different construction
11 types of that, though.

12 Q. Okay. And so when you were designing
13 this, did you want to sell to farmers that had
14 those type of structures?

15 A. I never thought I would sell one in
16 Ontario when I was designing this product.

17 Q. Okay. And why is that?

18 A. Mainly because we don't have lagoon
19 storage, and the number of lagoons is very --
20 it's a small market.

21 MR. LEACH: I'm going to mark
22 another exhibit quick. I believe this exhibit
23 is -- oh, I'm sorry, I'm not going to mark an
24 exhibit. I'm going to introduce an exhibit.
25 This is Exhibit 2074.

1 MR. LUCHSINGER: I'm not seeing it.

2 MR. LEACH: It might take a second.

3 MR. LUCHSINGER: Is it going to be
4 in the Marked Exhibits folder? Because if it's
5 somewhere else, I'm not sure we have access to
6 that.

7 MR. LEACH: It's in the Marked
8 Exhibits folder.

9 MR. LUCHSINGER: Okay. We're just
10 not seeing it yet. We'll let you know.

11 MR. LEACH: Yeah, just refresh.

12 MR. LUCHSINGER: We have an exhibit
13 that says Exhibit 1074 - 27 - Exhibit 2074.

14 MR. LEACH: Yeah, it's 2074. So I
15 didn't add a new exhibit sticker to this
16 because it already has an exhibit marked in
17 this IPR.

18 MR. LUCHSINGER: Yeah. Okay.
19 There's a 1074 and a 2074, so it's a bit
20 confusing. But Western Dairy Farmer?

21 MR. LEACH: Yes.

22 MR. LUCHSINGER: Okay.

23 MR. LEACH: If I don't put a number
24 in there, it automatically chooses a number.
25 So it's going to keep counting up --

1 MR. LUCHSINGER: I see. Okay.

2 MR. LEACH: -- on Exhibit Share.

3 But on the document -- so aside from the title
4 of the document, on the document the exhibit is
5 2074, and it has the Bazooka v. Nuhn - IPR.

6 THE WITNESS: On what page?

7 BY MR. LEACH:

8 Q. Mr. Nuhn, if you go to page 26, and
9 you'll see an article about the Lagoon Crawler.
10 And I just want to direct your attention
11 actually to page 27 in the bottom paragraph of
12 the left-hand column. Let me know when you're
13 there.

14 A. Yep.

15 Q. It says, "In Ontario most liquid manure
16 storage facilities are enclosed in above-ground
17 cement structures, which does not allow the
18 Lagoon Crawler direct access. This has been
19 addressed by the bolting of a removable steel
20 frame to the 15,000-pound crawler, which can
21 then be lifted into a cement tank and later
22 removed by a crane."

23 Do you see that?

24 A. (Views document.) I see that.

25 Q. And so is it true that for some of these

1 purchasers that may have an above-ground
2 storage tank or a lagoon that you can't access
3 by driving a vehicle into it, that you've
4 adapted your product to be lifted and set into
5 tanks or such so that it can agitate that
6 volume?

7 A. There's a lift bar that's available.
8 But at the time of designing this we didn't
9 anticipate that people would be doing this.

10 Q. And so you said earlier that you were
11 designing this for the midwestern states. Are
12 there a lot of hog farms in midwestern states
13 to your knowledge?

14 A. No. I believe it's more dairy central.

15 Q. And you testified, I think, that you've
16 never visited a hog farm that has a manure
17 lagoon?

18 A. To the best of my knowledge, that is
19 correct.

20 Q. So back to your declaration. Strike
21 that for a second.

22 Just give me a quick moment here. So
23 in -- prior to August 2013, were you aware of
24 other products that would be lifted by a crane
25 and set into these storage tanks in Ontario to

1 agitate them?

2 A. No, I was not.

3 Q. How did they agitate them?

4 A. The vertical straight wall liquid manure
5 pumps.

6 Q. And were these tractor mounted or...

7 A. Tractor driven.

8 Q. What about a cement structure that has
9 high walls, how do you get a tractor to back up
10 next to it and get a pump in there?

11 A. So the article is a little misleading.
12 Most of the pits in Ontario are not actually
13 above ground, maybe one foot, two foot above
14 ground, so the majority of agitation is done
15 tractor driven. Now, there are some above
16 ground that's very limited. And my competitor,
17 GEA Houle, which we've talked about before,
18 they make an over-the-wall pump to service
19 those.

20 Q. At the time, are you aware of any
21 pontoons that had pumps on them to agitate?

22 A. No, I was not.

23 Q. So as of August 2013 and prior -- or as
24 of August 2013, the only thing you were aware
25 of to agitate a manure lagoon or a liquid

1 manure lagoon was a tractor-mounted,
2 shore-based pump?

3 MR. LUCHSINGER: Objection as to
4 form.

5 THE WITNESS: Yeah. The tractor
6 driven. But also going back to the Puck boat
7 as well, that was another form.

8 BY MR. LEACH:

9 Q. Okay. The Puck boat?

10 A. Yeah.

11 Q. Okay. So in early August 2013 you
12 conceived of the Lagoon Crawler prototype,
13 correct?

14 A. Correct.

15 Q. And that prototype included an
16 amphibious pumping vehicle with four wheels,
17 correct?

18 A. The prototype was an amphibious vehicle
19 especially adapted for the particular purpose
20 of disrupting the crust, recirculating liquid
21 manure in a manure lagoon, where it can drive
22 into, out of, and navigate the manure lagoon by
23 wireless control.

24 Q. I'm not asking about what the intent was
25 of the vehicle. I guess I'm asking kind of

1 what the structure was of the vehicle. And so
2 in August 2013 the Lagoon Crawler prototype
3 that you conceived of was an amphibious pumping
4 vehicle with four wheels, correct?

5 MR. LUCHSINGER: Objection as to
6 form, asked and answered.

7 THE WITNESS: What are you asking
8 specifically? Sorry.

9 BY MR. LEACH:

10 Q. I'm asking: The vehicle that you
11 conceived of in August of 2013, the prototype
12 for the Lagoon Crawler, did -- was that an
13 amphibious pumping vehicle with four wheels?

14 MR. LUCHSINGER: Objection as to
15 form, asked and answered.

16 THE WITNESS: It was an amphibious
17 pumping vehicle with four wheels.

18 BY MR. LEACH:

19 Q. And did it use nozzles or jets to steer,
20 propel and agitate the manure lagoon?

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

23 THE WITNESS: Can you repeat the
24 question?

25 BY MR. LEACH:

1 Q. Did it use nozzles or jets to steer,
2 propel and agitate the manure lagoon?

3 MR. LUCHSINGER: Same objections.

4 THE WITNESS: It had a fluid pump
5 for pumping liquid manure.

6 BY MR. LEACH:

7 Q. Did it use nozzles or jets to steer,
8 propel and agitate the manure lagoon?

9 MR. LUCHSINGER: Same objections.

10 THE WITNESS: Sorry. I missed -- it
11 had fluid nozzles.

12 BY MR. LEACH:

13 Q. And were those fluid nozzles used to
14 steer, propel and agitate the manure lagoon?

15 MR. LUCHSINGER: Same objections.

16 THE WITNESS: The vehicle is an
17 amphibious agitation vehicle that had nozzles.
18 There's multiple ways that it can maneuver in a
19 lagoon, not just from nozzles.

20 BY MR. LEACH:

21 Q. Were the nozzles used to steer, propel
22 and agitate a manure lagoon?

23 MR. LUCHSINGER: Same objections.

24 THE WITNESS: It's one of the means
25 on the vehicle to accomplish that.

1 BY MR. LEACH:

2 Q. Okay. And the other means to, I guess,
3 agitate would be, in your view, the tires?

4 A. The tires are another method for
5 maneuvering in the lagoon and agitation.

6 Q. So looking at paragraph 15 of your
7 declaration, it says, "I conceived of and
8 designed the Lagoon Crawler in an effort to
9 solve the considerable deficiencies mentioned
10 above." And the products you mentioned above
11 were the shore-mounted agitators, the
12 tractor-mounted, shore-based agitators,
13 correct?

14 A. Correct.

15 Q. And the Puck boat, correct?

16 A. Correct.

17 MR. LEACH: I'm going to introduce
18 another exhibit.

19 (Exhibit Number 1075 marked for
20 identification.)

21 BY MR. LEACH:

22 Q. I'm introducing -- or showing you
23 Exhibit 1014, which is United States Patent
24 Application Publication Number US 2014/0112093.

25 Do you see that?

1 A. Exhibit 1075?

2 Q. Actually, go by the exhibit number on
3 the bottom of the page, the bottom right-hand
4 page, that's the IPR exhibit number,
5 Exhibit 1014.

6 Do you see that?

7 A. (Views document.) It's the patent
8 application for a floating manure agitator.

9 Q. Yes. And you see that the inventor is
10 Puck, correct?

11 A. I see that.

12 Q. And it was filed in December 2011.

13 Do you see that?

14 A. Yes.

15 Q. Is this the patent on the Puck boat that
16 you are referencing in, for example,
17 paragraph 13 of your declaration?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I haven't read this
21 patent specifically to know what the
22 similarities are of the commercial embodiment
23 to what's said here in the patent.

24 BY MR. LEACH:

25 Q. Look at the figures of Exhibit 1014.

1 And do those look like the Puck boat that you
2 saw prior to designing your Lagoon Crawler?

3 A. There's -- without looking at this much
4 closer, I can't say if this matches the boat
5 that I saw in 2012 as a matter of fact.

6 Q. Well, is it similar to it?

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

9 THE WITNESS: I can't say as a
10 matter of fact if it is or not to -- without
11 seeing the vehicle that I saw in 2012 beside
12 this.

13 BY MR. LEACH:

14 Q. Okay. Can you describe the vehicle you
15 saw in 2012 -- I'm sorry, the Puck vehicle that
16 you saw in 2012?

17 A. It was a floating manure agitator.

18 Q. Did it have plastic dock, like, sections
19 as its floats?

20 A. I never got close to it to examine what
21 the structure was.

22 Q. Do you recall if it had nozzles for
23 steering and agitating?

24 A. Where I was standing it was impossible
25 to tell without looking at it closer.

1 Q. Have you ever inspected a Puck boat up
2 close?

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

5 THE WITNESS: In what time period?

6 BY MR. LEACH:

7 Q. Prior to August 2013.

8 A. No.

9 Q. What about shortly after -- well, strike
10 that.

11 Tell me what else you -- for the Puck
12 boat that you saw prior to designing the Lagoon
13 Crawler, what other features did it have?

14 A. It had a front horizontal discharge. I
15 know that.

16 Q. What do you mean by "front horizontal
17 discharge"?

18 A. I take that back. I don't know if it
19 was the front or back, but it had a discharge
20 that basically sprayed the crowd at the show.

21 Q. So when you say a front discharge, was
22 that -- when you say "discharge," you mean,
23 like, nozzles?

24 A. I don't know if it was a nozzle or a
25 pump-out discharge. I don't know the specifics

1 of it other than it somehow opened during the
2 demo.

3 Q. Okay. And to your knowledge, did Puck
4 use nozzles to agitate the manure lagoons?

5 MR. LUCHSINGER: Objection as to
6 form.

7 THE WITNESS: Where everything is
8 located on that vehicle it's pretty hidden and
9 concealed, so I can't say as a matter of fact
10 what they do.

11 BY MR. LEACH:

12 Q. I'm asking about when you were viewing
13 the vehicle back -- well, strike that.

14 When did you view the Puck boat?

15 A. At the Manure Expo demo in 2012. It was
16 in a lagoon.

17 Q. And where was that?

18 A. At a farm in Wisconsin.

19 Q. And was someone operating the Puck
20 manure vehicle via remote control?

21 A. Yes. They were remote of the vehicle.

22 Q. And were they able to drive it around
23 the vehicle --

24 A. They --

25 Q. I'm sorry. Were they able to drive it

1 around the lagoon?

2 A. From what I remember, they had issues
3 priming. And once they did get it primed -- I
4 believe they had the controls backwards or
5 something, and they weren't able to operate it.
6 That's the best of my recollection.

7 Q. Okay. And so at least from what you
8 could see, could you tell that it was using
9 fluid to maneuver the vehicle around or trying
10 to use fluid to maneuver the vehicle around?

11 A. From my recollection, I don't think they
12 moved it around. I think it was launched -- it
13 was near the shore, and they shot the crowd
14 twice, and I think they stopped. I don't think
15 they ever -- that's the best of my
16 recollection.

17 Q. Okay. Well, try to -- I want you to
18 describe for me to the best of your
19 recollection what the vehicle looked like.

20 A. It was far away, and it was already in
21 the lagoon by the time I had got to the show.
22 I was demonstrating a PTO-driven pump, and I
23 was on the other side of the lagoon opposite to
24 where this was all happening, so it was -- it
25 was far away from me.

1 Q. Okay. Can you describe what you could
2 see, though? Describe what you saw at this --
3 the Manure Expo in 2012.

4 A. The vehicle was in the lagoon, and they
5 were having technical difficulties and somehow
6 sprayed the crowd and ended their demo.

7 Q. So I want you to describe what the
8 vehicle looked like, what the Puck vehicle
9 looked like in 2012 at the Manure Expo.

10 A. It was at a distance, so it was -- I
11 believe it was painted black. I'm not sure of
12 the specifics of it. It was a -- if I remember
13 correctly, it was a crusted-over lagoon, so
14 even the crust was -- like, where it was, it
15 was kind of hidden.

16 Q. What could you see?

17 A. So a black vehicle floating in the
18 lagoon --

19 Q. Did it have --

20 A. -- [unintelligible] looking --

21 Q. It had a pump on it?

22 MR. LUCHSINGER: Objection as to
23 form, foundation.

24 THE WITNESS: Yeah. Where I was
25 standing it's hard to speculate exactly what

1 they demoed at that show.

2 BY MR. LEACH:

3 Q. Was it a square vehicle?

4 A. I would -- there -- I wouldn't even call
5 it square. They had, you know, tubular pipes
6 on it.

7 Q. Was it rectangularly shaped?

8 A. I wouldn't particularly call it
9 rectangularly shaped.

10 Q. Okay. What shape would you call it?

11 A. I don't know. It was -- it had a
12 tubular frame in the -- like a -- it was kind
13 of two different shapes overlapping is maybe
14 the best way to describe it. Here -- this was
15 12 years ago. I can't describe the exact
16 machine that they demoed at this demo 12 years
17 ago. I was more worried about my demo and
18 focusing on my demonstration rather than what
19 others were doing.

20 Q. Okay.

21 THE VIDEOGRAPHER: Counsel, just a
22 heads-up, I've got five minutes left on media.

23 MR. LEACH: Okay. Perfect.

24 BY MR. LEACH:

25 Q. Did -- after the Manure Expo, did you do

1 any research on Puck's product that they were
2 demoing or patents that they had, anything like
3 that?

4 A. No. I talked with customers at the
5 demo -- or sorry, at the show but the day after
6 the demo about what their thoughts were of the
7 floating agitator.

8 Q. Okay. And so when you began
9 developing -- or when you were sitting down to
10 develop the Lagoon Crawler, you were trying to
11 solve the problems of the shore-based,
12 tractor-mounted pumps, correct?

13 A. Partially. Also the problems of what I
14 was told about the Puck boat the day after the
15 demo.

16 Q. Okay. And so before August of 2013, the
17 customers and dealers that you were talking to,
18 were they mostly using the Puck agitation
19 boats?

20 A. Prior to 2013?

21 Q. Yeah.

22 A. I don't think I actually knew anyone
23 that owned one.

24 Q. Prior to 2013, were customers and
25 dealers telling you about problems with the

1 Puck boat?

2 A. I only heard it at the show the day
3 after the demonstration when I was talking to
4 people about it.

5 Q. I just want to confirm that prior to
6 August 2013 you had never operated a Puck boat?

7 A. That's correct.

8 Q. And you only watched someone else
9 operate it, correct?

10 A. That's correct.

11 Q. And prior to August 2013, you had never
12 launched a Puck boat using a trailer?

13 A. That is correct.

14 Q. Did you watch someone else launch it?

15 A. I've never seen one launched prior to
16 August 2013.

17 Q. Okay. And prior to August 2013, had you
18 ever retrieved a Puck boat using a trailer?

19 A. No.

20 Q. Did you watch anyone retrieve the Puck
21 boat using a trailer?

22 A. No.

23 Q. And so what you know about the Puck boat
24 and its problems were from what dealers and
25 customers told you about Puck's boat, correct?

1 A. Not dealers, not necessarily customers,
2 but people attending the show.

3 Q. Okay. So people attending the show.
4 Okay. Would you say that people attending the
5 show were likely dealers and customers in that
6 industry?

7 A. Potential customers.

8 Q. Okay.

9 A. We were very new at the time. I didn't
10 know anyone at that show.

11 MR. LEACH: Let's take a break and
12 let him change the media. We'll take a
13 ten-minute break.

14 THE VIDEOGRAPHER: We are going off
15 the record.

16 The time now is 10:52 a.m.

17 (Off the record 10:52 to 11:04.)

18 THE VIDEOGRAPHER: We are back on
19 the record. This marks the beginning of Media
20 Number 3 in the deposition of Ian Nuhn.

21 The time now is 11:04 a.m.

22 MR. LEACH: We're back from a break
23 here.

24 BY MR. LEACH:

25 Q. Mr. Nuhn, prior to the break, we were

1 just talking about what people were telling you
2 about the problems with the Puck boat after the
3 2012 Manure Expo. Did you continue to hear or
4 did people continue to tell you about problems
5 with the Puck boat from the Manure Expo in
6 2012, you know, until you started designing the
7 prototype that became the Lagoon Crawler
8 disclosed in the '425 patent?

9 A. No. I didn't know anyone that actually
10 had a Puck boat. It was just what I heard at
11 the -- after the demo at the show, so...

12 Q. Sure. But what I'm saying is: After
13 the demo, you were talking to people that
14 either saw the demo at the show and were
15 talking about the problems with the Puck boat,
16 correct?

17 A. At the show, but not in the time after
18 until August of 2013.

19 Q. Okay. So it was just during the show
20 and maybe just a little bit after you were
21 hearing about problems with the Puck boat, from
22 the Puck boat disclosed at the show?

23 A. It was the last day of the show. The
24 demo was the first day. The -- more of the
25 trade show is the second day. And at that

1 trade show, that's when I heard the people's
2 comments, not so much just from the demo, but
3 people that also owned them or had experience
4 with them.

5 Q. Okay. So you did hear about problems
6 the Puck boat had from people that saw the demo
7 and from other people that owned the Puck boat?

8 A. I think that's fair to say, yes.

9 Q. Okay. Would you hear problems about the
10 Puck boat from dealers of the Puck boat?

11 A. No.

12 Q. So just customers mainly?

13 A. Just -- might not even be the owner of
14 it. It might just be an operator. I don't
15 know the specifics of who I was talking to.

16 Q. Okay. Did these customers or operators
17 tell you that the Puck boat's design made it
18 difficult to enter and exit the lagoon?

19 A. Not in those words.

20 Q. Okay. Well, tell me what they told you.

21 A. I heard complaints that the pump would
22 clog. I heard complaints that the pump could
23 not handle the manure in the lagoons. I also
24 heard that someone -- I believe they lost a few
25 fingers when trying to clean out the pump and

1 it was still in operation. I also heard that
2 there was issues of it getting stuck while
3 trying to pull it out.

4 Q. Okay. Well, let's go to paragraph 17 of
5 your declaration. It says, "The '425 Patent
6 and Lagoon Crawler overcame drawbacks with
7 Puck's boat."

8 Do you see that?

9 A. I see that.

10 Q. "For example, the Lagoon Crawler made it
11 easier for the vehicle to enter and exit the
12 lagoon..."

13 Do you see that?

14 A. I do.

15 Q. Is that accurate?

16 A. I think there's different times that
17 that can be accurate and can't be accurate.

18 Q. What do you mean by that?

19 A. If we ever have a breakdown while in the
20 lagoon, I think it would actually make it
21 harder to exit the lagoon than what the Puck
22 boat design is. So generally speaking, it can
23 and can't be.

24 Q. Okay. As I'm reading paragraph 17,
25 though, it says, "For example, the Lagoon

1 Crawler made it easier for the vehicle to enter
2 and exit the lagoon..." And that's in
3 comparison to the Puck boat, correct?

4 A. That is correct.

5 Q. Okay. And so if you go to paragraph 18
6 of your declaration, it says, "A typical lagoon
7 has a berm that requires navigation both up and
8 then back down, whereas Puck's design required
9 a trailer to launch the boat," is that
10 accurate?

11 A. That is accurate.

12 Q. And is that something you learned prior
13 to designing the Lagoon Crawler from one of
14 these customers or operators of the Puck boat?

