

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,

Petitioner,

v.

NUHN INDUSTRIES LTD.,

Patent Owner.

Case No. IPR2024-00098
U.S. Patent No. 11,541,708

**PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PATENT OWNER’S OBJECTIONS ARE PROPER.....	1
III.	PUBLIC AVAILABILITY.....	1
IV.	OLOFSSON DECLARATION (EX1008).....	1
V.	LONNEMANN DECLARATION (EX1013).....	2
VI.	WINKEL DECLARATIONS (EX1004 and EX1079)	4
VII.	PUCK AND SUNDSTROM DECLARATIONS (EX1099-EX1101).....	5
VIII.	CONCLUSION	5

TABLE OF AUTHORITIES

Page(s)

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Other Authorities

37 C.F.R. § 1.69(b) 3
37 C.F.R. § 42.63(b) 3
FRE 402/403 5
FRE 602 2, 3
FRE 701 5
FRE 702 4, 5

PATENT OWNER'S EXHIBIT LIST

<i>Exhibit #</i>	<i>Description</i>
2001	Petitioner's <i>Ex Parte</i> Reexamination Requests for U.S. Patent No. 11,358,425 and U.S. Patent No. 10,974,557
2002	Decision Granting Patent Owner's Petition for an Unintentionally Delayed Priority Claim in U.S. Patent. No. 10,124,638
2003	U.S. Patent No. 4,594,006 to Depeault ("Depeault")
2004	Expert Declaration of Douglas S. Prairie
2005	Curriculum Vitae of Douglas S. Prairie and Case List
2006	Screenshots from Patent Owner's YouTube Channel of Patented Product, retrieved on 10-2-23 from https://www.youtube.com/watch?v=fEgvvq9HZkk ("Nuhn Lagoon Crawler YouTube Video Screenshots")
2007	Screenshots from Petitioner's YouTube Channel of Accused Product, retrieved on 10-2-23 from https://www.youtube.com/watch?v=3y3bSJJUOps ("Bazooka Wolverine YouTube Video Screenshots")
2008	Screenshots from Progressive Dairyman YouTube Channel of 2014 Manure Lagoon Agitation Boat Demonstration, published on 7-9-14 by Progressive Dairy, retrieved on 10-2-23 from https://www.youtube.com/watch?v=FXRS-9Ip1pE ("Progressive Dairyman YouTube Video Screenshots")
2009	'708 Patent from Google Patents (with Patent Classification List, retrieved on January 23 2024 from https://patents.google.com/patent/US11541708B2/en?q=11%2c541%2c708+ ("708 Patent on Google Patents"))
2010	U.S. Patent No. 4,406,413 to Houle ("Houle")
2011	U.S. Patent No. 7,833,071 to Gaither ("Gaither")
2012	U.S. Patent No. 5,176,098 to Royle ("Royle")
2013	U.S. Patent No. 9,462,741 to Puck ("Puck-II")
2014	U.S. Patent No. 9,572,297 to Puck ("Puck-III")
2015	DE2364962 to Kronseder ("Kronseder")
2016	DE3431345 to Lüllmann ("Lüllmann")
2017	CA2002619 to Depeault ("Depeault-II")
2018	U.S. Patent No. 10,118,138 to Tews ("Tews")
2019	DANIEL L. PFOST ET AL., UNIV. OF MO. EXTENSION, ANAEROBIC LAGOONS FOR STORAGE/TREATMENT OF LIVESTOCK MANURE (Oct. 2000) ("MU Guide for Anaerobic Manure Lagoons")

2020	Screenshots from 2023 North American Manure Expo Website, retrieved on 10-2-23 from https://www.manureexpo.ca/
2021	Dictionary Definitions of “Dredging” and “Agitation”, retrieved on 9-30-23 from https://en.wikipedia.org/wiki/Dredging , https://www.merriam-webster.com/dictionary/dredging#dictionary-entry-1 , https://www.merriam-webster.com/dictionary/agitation , and https://www.lagoonpumping.com/articles-resources/agriculture-articles/manure-articles/ (“‘Dredging’ and ‘Agitation’ Dictionary Definition”)
2022	ENVTL. PROT. AGENCY, PRIMER FOR MUNICIPAL WASTEWATER TREATMENT SYSTEMS (Sept. 2004) (“EPA Municipal Lagoon Primer”)
2023	U.S. DEP’T AGRIC., <i>Agricultural Waste Management Systems</i> , in AGRICULTURAL WASTE MANAGEMENT FIELD HANDBOOK ch. 9 (Dec. 2011)
2024	Screenshot of 2023 Commercial Manure Applicator Certification, retrieved on 10-3-23 from https://elearning-dnr.iowa.gov/course/index.php?categoryid=2 (“Commercial Manure Applicator Certification”)
2025	JOSEPH AKYEAMPONG ET AL., <i>Evaluation of hydraulic excavator Human-Machine Interface concepts using NASA TLX</i> , 44 INT’L J. OF INDUS. ERGONOMICS 374, 374–82 (2014) (“Excavator Human-Machine Interface Concepts”)
2026	Screenshots of 2023 Truxor Website, retrieved on 10-1-23 from https://truxor.com/en/catalog/node/products and https://truxor.com/en/catalog/node/products-truxor-machines
2027	Screenshots of 2023 Berky (formerly SenwaTec) Website, retrieved on 10-4-23 from https://www.berky.de/en/berky-nereus-240-amphi/
2028	CHRISTIAN HAAS ET AL., <i>Practical Evaluation of a Control Concept for a Remote Controlled 1.8T Excavator Using a 3D Input Device</i> , BATH/ASME 2022 Symposium on Fluid Power and Motion Control, ISBN: 978-0-7918-8633-5, FPMC2022-88959, V001T01A012-1 thru V001T01A012-7 (2022) (“Practical Evaluation of a Control Concept”)
2029	Timeline Showing Bazooka’s Post-Grant Challenges
2030	January 18, 2023 District Court Order Granting Motion to Lift Stay
2031	Reexamination History of U.S. Patent No. 11,358,425
2032	Screenshots from YouTube of SenwaTec video, retrieved on January 15, 2024 from https://www.youtube.com/watch?v=ecnlfMf7CH4&t=1s (“SenwaTec YouTube Video Screenshots”)
2033	Reexamination History of U.S. Patent No. 10,974,557

2034	McCaslin, Drive Sprockets and Track Drives, TexasFinalDrive.com, https://info.texasfinaldrive.com