15 A. I was told at the show that they were
16 difficult to retrieve.

17 Q. And so in paragraph 18 were you also
18 told that a typical problem with Puck's boat
19 was that it would get stuck on the bank or
20 enter the lagoon too quickly and nosedive under
21 the liquid?

22 A. I'm not sure when I learned that. I
23 can't on the record specifically say if I
24 learned that after we released it or if it was
25 before.

1 Q. Okay. But in designing the Lagoon
2 Crawler in August of 2013 you were trying to
3 address the problems or the shortcomings that
4 the Puck boat had, correct?

5 A. From what I had heard at that Manure
6 Expo from what customer -- potential customers
7 told me.

8 Q. Okay. And did some of the customers or
9 the operators or attendees of the show tell you
10 that Puck's boat was often ineffective in
11 exiting the lagoon, either because they got
12 stuck in the mud at the bottom of the lagoon or
13 got stuck on islands of solid buildup in the
14 lagoon? Reading from paragraph 19.

15 A. Yeah, I can't specifically recall when I
16 learned that information. Because when we did
17 come out with the crawler, that's when we
18 really seemed to get a lot more feedback and
19 people saying their horror stories with the
20 competitor's product. So I can't specifically
21 say at what time period I learned that.

22 Q. Nevertheless, at the 2012 show or the
23 day after you had talked to people that either
24 saw the demonstration or had operated the Puck
25 boat, and they told you about problems entering

1 and exiting the lagoon with the Puck boat,
2 correct?

3 A. I heard basically feedback of the
4 product at that day on that show.

5 Q. I guess, is that a yes to my question?

6 A. Can you rephrase the question?

7 Q. Maybe I'll just have it read back.

8 MR. LEACH: Dana, if you could
9 please do that.

10 (Whereupon, the court reporter read
11 back the previous question.)

12 THE WITNESS: The day after the show
13 or the day -- the last day of the show I had
14 heard complaints basically that the boat -- the
15 pump on the boat would clog, the pump could not
16 handle manure in lagoons, and that someone was
17 seriously injured while attempting to clean the
18 pump. And I also had heard that the Puck boat
19 would get stuck in the manure lagoon when
20 trying to pull it out.

21 BY MR. LEACH:

22 Q. Okay. And then -- so the '425 patent
23 and the Lagoon Crawler that you designed
24 overcame the drawbacks with Puck's boat or
25 attempted to, correct?

1 A. I believe we made entry and exit of the
2 lagoon easy. I don't know about in comparison
3 to Puck, but I do know that we made it easy to
4 do.

5 Q. And I think -- I read an article where
6 you were talking about your multi-outlet pump
7 design, that you got customer feedback and used
8 that in the design of the multi-outlet pump, is
9 that correct?

10 A. Can you rephrase the question? It's a
11 little unclear.

12 Q. Sure. I read an article that said when
13 you set out to redesign Nuhn's pump, that you
14 listened to feedback from customers and tried
15 to address the problems that they talked about,
16 correct?

17 A. Can you pull the article?

18 Q. I don't have it off the top of my head
19 here, but do you recall that?

20 A. I'm not going to comment on that if I
21 don't see the article.

22 Q. Okay. So let me ask you this: Do you
23 get -- do you take feedback from customers and
24 try to address those concerns in the products
25 that you design?

1 A. That's a very broad question. For the
2 most part I do.

3 Q. And so in paragraph 19, going back to
4 this, it says, "Relatedly, Puck's boat was
5 often ineffective in exiting the lagoon, either
6 because they got stuck in the mud at the bottom
7 of the lagoon or got stuck on the 'islands' of
8 solid buildup in the lagoon." Was that one of
9 the problems that you set out to fix when you
10 began designing the Lagoon Crawler?

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

13 THE WITNESS: I can't recall when I
14 learned that information.

15 BY MR. LEACH:

16 Q. Okay.

17 MR. LEACH: Dana, what's the next
18 exhibit?

19 (Off the record.)

20 MR. LEACH: I'm marking
21 Exhibit 1074. And it's Manure Manager from
22 September/October 2014. It's probably going to
23 take a little bit to upload here. Still trying
24 to distribute it on my end.

25 BY MR. LEACH:

1 Q. Let me know when you get that.

2 THE COURT REPORTER: Can we go off
3 the record for a minute, please?

4 MR. LEACH: Sure.

5 THE VIDEOGRAPHER: We are off the
6 record.

7 The time now is 11:20 a.m.

8 (Off the record 11:20 to 11:31.)

9 THE VIDEOGRAPHER: We are back on
10 the record. This marks the beginning of
11 Media Number 4 in the deposition of Ian Nuhn.

12 The time is 11:31 a.m.

13 (Exhibit Number 1074 marked for
14 identification.)

15 BY MR. LEACH:

16 Q. Okay. Ian, before the break, we were
17 talking about some of the problems with the
18 Puck boat that customers and people that saw
19 the Puck boat demoed in 2012 told you about the
20 Puck boat, right?

21 A. Is that a question?

22 Q. Yeah.

23 A. We were talking about customers at the
24 expo in 2012.

25 Q. And what they told you about the

1 problems with the Puck boat, correct?

2 A. From what they saw and from what they
3 had experienced.

4 Q. Okay. Can you go to page 32 of
5 Exhibit 1074 where it says EFFICIENCY on
6 wheels?

7 A. Okay.

8 Q. So page 32 of IPR Exhibit 1074. I'm on
9 page 32 of the actual publication for clarity.
10 So this is an article in which you are quoted a
11 few times, correct?

12 A. (Views document.) It appears I've been
13 quoted in it, yes.

14 Q. Okay. And I would like to draw your
15 attention to the right-hand column. It says,
16 "The brainchild of Ian Nuhn, a prototype of the
17 amphibious lagoon agitator was designed and
18 constructed by Nuhn Industries in 10 days so it
19 could be displayed at the 2013 expo."

20 Do you see that?

21 A. I do.

22 Q. "The company worked from August 2013 to
23 January 2014 perfecting the prototype before
24 shipping the first unit in February of 2014."

25 Do you see that?

1 A. Yep.

2 Q. And then it says in quotes, it's quoting
3 you, "'The idea came from our customers,'
4 explained Nuhn." And that's quoting you,
5 correct?

6 A. I don't know if you've ever been
7 interviewed before, but a lot of times you talk
8 in an interview and it's not captured the way
9 that it was said.

10 Q. Well, it's a quote from you, correct?

11 A. It might not be verbatim, though.

12 Q. Okay. Well, the author thought it was a
13 quote from you, correct?

14 MR. LUCHSINGER: Objection as to
15 form and foundation.

16 THE WITNESS: I'm going to say that
17 it's not verbatim.

18 BY MR. LEACH:

19 Q. Okay. Well --

20 A. I've had many articles where I'm talking
21 on something, and I read the article after, and
22 it's like: Where did the interviewer even get
23 that from?

24 Q. Okay. Nevertheless, the article quoting
25 you says, "'The idea came from our customers,'

1 explained Nuhn. 'We talked to our customers
2 and dealers about what they needed, what they
3 were looking for. They said it needed to have
4 wheels to get in and out of the pit.'"

5 Do you see that?

6 MR. LUCHSINGER: Objection to form.

7 THE WITNESS: I see where it's said
8 in the article.

9 BY MR. LEACH:

10 Q. Okay. And it's saying that in quotes,
11 correct?

12 A. There are quotations around that
13 sentence.

14 Q. Okay. And it's quoting what you
15 explained, right? You're the Nuhn there when
16 it says that, correct?

17 MR. LUCHSINGER: Objection to form.

18 THE WITNESS: I would have to read
19 earlier up in the article to see if it is
20 referring to me.

21 BY MR. LEACH:

22 Q. Well, if you go up a paragraph that I
23 just read, it says, "'We convinced them to rent
24 it to us. We put 77 hours on it.' The
25 brainchild of Ian Nuhn, a prototype..." Sorry.

1 I'm -- "The brainchild of Ian Nuhn, a prototype
2 of the amphibious lagoon agitator was designed
3 and constructed by Nuhn Industries in 10 days
4 so it could be displayed at the 2013 expo,"
5 right?

6 A. It doesn't actually say that I'm saying
7 this, though. It could be Nuhn as a company.

8 Q. If you look at the paragraph where they
9 are quoting, where it said "explained Nuhn," it
10 says, "'We talked to our customers and dealers
11 about what they needed, what they were looking
12 for. They said it needed to have wheels to get
13 in and out of the pit.'" Correct?

14 A. It says that in quotations in the
15 article.

16 Q. Okay. And --

17 A. I'm not sure if it's actually quoting me
18 or the company, Nuhn.

19 Q. They're talking about -- they're talking
20 about -- strike that.

21 When the customers say, "It needed to
22 have wheels to get in and out of the pit," are
23 they talk about the Puck boat? Is that what
24 you were explaining there?

25 MR. LUCHSINGER: Objection as to

1 form and foundation.

2 THE WITNESS: I wasn't explaining
3 anything here.

4 BY MR. LEACH:

5 Q. What is -- when the customers said that
6 it needs to have wheels to get in and out of
7 the pit, were they talking about putting wheels
8 on Puck?

9 MR. LUCHSINGER: Objection as to
10 form, foundation, misstates prior testimony.

11 THE WITNESS: I don't know the
12 context of which this quote was made and what
13 the way that said customers are referring to.

14 BY MR. LEACH:

15 Q. Well, in any event, you admitted that
16 the idea came from customers, right?

17 MR. LUCHSINGER: Objection as to
18 form, foundation, misstates prior testimony.
19 Witness says he doesn't know that this is
20 quoting him.

21 MR. LEACH: And, Brad, you're going
22 to have to keep your objections to proper
23 objections, okay?

24 MR. LUCHSINGER: Well, ask the right
25 questions.

1 MR. LEACH: No speaking objections
2 and no coaching.

3 MR. LUCHSINGER: Ask the right
4 questions. You're being misleading
5 intentionally.

6 MR. LEACH: I disagree with you.

7 THE WITNESS: I'm saying that this
8 quote, there's no -- there's no way here that
9 it says it's actually said from me. They could
10 have talked to a janitor at Nuhn.

11 BY MR. LEACH:

12 Q. Do you think that someone interviewing
13 someone for an article at Nuhn would be
14 interviewing a janitor? Is that credible?

15 A. The Manure Manager is a pretty -- not a
16 credible news source.

17 Q. You advertise a lot in Manure Manager,
18 don't you?

19 A. Not anymore.

20 Q. But you did at one point, correct?

21 A. It appears so. I'm just saying there's
22 nowhere on this article that says Ian Nuhn said
23 that. If you can point it to me, I'll consider
24 that. But it doesn't say anywhere in this
25 article that that's a quote from Ian Nuhn.

1 Q. Well, it says, "'The idea came from our
2 customers,' explained Nuhn. 'We talked to our
3 customers and dealers about what they needed,
4 what they were looking for. They said it
5 needed to have wheels to get in and out of the
6 pit.'" And that's in quotes. And it's saying
7 that was explained to them by Nuhn.

8 A. It does not say Ian Nuhn.

9 Q. You don't remember providing this quote?

10 A. No.

11 Q. What is the "it" that customers said
12 needed to have wheels to get in and out of the
13 pit?

14 MR. LUCHSINGER: Objection as to
15 form and foundation.

16 THE WITNESS: I don't know the
17 context or the content of this quote. It's not
18 my quote.

19 BY MR. LEACH:

20 Q. Who else would have been providing
21 quotes when you were the one involved in the
22 advertising for the Nuhn product and you were
23 the inventor allegedly of this Lagoon Crawler?

24 A. I believe I said earlier I did not do
25 print ads.

1 Q. This is an article, not a print ad.

2 A. I'm not involved in advertising. I'm
3 saying this article just says "explained Nuhn."
4 That's not my quote.

5 Q. How do you know that?

6 A. How do you know it is?

7 Q. Well, it says "explained Nuhn." A
8 company doesn't explain something. A person at
9 a company does.

10 MR. LUCHSINGER: Objection as to
11 form, argumentative.

12 BY MR. LEACH:

13 Q. Well, would this have been your father
14 providing a quote?

15 A. I would be speculating on who would
16 provide the quote. I do not know who said the
17 quote.

18 Q. Wouldn't it make sense that you would
19 provide the quote given that you're inventor of
20 this -- you're the alleged inventor of this
21 product?

22 A. No.

23 MR. LUCHSINGER: Objection as to
24 form, foundation, calls for speculation.

25 THE WITNESS: It says "explained

1 Nuhn." It doesn't say the -- it could be Nuhn
2 Industries. It could be any member of --
3 someone from Nuhn. There's nowhere that says I
4 said that quote.

5 BY MR. LEACH:

6 Q. Well, up there it says, "The brainchild
7 of Ian Nuhn, a prototype of the amphibious
8 lagoon agitator was designed and constructed by
9 Nuhn Industries in 10 days so it could be
10 displayed at the 2013 expo." So they
11 specifically say this is the brainchild of Ian
12 Nuhn. And then they're quoting "explained
13 Nuhn."

14 A. The first comment was common knowledge
15 in the industry by the time this article came
16 out. It had been well documented that the time
17 that it took to design and produce was in that
18 time range. That's not new information.

19 Q. During the September/October time frame
20 2014, who else besides yourself might be quoted
21 in an article related to the Lagoon Crawler
22 product that's named Nuhn?

23 A. I have no idea.

24 Q. You wouldn't agree with me that it's
25 more likely that this was a quote from you

1 versus anyone else in the company?

2 A. I'm not agreeing to that.

3 Q. Do you recall customers telling you:
4 You need to put wheels on Puck's boat so it can
5 drive in and out of a lagoon?

6 A. No, I do not recall that.

7 Q. And this quote doesn't just say a
8 customer. It says customers. "'The idea came
9 from our customers,' explained Nuhn. We talked
10 to our customers and dealers about what they
11 needed, what they were looking for." They,
12 plurality. A number of them said it was --
13 said it needed to have wheels to get in and out
14 of the pit. Did the idea to put wheels on
15 Puck's boat come from your customers and
16 dealers?

17 A. No. I see the article, but that is an
18 article.

19 Q. An article that's presumably quoting
20 you?

21 MR. LUCHSINGER: Objection as to
22 form, foundation, misstates prior testimony,
23 argumentative, go on and on.

24 THE WITNESS: It's an article. It
25 doesn't say my name.

1 BY MR. LEACH:

2 Q. Is your name Nuhn?

3 A. My last name is Nuhn. I know several
4 other people with the last name Nuhn.

5 Q. But when it's talking about this quote,
6 it says "explained Nuhn," right? It's talking
7 about a person named Nuhn that is explaining
8 this, right? And wouldn't it just make --

9 MR. LUCHSINGER: Objection --

10 BY MR. LEACH:

11 Q. -- sense that it was you?

12 A. No.

13 MR. LUCHSINGER: Objection as to
14 form, foundation, argumentative.

15 BY MR. LEACH:

16 Q. Why do you think it's not you?

17 A. I did not say that.

18 Q. And so you can specifically remember
19 that a decade later?

20 A. I can say that because I know it's not
21 true, the content of the quote.

22 Q. Let's go to page -- or exhibit -- your
23 declaration, Exhibit 2083, at paragraph 11,
24 please.

25 MR. LEACH: Real quick. What time

1 is it there and what time do people want to
2 take lunch?

3 THE COURT REPORTER: Should we go
4 off the record for talks about breaks?

5 MR. LEACH: Sure.

6 MR. LUCHSINGER: No. I mean, I
7 don't think we need to.

8 THE WITNESS: I want to keep going.

9 MR. LUCHSINGER: It's 11:48 here.

10 MR. LEACH: Okay.

11 MR. LUCHSINGER: If we break, you
12 know, in maybe, like, 20 minutes or something,
13 that's fine.

14 MR. LEACH: Oh, okay. That's kind
15 of what I was wondering. All right. Let's go
16 back on the record.

17 THE VIDEOGRAPHER: We're still on.

18 MR. LEACH: Okay.

19 BY MR. LEACH:

20 Q. Mr. Nuhn, I want to direct your
21 attention to your declaration at paragraph 11.
22 It says, "In 2009-2010, prior to my Lagoon
23 Crawler Invention, the best solution for
24 pumping out a manure lagoon was an agitator
25 that required a long pump driven by a tractor

1 along the bank of a lagoon."

2 Do you see that?

3 A. I do.

4 Q. Says, "Depending on the size of the
5 lagoon, as many as four pump/tractor
6 combinations were required to adequately mix
7 the lagoon, and not leave any solids behind.
8 To the extent this pump/tractor method was not
9 sufficiently effective, lagoon operators would
10 be required to scoop out residual solids from
11 the pit."

12 Do you see that?

13 A. I do.

14 Q. And so prior to developing the Lagoon
15 Crawler, it's your testimony that the best
16 solution for pumping out a manure lagoon was an
17 agitator that required a long pump driven by a
18 tractor along the bank of a lagoon?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: Are you asking a
22 question? Sorry.

23 BY MR. LEACH:

24 Q. Yes.

25 A. Can you rephrase it?

1 Q. Sure.

2 MR. LEACH: Dana, can you read it
3 back, please?

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

6 THE WITNESS: Yes.

7 MR. LEACH: I'm going to introduce
8 an exhibit that was previously marked in the
9 IPR as Exhibit 1061. And UK Patent Application
10 GB 2 366 218 to Bradley.

11 MR. LUCHSINGER: It's going to be at
12 the top of the list, second down.

13 THE WITNESS: Okay. Yeah. Thanks.

14 BY MR. LEACH:

15 Q. Do you see this document?

16 A. (Views document.) Yes.

17 Q. Were you aware of Bradley's manure
18 lagoon agitator before August 2013?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: No, I was not aware.

22 BY MR. LEACH:

23 Q. Were you aware of the patent application
24 that Bradley -- or the patent that Bradley had
25 obtained prior to August 2013 shown in

1 Exhibit 1061?

2 A. No.

3 Q. Have you seen this document before?

4 A. I vaguely remember it coming up in an
5 IPR filing from you.

6 Q. So if you look at the abstract, it's a
7 floating mixer for sewage treatment.

8 Do you see that?

9 A. I see Abstract Title.

10 Q. Or Abstract Title. Okay.

11 Do you see that?

12 A. I see that.

13 Q. And then if you go below that, it says,
14 "A mixing device 10 has a buoyant body 12
15 adapted to support the device on a liquid such
16 as a large-scale lagoon or sewage treatment
17 plant."

18 Do you see that?

19 A. I do.

20 Q. Would you agree with me that Bradley
21 discloses an apparatus for mixing a large-scale
22 lagoon?

23 A. No. I would need to read this document
24 further.

25 Q. Take your time to look at it to get

1 comfortable with it, please.

2 A. (Views document.)

3 Q. Have you had a chance to review it?

4 A. I'm on page 17. What was the question
5 again, Tom?

6 Q. I don't think I've asked a question yet.
7 So I just want to direct your attention -- if
8 you go to page 1 of Exhibit 1061. And that's
9 page 1 of the document that's at the top. It
10 says, "The present invention concerns a mixing
11 device and in particular a mixing device for
12 use with large-scale lagoons or sewage
13 treatment plants."

14 Do you see that?

15 A. I'm not seeing that.

16 MR. LUCHSINGER: If we can refer to
17 the page number maybe in the bottom right, it
18 looks like -- are you on page 5 of 24?

19 MR. LEACH: Okay. Five of 24 then.
20 The -- Exhibit 1061 underneath that it says
21 page 5 of 24. And it's Bates numbered
22 BAZ15_0002717.

23 BY MR. LEACH:

24 Q. So at the top it says Mixing Device. Do
25 you see that, Mr. Nuhn?

1 A. Yep.

2 Q. It says, "The present invention concerns
3 a mixing device, and in particular, a mixing
4 device for use with large-scale lagoons or
5 sewage treatment plants."

6 Do you see that?

7 A. I do.

8 Q. Then it goes on to talk about a problem
9 with large-scale sewage treatment works or
10 lagoons into which is pumped any solution such
11 as sewage or the like, which includes a
12 component of solid matter.

13 Do you see that?

14 A. I do.

15 Q. Then if you go down a little further to
16 the next paragraph, it says, "The only known
17 means to alleviate the above-mentioned problem
18 is to carry out mixing of the contents of the
19 lagoon or sewage treatment plant by using a
20 tractor-mounted mixer." Mr. Nuhn, is that
21 identifying the same problem that you
22 identified -- I'm sorry. Is that identifying
23 the same solution that existed to agitate large
24 manure lagoons?

25 MR. LUCHSINGER: Objection as to

1 form and foundation.

2 THE WITNESS: I didn't write this
3 document, so I don't know what they're
4 referring to.

5 BY MR. LEACH:

6 Q. Well, do you understand the document to
7 be describing the tractor-mounted mixers that
8 you identified as being the best solution for
9 pumping out manure lagoons in the 2009-2010
10 time frame, which was prior to the Lagoon
11 Crawler invention?

12 MR. LUCHSINGER: Objection as to
13 form.

14 THE WITNESS: This is from a
15 different market. I'm not sure what their
16 tractor-mounted mixers are like versus the ones
17 I'm referring to.

18 BY MR. LEACH:

19 Q. Why do you say it's from a different
20 market?

21 A. On the first page didn't it say -- isn't
22 this a UK patent?

23 Q. Sure. But why does that have anything
24 to do with it?

25 A. I'm not familiar with I'm not familiar

1 with the tractor-mounted mixers that they are
2 talking about.

3 Q. Okay. Well, if you go on it says,
4 "However such tractor-mounted mixers suffer
5 from a number of drawbacks. The main
6 shortcoming of such mixers is their limited
7 reach governed as it is by the length of an
8 articulated arm extending from the tractor, the
9 tractor itself being confined to the bank of
10 the lagoon."

11 Do you see that?

12 A. I see where it says that.

13 Q. Isn't that the same problem that the
14 tractor-mounted pump tractor combination
15 agitators had that you describe in paragraph 11
16 of your declaration?

17 MR. LUCHSINGER: Objection as to
18 form.

19 THE WITNESS: I don't know the
20 specific context of what's being said here.

21 BY MR. LEACH:

22 Q. Well, is one of the shortcomings of the
23 tractor-mounted mixers that they had a limited
24 reach?

25 MR. LUCHSINGER: Objection as to

1 form.

2 THE WITNESS: I don't believe the --
3 I don't know the context in which the -- this
4 patent is describing for its mixer.

5 BY MR. LEACH:

6 Q. Well, will you agree with me that it's
7 describing a tractor-mounted mixer?

8 A. No. I don't know what their definition
9 of a mixer is versus what I think of a mixer.

10 Q. Well, if you assume that the
11 tractor-mounted mixer that's being described in
12 Exhibit 1061, the Bradley patent, is a mixer or
13 agitator mounted to a tractor on the bank of a
14 lagoon, would that be the same type of mixer
15 that you're describing in paragraph 11 of your
16 declaration?

17 MR. LUCHSINGER: Objection as to
18 form.

19 THE WITNESS: I don't want to assume
20 anything.

21 BY MR. LEACH:

22 Q. And so when you read Bradley, you just
23 don't have idea what they're talking about?

24 A. I don't know what they are talking
25 about, and I don't want to assume.

1 Q. When you say "they," you mean what's
2 being described in the Bradley patent?

3 A. Correct.

4 Q. Isn't it true that the dual-outlet pump
5 that you allegedly invented is a
6 tractor-mounted agitator or mixer?

7 A. Not necessarily.

8 Q. What do you mean by that?

9 A. Tractor-mounted is very specific
10 construction.

11 Q. Explain.

12 A. When I hear "tractor-mounted," I
13 envision something mounted to a three-point.
14 There's many different versions of products we
15 make with that pump.

16 Q. Okay. Well, in any event, would you
17 agree with me that Bradley is disclosing some
18 problems with tractor or shore-mounted mixers
19 as it pertains to large manure lagoons?

20 MR. LUCHSINGER: Objection as to
21 form.

22 THE WITNESS: I can't comment on
23 that, because I don't know what they're
24 referring to by "mixer."

25 BY MR. LEACH:

1 Q. Okay. Would you agree with me that
2 whatever they're describing as a
3 tractor-mounted mixer on page 5 of 24 in
4 Exhibit 1061 --

5 A. I don't want to speculate anything
6 that --

7 Q. Just wait. That, "The main shortcoming
8 of such mixers is their limited reach governed
9 as it is by length of the articulated arm
10 extending from the tractor, the tractor itself
11 being confined to the bank of the lagoon." Do
12 you understand what that means and would you
13 agree with that?

14 A. I don't agree with it. I don't
15 understand some of the definitions and terms
16 that they would be implying and using.

17 Q. And so your testimony is that after
18 reading Bradley and reading the language where
19 it says, "The main shortcomings of such mixers
20 is their limited reach governed as it is by the
21 length of an articulated arm extending from the
22 tractor, the tractor itself being confined to
23 the bank of the lagoon"?

24 A. I'm not going to comment on what Bradley
25 means or what I think Bradley means.

1 Q. So you just refuse to tell me what you
2 think Bradley means?

3 A. I don't want to speculate what Bradley
4 means. I would be speculating. It's a
5 different target market. Their idea of a mixer
6 when they were writing that could be different
7 than my idea of what a mixer is.

8 Q. Well, setting aside what a mixer is,
9 it's saying one of the limitations -- sorry,
10 one of the main shortcomings of a mixer,
11 whatever it may be, is its limited reach and
12 that the tractor is confined to the bank of a
13 lagoon?

14 A. I don't know the context in which it was
15 written.

16 Q. Okay. Well, let's go back to your
17 declaration on -- which is Exhibit 2083. In
18 paragraph 11 it says, "In 2009-2010, prior to
19 my Lagoon Crawler invention, the best solution
20 for pumping out a manure lagoon was an agitator
21 that required a long pump driven by a tractor
22 along the bank of a lagoon."

23 Do you see that?

24 A. I do.

25 Q. And you don't think what Bradley is

1 talking about is similar to what you're talking
2 about in paragraph 11 of your declaration?

3 MR. LUCHSINGER: Objection as to
4 form, argumentative.

5 THE WITNESS: No. I don't know the
6 context in which Bradley was written.

7 BY MR. LEACH:

8 Q. Bradley goes on to say that, "The
9 maximum reach generally obtainable with such
10 tractor-mounted mixers is approximately five
11 meters from the bank of a lagoon. It will
12 therefore be appreciated that for large
13 lagoons, such limited reach will render the
14 mixer all but ineffective."

15 Do you see that?

16 A. I do.

17 Q. Do you agree that that's one of the
18 shortcomings of the pump driven by a tractor
19 along the bank of a lagoon described in
20 paragraph 11 of your declaration?

21 MR. LUCHSINGER: Objection as to
22 form.

23 THE WITNESS: I think the context in
24 which Bradley is written is different than my
25 declaration.

1 BY MR. LEACH:

2 Q. Tell me what was one of the shortcomings
3 of the tractor-mounted agitators that were run
4 from the banks of a lagoon as you describe in
5 paragraph 11 of your declaration?

6 A. Can you rephrase the question?

7 Q. What were some of the drawbacks --
8 strike that.

9 In paragraph 11 you're basically
10 testifying as to what you believe the best
11 solution was for pumping out a manure lagoon,
12 that being an agitator that required a long
13 pump driven by a tractor along the bank of a
14 lagoon, correct?

15 A. That's what it says.

16 Q. Okay. What were some of the drawbacks
17 of that solution?

18 A. You would have to move it around the
19 lagoon. When you are doing that, you're not
20 actually pumping because you're setting up and
21 tearing down.

22 Q. Did it have a limited reach?

23 A. Depending on the lagoon, a lot of
24 lagoons we sold to it was actually able to
25 cover the whole lagoon.

1 Q. Well, what about for large lagoons?

2 A. Depending on the size of the lagoon, you
3 would have to move it around is what I would
4 say.

5 Q. And one of the other drawbacks of what
6 you call the best solution prior to your Lagoon
7 Crawler invention, the tractor-mounted agitator
8 driven from the bank of a lagoon, was that
9 lagoon operators would be required to scoop out
10 residual solids from the pit, correct?

11 A. I say, "To the extent that this pump
12 tractor method was not sufficiently effective,
13 lagoon operators would be required to scoop out
14 residual solids from the pit."

15 Q. So if you go back to Bradley on page 5
16 of 24 still, which is Exhibit 1061, in the
17 middle paragraph around the reference
18 number 15, it says, "As a result of said
19 settlement, only the liquid component may be
20 drawn from the lagoon for processing leaving
21 the solid matter deposited on the base, which
22 solid matter over time builds up, thereby
23 reducing the effective volume of the lagoon.
24 Furthermore, the buildup of solid matter will
25 eventually require extensive and time-consuming

1 excavation resulting in significant downtime,
2 which may be unacceptable for certain
3 applications."

4 Do you see that?

5 A. I see that.

6 Q. Do you know what that's talking about in
7 Bradley?

8 A. I'm not sure I understand the method of
9 agitation that they were discussing.

10 Q. I wasn't asking about the method of
11 agitation. I was asking about the problem it's
12 identifying there when a lagoon isn't
13 sufficiently agitated.

14 A. It seems to focus on sewage lagoons,
15 which I don't have experience with.

16 Q. Isn't Bradley directed to lagoons and
17 sewage treatment plants?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I can't comment on
21 what it's talking about other than I see
22 "particularly in sewage treatment plants,"
23 which I have no experience with.

24 BY MR. LEACH:

25 Q. And if you go up to -- let's move on.

1 If you go to Exhibit 1061, would you agree with
2 me at least that Bradley discloses that,
3 "Preferably, the device may be remotely
4 controlled"?

5 Do you see that?

6 A. What page?

7 Q. I'm on page 7 of 24 on Exhibit 1061.

8 A. Which paragraph?

9 Q. It's right by the reference number 20
10 where it has the reference numbers. It says,
11 "Preferably, the device may be remotely
12 controlled."

13 Do you see that?

14 A. I do.

15 Q. Would you agree with me then that
16 Bradley discloses that preferably the mixing
17 device would be remotely controlled?

18 A. It's a very vague statement. I don't
19 know what they're describing in particular.

20 Q. Going back to our conversation about
21 your development in early August of 2013, you
22 said that you had -- over the weekend,
23 basically Friday to Monday morning, you
24 designed 80 percent of the Lagoon Crawler or
25 conceived of and designed 80 percent of the

1 Lagoon Crawler, is that correct?

2 A. I wouldn't say that that's correct on
3 that specific time of 80 percent, but there was
4 enough drawn up that the guys could start
5 making the frame. It wasn't fully complete. I
6 was drawing kind of as they were building it,
7 but I had enough of a head start that we could
8 work together.

9 Q. Did you buy off-the-shelf remote control
10 components to drive the Lagoon Crawler
11 prototype remotely?

12 A. No. No.

13 Q. How did you get to the point where it
14 was operable by a remote control?

15 A. We had remote control systems for our
16 liquid manure tankers, and I worked to program
17 it to work for the Lagoon Crawler.

18 Q. And that was part of your weekend
19 project?

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

22 THE WITNESS: That was not on the
23 weekend.

24 BY MR. LEACH:

25 Q. When did you do that?

1 A. I'd be speculating, but it was after the
2 weekend.

3 Q. For the prototype that you showed at the
4 first trade show that it went to, could you
5 start the engine and drive that?

6 A. The engine ran and it was drivable.

7 Q. By remote control?

8 A. The engine --

9 MR. LUCHSINGER: Objection as to
10 form.

11 THE WITNESS: The engine did not
12 start from the remote at that time.

13 BY MR. LEACH:

14 Q. But once the engine was started, you
15 could drive it around?

16 A. Correct.

17 Q. Kind of like a remote control car?

18 A. That's very vague, but you could operate
19 the machine by the remote.

20 Q. Okay. Go back to Exhibit 1061 and take
21 a look at Figure 2, please?

22 A. What page?

23 Q. Figure 2 is on page 3 of 24. Will you
24 agree with me that Bradley discloses four
25 wheels?

1 A. I can't as a matter of fact confirm
2 that.

3 Q. Okay. Let's go to -- well, first off,
4 looking at Figure 2, what is the reference
5 number 26?

6 A. With what's in front of me here I can't
7 comment as a matter of fact of what it is.

8 Q. What is reference number 26 pointing to?

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

11 THE WITNESS: A white void space.

12 BY MR. LEACH:

13 Q. Do you think reference number 26 is
14 pointing to a wheel?

15 A. I'm not in a position to speculate.

16 Q. Okay. Let's go down to -- go to page 16
17 of 24 of Exhibit 1061, the Bradley patent. Can
18 you just confirm for me that it says, "The
19 buffer wheels 26..."?

20 A. I don't know what a buffer wheel is.

21 Q. Well, will you agree with me that
22 reference number 26 is referring to wheels?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: I'm not going to

1 speculate what a buffer wheel is.

2 BY MR. LEACH:

3 Q. Okay. Let's go to page 6 of 24. Would
4 you agree with me that it says, around
5 reference number 15 there on the left-hand
6 side, "It is therefore an object of the present
7 invention to provide a mixing device which is
8 capable of effecting mixing across the entire
9 surface area of any given volume of liquid"?

10 A. Can you rephrase what you're saying?

11 Q. I'm just asking if you agree that that's
12 what Bradley discloses?

13 A. Can you say it again? I didn't hear the
14 way that you said the question.

15 Q. "It is therefore an object of the
16 present invention to provide a mixing device
17 which is capable of effecting mixing across the
18 entire surface area of any given volume of
19 liquid."

20 A. That's what it says.

21 Q. Okay. Would you agree with me that what
22 Bradley is disclosing is a floating agitation
23 device that can mix the entire lagoon?

24 MR. LUCHSINGER: Objection as to
25 form.

1 THE WITNESS: That's quite a stretch
2 going there from reading that line.

3 BY MR. LEACH:

4 Q. Okay. If you go to page 8 of 24 of
5 Exhibit 1061, it says, "Preferably, the second
6 drive source is powered by an internal
7 combustion engine..."

8 Do you see that?

9 A. I see where it says that.

10 Q. So would you agree with me that Bradley
11 discloses powering the vehicle with an internal
12 combustion engine?

13 A. I don't know what it's referring to by
14 "second drive source." That's unclear.

15 Q. If you go to page 10 of 24 at the
16 bottom, Bradley discloses, "It will of course
17 be appreciated that, in place of the first and
18 second tanks 14, 16, any suitable alternative
19 may be used which provides sufficient buoyancy
20 in order to support the device 10 on or in any
21 given liquid." And it goes on to the next
22 page, 11, "Examples of suitable equivalents
23 would be a solid or hollow base (not shown),
24 formed from plastics, wood or the like, whose
25 density is sufficiently low as to render the

1 base (not shown) buoyant." Says, "The device
2 10 could also be supplied with a suitably
3 shaped and dimensioned hull (not shown) of
4 conventional form, in order to support the
5 device 10 on the surface of a liquid."

6 Do you see that?

7 A. I see the lines.

8 Q. Would you agree with me that Bradley
9 discloses buoyant elements to support the
10 mixing device in a --

11 MR. LUCHSINGER: Objection as to
12 form.

13 BY MR. LEACH:

14 Q. -- manure lagoon?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: No. I would be
18 speculating what they are talking about with
19 the way they are describing it in these
20 paragraphs.

21 MR. LUCHSINGER: Tom, I don't know
22 if now would be a good time for a lunch break.
23 If you've got more questions on this particular
24 exhibit, you know, I think we're happy to, you
25 know, field those.

1 MR. LEACH: Let's just go for a few
2 more minutes.

3 MR. LUCHSINGER: Yeah, that's fine.

4 MR. LEACH: And then we can break
5 for lunch.

6 MR. LUCHSINGER: Yep.

7 BY MR. LEACH:

8 Q. Mr. Nuhn, are you familiar with a
9 hovercraft?

10 A. What's your definition of a hovercraft?

11 Q. I'm asking you if you're familiar with a
12 hovercraft?

13 A. I'm familiar with the term.

14 Q. What does it mean to you? What is a
15 hovercraft?

16 A. I envision something that's off the
17 ground.

18 Q. When you say "off the ground," is it a
19 vehicle that can go on land and water using
20 air?

21 A. I almost envision something that's more
22 flying when I hear "hover."

23 Q. Flying just off the ground, is that
24 fair?

25 A. I'd say it's flying, able to hover.

1 Q. If you look at page 7 at 10 -- I'm
2 sorry, page 11 of 24 of Exhibit 1061 around
3 reference number 10, it says, "As a further
4 alternative, the device 10 could be provided
5 with a 'hovercraft' type base (not shown)
6 which, due to the expulsion of air therefrom,
7 would aid in the process of mixing the liquid."

8 Do you see that?

9 A. I see where it says that.

10 Q. Do you agree that Bradley is disclosing
11 a vehicle for agitating a lagoon that could
12 have a hovercraft base?

13 A. I don't want to speculate on what they
14 are saying there.

15 Q. So is that a -- you don't agree that
16 it's saying that?

17 A. I don't agree. I don't want to
18 speculate on what it's -- what's there.

19 Q. Okay. If you go to page 13 of 24 of
20 Exhibit 1061, it says, "A person skilled in the
21 art will readily appreciate that the impeller
22 36 may be replaced with any other suitable
23 equivalent. For example, an alternative mixer
24 could be some sort of pneumatic or hydraulic
25 jet (not shown) to be directed into the liquid

1 in order to agitate the liquid. In the case of
2 the hydraulic jet (not shown), liquid could be
3 drawn from the lagoon and forced from the jet
4 (not shown). With the pneumatic jet (not
5 shown), a supply of air could be drawn, in use,
6 from the surrounding air. Both forms of jets
7 would of course require some form of pump, as a
8 first drive source, in order to draw in a
9 supply of liquid/air, and subsequently to expel
10 the liquid/air from the jet (not shown)."

11 Do you see that?

12 A. I see the paragraph.

13 Q. Would you agree with me that Bradley,
14 Exhibit 1061, discloses using a pump and jets
15 to draw in liquid from the lagoon and expel it
16 to agitate the lagoon?

17 A. I don't agree with that. That's not
18 what I see when I read this.

19 Q. What does that mean to you?

20 A. What do you mean?

21 Q. You said that's not what you see when
22 you read it. What does it mean to you?

23 A. I think you're oversimplifying what's
24 being shown there. There's quite a bit of talk
25 about air. There's a lot of terms here that I

1 would be speculating on what their meaning is.

2 Q. Well, it says air, liquid, so let's
3 focus on the liquid. Would you agree with me
4 that it --

5 A. [Unintelligible].

6 Q. Sorry. Would you agree with me that it
7 discloses a pump that can pump liquid from the
8 lagoon and expel it back into the lagoon to
9 agitate it?

10 A. I don't --

11 MR. LUCHSINGER: Objection as to
12 form.

13 THE WITNESS: I don't agree with
14 that. That's not the way that I'm reading
15 this. I don't want to speculate on what their
16 meaning was. There's no figures.

17 BY MR. LEACH:

18 Q. Would you agree with me that what's
19 disclosed in Bradley solved the problems of the
20 shore-mounted agitators that you identified in
21 paragraph 11 of your declaration?

22 A. No, I --

23 MR. LUCHSINGER: Objection as to
24 form and foundation.

25 THE WITNESS: I do not agree.

1 BY MR. LEACH:

2 Q. Would you agree with me that Bradley is
3 a better solution than the shore-mounted
4 pump/tractor combination you disclose in
5 paragraph 11 of your declaration?

6 MR. LUCHSINGER: Objection as to
7 form and foundation.

8 THE WITNESS: I don't agree.

9 BY MR. LEACH:

10 Q. You would agree with me, though, that
11 the Bradley patent was filed on -- in 2001,
12 though, correct? If you go to the very first
13 page of Exhibit 1061, which is page 1 of 24,
14 says Date of Filing.

15 A. Yeah, I agree. 2001.

16 Q. So at least as of 2001, Bradley
17 recognized the problems you're identifying in
18 paragraph 11 -- I'm sorry, Bradley recognized
19 the best solution that you identified in
20 paragraph 11 of your declaration and provided a
21 solution to their drawbacks, correct?

22 MR. LUCHSINGER: Objection as to
23 form, foundation.

24 THE WITNESS: No, I don't agree.

25 BY MR. LEACH:

1 Q. And why not?

2 A. If it was so successful, it had been out
3 12 years prior to our product, I would have --
4 you would have thought that people would have
5 bought this and it would have been a commercial
6 success. I've never heard of it. I've never
7 seen it.

8 Q. I'm going to just introduce another
9 exhibit.

10 MR. LUCHSINGER: Do you want to go
11 to lunch?

12 MR. LEACH: Let's go off the record.

13 MR. LUCHSINGER: It's 12:45.

14 THE VIDEOGRAPHER: We are going off
15 the record.

16 The time now is 12:42 p.m.

17 (Off the record 12:42 to 1:21.)

18 THE VIDEOGRAPHER: We are back on
19 the record. This marks the beginning of Media
20 Number 5 in the deposition of Ian Nuhn.

21 The time now is 1:21 p.m.

22 BY MR. LEACH:

23 Q. Good afternoon, Ian, or Mr. Nuhn.

24 A. Ian is fine.

25 Q. We just took a lunch break. And prior

1 to our break we were talking about this Bradley
2 patent. And we went through some of what the
3 Bradley patent discloses. I'm going to bring
4 up a few exhibits. I'd ask you to look at
5 Exhibit 1075, 76, 77 and 78, please.

6 (Exhibit Numbers 1076, 1077 and 1078
7 marked for identification.)

8 BY MR. LEACH:

9 Q. They've already been marked, and they
10 should be in your folder. Let's start with
11 Exhibit 1075. Have you ever seen the mixing
12 device disclosed in Exhibit 1075?

13 A. Sorry. There's two 1075s here.

14 Q. Did I mark two of them?

15 A. I see the one you're referring to. I'm
16 assuming it's CROSS00000005?

17 Q. Yes.

18 A. What was the question?

19 Q. Have you ever seen the lagoon agitator
20 shown in Exhibit 1075?

21 A. No, I have not.

22 Q. One quick question on Exhibit 1075, the
23 one we were just looking at. Can you look at
24 this and look at the Bradley patent, which I
25 believe was 1061, and just tell me if it looks

1 like the commercial embodiment of what's
2 disclosed in the Bradley patent, Great Britain
3 Patent Number 2,336,218, which is Exhibit 1061?

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

6 THE WITNESS: I'm not going to
7 speculate on that.

8 BY MR. LEACH:

9 Q. Can you tell me whether they appear to
10 be similar, the two structures?

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

13 THE WITNESS: Just going by these
14 pictures and what's on the patent, I can't
15 confidently say that.

16 BY MR. LEACH:

17 Q. Let's go to Exhibit 1076. In
18 Exhibit 1076 -- have you ever seen a lagoon
19 agitator as shown in Exhibit 1076?

20 A. No, I have not.

21 Q. Would you agree with me that this is a
22 better solution than a shore-based,
23 tractor-mounted pump agitator?

24 MR. LUCHSINGER: Objection as to
25 form and foundation.

1 THE WITNESS: No.

2 BY MR. LEACH:

3 Q. Why not?

4 A. From this picture I can't tell what's
5 going on here.

6 Q. Let's look at Exhibit 1077. Have you
7 ever seen the lagoon agitator shown in
8 Exhibit 1077?

9 A. No, I have not.

10 Q. Would you agree with me that this would
11 be a better solution -- strike that.

12 Would you agree with me that what is
13 shown in Exhibit 1077 would be a better
14 solution than a shore-based, tractor-mounted
15 lagoon agitator for a large lagoon such as the
16 one shown here in Exhibit 1077?

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

19 THE WITNESS: No, I do not.

20 BY MR. LEACH:

21 Q. Why not?

22 A. I don't see anything going on here, and
23 I see it on the bank.

24 Q. With your background and years of
25 experience working at Nuhn Industries, are you

1 telling me you're unable to look at this
2 picture and understand what this machine would
3 do as it sits there in what appears to be a
4 large manure lagoon?

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

7 THE WITNESS: I'm not going to
8 speculate what is in the picture and what is
9 going to happen in the picture.

10 BY MR. LEACH:

11 Q. So are you telling me with the
12 experience that you have working at Nuhn
13 Industries you're just unable to look at this
14 picture and tell me what you see in terms of a
15 manure agitator?

16 MR. LUCHSINGER: Objection as to
17 form and foundation.

18 THE WITNESS: I'm telling you I'm
19 not going to speculate on what is going to
20 happen in this photo.

21 BY MR. LEACH:

22 Q. Well, does this photo look like a
23 floating manure agitator?

24 MR. LUCHSINGER: Objection as to
25 form and foundation.

1 THE WITNESS: It does not.

2 BY MR. LEACH:

3 Q. What does it look like to you?

4 A. How do you know that's manure?

5 Q. Well, does it look like a device to
6 agitate a lagoon?

7 A. The picture I'm looking at has a ramp on
8 a bank, and there's a control on the bank that
9 looks like it's potentially wired to the
10 device.

11 Q. Could it be remote control?

12 A. I'm sorry.

13 MR. LUCHSINGER: Objection as to
14 form, foundation.

15 THE WITNESS: I'm not going to
16 speculate on what I think it is.

17 BY MR. LEACH:

18 Q. Well, what do you think it is?

19 MR. LUCHSINGER: Objection as to
20 form, foundation, asked and answered.

21 THE WITNESS: I'm not going to
22 speculate what I think it is.

23 BY MR. LEACH:

24 Q. Well, I'm asking you to tell me what you
25 think it is based on your experience and

1 looking at Exhibit 1077. What is the device
2 shown in there?

3 MR. LUCHSINGER: Objection as to
4 form, foundation, asked and answered.

5 THE WITNESS: Sitting here today,
6 I'm not going to speculate that.

7 BY MR. LEACH:

8 Q. Do you know why there would be a crane
9 with a hook on it next to a device like this in
10 a big lagoon?

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

13 THE WITNESS: I'm not going to
14 speculate why there's a crane hook hovering in
15 the picture.

16 BY MR. LEACH:

17 Q. What would be your best guess as to what
18 is shown in Exhibit 1077?

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

21 THE WITNESS: I'm not going to
22 speculate on -- guessing on what this device
23 is.

24 BY MR. LEACH:

25 Q. Let's pull up 1078. Have you ever seen

1 the agitation vehicle shown in Exhibit 1078?

2 A. No.

3 Q. Would you agree with me that this looks
4 like some sort of manure sewage agitation
5 vehicle?

6 MR. LUCHSINGER: Objection as to
7 form and foundation.

8 THE WITNESS: No, I do not agree.

9 BY MR. LEACH:

10 Q. Why not?

11 A. Personally, how do you know that this is
12 manure?

13 Q. Well, would you agree with me that
14 what's shown in Exhibit 1078 appears to be some
15 sort of agitation device for a tank?

16 MR. LUCHSINGER: Objection as to
17 form and foundation.

18 THE WITNESS: No. I do not want to
19 speculate on what is this device.

20 (Exhibit Number 1079 marked for
21 identification.)

22 BY MR. LEACH:

23 Q. Pull up Exhibit 1079, please. Would you
24 agree with me that dredge pumps can pump liquid
25 manure?

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

3 THE WITNESS: That's a very broad
4 statement. I don't want to speculate on that.
5 BY MR. LEACH:

6 Q. Well, generally, would you agree with me
7 that dredge pumps or dredging pumps are capable
8 of pumping liquid manure?

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

11 THE WITNESS: I don't have any
12 experience with dredging pumps.

13 BY MR. LEACH:

14 Q. Are you familiar with dredge pumps being
15 used to pump liquid manure?

16 A. I'm not familiar with dredge pumps being
17 used to pump liquid manure.

18 Q. If you look at Exhibit 1079, in the
19 second paragraph towards the end it says, "'I
20 can use my dredge to pump the sand and sludge
21 into a tank or sand separator and then spread
22 the sludge on fields.'"

23 Do you see that?

24 A. No, I don't. Where were you looking?

25 Q. It's right underneath the picture. Just

1 to the left of the picture it says, "'I can use
2 my dredge to pump the sand and sludge into a
3 tank or sand separator and then spread the
4 sludge on fields.'"

5 A. (Views document.) I see that it says,
6 "'I can use my dredge to pump the sand and
7 sludge into a tank or sand separator and then
8 spread the sludge on fields.'"

9 Q. So do you understand that to teach that
10 a dredge pump can be used to pump sludge out of
11 lagoons?

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

14 THE WITNESS: I don't -- I don't
15 want to misconstrue what is said there. He
16 says, "'I can use my dredge to pump the sand
17 and sludge into a tank or sand separator and
18 then spread the sludge on fields.'"

19 BY MR. LEACH:

20 Q. Okay. So if you go up to the first
21 paragraph -- or the first sentence of that
22 paragraph, it says, "'Dairy lagoons especially
23 tend to lose capacity over time because the
24 solids are so difficult to remove,' says
25 Dresbach. 'The only way to do it has been to

1 pump out the liquids and then break a wall and
2 bring in a bulldozer or big tractor. It's a
3 sloppy, expensive job. I can use my dredge to
4 pump the sand and sludge into a tank or sand
5 separator and then spread the sludge on the
6 fields.'" Would you agree with me that at
7 least in this article it's teaching that a
8 dredge pump is used to pump manure from a dairy
9 lagoon?

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

12 THE WITNESS: No. It doesn't
13 specifically say liquid manure.

14 BY MR. LEACH:

15 Q. I said "manure from a dairy lagoon."

16 MR. LUCHSINGER: Same objections.

17 THE WITNESS: This doesn't say
18 anything about manure.

19 BY MR. LEACH:

20 Q. What does it mean when it says, "'Dairy
21 lagoons especially tend to lose capacity over
22 time because the solids are so difficult to
23 remove'"? What does that mean to you?

24 A. You'll have to ask Eric Dresbach what he
25 meant.

1 Q. Okay. So despite your 20-some-plus
2 years of experience working at Nuhn and
3 allegedly designing and inventing manure pumps
4 and manure agitation vehicles, you read that --
5 or you don't understand what this article is
6 talking about?

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

9 THE WITNESS: I'm not going to
10 speculate on what this article is about.

11 BY MR. LEACH:

12 Q. Okay. Back to your declaration,
13 Exhibit 2083, and your paragraph 11 where you
14 claim that the best solution for pumping out a
15 manure lagoon was an agitator that required a
16 long pump driven by a tractor along the bank of
17 a lagoon. Would you agree that Puck is a
18 better solution than a shored-based,
19 tractor-mounted pump for that application?

20 A. No, I don't agree with that.

21 Q. And why not?

22 A. What time period are you talking?

23 Q. Prior to your Lagoon Crawler.

24 MR. LUCHSINGER: Objection as to
25 form.

1 BY MR. LEACH:

2 Q. Sorry. Prior to 2009-2010 when you
3 began -- or when you -- sorry. Strike that.

4 Prior to August 2013, would you agree
5 with me that the Puck boat was a better
6 solution than shore-based, tractor-mounted
7 pumps for agitating and pumping a liquid manure
8 lagoon?

9 A. No.

10 Q. And why not?

11 A. It's a very broad statement.

12 Q. Well, would you agree with me that prior
13 to your Lagoon Crawler invention, Puck was a
14 better solution for pumping out manure lagoons
15 than the shore-based, tractor-mounted pumps
16 that you reference in Exhibit [sic] 11?

17 MR. LUCHSINGER: Objection as to
18 form.

19 Asked and answered.

20 THE WITNESS: The answer is no.

21 BY MR. LEACH:

22 Q. Okay. And how do you come to that
23 conclusion?

24 A. It's a very generic comment. And I can
25 think of instances where our lagoon pump would

1 have outperformed the Puck boat.

2 Q. Do you think your Lagoon pump competes
3 with the Puck boat?

4 A. I do.

5 Q. Does your Lagoon pump [sic]
6 tractor-mounted, shore-based pump compete with
7 the -- your Lagoon Crawler?

8 A. It does.

9 Q. You make the statement in paragraph 11
10 of your declaration, but you've already
11 admitted that you vaguely saw what the Puck
12 boat does from a long ways away, and you really
13 couldn't discern what was happening, and you
14 base that also on what others told you,
15 correct?

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

18 THE WITNESS: Can you rephrase that
19 question? I'm sorry. I wasn't --

20 BY MR. LEACH:

21 Q. Sure. You make the statement in
22 paragraph 11 that the best solution prior to
23 your Lagoon Crawler invention were these
24 shore-based, tractor-mounted agitators, right?

25 MR. LUCHSINGER: Objection as to

1 form, mischaracterizes the document.

2 THE WITNESS: In paragraph 11, I
3 say, "In 2009-2010, prior to my Lagoon Crawler
4 Invention, the best solution for pumping out a
5 manure lagoon was an agitator that required a
6 long pump driven by a tractor along the bank of
7 a lagoon. Depending on the size of the lagoon,
8 as many as four pump/tractor combinations were
9 required to adequately mix the lagoon, and not
10 leave any solids behind. To the extent that
11 this pump/tractor method was not sufficiently
12 effective, lagoon operators would be required
13 to scoop out residual solids from the pit."

14 BY MR. LEACH:

15 Q. Okay. And you make that statement
16 despite admitting that you really don't know
17 much at this time as of 2009-2010 about the
18 Puck boat, correct?

19 MR. LUCHSINGER: Objection as to
20 form.

21 THE WITNESS: It is my understanding
22 in 2009-2010 the Puck boat was not released.

23 BY MR. LEACH:

24 Q. Well, what about prior to the Lagoon
25 Crawler invention? So is that how you're

1 phrasing this? Let me ask this a different
2 way. Do you think the Puck boat was better
3 than the pump/tractor combinations you're
4 talking about in paragraph 11 of your
5 declaration?

6 A. I don't think that that's a --

7 MR. LUCHSINGER: Objection as to
8 form.

9 THE WITNESS: I don't think that
10 that's a -- that's not a generic statement.
11 There's applications where one would outperform
12 the other.

13 BY MR. LEACH:

14 Q. What about for large lagoons?

15 A. Depends.

16 Q. On what?

17 A. The lagoon.

18 Q. So tell me what about the lagoon
19 characteristics that make it depend.

20 A. I've been at lagoons where it's so thick
21 you can't even get a boat around, so you would
22 be stuck to the shore, and a lagoon pump would
23 outperform the Puck boat.

24 Q. I'm going to introduce another exhibit.
25 Going back, though, before I do, are there

1 situations where the Puck boat would
2 outperform -- are there lagoons that have
3 characteristics where the Puck boat would
4 outperform the shore-based, pump/tractor
5 combinations?

6 A. I'm not going to speculate on
7 performance conditions sitting here today.

8 Q. Well, you just testified that lagoons
9 have certain characteristics that might make
10 the Puck boat versus a shore-based,
11 tractor/pump combination better or worse. I'm
12 just trying to understand what those conditions
13 are. Can you elaborate on those?

14 A. I think the thickness of the lagoon is
15 what I mentioned before with the
16 maneuverability of the Puck boat.

17 Q. Anything else?

18 A. Not that comes to mind.

19 Q. So does the products that you're
20 competing to sell in the manure or manure
21 lagoon agitation business largely depend on the
22 very specific characteristics of the particular
23 lagoon?

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

1 THE WITNESS: Can you reask the
2 question, rephrase the question? I didn't
3 follow.

4 BY MR. LEACH:

5 Q. Sure.

6 MR. LEACH: Dana, could you read
7 that back, please?

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

10 BY MR. LEACH:

11 Q. Let me rephrase that. Does the products
12 that Nuhn is competing against change depending
13 on the characteristics of a particular manure
14 lagoon that the products are going to be used
15 in?

16 MR. LUCHSINGER: Objection to form.

17 THE WITNESS: I don't understand the
18 question. I'm sorry.

19 BY MR. LEACH:

20 Q. I guess what I'm trying to understand
21 is: If the lagoon characteristics may drive
22 what is the best application to use to agitate,
23 do those characteristics drive what are the
24 potential solutions to agitate, pump at the
25 lagoon?

1 A. I don't think people buy a product for
2 one lagoon.

3 Q. Why do you say that?

4 A. In my experience, my customers aren't
5 buying a product to service just one lagoon --

6 Q. Do individuals --

7 A. -- generally.

8 Q. Sorry. Do individual Farmers buy Nuhn's
9 Lagoon Crawler or competing products to service
10 the lagoons they may have on their operation?

11 A. They do.

12 Q. Okay. And so wouldn't that be someone
13 buying it for a specific type of lagoon they
14 have or characteristics of their particular
15 lagoon?

16 A. Yeah, I'm not going to speculate on the
17 reasons why my customers buy certain products.

18 Q. But in any event, would you agree with
19 me that the characteristics of a particular
20 manure lagoon may drive what application works
21 best to agitate and pump it out?

22 A. I'm not going to speculate on the buying
23 behavior of my customers.

24 MR. LEACH: Dana, can you read that
25 question back?

1 (Whereupon, the court reporter read
2 back the previous question.)

3 THE WITNESS: Can you be more
4 specific?

5 BY MR. LEACH:

6 Q. What's not specific enough?

7 A. What characteristics are you referring
8 to?

9 Q. You're the one that said characteristics
10 are -- can drive what application works better.

11 A. The Lagoon Crawler solved the
12 deficiencies of the Puck boat in
13 maneuverability of the lagoon.

14 Q. Okay. But you're not really answering
15 my question.

16 MR. LEACH: Dana, could you please
17 read it back again?

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

20 THE WITNESS: I say the Lagoon
21 Crawler works the best.

22 BY MR. LEACH:

23 Q. Again, I don't think you're answering my
24 question.

25 A. Sure.

1 MR. LEACH: Can you please read back
2 the question again?

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

5 MR. LUCHSINGER: I'm just going to
6 place a standing objection here to form, asked
7 and answered. I think the witness has
8 attempted to answer the question that's been
9 read several times.

10 MR. LEACH: Brad, can you please
11 just make proper objections?

12 MR. LUCHSINGER: That is a proper
13 objection when you continuously have the court
14 reporter read back the same question expecting
15 a different answer each time.

16 MR. LEACH: Again, I'm going to ask
17 you not to make speaking objections. Just make
18 a proper objection, okay?

19 BY MR. LEACH:

20 Q. Ian, can you please answer that question
21 that's being asked of you?

22 A. I feel like I am, though. You're asking
23 which works best depending on the conditions,
24 and I'm saying the Lagoon Crawler works best.
25 That's my answer.

1 Q. That's not the question I'm asking.

2 MR. LEACH: Dana, could you please
3 read it back one more time?

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

6 MR. LUCHSINGER: Same objection.

7 THE WITNESS: When I hear that
8 question, the Lagoon Crawler is the tool to
9 choose depending on lagoon conditions. So I'm
10 not sure how I'm answering that question
11 incorrectly.

12 BY MR. LEACH:

13 Q. And what features of the Lagoon Crawler
14 make you continue to provide that answer?

15 A. We were talking about deficiencies about
16 the Puck boat and where a lagoon pump would do
17 a better job than the Puck boat. And I'm
18 saying that because we have the wheels, we can
19 get through the material that would hold a Puck
20 boat back. So really, the Lagoon Crawler is
21 the best solution.

22 BY MR. LEACH:

23 Q. I've put in what's been previously
24 marked as Exhibit 1012, if you could pull that
25 up. As of August 2013, were you aware of

1 Senwatec's Amphi-King product?

2 A. No.

3 Q. Would you agree with me that the
4 Amphi-King is an amphibious vehicle?

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

7 THE WITNESS: I don't know enough
8 about the product to agree with you.

9 BY MR. LEACH:

10 Q. Well, looking at Exhibit 1012, does this
11 document disclose an amphibious vehicle?

12 A. It says "light amphibious boat/vehicle."

13 Q. Okay. Would you agree with me that it's
14 an amphibious vehicle?

15 MR. LUCHSINGER: Objection as to
16 form and foundation.

17 THE WITNESS: Sitting here, all I
18 can say is what I read on this, which it says
19 "light amphibious boat/vehicle."

20 BY MR. LEACH:

21 Q. And given our prior discussion about
22 Puck and the Lagoon Crawler and having the
23 wheels to break up crust, would you agree with
24 me that what's shown in Exhibit 1012,
25 specifically the version that has six wheels,

1 would solve the problem that you identified as
2 Puck having?

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

5 THE WITNESS: I'm not going to
6 speculate on that looking at this photo.

7 BY MR. LEACH:

8 Q. Would you agree with me that the
9 Senwatec product shown on Exhibit 1012 is a
10 better solution than using a shore-mounted pump
11 driven by a tractor for large manure lagoons?

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

14 THE WITNESS: No.

15 BY MR. LEACH:

16 Q. Why not?

17 A. Where does this have anything to do with
18 manure?

19 Q. Well, you agree with me, though, that a
20 dredge pump can pump liquid manure?

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

23 THE WITNESS: No. I'm not going to
24 speculate on that.

25 BY MR. LEACH:

1 Q. Would you agree with me that the wheels
2 on the Senwatec product shown in Exhibit 1012
3 would operate in a similar manner as to the
4 wheels on the Lagoon Crawler to break up crust?

5 MR. LUCHSINGER: Objection as to
6 form, asked and answered.

7 THE WITNESS: I'm not going to
8 speculate on that just looking at these photos.
9 BY MR. LEACH:

10 Q. Would you agree with me that what's
11 shown in Exhibit 1012 could drive into a manure
12 lagoon?

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

15 THE WITNESS: I'm not going to
16 speculate that just looking at these photos.
17 BY MR. LEACH:

18 Q. Why not? What's preventing you from
19 looking at this brochure and determining
20 whether it could drive into a manure lagoon?

21 A. I'm not in a position to speculate on
22 that based on this brochure.

23 Q. Why do you say that? What do you base
24 that on?

25 A. All these pictures are like lakes and

1 streams.

2 Q. Okay. So in your opinion, this is not a
3 better solution than tractor-mounted pumps used
4 to agitate a lagoon from the banks of a lagoon?

5 A. I'm not going to speculate based on this
6 brochure.

7 Q. Well, looking at this brochure, what
8 does it tell you about this product?

9 A. It's a light amphibious boat/vehicle.

10 Q. Anything else?

11 A. Light and strong aluminum construction,
12 approximately 2,480 kilograms without
13 attachments, six-wheel driver or track-drive
14 system, forward crane ready for many
15 attachments with available power for up to 50
16 kilowatts, heavy-duty diesel engine certified
17 to the latest standards of Tier IV emission and
18 fuel consumption.

19 Q. Sir, can I just stop you there. Are you
20 just going to read the whole document to me?

21 A. Isn't that not what you asked?

22 Q. Well, I'm asking from -- feel free to
23 take your time to look at it. I'm asking you
24 from the perspective of someone who designed a
25 lagoon agitator, who's designed a lagoon pump,

1 manure pump, you know, looking at a competing
2 product in a brochure, what does this tell you
3 about the product and its capabilities?

4 MR. LUCHSINGER: Objection to form,
5 foundation, misstates prior testimony.

6 THE WITNESS: There's nothing in
7 this about manure, so I'm not going to comment
8 and speculate.

9 BY MR. LEACH:

10 Q. Okay.

11 A. Am I allowed to ask a question?

12 Q. Sure.

13 A. Can I -- do we know the exact date of
14 this? Because I didn't know that Tier IV
15 emissions were a thing prior to 2013. Do we
16 know the date of this? It says, "Heavy duty
17 Diesel engine certified to the latest standards
18 of Tier IV emission and fuel consumption."
19 It's my understanding that Tier IV was around
20 January 1st, 2018.

21 Q. I don't know about that. We'll just
22 move on, because I've only got so much time
23 here.

24 A. I just don't see a date, so I guess
25 that's why I'm asking.

1 Q. I'm going to provide another exhibit.
2 You should be getting it.

3 MR. LUCHSINGER: What's the exhibit
4 number?

5 MR. LEACH: This is Exhibit 1006.
6 And it's the Truxor Amphibian tool carrier.

7 BY MR. LEACH:

8 Q. Do you have it, Mr. Nuhn?

9 A. Yep.

10 Q. Can you take a look at this document and
11 tell me if you've ever seen this document or
12 anything like it or the products shown therein
13 prior to August of 2013?

14 A. (Views document.) No, I have not.

15 Q. If you go down to page 5 of 16 of the
16 document, it shows the Truxor equipment
17 carrier. And one of the images towards the
18 left-hand side on the middle it shows the
19 dredger operating where it's pumping liquid out
20 of a conduit from the lake or stream.

21 Do you see that?

22 MR. LUCHSINGER: Objection to form.

23 THE WITNESS: I'm not going to
24 speculate what's in the liquid.

25 BY MR. LEACH:

1 Q. Would you agree with me that that's at
2 least a liquid with suspended solids? It's
3 pumping liquid out of a lake or a stream using
4 a dredge pump?

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

7 THE WITNESS: I'm not going to
8 speculate what that picture is.

9 BY MR. LEACH:

10 Q. If you go down to page 10 of 16 where it
11 says Dredge pumps, and it talks about the Doro
12 pump and has a wheel feed head, a screw feed
13 head and a suction mouthpiece, would you agree
14 with me that a dredge pump as shown in
15 Exhibit 1006 would be capable of pumping liquid
16 manure?

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

19 THE WITNESS: I'm not going to
20 speculate the capabilities of what's in this
21 picture.

22 BY MR. LEACH:

23 Q. So given the experience you have, you
24 just don't have the knowledge or background to
25 determine what this document teaches to those

1 in the industry?

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

4 THE WITNESS: I'm not going to
5 speculate the performance of what's in the
6 pictures shown here.

7 BY MR. LEACH:

8 Q. Do you believe something like what's
9 shown in Exhibit 1006, the Truxor vehicle with
10 the pump attachment, could pump any form of
11 liquid manure, meaning even the lowest solid
12 content forms of liquid manure?

13 MR. LUCHSINGER: Objection as to
14 form, vague and foundation.

15 THE WITNESS: I'm not going to
16 speculate on the performance and capabilities
17 of what's on this picture here.

18 BY MR. LEACH:

19 Q. If you look under where it says The Doro
20 Pump it says, "The wheel feeder has a rotating
21 wheel with horizontal cutters and vertical
22 teeth which aerate the sediment and cut off
23 roots to facilitate the feeding into the inlet
24 of the pump."

25 Do you see that?

1 A. No. Can you point to where it is?

2 Q. Sure. It is the third sentence in the
3 first paragraph.

4 A. Which page?

5 Q. Sorry. I'm on page 10 of 16.

6 A. Okay. Third sentence, first paragraph?

7 Q. Yeah. And I'll quote. It says, "The
8 wheel feeder has a rotating wheel with
9 horizontal cutters and vertical teeth which
10 aerate the sediment and cut off roots to
11 facilitate the feeding into the inlet of the
12 pump. The rotating wheel gives greater flow of
13 sediment to the pump inlet when the sediment is
14 soft."

15 Do you see that?

16 A. I see that in the paragraph.

17 Q. Would you agree with me that if the Doro
18 pump is able to pump water with sediment in it,
19 that it would be capable of pumping a liquid
20 with suspended solids?

21 MR. LUCHSINGER: Objection as to
22 foundation.

23 THE WITNESS: I'm not going to
24 speculate the performance of this pump based on
25 that paragraph.

1 BY MR. LEACH:

2 Q. If you go down to the next paragraph, it
3 says, "When dredging harder sediments, screw
4 feeding can give a more stable flow to the pump
5 inlet. For sediment containing solid objects,
6 e.g., stones, bits of wood, et cetera, screw
7 feeding is recommended."

8 Do you see that?

9 A. I do.

10 Q. Does that tell you that the dredge pump
11 disclosed in Exhibit 1006 would be capable of
12 pumping a fluid with a suspended solid?

13 MR. LUCHSINGER: Objection as to
14 foundation.

15 THE WITNESS: I don't have any
16 experience with screw feeding, so I'm not going
17 to speculate on performance.

18 BY MR. LEACH:

19 Q. If you go down to the next paragraph, it
20 says, "Suction dredging in pure sand is
21 performed with a nozzle mounted on the intake
22 of the pump." Would you agree with me that if
23 the exhibit -- the product or dredge pump
24 disclosed in Exhibit 1006 can suck up sand,
25 that it would be capable of pumping a liquid

1 with a suspended solid?

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

4 THE WITNESS: I'm not going to
5 speculate on performance of this product based
6 on that paragraph.

7 BY MR. LEACH:

8 Q. Based on this disclosure, if you go back
9 down to the picture that shows the dark liquid
10 being disclosed -- sorry. I think that was
11 in -- on page 5 of 16 in the middle on the
12 left-hand side. Based on what we've read about
13 that dredge pump, would you agree with me that
14 it appears to be pumping liquid with a
15 suspended solid, i.e., sediment, from the
16 bottom of the lake or stream it's in?

17 MR. LUCHSINGER: Objection as to
18 foundation.

19 THE WITNESS: I'm not going to
20 speculate as to what's going on in that
21 picture.

22 BY MR. LEACH:

23 Q. Okay. All right. Let's move on. In
24 paragraph 22 of your declaration you provide
25 various operator's manuals, basically the year,

1 model, first public disclosure, the operator's
2 safety manual, parts catalogs, brochures for
3 the different generations of the Lagoon
4 Crawler. Can you tell me why you included that
5 in your declaration?

6 MR. LUCHSINGER: I'm just going to
7 caution the witness not to reveal any
8 attorney-client privileged communications. If
9 you can answer without doing so, feel free.

10 THE WITNESS: I think -- are you
11 ready for me to answer?

12 BY MR. LEACH:

13 Q. Yeah.

14 A. I think I did a good job of accurately
15 describing the design configuration function of
16 Nuhn's Lagoon Crawlers.

17 Q. What do you mean by that?

18 A. I think I gave a pretty good, clear,
19 concise way of accurately describing the design
20 configuration function and manufacture of
21 Nuhn's Lagoon Crawlers.

22 Q. Okay.

23 MR. LEACH: Let's go off the record
24 for five minutes, okay?

25 MR. LUCHSINGER: Yep.

1 THE VIDEOGRAPHER: We are going off
2 the record.

3 The time now is 2:14 p.m.

4 (Off the record 2:14 to 2:21.)

5 THE VIDEOGRAPHER: We are back on
6 the record. This marks the beginning of Media
7 Number 6 in the deposition of Ian Nuhn.

8 The time now is 2:21 p.m.

9 BY MR. LEACH:

10 Q. Mr. Nuhn, we just took a brief break. I
11 want to turn your attention to Exhibit 2055,
12 which I've introduced. Let me know when you
13 have that up.

14 A. I've got it.

15 Q. Okay. And 2055 correlates with exhibits
16 that you identify in paragraph 24 of your
17 declaration, correct?

18 A. (Views document.) Can you repeat the
19 question?

20 MR. LEACH: Dana, can you read that
21 back?

22 THE WITNESS: In paragraph 24 I'm
23 referencing 2055, which is open here, if that's
24 what you're asking.

25 BY MR. LEACH:

1 Q. Yeah. And so can you confirm for me
2 that Exhibit 2055 provides total sales of the
3 Lagoon Crawler in dollars, is that correct?

4 A. Are you referring to U.S. dollars?

5 Q. Well, are they in Canadian dollars or
6 U.S. dollars?

7 A. U.S. dollars.

8 Q. And that's sales through December 6,
9 2023?

10 A. Exhibit 2055 is through December 6,
11 2023.

12 Q. So going back to your declaration on
13 Exhibit 24 -- sorry. Going back to your
14 declaration and looking at paragraph 24 and 25,
15 there's a footnote there. Does that footnote
16 tell us whether the sales numbers are actually
17 in dollars, U.S. dollars or Canadian dollars?

18 A. Would you like me to read the footnote?

19 Q. No. I'm just asking you -- this is your
20 declaration. I know you said they are in U.S.
21 dollars, but are you sure? Is there somewhere
22 in here that tells us it is U.S. dollars?

23 A. It's in U.S. dollars.

24 Q. How do you know that?

25 A. I was involved in how this report was

1 generated.

2 Q. Nuhn Industries is a Canadian company,
3 correct?

4 A. Nuhn Industries is a Canadian company.

5 Q. And so did you have sales in Canadian
6 dollars and you converted them to get to U.S.
7 dollars, is that what you did?

8 A. We -- the majority of our sales is to
9 U.S., so it was invoiced in U.S. dollars. The
10 ones that are sold in Canada are sold in
11 Canadian dollars, and that was converted to
12 U.S. dollars for the purpose of this report.

13 Q. Do you know what exchange rate was used
14 to convert the Canadian dollars to U.S.
15 dollars?

16 A. I was not the one specifically in charge
17 of that, so I do not know the exchange rate.
18 Sitting here today, I cannot under oath say
19 what rate. Exhibit 2056 shows more of a
20 breakdown of each transaction and what currency
21 they were sold in.

22 Q. So let's stick with Exhibit 2055. What
23 Exhibit 2055 is showing is the total sales in,
24 as you claim, U.S. dollars, correct?

25 A. It's -- there's several columns for

1 totals. But yes, the currency of everything in
2 2055 is in U.S. dollars.

3 Q. So what would be the U.S. dollars that
4 Nuhn collected from these sales shown in here?
5 Would that be the Price after Discount (Crawler
6 Only)?

7 A. No. For the general sale it would have
8 been price after discount.

9 Q. So the column -- so the total for -- the
10 total amount that Nuhn received was
11 \$90,915,765.02?

12 MR. LUCHSINGER: I'm just going to
13 designate this portion of the transcript sealed
14 under the protective order. And when we're
15 done with this, I'll try and do that again. We
16 may have to designate and de-designate certain
17 sections after the transcript is made
18 available.

19 You can answer.

20 THE WITNESS: So the total dollar
21 figure that Nuhn Industries received for Lagoon
22 Crawlers was \$90,915,765.02 U.S.

23 BY MR. LEACH:

24 Q. Okay. Is this a summary of the other
25 exhibits that you identify in paragraph 24 of

1 your declaration, namely, Exhibit 2056
2 through 2059?

3 A. In order for me to answer right now we
4 would have to open all of those up.

5 Q. Okay. But nevertheless, Exhibit 2055 is
6 titled Consolidated Totals, right?

7 A. 2055 is titled Consolidated Totals.

8 Q. Okay. And so --

9 MR. LUCHSINGER: Just a suggestion.
10 You might discuss paragraph 24 of the
11 declaration. That might help orient the
12 witness.

13 BY MR. LEACH:

14 Q. Okay. Well, let's go to paragraph 24.
15 Says, "Exhibit 2055 is the 'Consolidated
16 Totals' worksheet of the report, which includes
17 total revenue for the Lagoon Crawler models
18 sold between 2014 and December 5, 2023."

19 Do you see that?

20 A. Yep.

21 Q. And exhibit 2056 --

22 A. [Unintelligible].

23 Q. Sorry.

24 A. Yep. I agree with that statement.

25 Q. Okay. And Exhibits -- I'm sorry. And,

1 "Exhibit 2056 through 2069..." is that a typo?
2 Should it be 59?

3 MR. LUCHSINGER: I think it's
4 supposed to be 2059 like at the beginning of
5 paragraph 24.

6 BY MR. LEACH:

7 Q. Okay. "...are reports of the individual
8 sales for the Lagoon Crawler for 2014
9 through 2017, 2018 through 2019, and 2020
10 through 2023, respectively," is that accurate?

11 A. That's accurate.

12 Q. So let's look at next exhibit, 2056.
13 Can you pull that up?

14 MR. LUCHSINGER: Tom, I don't want
15 to run your deposition, but maybe if you can
16 certify for the witness that the exhibit you're
17 putting in front of him as 2056 is what's
18 referenced -- you know, what was attached to --
19 are the same exhibits that are referenced here.

20 MR. LEACH: Well, it's got an
21 exhibit number on it that you guys marked, so I
22 assume it's accurate.

23 MR. LUCHSINGER: Exactly. What I'm
24 saying is I don't know if the witness
25 understands that you are using the same --

1 we're all using the same exhibit numbers.

2 BY MR. LEACH:

3 Q. Well, Mr. Nuhn, can you look at
4 Exhibit 2056, please, and can you tell me what
5 this is? I'll represent this is an attachment
6 to your declaration specifically referenced in
7 paragraph 24 of your declaration.

8 A. (Views document.) Yep. This is
9 basically -- the basis of this report is what
10 was generated from QuickBooks. It's not the
11 totality of the report. It's not just a
12 cut-and-dry report from QuickBooks. It has
13 been manipulated by someone in our office to
14 make sense of certain points. But the general
15 gist of what was produced here is from
16 QuickBooks in our office.

17 Q. And, again, this is the detail to the
18 Exhibit 2055, which is the Consolidated Totals.
19 Okay. So confirm for me that these documents
20 show only the total sales in dollars and, I
21 believe, units, right, or no?

22 A. Each line item is its own individual
23 unit.

24 Q. So confirm for me then that these
25 documents, Exhibits 2055 through 2059, provide

1 only the total sales in units and dollars,
2 correct?

3 A. It's the basis of what was generated for
4 2055, but yes.

5 Q. I guess I can mark the other ones.
6 Let's just do that quick so I have them. I'm
7 introducing the rest of the exhibits so you
8 have Exhibits 2055 through 2059.

9 A. So I have 2057 here. I have 2058 here
10 and I have 2059.

11 Q. Okay. So just confirm for me that these
12 documents do not provide any detail as to the
13 overhead costs associated with making these
14 sales, is that correct?

15 A. No. This is strictly dollars in.

16 Q. Okay. So no direct labor costs for
17 making the sales of the Lagoon Crawler,
18 correct?

19 A. These exhibits only show income.
20 There's no costs.

21 Q. Okay. So no indirect labor costs, no
22 warranty claims?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: These exhibits only

1 show the money coming in, no -- nothing going
2 out.

3 BY MR. LEACH:

4 Q. They don't show any costs associated
5 with warranty claims, right?

6 A. They don't show any costs.

7 Q. They don't show any costs, period,
8 correct?

9 A. Period. Correct.

10 Q. And Nuhn advertises its Lagoon Crawler,
11 right?

12 A. Not anymore.

13 Q. When did it stop advertising its Lagoon
14 Crawler?

15 A. I believe it's in my report on the exact
16 date. I'll just find that just so I'm on the
17 same page as that. Sorry. I must have gone by
18 it. One second.

19 Q. I just -- it's in there.

20 A. It's in here. I'm speculating on the
21 exact date, but it was in and around 2019.

22 Q. And do you know how much from 2013 to
23 2019 Nuhn spent on advertising its Lagoon
24 Crawler product?

25 A. Sitting here today, I wouldn't have an

1 answer to that.

2 Q. Do you think five percent of sales, ten
3 percent of sales?

4 A. I'm not in a position to speculate on
5 that. Oh, sorry. Went right by it. Paragraph
6 28, "Nuhn is particularly proud of the
7 commercial success that the Lagoon Crawler has
8 enjoyed given that we stopped paying for
9 advertising after 2019 but as reflected in the
10 Lagoon Crawler Sales Report at Exhibits 2055 to
11 2059 have gone on to sell over 230 Lagoon
12 Crawlers since 2020. This is a testament to
13 the fact that the Lagoon Crawler's success can
14 only be attributed to the liquid manure lagoon
15 agitation design that I invented."

16 Q. So let's talk about that. When you say
17 you stopped paying for advertising in 2019 in
18 paragraph 28 of your declaration, were you
19 still doing social media posts about the Lagoon
20 Crawler?

21 A. I'd have to look. Sitting here today,
22 I'm not up to speed on what we post on social
23 media.

24 Q. Do you know whether you were paying for
25 any Google clicks or ads or any of that kind of

1 stuff generally as the company based on posts
2 related to the Lagoon Crawler?

3 A. I would have to -- sitting here today, I
4 don't have a good answer on that.

5 Q. Do you have anyone at Nuhn that is in
6 charge of its social media?

7 A. What time period are you referring to?

8 Q. 2019 forward.

9 A. I would have to look back and see who
10 would be. Today, I can say for a fact that I
11 have someone doing it, but in 2019 I would have
12 to look to see who it was in particular.

13 Q. And so this person that you hired, their
14 job is to advertise in part at least the Lagoon
15 Crawler, correct?

16 A. No. I wouldn't say that.

17 Q. Well, are they providing social media
18 posts about the Lagoon Crawler?

19 A. I don't think we've posted about the
20 Lagoon Crawler in a very long time. I would
21 have to look back. I'm not big on Facebook, so
22 I don't know. I don't think -- as far as I
23 know, I don't think we post a lot on Facebook.
24 I would have to look into it further.

25 Q. What about other social media sites,

1 Twitter, Snapchat?

2 A. As far as I know -- I don't have Twitter
3 or Snapchat or whatever else, so I don't know.
4 I try to stay off that stuff.

5 Q. I'm not asking about you personally.
6 I'm asking about: Does the company have any
7 social media presence that you pay someone to
8 monitor or generate content to drive sales?

9 A. To the best of my knowledge, just
10 Facebook.

11 Q. Okay. But you're telling me that from
12 2019 forward, at least during that time, you
13 had someone hired at Nuhn to do social media
14 for its products?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: Yeah, I don't think
18 I'm saying that. I'm saying there may have
19 been an employee, not necessarily hired to do
20 that, but posted on Facebook. I would have to
21 look into it. I -- sitting here today, I don't
22 know.

23 BY MR. LEACH:

24 Q. Okay. And so prior to 2019, do you have
25 any idea how much Nuhn spent on advertising its

1 Lagoon Crawler product?

2 A. I would be merely speculating. I don't
3 have an answer to that.

4 Q. And prior to 2019, did Nuhn work with
5 any publicist to try to get newspaper
6 placements or articles placed in local
7 newspapers or national newspapers or trade
8 journals?

9 A. There's one article that we did do, we
10 paid someone to write.

11 Q. Was that about the Lagoon Crawler?

12 A. I'm not sure the specifics of the
13 article sitting here. I just do know we did
14 pay, like, a freelance writer to write
15 something as an experiment or trial. Sitting
16 here today, I can't remember the exact
17 specifics.

18 Q. Does Nuhn have a PR firm that it uses?

19 A. No.

20 Q. Looking at paragraph 25 of your
21 declaration, it says -- you testified that, "By
22 the time we invoiced our first Lagoon Crawler
23 in January 2014 for an order taken around
24 November 2013, we had gone from a small company
25 that was not all that well known, to being a

1 household name in the agricultural industry."

2 Do you see that?

3 A. I do.

4 Q. How do you know how well Nuhn was known
5 in households in the agricultural industry in
6 November of 2013?

7 A. I had feedback from people, you know,
8 that didn't have any experience with our
9 company that seemed to know and recognize the
10 Lagoon Crawler. So from a small sample that I
11 took, I'd say people that have no -- they're in
12 agriculture but not necessarily the manure
13 world knew about our company.

14 Q. And how big was this sample?

15 A. Fairly large, I would say. I believe
16 November 2013 I attended Agritechnica in
17 Germany. And, you know, people that we -- you
18 know, had never heard of Nuhn, when they walked
19 by the booth, they would be like: Oh, I've
20 seen this. And they knew the name.

21 Q. In 2013?

22 A. November 2013, yeah.

23 Q. Okay. So can you name a person? Can
24 you give me the name of someone?

25 A. I was at a trade show. I never got

1 names.

2 Q. Did you do any formal polling, any
3 surveys?

4 A. I did not do any formal polling or
5 surveys. But the amount of people at a show in
6 a country that we had never been at before knew
7 our name. It was due to the Lagoon Crawler.

8 Q. Did you specifically ask people if they
9 knew your name? I'm trying to understand your
10 basis for saying you were not well known in
11 November of 2013 to being a household name,
12 let's see, in January of 2014.

13 MR. LUCHSINGER: Objection as to
14 form.

15 THE WITNESS: I had firsthand
16 experience that people recognized our name. I
17 don't know how to say that any other way.

18 BY MR. LEACH:

19 Q. How do you know they recognized your
20 name as a household name?

21 A. They said it at the show to me.

22 Q. What did people tell you specifically?

23 A. That they had seen somewhere something
24 about the Lagoon Crawler and they had talked
25 about it. They knew the small little company

1 from Canada had come out with it.

2 Q. And you can't give me the name of anyone
3 that recognized Nuhn in November of 2013 that
4 you're basing your testimony on?

5 A. It was a farm show. You meet many
6 different people. It was overwhelming the
7 amount of people that we met. I did not get a
8 name.

9 Q. So no names. About how many people --
10 and I'm asking you specifically. About how
11 many people said: Oh, I recognize Nuhn?

12 A. Over the course of the week over a
13 hundred people. And that's conservative.

14 Q. And do those hundred people -- did they
15 tell you: Oh, I recognize Nuhn because of the
16 Lagoon Crawler specifically, or do you know
17 whether it was some other product maybe that
18 they saw your name?

19 A. No. It was the Lagoon Crawler.

20 Q. So tell me exactly what these
21 interactions would be like.

22 A. I was at a trade show, and people would
23 walk by the booth, see the name and immediately
24 say: You guys are the ones from Canada with
25 the Lagoon Crawler. It happened so many times

1 it was crazy. I've never had a farm show or
2 anything quite like it.

3 Q. And where was this farm show? It was
4 Agritechnica in Germany?

5 A. Agritechnica in Germany.

6 Q. Okay. And when did Agritechnica in
7 Germany happen?

8 A. I don't know the exact dates, but
9 November 2013.

10 Q. Okay. So that's in November 2013. So
11 what is your basis for saying that in January
12 of 2014 you became a household name in the
13 agricultural industry?

14 MR. LUCHSINGER: Objection to the
15 form, asked and answered.

16 THE WITNESS: I would say from my
17 experience in that time period of November to
18 January we became a household name.

19 BY MR. LEACH:

20 Q. And I'm asking: What do you base that
21 testimony on? What facts can you give me?

22 A. The public reception that I had at a
23 world-class international trade show.

24 Q. And that's entirely based on what people
25 told you, correct?

1 A. Correct.

2 Q. In January 2014, you didn't do any
3 polling, correct?

4 A. No.

5 Q. You didn't do any survey in January 2014
6 to see whether Nuhn was a household name in the
7 agricultural industry?

8 A. No.

9 Q. And so you base this testimony that by
10 January '14, January 2014 Nuhn became a
11 household name in the agricultural industry
12 based on people telling you that, is that
13 correct?

14 A. I had a large enough sample of people
15 telling me that, that -- I feel like we were a
16 household name in an area internationally that
17 we prior had no recognition.

18 Q. How do you know Nuhn wasn't recognized
19 before November --

20 A. People [unintelligible] --

21 Q. -- of 2013?

22 A. People only knew of us at the show based
23 on the Lagoon Crawler.

24 Q. And, again, you base that on what people
25 told you?

1 A. Correct.

2 Q. So I guess what I'm trying to understand
3 is what facts you have to first get a baseline
4 of how well known Nuhn was in November of 2013
5 versus how well known you were in January of
6 2014.

7 A. I think what this sentence is saying is
8 in that general time period.

9 Q. Isn't your testimony that from
10 November 2013 you'd gone from a small company
11 that was not all that well known to being a
12 household name in the agricultural industry in
13 January 2014, right, that's what you're saying?

14 MR. LUCHSINGER: Objection to form,
15 misstates testimony.

16 You can answer.

17 THE WITNESS: I think in that --
18 over that time period.

19 BY MR. LEACH:

20 Q. Okay. So from November 2013 to
21 January 2014 Nuhn went from a small company
22 that was not all that well known to a household
23 name in the agricultural industry, that's your
24 testimony, correct?

25 A. Here it says, "By the time we invoiced

1 our first Lagoon Crawler in January 2014 for an
2 order taken in or around November 2013, we had
3 gone from a small company that was not all that
4 well known, to being a household name in the
5 industry." I'm saying during that time period
6 we became -- from our sample in late November,
7 we became a household name in the agricultural
8 industry.

9 Q. And I guess what I'm wondering is -- I
10 want to understand the facts of how you
11 determined that. And so did you get a baseline
12 in November of 2013 as to how well known you
13 were in the ag industry?

14 A. I would go back even prior to that from
15 my first sample of being at trade shows in the
16 states and being at shows. And even though
17 there was the Manure Expo, which we first
18 unveiled it, really once we started taking it
19 to the major shows and getting newspaper
20 coverage, that's when people first started
21 seeing it. So at that time we'd be at shows
22 and people would come up and not know who the
23 company was. So by the time we showed it at
24 these farm shows, midsummer, late summer, early
25 fall, we had newspaper articles, we got

1 coverage. So by the time I took my next sample
2 late November, it was a totally different
3 environment. People knew us. And they knew us
4 in a market that shouldn't know us.

5 Q. And, again, there was no formal study,
6 poll or survey done to determine this, correct?

7 A. No, just me talking to customers,
8 talking to people at shows and seeing their
9 reaction. The -- even after the Manure Expo,
10 at farm shows it was still people's first time
11 really seeing this product. And then that's
12 when all the coverage really began. So next
13 time I went to a show in that time period, the
14 reception from the public was totally
15 different.

16 Q. And in paragraph 25 when you say you had
17 gone from a small company that was not all that
18 well known to being a household name in the
19 agricultural industry, is that worldwide, is
20 that U.S., is that Canada?

21 A. I'd say worldwide.

22 Q. In January of 2014, aside from the
23 Agritechnica trade show that you were -- strike
24 that.

25 Do you know when the Agritechnica trade

1 show was in that you're talking about?

2 A. No, not -- I don't know the specific
3 dates. It's usually later in the month,
4 though, in November, November 16th or 17th. I
5 would be speculating.

6 Q. Focusing on your testimony in
7 paragraph 25, the end date of your sample was
8 January 2014, correct?

9 A. I think you're being very specific on
10 the dates. I think what I'm saying is prior to
11 our first physical order and first invoice,
12 which is in that time period, prior to that
13 time period, I was at shows and people didn't
14 know the product, and they were really seeing
15 the Lagoon Crawler for the first time. As
16 enough time goes by, not very much, but enough
17 time goes by that people all over the world are
18 now seeing this product. So in that time
19 period of when we take an order and when we've
20 invoiced it, in that time period, now we're
21 taking a sample, and we've become a household
22 name internationally.

23 Q. I just want to be clear. You base that
24 testimony in paragraph 25 on what people told
25 you and nothing else, no studies, no surveys,

1 no formal polls, correct?

2 A. I go to farm shows, and I do informal
3 polling direct to the people coming into the
4 booth. People did not know of our company. We
5 were a small company. And by the time -- in
6 the time period between November 2013 to
7 January 2014 to the time we actually had our
8 first order and invoiced our first unit, it was
9 a totally different perception of Nuhn.

10 Q. But, again, no formal polling, no formal
11 survey, no determination of what a proper
12 sample size would need to be to make those
13 conclusions, correct?

14 MR. LUCHSINGER: Objection as to
15 form, vague.

16 THE WITNESS: I would say it's a
17 large sampling. These shows get hundreds of
18 thousands of people through it. How big of a
19 sample do you want? There's nothing formally
20 documented. But during a fairly large sample
21 of people coming through, we were very well
22 known based on first coming out with it.
23 Sorry. We weren't very well known in the
24 summer. And only a few months later we were
25 well known. The only thing that happened

1 between then was us unveiling the Lagoon
2 Crawler, around the Lagoon Crawler.

3 BY MR. LEACH:

4 Q. Do you have any documents that
5 corroborate this testimony?

6 A. Just my personal experience.

7 Q. Going on to paragraph 26 in your
8 declaration, you talk about market share as
9 well, correct?

10 A. I don't believe I talk about that in 26.

11 Q. Okay. Well, 26 talks about market share
12 perspective, so let's go on to 27. What is the
13 geographic area you use to determine market
14 share?

15 A. For this, I'm talking about Canada and
16 the United States.

17 Q. How do you know that Puck's boat
18 occupied about 95 percent of the manure pumping
19 boat market when Nuhn first introduced the
20 Lagoon Crawler prototype at the 2013 North
21 America Manure Expo?

22 A. They were the only ones making a manure
23 pumping boat. So I'm being conservative when I
24 say 95 percent.

25 Q. Well, did you count the Bradley

1 agitation boat?

2 MR. LUCHSINGER: Objection as to
3 form.

4 THE WITNESS: To my knowledge, Puck
5 has the -- is the market -- at this time had
6 the agitation boat market.

7 BY MR. LEACH:

8 Q. And so you come up with this number of
9 95 percent because you were only aware of Puck
10 having an agitation boat, as you define it,
11 correct?

12 A. I'm being conservative when I say
13 95 percent.

14 Q. Well, who had the other five percent of
15 the market share?

16 A. I'm aware possibly of some homemade
17 boats that were with cables. But of an actual
18 manufactured unit, I'd say Puck's boat occupied
19 about 95 percent of the manure pumping boat
20 market.

21 Q. Let's talk about these homemade boats
22 with cables. Were they used on manure lagoons?

23 A. The only one that I had ever seen was at
24 that same Manure Expo of 2012. It wasn't
25 self -- it had a cable that ran across the

1 lagoon. I'm not sure of the specifics of it,
2 but I'm -- I would be speculating on how it
3 operated. But I'm pretty sure the cable was
4 just pulled on shore to move it across.

5 Q. Did it have a pump?

6 A. I would be speculating on the
7 construction of it.

8 Q. Well, how did it agitate?

9 A. Sitting here today, I wasn't really
10 paying attention to it. But I do know it was a
11 homemade floating boat that had a cable to pull
12 it across the lagoon at the 2012 Manure Expo.

13 Q. So the cable propelled it across or
14 moved it across the lagoon?

15 MR. LUCHSINGER: Objection as to
16 form, foundation.

17 THE WITNESS: I would be speculating
18 on the operation of it. I was more focused on
19 my equipment that day.

20 BY MR. LEACH:

21 Q. And can you tell me how it agitated the
22 lagoon?

23 A. Sitting here today, I can't comment on
24 that.

25 Q. Do you remember seeing any propellers,

1 any pumps? Did you hear an engine as it was
2 running? Did you see any fluid being sprayed
3 out of nozzles?

4 A. I can't recall the specifics of it. All
5 I know is it had a cable across the pit.

6 Q. And so you included that in your market
7 share calculation?

8 A. I'm leaving room for things like that
9 when I say 95 percent, yeah.

10 Q. I apologize. I'm sorry. So can you
11 name any other entity that would account for
12 this other five percent?

13 A. No.

14 Q. Did you call up Puck and ask what their
15 market share was or ask them how many units
16 they sold?

17 A. No, I did not.

18 Q. Did you ask to get a declaration from
19 Puck to find out how many units they sold?

20 A. No, I did not.

21 Q. In this analysis, did you count the
22 Senwatec Amphi-King in your market share
23 analysis?

24 MR. LUCHSINGER: Objection to form.

25 THE WITNESS: Not aware of any in

1 North America, Canada or United States, so it
2 is non-U.S.

3 BY MR. LEACH:

4 Q. What about the Truxor product?

5 MR. LUCHSINGER: Objection as to
6 form.

7 THE WITNESS: To my knowledge,
8 there's none in Canada or the United States, so
9 it's not in this -- literally the five percent
10 that I'm leaving there is for that boat that I
11 saw at the 2012 Manure Expo.

12 BY MR. LEACH:

13 Q. So you knew about Puck, and you knew
14 about this other product that was displayed at
15 the 2012 Manure Expo, and that's all that you
16 took into account for your market share
17 estimates?

18 MR. LUCHSINGER: Objection as to
19 form.

20 THE WITNESS: I believe that from my
21 experience with the industry around the time
22 when I first introduced the Lagoon Crawler,
23 Puck's boat occupied about 95 percent of the
24 manure pumping boat market.

25 BY MR. LEACH:

1 Q. Were you aware of any float-mounted
2 agitator pumps?

3 A. I was not.

4 Q. What did you do to educate yourself on
5 what the market was that Puck was in?

6 A. Industry -- I'm in that industry. And I
7 had feedback from people in the industry and
8 had a general idea of how many Puck boats were
9 made.

10 Q. What do you base your statement on, you
11 had an idea of how many Puck boats were made?

12 A. Puck has a unique serial number for
13 their boat. And they go -- they literally
14 count up. So I believe around the time that
15 this came out -- I'm speculating sitting here,
16 but I believe it was -- they were at least
17 close to a hundred serial numbers. That was
18 the highest serial number I had heard.

19 Q. So you're basing your market share data
20 on something you heard about the number of
21 Puck's boats that were sold at some point in
22 time?

23 MR. LUCHSINGER: Objection to form.

24 THE WITNESS: I believe when I'm
25 saying this in today's date, I recall seeing a

1 listing for a used Puck boat from 2013 and
2 seeing that -- the serial number it was, and
3 that's where I'm coming up with this from.

4 BY MR. LEACH:

5 Q. So you saw an ad for a Puck boat, a
6 physical Puck boat in 2013?

7 A. That's not what I'm saying. I'm saying
8 at some point since then, it could be two years
9 ago, three years ago, I've seen an ad for a
10 used Puck boat from year produced 2013, and I
11 am pretty sure the number for the serial number
12 was something around close to a hundred units.
13 It just -- it stuck with me that -- I didn't
14 realize they had that many produced in that
15 time period.

16 Q. Okay. But you're unaware of what other
17 floating agitating boats were out there at the
18 time, correct?

19 MR. LUCHSINGER: Objection as to
20 form, misstates prior testimony.

21 THE WITNESS: Can you repeat the
22 question?

23 BY MR. LEACH:

24 Q. I'm just trying to understand how you
25 come up with this market share number.

1 A. This declaration is, you know, fairly
2 recent. And I -- based on seeing a used Puck
3 boat with a high serial number around a hundred
4 units that was built in 2013 model year, I
5 think that gives you a pretty good idea that
6 there was close to a hundred Puck boats built
7 sometime around 2013. So with that information
8 that I've learned sometime over the last five
9 years, you know, I see this other raft that has
10 a cable pulling it across, I can come up with a
11 number that's pretty close and conservatively
12 saying that they had about 95 percent of the
13 market.

14 Q. And this story about the Puck boat and
15 the serial number, someone told you that their
16 serial numbers go sequentially up and they
17 started from zero, is that correct? What's
18 your basis for that?

19 A. They haven't once announced how many
20 boats they made. I'm purely speculating on how
21 many they made, but it matched up with their
22 boat serial number that was just a progressive
23 number.

24 Q. And you didn't call to confirm that with
25 Puck to make sure that was accurate, right?

1 A. Puck is my competitor.

2 Q. And would you agree with me that the
3 Puck boats compete against your Lagoon Crawler?

4 A. They are -- they're both manure pumping
5 boats.

6 Q. Well, you just said Puck was a
7 competitor. Does Puck's agitation boat compete
8 with your Lagoon Crawler product?

9 A. They are two competing products.

10 Q. Do you know if the Puck boat costs more
11 or less than the Lagoon Crawler?

12 A. I would be speculating. I have no idea.

13 Q. But yet you're willing to testify that
14 you heard that they have a serial number that
15 counts progressively up, and you thought at one
16 point in time it was at a hundred in 2013;
17 that's not speculation?

18 MR. LUCHSINGER: Objection as to
19 form, argumentative.

20 THE WITNESS: You're asking where
21 this number came from. And I can pretty
22 confidently say that they were the major market
23 player at that time minus one boat.

24 BY MR. LEACH:

25 Q. Well, wouldn't that be a 99 percent

1 market share then?

2 A. I wanted to be conservative.

3 Q. Okay. But even -- is it 99 percent -- I
4 guess it depends on how many boats they sold
5 per year. What -- is -- your market share, is
6 it as of 2013? What are the dates you're --

7 A. This is the time stamp basically when
8 Nuhn first introduced the Nuhn Lagoon Crawler
9 prototype at the 2013 North American Manure
10 Expo.

11 Q. I'm going to mark Exhibit 1066. If you
12 could just go to page 63. Look at Figure 12-57
13 on page 63 of Exhibit 1066. It says,
14 "Float-mounted agitator pump."

15 Do you see that?

16 A. Yeah. I'm on page 63.

17 Q. Do you see the Figure 12-57, the
18 float-mounted agitator pump?

19 A. (Views document.) Yeah. I see
20 Figure 12-57.

21 Q. Prior to August 2013, were you aware of
22 floating agitator boats such as this one?

23 MR. LUCHSINGER: Objection as to
24 form.

25 THE WITNESS: No, I was not.

1 BY MR. LEACH:

2 Q. So if a number of these were sold --
3 well, the fact that this was out there means
4 that your market share data is just incorrect,
5 right?

6 MR. LUCHSINGER: Objection as to
7 form.

8 THE WITNESS: I don't agree with
9 that.

10 BY MR. LEACH:

11 Q. Can you tell me why?

12 A. I don't want to speculate what this
13 does.

14 Q. In 2013, how did you determine what the
15 market was that you were going to calculate
16 market share on?

17 A. In 2013, I wasn't doing this. This is
18 me today looking back at 2013.

19 Q. So you're estimating what your market
20 share was in -- or what Puck's market share was
21 in 2013, and then you're estimating what it is
22 today, is that correct?

23 A. I'm estimating what we'll make a year
24 today compared to them, not total units.

25 Q. Compared to them in 2013 or compared to

1 them today?

2 MR. LUCHSINGER: Objection as to
3 form.

4 THE WITNESS: I'd say today -- when
5 I say "today," I'm saying -- I'm basing my
6 numbers off of what we're producing per year.

7 BY MR. LEACH:

8 Q. Okay. And so we've talked about Puck
9 and your estimate in 2013 that they had a
10 95 percent market share, and I think we've
11 concluded that you didn't include all of the
12 products that were out there, and that you are
13 uncertain or speculating as to how many Puck
14 boats were sold in 2013, is that fair?

15 MR. LUCHSINGER: Objection as to
16 form, misstates prior testimony.

17 THE WITNESS: That's not what I'm
18 saying.

19 BY MR. LEACH:

20 Q. Okay. What are you saying?

21 A. I'm saying -- this is what I'm saying --

22 Q. I don't need you to read your
23 declaration. I'm trying to get at the basis
24 for how you arrived at those numbers. That's
25 the problem I have here. I want to get at what

1 are the facts that you relied on to make these
2 statements under oath. So let's -- we've hit
3 Puck enough. Let's talk about how you
4 estimated that Nuhn's Lagoon Crawler
5 constitutes at least 90 percent of the manure
6 pumping boat market as of December 2023. What
7 did you base that estimate on?

8 A. I had a phone call conversation with
9 Jeremy Puck.

10 Q. Okay. And what did he tell you?

11 A. He's making less than five boats per
12 year.

13 Q. And when did you have that conversation?

14 A. I would be speculating on the exact
15 date, but I would say late -- sometime in '23.
16 I would have to go through my notes.

17 Q. And is Jeremy Puck affiliated with Puck
18 boats?

19 A. I believe he's the CEO of Puck, the
20 manufacturer of Puck boats.

21 Q. Do you know that for sure?

22 A. I believe that's what his title is when
23 he signs an email. That would be what I'd be
24 going off of. I'd have to see --

25 Q. Is this the same Puck that's a

1 competitor of Nuhn?

2 A. Correct.

3 Q. Why would he provide you his sales
4 information?

5 A. He over the course of the last two years
6 has been very active in seeking a license
7 agreement for our patented technology.

8 Q. Getting back to the 90 percent market
9 share, you -- today you included Puck. What
10 about the other -- what did you do to determine
11 other floating agitators on the market?

12 MR. LUCHSINGER: Objection as to
13 form.

14 THE WITNESS: I believe that the
15 competitors in the field are Puck and I, I say,
16 setting aside Bazooka's copycat Wolverine.

17 BY MR. LEACH:

18 Q. So the only two products you considered
19 in your market share analysis for the
20 90 percent and the five percent or the ten
21 percent in paragraph 27 is Puck and Nuhn's
22 Lagoon Crawler, is that correct?

23 A. There's also JT Boats. And I have a
24 close contact who deals with JT Boats. And to
25 my knowledge, they have not made a boat in

1 2023.

2 Q. Do you know whether they had inventory
3 that they were selling off from their dealers
4 or distributors?

5 A. I don't know. I'm going off of
6 manufactured in the year 2023.

7 Q. So your market share data is based on
8 the number of boats manufactured or the number
9 of boats sold?

10 A. I would say manufactured and sold.

11 Q. Okay. Explain that.

12 A. I don't think Puck is building them for
13 stock and we're not either.

14 Q. What's your definition of market share?

15 A. Basically the number of units sold
16 within a year and the percentage for each
17 competitor in that field.

18 Q. Did you consider the product that Nuhn
19 sells to Russia and China in your calculations
20 or estimates?

21 A. This is strictly talking about United
22 States and Canada.

23 Q. And so for the boats that you produced
24 and sold, did you exclude the boats, the Lagoon
25 Crawlers, that you sold to China and Russia?

1 A. I don't believe I sold any to China or
2 Russia in 2023. I'd have to look through my
3 notes.

4 Q. Okay. But as you sit here, you don't
5 know one way or the other whether you excluded
6 or included any?

7 A. I'm saying we made close to 80 Lagoon
8 Crawlers in 2023. I'm -- I'd have to look
9 through my notes. But I would imagine that
10 almost 99 to 100 percent of those 80 were in
11 Canada or the United States. I'd have to go
12 through my notes to verify. It may only be
13 like one that would not be in that area.

14 Q. And just to confirm, you didn't do
15 anything -- I mean, you didn't hire a company
16 that does market share research, correct?

17 A. No.

18 Q. You didn't do any formal market share
19 study, correct?

20 A. I think with the size of the industry,
21 it's not a very big industry, you know, if I
22 have the owner of the main competitor telling
23 me that they're making less than five boats a
24 year, and someone who has direct contact with
25 the only other player in the field, I think I

1 have a pretty good understanding of the market
2 share that we would have.

3 Q. Did you include any manure pumping
4 dredges?

5 A. No. I'm not familiar with any lagoon
6 pumping dredges operation or being sold.

7 Q. Do you have any documents that support
8 what Puck told you or what your contact at JT
9 Boats told you?

10 A. It's all verbal.

11 Q. Is there a chance that Puck was giving
12 you misinformation because you're a competitor?

13 A. My experience --

14 MR. LUCHSINGER: Objection as to
15 form, calls for speculation, lack of
16 foundation.

17 THE WITNESS: My experience, I have
18 to go by what he's saying. And this is just me
19 speculating again. I feel like he's even
20 inflating those numbers.

21 BY MR. LEACH:

22 Q. But, again, you didn't check if Senwatec
23 sold any vehicles in the United States,
24 correct, in 2023?

25 A. I'm not aware of any Senwatec vehicles

1 in the United States or Canada.

2 Q. And you didn't check if Bradley sold any
3 agitation boats in the U.S. or Canada in 2023?

4 A. I am not aware of any Bradley units.

5 Q. And you didn't check whether Truxor sold
6 any agitation boats in -- or dredging boats in
7 2023 in the U.S. or Canada, correct?

8 A. I'm not aware of any Truxor units in the
9 United States or Canada.

10 Q. So I just want to review. You base your
11 market share data based on what people told
12 you, correct?

13 A. Correct.

14 MR. LUCHSINGER: Objection to form.

15 BY MR. LEACH:

16 Q. And you didn't do any formal market
17 share study, correct?

18 A. I have experience in the field, and it
19 is kind of backed up with what I see in the
20 field. I haven't personally seen any new JT
21 Boats in 2023. And quite frankly, I have not
22 seen any new Puck boats in 2023. So I -- it's
23 a small market. I would know if they made any
24 or sold any. So even me saying five boats a
25 year that Puck's making, I can't even name one.

1 Q. Are you telling me you would know
2 whether Puck or JT Boats sold a product in the
3 U.S. or Canada?

4 A. It would get around. It's a small
5 industry. A dealer would tell me: Hey, you'll
6 never believe it. Someone just bought a Puck
7 boat. It would honestly be that much of a
8 shock if someone bought a Puck boat today. And
9 I don't mean to come across as cocky when I say
10 that, but it would be industry news that
11 someone is buying one of those today.

12 Q. And you would base that on -- your
13 knowledge of what's being sold out there would
14 be based on what people would tell you, no
15 actually -- no actual study or hard data
16 collected, correct?

17 A. It would be from just me being in the
18 industry.

19 Q. Okay. Let's move on to paragraph 29 of
20 your declaration. Before we do that, one quick
21 thing. You agree with me that there are some,
22 for example, swine lagoons that don't have a
23 crust on them, correct?

24 MR. LUCHSINGER: Objection as to
25 form, foundation, asked and answered.

1 THE WITNESS: I personally have not
2 been at a swine lagoon.

3 BY MR. LEACH:

4 Q. I understand you haven't been at one,
5 but would you agree with me that there are
6 swine lagoons out there that need to be
7 agitated that don't have a crust?

8 MR. LUCHSINGER: Same objections.

9 THE WITNESS: I would be
10 speculating. I personally have not been at a
11 swine lagoon to verify what you're saying.

12 BY MR. LEACH:

13 Q. Okay.

14 A. I've been at sites where it's under barn
15 storage, but I've never been at a hog site
16 where it's an open lagoon.

17 Q. Would a Puck boat work well in a manure
18 lagoon that doesn't have a crust?

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

21 THE WITNESS: Sitting here today,
22 that would be very speculative to say a broad
23 statement like that.

24 BY MR. LEACH:

25 Q. Okay. Well, if you've never been to a

1 swine lagoon and they may -- they may have
2 purchased a Puck boat that you're unaware of,
3 right?

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

6 THE WITNESS: It's mainly not swine
7 producers that are buying these. It would be
8 more of a custom operator.

9 BY MR. LEACH:

10 Q. Okay. Well, let's go on to Unexpected
11 Results, paragraph 29 of your declaration,
12 which is Exhibit 2083.

13 MR. LUCHSINGER: So the -- this is
14 like the end of the sealed protected portion of
15 the testimony for right now.

16 MR. LEACH: Okay.

17 BY MR. LEACH:

18 Q. In paragraph 29, you state that
19 "...others in the industry did not expect the
20 Lagoon Crawler to be able to agitate manure
21 lagoons that were severely crusted over." Is
22 your basis for saying that what people in the
23 industry told you they believed?

24 A. Yeah.

25 Q. Can you tell me who?

1 A. I can't name anyone specifically. I
2 was -- at the time of its unveiling I was new
3 in the industry myself just being out of
4 school, so I didn't have the one-on-one
5 connections that I do today with a customer
6 base.

7 Q. So when you came out of university, you
8 would agree that you were new in the industry?

9 A. When I came out of university, that was
10 my first time really being full-time in the
11 industry.

12 Q. And so being new to the industry in
13 April of 2013, is it your testimony that you
14 didn't expect that the churning wheels of the
15 Lagoon Crawler would help navigate the Lagoon
16 Crawler through thick sludge where the Puck
17 boat would often get stuck and other pumps
18 would not work?

19 A. I did not expect that the churning of
20 wheels -- churning wheels of the Lagoon Crawler
21 would help navigate the Lagoon Crawler through
22 thick sludge where the Puck boat would often
23 get stuck and other pumps would not work.

24 Q. Do you think this was unexpected to you
25 because you were new to the industry?

1 MR. LUCHSINGER: Objection to form.

2 THE WITNESS: No. I don't agree

3 with that statement.

4 BY MR. LEACH:

5 Q. Okay. Do you think it was unexpected to
6 you because you're not an engineer?

7 MR. LUCHSINGER: Objection to form.

8 THE WITNESS: That's a little
9 offensive. No. I don't agree with that.

10 BY MR. LEACH:

11 Q. I don't mean to offend. That's not --

12 A. No. I'm just kidding.

13 Q. Would you agree with me that the
14 Senwatec vehicle that we looked at and the
15 Amphi-King vehicle that we looked at has wheels
16 or tracks that would help the vehicle navigate
17 through thick sludge?

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

20 THE WITNESS: I don't want to
21 speculate on their performance.

22 BY MR. LEACH:

23 Q. Would the floatable vehicle body in the
24 Senwatec and Truxor vehicles form a pocket or
25 allow a pocket to form where their pumps could

1 work?

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

4 THE WITNESS: I don't want to
5 speculate on how those machines would operate.

6 BY MR. LEACH:

7 Q. Can you tell me what specific part of
8 the Lagoon Crawler performed the function of
9 creating this pocket?

10 A. I don't know if I can answer that.

11 Q. Why?

12 A. I feel like it's a very vague question.

13 Q. Well, is it the wheels? Is it the hull?
14 What forms the pocket when it's driven into the
15 lagoon?

16 A. I think it's a variety of structure. I
17 don't think it's just one structure.

18 Q. Okay. Can you name the structure that
19 you think does it?

20 A. I'd have to -- I've never really
21 investigated closely on which one's creating
22 the pocket to be quite honest.

23 Q. Well, you say, "Moreover, the floatable
24 vehicle body and churning wheels unexpectedly
25 allowed the pump to agitate and mix thicker

1 sludge by creating the 'pocket' or opening" in
2 paragraph 30 of your declaration.

3 A. Yeah. So I said previously I think it's
4 a combination, not particularly one thing.

5 Q. Okay. So is it your testimony that it's
6 the vehicle body and the churning wheels that
7 created the pocket or opening?

8 A. My testimony is the floatable vehicle
9 body and churning wheels unexpectedly allowed
10 the pump to agitate and mix thicker sludge by
11 creating the pocket or opening.

12 Q. And when you say "unexpectedly," that's
13 as of early August 2013, right?

14 MR. LUCHSINGER: Objection as to
15 form.

16 THE WITNESS: I don't think I could
17 say the exact date.

18 BY MR. LEACH:

19 Q. Well, is that --

20 A. We never ran it in those conditions in
21 August 2013.

22 Q. Well, when did you run it in those
23 conditions?

24 A. I can't recall the first time.

25 Q. Was it in 2014?

1 A. Sitting here today, I can't recall the
2 first time.

3 Q. But, again, your testimony in
4 paragraph 31 is from someone who was relatively
5 new to the industry in 2013, as you just
6 testified, without an engineering degree, and
7 that's the perspective from which you're making
8 this testimony, correct?

9 MR. LUCHSINGER: Objection as to
10 form.

11 THE WITNESS: I'd say I'm not new to
12 the industry. I'm saying I was starting to
13 work full-time in the industry. I worked
14 part-time on and off many years prior. But in
15 order for me to gain the personal connection to
16 the end customers, that didn't start until when
17 I worked full-time in 2013.

18 BY MR. LEACH:

19 Q. Okay. But at least in paragraph 30, the
20 unexpected results that you perceived were from
21 the perspective of someone that's not an
22 engineer, not trained in designing manure
23 agitation equipment --

24 MR. LUCHSINGER: Objection as to
25 form.

1 MR. LEACH: I'm not done yet.

2 THE WITNESS: I --

3 BY MR. LEACH:

4 Q. -- and no formal engineering or
5 mechanical design courses, correct?

6 MR. LUCHSINGER: Objection as to
7 form.

8 THE WITNESS: That's not correct. I
9 had experience with agitation design. All I
10 said was I was just in the industry full-time
11 getting out of school in and around April 2013
12 where I was able to, you know, start making
13 relationships with the end customers.

14 MR. LEACH: Can we take a break for
15 a second?

16 THE WITNESS: Sure.

17 THE VIDEOGRAPHER: We are going off
18 the record.

19 The time now is 3:45 p.m.

20 (Off the record 3:45 to 3:54.)

21 THE VIDEOGRAPHER: We are back on
22 the record. This marks the beginning of Media
23 Number 7 in the deposition of Ian Nuhn.

24 The time now is 3:54 p.m.

25 MR. LEACH: Okay. We're back from a

1 break.

2 BY MR. LEACH:

3 Q. I want to direct your attention to
4 paragraph 32 and -- of your declaration. In
5 that paragraph, the second paragraph of
6 paragraph 32, you talk about your Lagoon
7 Crawler used less -- or took less time to
8 agitate than a farmer using tractor-mounted
9 agitators, correct?

10 A. (No verbal answer.)

11 Q. And you mentioned that it did the job --

12 THE COURT REPORTER: Oh, I'm sorry.
13 Can -- did you hear him answer? He talked, but
14 I couldn't hear him.

15 BY MR. LEACH:

16 Q. Sorry. You're on mute.

17 A. Oh, sorry about that. Sorry. Can you
18 reask the question?

19 Q. Yes, I can. In paragraph 32, and it's
20 the second paragraph of paragraph 32 of your
21 declaration, you talk about the Lagoon Crawler
22 using less fuel than four fuel-burning tractors
23 to agitate a lagoon, correct?

24 A. I say "...I did not expect that it would
25 agitate a manure lagoon in significantly less

1 time than when using multiple standalone
2 pumps."

3 Q. Okay. And when you were developing the
4 Lagoon Crawler, did you consider putting in two
5 engines on the Lagoon Crawler, one to drive the
6 wheels and one to drive the pump?

7 A. I did not consider that.

8 Q. Why not? Was it for fuel consumption or
9 weight?

10 A. Just seemed like added complexity. It
11 was just something I never considered.

12 Q. So in a number -- well, in paragraph 34
13 you cite a number of articles mentioning that
14 the Lagoon Crawler wowed the agricultural
15 industry, right?

16 A. Where does it say that specifically?

17 Q. So if you go down on page 19 of your
18 declaration in paragraph 34, it quotes that,
19 "H. Rivers, Farm show opens with a splash. The
20 Beacon Herald (September 10, 2014) at 2..." you
21 say "... (accurately reporting the Lagoon
22 Crawler 'wowed the industry by winning an
23 innovation award in Illinois at the Farm
24 Progress Show' the last year in 2013)."

25 Do you see that?

1 A. I see -- I see what you're -- I see in
2 quotes "...wowed the industry by winning an
3 innovation award at the Farm Progress Show in
4 Decatur, Illinois last August')." I believe
5 that's an excerpt from the article.

6 Q. Okay. In reading some of these articles
7 that you're citing in paragraph 34, would you
8 agree with me that people were also wowed with
9 the appearance of the machine?

10 A. Can you show me where it says that?

11 Q. I'm saying: In the article, would you
12 agree with me that generally people were
13 impressed by the fit and finish and the cool
14 looking design of the machine?

15 A. Can you show me that specifically?

16 MR. LUCHSINGER: Objection as to
17 form.

18 BY MR. LEACH:

19 Q. I'm not -- I'm asking you that question.

20 A. I'm not going to speculate on what's in
21 the articles without having them open.

22 Q. Okay.

23 A. You can load it in the docket if you'd
24 like.

25 Q. Yeah. Okay. I'm going to introduce

1 Exhibit 2063, which has been previously marked.
2 You might have to blow it up a bit because it's
3 small. So this is dated September 9, 2013.
4 And is that a picture of you in the first page
5 of the article?

6 A. (Views document.) It appears to be.

7 Q. A younger you?

8 A. Equally handsome.

9 Q. Yes. Yes. I feel it too. Let's go
10 to -- so if you look at the first sentence of
11 the article, it says, "A kick-ass amphibious
12 Lagoon Crawler is making waves in farming
13 circles. It looks like something out of a
14 Transformers movie, a futuristic cross between
15 a dune buggy, boat and F1 racer. The bright
16 red, knobby-tired vehicle might just be the
17 coolest piece of farm equipment ever made."

18 Do you see that?

19 A. Yeah, I see the first sentences.

20 Q. Would you agree with me that a lot of
21 the press that you received talked about how
22 kick-ass and cool the Lagoon Crawler looked?

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

25 THE WITNESS: That's -- without

1 seeing all the exhibits and reading the entire
2 article, I can't comment on that.

3 BY MR. LEACH:

4 Q. Well, would you agree with me at least
5 this article, Exhibit 2063, says that?

6 A. I can say what it says if you'd like.

7 Q. I don't need you to read it back to me.
8 I read it to you. I guess what I'm asking is:
9 Would you agree with me that at least in this
10 article it talks about how cool the Lagoon
11 Crawler looked?

12 A. Well, you've only read a few sentences
13 from an article, so I don't think that that's
14 what the entire article is about.

15 Q. I wasn't asking whether that was the
16 entire article. I was asking: Did at least
17 the article in a portion talk about how cool
18 the Lagoon Crawler looked?

19 MR. LUCHSINGER: Tom, I think you
20 cut Ian off again, so I just wanted to, you
21 know, caution you to let him finish.

22 MR. LEACH: Sure. I apologize.

23 THE WITNESS: I'm not sure if it's
24 talking just about how it looks. If I read --

25 BY MR. LEACH:

1 Q. In the first column -- sorry.

2 A. No. Go ahead.

3 Q. I mean, would you agree with me that it
4 says, "A kick-ass amphibious Lagoon Crawler is
5 making waves in farming circles. It looks like
6 something out of a Transformers movie, a
7 futuristic cross between a dune buggy, boat and
8 F1 racer. The bright red, knobby-tired vehicle
9 might just be the coolest piece of farm
10 equipment ever made." Would you agree with
11 me --

12 A. I read --

13 Q. Sorry.

14 A. No. Go ahead.

15 Q. Would you agree with me that at least in
16 this article part of what it's talking about is
17 how cool the Lagoon Crawler looks?

18 A. I read it differently than you.

19 Q. How do you read it?

20 A. I read, "A kick-ass amphibious Lagoon
21 Crawler is making waves in farming circles." I
22 agree that it does a good job of making waves
23 in lagoons. It's talking about performance
24 there.

25 Q. Okay. What about the next paragraph?

1 A. "It looks like something out of a
2 Transformers movie, a futuristic cross between
3 a dune buggy, boat and F1 racer." When I read
4 further down, "'It's big and when you tell them
5 it floats, they almost fall over.'" That's
6 more than appearance.

7 Q. If you go to the middle -- kind of
8 middle paragraph towards the bottom, the author
9 says, "He and his dad had kicked ideas around
10 for the design for about a year."

11 Do you see that?

12 A. I do.

13 Q. Is that you and your dad discussing the
14 design of the Lagoon Crawler for about a year?

15 A. It says, "He and his dad had kicked
16 ideas around for the design for about a year."
17 I'm not sure where they're getting that info
18 from. I'm not sure the context of which that
19 is said in that article.

20 Q. Is that true?

21 A. No.

22 Q. And if you go to the first column, it
23 says, there's a quote, "'A lot of people think
24 it's a jacked-up Ferrari.'" And they attribute
25 that to Ian Nuhn, yourself, right, correct?

1 A. According to this article, it appears as
2 though it's a quote from me.

3 Q. Okay. So in this article, at least in a
4 portion of it they're quoting you, correct?

5 A. I don't recall making that quote, but it
6 appears that way in this article.

7 Q. I'll mark another exhibit. Here's
8 another article out The Beacon Herald. And
9 this is Exhibit 2064 from September 6, 2013.
10 And, again, in the center the title is "Crawler
11 makes manure almost sexy."

12 Do you see that?

13 A. (Views document.) Yep.

14 Q. Again, would you agree with me that part
15 of what this article is talking about is how
16 cool the Lagoon Crawler looks?

17 A. I'd have to compare it to the other
18 exhibit. I feel like The London Free Press is
19 almost a reprint of this.

20 Q. I notice some of them are very similar.
21 That's right. This also has the quote, "'A lot
22 of people think it's a jacked-up Ferrari.'"
23 And they're attributing that to Ian Nuhn,
24 designer Nuhn Industries. Do you see that in
25 the center column?

1 A. I see that.

2 Q. And I think if you look below that, it
3 has almost the same text as we looked at in the
4 prior exhibit, correct?

5 A. I'd have to pull them up side by side.

6 Q. Well, let me read it to you. It says,
7 "The bright red, knobby-tired crawler, though,
8 is arguably the coolest piece of farm equipment
9 every made. It reassembles something out of a
10 Transformers movie, a futuristic cross between
11 a dune buggy, boat and F1 racer. 'A lot of
12 people think it's a jacked-up Ferrari,' Nuhn
13 said, laughing."

14 Do you see that?

15 A. Do you want to pull up the other exhibit
16 to compare?

17 Q. No, we don't need to compare it. I'm
18 just asking if that -- did I accurately read
19 that?

20 A. It appears as though it's the same
21 author for both articles.

22 Q. Did a lot of these newspapers -- the
23 publications that you got get printed in
24 multiple newspapers?

25 A. Not to my knowledge. I'd be speculating

1 on giving an answer to that.

2 Q. So if you look at the second from the
3 right column under "almost" basically, the
4 second paragraph says, "Nuhn explained that
5 solid manure settles in the bottom of the
6 lagoons. Traditional pumps spray mostly the
7 water from the lagoons, leaving the best
8 nutrients for the soil behind."

9 Do you see that?

10 A. I see that in the article.

11 Q. Would you agree with me that in some
12 lagoons when the contents have settled, that
13 there's a layer that is a watery consistency of
14 liquid manure?

15 MR. LUCHSINGER: Objection as to
16 form.

17 THE WITNESS: I wouldn't agree with
18 you on that broadly.

19 BY MR. LEACH:

20 Q. Well, are you saying the -- what you
21 explained there is incorrect?

22 MR. LUCHSINGER: Objection as to
23 form.

24 THE WITNESS: I don't believe this
25 is a -- like a formal proper quote from me.

1 This is not an agriculture magazine. This is
2 a -- probably the person doing the interview
3 took what I said and construed it in a way that
4 the general reader of this would understand.
5 I'm not even sure if that's the proper Nuhn
6 because I know they go back and forth between
7 Dennis Nuhn and me in this as well, so...

8 Q. Mark another exhibit here. I'm
9 introducing Exhibit 2068. Might take a second
10 to load.

11 MR. LUCHSINGER: While we're
12 waiting, what's the record time right now?

13 THE VIDEOGRAPHER: We've got
14 13 minutes left.

15 MR. LUCHSINGER: Thank you.

16 BY MR. LEACH:

17 Q. If you go to page 30, I believe -- let
18 me check to make sure it's 30 of the exhibit
19 and not the page numbers on the document.
20 Page 30 out of 20 -- page 30 out of 65. If you
21 look at the bottom middle column, it says,
22 "'Guys will take it through parades in their
23 local towns,' Nuhn said. 'We didn't have to go
24 the extra mile that we did in building it. But
25 this is a \$150,000 machine, and if we would

1 have just slapped some metal together and made
2 a simple barge, I don't think we would have
3 received the same response. I think because we
4 made it look the way it does people are proud
5 to fork over that kind of change and they are
6 proud to own it.'"

7 Do you see that?

8 A. (Views document.) Yeah, I see that.

9 Q. And so would you agree with me that part
10 of the reason people buy this vehicle is
11 because it looks cool?

12 MR. LUCHSINGER: Objection as to
13 foundation.

14 THE WITNESS: No, I don't agree with
15 that.

16 BY MR. LEACH:

17 Q. Well, isn't that what you said in this
18 article?

19 A. Maybe that's where the sense of pride
20 comes from in order to show it in a parade.

21 Q. Okay.

22 THE VIDEOGRAPHER: Counsel, just a
23 heads-up, I've got ten minutes.

24 MR. LEACH: Okay.

25 BY MR. LEACH:

1 Q. In paragraph 53 of your declaration
2 under the heading of Skepticism and Surprise,
3 towards the bottom it says "...others in the
4 industry expressed skepticism that the Lagoon
5 Crawler would successfully or reliably perform
6 to disrupt the crust and circulate liquid
7 manure in a manure lagoon, while reliably
8 driving into, out of, and navigating the manure
9 lagoon by wireless remote control."

10 Do you see that?

11 A. Yep.

12 Q. When you say others in the industry
13 expressed that skepticism, is this what people
14 told you?

15 A. Yeah, at these trade shows.

16 Q. Do you know the names of any of the
17 people that told you about their skepticism
18 that you're talking about in paragraph 53 of
19 your declaration?

20 A. Not particular names. But there was --
21 you know, there's a lot of people in the
22 industry that were -- you know, expressed
23 skepticism about the performance of the
24 product.

25 Q. But you don't have any name that goes

1 along with that skepticism that you can give
2 me, correct?

3 MR. LUCHSINGER: Objection as to
4 form.

5 THE WITNESS: I think even my father
6 was skeptical of it.

7 BY MR. LEACH:

8 Q. Okay. Aside from your dad, anyone else?

9 A. I can think of a few names, but I can't
10 say for certain what time frame and year.

11 Q. Did you get a declaration from anyone
12 that's willing to say under oath that they were
13 skeptical about how it would perform?

14 A. I do not have that. I never tried for
15 that either.

16 Q. Let's turn to paragraph 60 to 63. Well,
17 strike that.

18 Let me pull up -- I'll mark -- or
19 introduce another exhibit, 2075. Take a look
20 at this. And you rely on this email to suggest
21 that Mr. Puck wanted to license some patents
22 from Nuhn, correct?

23 A. This shows that the Lagoon Crawler
24 invention was so successful that Puck, the
25 prior market leader in agitation boats that

1 Nuhn has since eclipsed with the Crawler, has
2 sought a license to the Lagoon Crawler
3 technology, which includes the '425 patent and
4 the family of related products. Exhibit 2075
5 is a true and correct copy of an email that the
6 CEO Jeremy Puck of Puck sent to me.

7 Q. Okay. In that email, Exhibit 2075, does
8 he ever specifically mention the '425 patent?

9 A. The -- I'd have to look at this closer
10 if you'd like me to.

11 Q. Yeah. Please look at the email.

12 A. (Views document.) The email says, "I
13 would like to set up a meeting with you
14 sometime to talk about opportunities with your
15 pumps on our products and some of the new
16 markets we are seeing. I would also like to
17 share with you where we are with a new boat we
18 are working on. The discussion around the boat
19 would be in regards to your patents you own,
20 and to see if there was any opportunity for a
21 licensing agreement or a cross licenses
22 agreement with our patents." I think it's
23 pretty clear he's talking about our -- the
24 Crawler portfolio from this.

25 Q. Well, wouldn't you agree that the email

1 says on the fourth line down, "I would like to
2 set up a meeting with you sometime to talk
3 about opportunities with your pumps on our
4 products and some of the new markets we are
5 seeing"? Are you sure he wasn't talking about
6 the '224 patent and your triple-outlet pump?

7 MR. LUCHSINGER: Objection as to
8 form.

9 THE WITNESS: Nope. It says, "The
10 discussion around the boat would be in regards
11 to your patents you own, and to see if there
12 was any opportunity for a licensing agreement
13 or a cross licenses agreement with our
14 patents."

15 BY MR. LEACH:

16 Q. So here he's talking about actually
17 licensing patents to Nuhn as well, correct,
18 Puck patents to Nuhn?

19 A. He mentions cross-license agreements
20 with our patents.

21 Q. Okay. But isn't it true that he may
22 want to put the triple-outlet pump that you
23 designed it on the boat? Couldn't he have been
24 talking about that?

25 MR. LUCHSINGER: Objection as to

1 form, foundation, calls for speculation.

2 THE WITNESS: I don't --

3 BY MR. LEACH:

4 Q. In the end, it's pure speculation as to
5 what Mr. Puck is seeking to license, isn't it?

6 MR. LUCHSINGER: Objection to form.

7 THE WITNESS: Puck had phone calls
8 with me after specifically on licensing the
9 Lagoon Crawler.

10 BY MR. LEACH:

11 Q. I want to turn your attention now to
12 liquid manure. Is the crust that forms on top
13 of some manure lagoons liquid manure in your
14 mind?

15 MR. LUCHSINGER: Objection as to
16 form, vague.

17 THE WITNESS: If it's in a liquid,
18 it's liquid manure.

19 BY MR. LEACH:

20 Q. Is -- the crust that forms on top of
21 liquid manure, is that liquid manure in your
22 mind?

23 MR. LUCHSINGER: Same objection.

24 THE WITNESS: If it's in a fluid,
25 it's liquid manure.

1 BY MR. LEACH:

2 Q. I don't understand what you're saying
3 there. You mean if a crust is floating on
4 liquid manure, it's liquid manure in your mind?

5 A. In my mind, if it's within a fluid, a
6 body of fluid within a container of a lagoon, I
7 would classify that all as liquid manure.

8 Q. Isn't -- well, do you know the
9 difference between a liquid and a solid?

10 MR. LUCHSINGER: Objection, vague.

11 THE WITNESS: In what context?

12 BY MR. LEACH:

13 Q. In any context. How about ice and
14 water, is ice a solid and water is -- liquid
15 water is a liquid?

16 A. Are you asking me anything specific
17 related to the '425 patent?

18 Q. I'm asking you if you would consider an
19 ice cube floating in water to be a liquid?

20 A. Do you have a -- I feel like that's a --
21 vague for me to answer. Do you have a picture
22 or something we -- a video we can look at? I
23 don't want to answer based on your description.

24 Q. Of an ice cube floating in water, you
25 need a picture or a video of that to answer my

1 question?

2 A. I feel like it's -- it's a broad...

3 Q. For -- so I assume you're not going to
4 answer that question, you don't have enough
5 detail there?

6 A. If you can provide more detail, I can
7 answer that question.

8 Q. Okay. I don't know what more detail I
9 can provide. I don't have a picture or a video
10 that I can show you, but I think you --

11 MR. LUCHSINGER: That's good because
12 time's up. So --

13 MR. LEACH: No. I've got a few more
14 questions.

15 MR. LUCHSINGER: Nope. You've used
16 your seven hours.

17 MR. LEACH: Just give me a few
18 minutes here. You've had a number of
19 objections that were quite lengthy.

20 MR. LUCHSINGER: I'll give you to --
21 BY MR. LEACH:

22 Q. If you could go back to Exhibit 1066 --

23 MR. LUCHSINGER: I'll give you to
24 4:40. That's seven more minutes.

25 MR. LEACH: Okay.

1 BY MR. LEACH:

2 Q. Does liquid manure contain suspended
3 solids?

4 A. If there are solids in the fluid, I
5 would call it liquid manure.

6 Q. Any percentage of solids would be liquid
7 manure?

8 A. If there's solids in the fluid, I would
9 call it liquid manure.

10 Q. So if there's one percent total solid
11 content in water, you would consider that
12 liquid manure?

13 MR. LUCHSINGER: Objection to form.

14 THE WITNESS: If there's solids in a
15 fluid, I would call it liquid manure.

16 BY MR. LEACH:

17 Q. Okay. If you turn to page 89 of 124 of
18 Exhibit 1066, there's a chart, Figure 12-92.
19 Can you take a look at that?

20 A. Which page? Sorry.

21 Q. Page 89 of 124. It's a chart that has
22 bars of yellow, orange and then deeper orange
23 and then yet deeper orange.

24 A. Did you say Exhibit 1062?

25 Q. 1066. Are you there, Mr. Nuhn?

1 A. Figure 12-92?

2 Q. Yes. Would you agree with me that
3 liquid manure -- I'm sorry. Would you agree
4 with me that a liquid with one percent total
5 solids -- strike that.

6 In looking at this chart from -- the
7 title of the chart is "Relative handling
8 characteristics of different kinds of manure
9 and percent total solids."

10 Do you see that?

11 A. I see that.

12 Q. Do you see that under five percent, the
13 yellow bars for swine, poultry, beef and dairy,
14 it says from zero to about five percent is
15 considered liquid manure?

16 MR. LUCHSINGER: Objection as to
17 form and foundation.

18 THE WITNESS: I'm not going to
19 comment on the specifics of this chart. I
20 don't know the context of where it is in the
21 article. I haven't read this whole document.

22 BY MR. LEACH:

23 Q. Well, let's just get away from this
24 document. I think you've already answered my
25 question. Would you agree with me that a

1 liquid with -- liquid manure with one percent
2 total solids would still be liquid manure with
3 that low of total solid content?

4 A. I'm saying if there's solids within the
5 fluid, I would call it liquid manure.

6 Q. Suspended solids. Okay. Would you
7 agree with me that an irrigation pump could
8 pump a mixture of water and manure that has one
9 percent total solids?

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

12 THE WITNESS: I have no experience
13 with irrigation pumps to make a statement.

14 BY MR. LEACH:

15 Q. Would you agree with me that the
16 prior -- I'm sorry. Would you agree with me
17 that centrifugal pumps are used to pump liquid
18 manure?

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

21 THE WITNESS: Can you show me some
22 diagrams to look at and what you're basing this
23 off of?

24 BY MR. LEACH:

25 Q. Are Nuhn's header series pumps

1 centrifugal pumps?

2 A. Can you show me a diagram or something
3 that we can look at --

4 Q. I don't have a diagram. Are you
5 familiar with the pump that you designed that's
6 disclosed in the '224 patent?

7 A. There's different configurations of it.

8 Q. Well, is the housing a centrifugal pump?

9 A. I wouldn't want to speculate on --

10 MR. LUCHSINGER: Objection as to
11 form.

12 THE WITNESS: I don't want to
13 speculate on the context of your definition
14 versus my definition.

15 BY MR. LEACH:

16 Q. I'm just asking you: From your
17 experience in this industry, which you've had a
18 number of years in now, are centrifugal pumps
19 used to pump liquid manure?

20 A. If you can show me a definition, I can
21 be more prepared to answer the question.

22 Q. I don't know what you mean by "a
23 definition."

24 A. I want to make sure we're saying and
25 what you're implying is the same as what I'm

1 understanding.

2 Q. Well, what do you understand a
3 centrifugal pump to be?

4 A. I don't want to speculate on my
5 response.

6 Q. Sir, do you know what a centrifugal pump
7 is?

8 A. I have an understanding of that, yes.

9 Q. Okay. Can you tell me what that
10 understanding is?

11 A. It would have a rotating shaft.

12 Q. Anything else?

13 A. There's different versions of
14 centrifugal pumps, so I'd like to be -- if you
15 can be more specific.

16 Q. I'm asking for your understanding of it.
17 Provide me your understanding of a centrifugal
18 pump.

19 A. In what context?

20 Q. Manure handling context. Can you do
21 that?

22 A. I'd say it's a rotating -- I don't want
23 to define a centrifugal pump in this context.

24 Q. Sir, you may not want to define it, but
25 I'm asking: What is your understanding of a

1 centrifugal pump in the liquid manure handling
2 area?

3 A. I can only answer to my centrifugal
4 pumps, which are the content of the '224
5 patent.

6 Q. So the '224 patent shows a centrifugal
7 pump?

8 A. The basis of a centrifugal pump, yes.

9 Q. Okay. And whether it had a single
10 opening or a dual outlet, it would still be a
11 centrifugal pump, right?

12 A. I would call even the three-outlet a
13 centrifugal pump, a four-outlet a centrifugal
14 pump.

15 Q. Okay. And those are used to handle
16 liquid manure, correct?

17 A. The pumps in the '224 are used for
18 pumping liquid manure.

19 MR. LUCHSINGER: All right. We're
20 done now. Yeah, I gave you even more time
21 over, you know, what I originally had said.
22 So, you know -- I mean, we're well over the
23 seven hours allotted now. I have a few
24 follow-up questions.

25 (Next page, please.)

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EXAMINATION

BY MR. LUCHSINGER:

Q. So, Mr. Nuhn, I'm going to ask you a couple questions now, same ground rules apply. Mr. Leach might make some objections, but you should still answer the questions. So my first question, if you have Exhibit 283 [sic] ready, which is your declaration: Was your market share analysis in paragraphs 27 though 28 of Exhibit 2083 for manure agitation boats in the U.S. and Canada?

MR. LEACH: Object to form.

THE WITNESS: Which -- sorry. I just want to pull the exhibit up.

BY MR. LUCHSINGER:

Q. It's 283 [sic]. It's your declaration. You have it printed out in front of you.

A. Yeah.

Q. It's paragraphs 27 through 38. So the question is: Was your market share analysis in paragraphs 27 through 28 of Exhibit 2083 for manure agitation boats in the U.S. and Canada?

A. Yes.

MR. LUCHSINGER: I object to that question and to the extent it misconstrues

1 prior testimony.

2 BY MR. LUCHSINGER:

3 Q. Is that the North American market Nuhn's
4 Lagoon Crawler occupies?

5 A. That is correct.

6 MR. LEACH: Object to form, leading.

7 BY MR. LUCHSINGER:

8 Q. Do you consider floating agitator pumps
9 to be in the same market as manure agitation
10 boats?

11 A. No, I --

12 MR. LEACH: Object to form.

13 THE WITNESS: No, I do not.

14 BY MR. LUCHSINGER:

15 Q. I think you mentioned previously that it
16 was harder to retrieve Nuhn's Lagoon Crawler
17 when it's broken down than Puck's boat. Do you
18 remember saying that?

19 A. Earlier today. It's been a long day.
20 Yes. Yeah.

21 Q. What did you mean by that?

22 A. Our boat without hydraulic power is
23 almost like an anchor, so it would actually
24 make it harder to retrieve than the Puck's
25 boat.

1 Q. What happens to the wheels if there's no
2 hydraulic power?

3 A. They lock up.

4 MR. LEACH: Object to form.

5 BY MR. LUCHSINGER:

6 Q. What do you mean by "they lock up"?

7 MR. LEACH: Object to form.

8 THE WITNESS: The wheels on the
9 crawler are a spring-applied brake. And then
10 we need hydraulic pressure to release them.

11 BY MR. LUCHSINGER:

12 Q. So if the wheels are locked up, do they
13 rotate?

14 A. No.

15 Q. What's the process to retrieve a
16 broken-down Lagoon Crawler for Nuhn?

17 MR. LEACH: Object to form.

18 THE WITNESS: You -- just because of
19 the environment that the machine is operating
20 in, you pretty much need to put someone on a
21 second Lagoon Crawler and send them into the
22 pit to retrieve the other one. They almost
23 have to jump onto the one that's broken down,
24 tie off and then pull out the broken-down unit.

25 BY MR. LUCHSINGER:

1 Q. And --

2 MR. LEACH: So I'm just going to
3 make an objection that, you know, I asked
4 certain questions and he was unable -- without
5 further specificity of what circumstances were
6 or what the operating conditions were or a
7 video or a document he couldn't answer
8 questions. And now he seems to be able to
9 answer all of your questions without having any
10 issue. So I'm objecting to all of your
11 questions here.

12 MR. LUCHSINGER: Yep. Thanks, Tom.

13 MR. LEACH: I'm reserving the right
14 to bring Ian Nuhn back and depose him again on
15 any of these topics.

16 MR. LUCHSINGER: Yeah, we disagree
17 with that.

18 MR. LEACH: Sure.

19 BY MR. LUCHSINGER:

20 Q. What -- are you aware of -- well, strike
21 that.

22 How do you know what the process has
23 been to retrieve a broken-down Lagoon Crawler?

24 MR. LEACH: Object to form.

25 THE WITNESS: I've been on site when

1 it's happened, so I've seen it firsthand. I've
2 even done it firsthand.

3 MR. LUCHSINGER: No further
4 questions. And I think that concludes today's
5 deposition.

6 THE VIDEOGRAPHER: We are off the
7 record at 4:46 p.m. This concludes today's
8 deposition of Ian Nuhn. The total number of
9 media used was seven and will be retained by
10 Veritext Legal Solutions.

11 MR. LUCHSINGER: We'll reserve
12 signature, review the transcript and have the
13 witness sign.

14 (Deposition concluded at 4:46 p.m.)

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REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that I reported the remote deposition of IAN NUHN on Thursday, May 30, 2024, from Maple Grove, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition transcript by the witness was reserved.

WITNESS MY HAND AND SEAL THIS 12th day of June, 2024.



Dana S. Anderson-Linnell
Notary Public, Hennepin County, MN
My commission expires 1/31/2025

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 13, 2024

To: Mr. Luchsinger

Case Name: Bazooka-Farmstar, LLC v. Nuhn Industries, Ltd.

Veritext Reference Number: 6718670

Witness: Ian Nuhn Deposition Date: 5/30/2024

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: 6718670

CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries, Ltd.

DATE OF DEPOSITION: 5/30/2024

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: 6718670

CASE NAME: Bazooka-Farmstar, LLC v. Nuhn Industries, Ltd.

DATE OF DEPOSITION: 5/30/2024

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

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 6718670

PAGE/LINE(S) / CHANGE /REASON

Date Ian Nuhn
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20____ .

Notary Public

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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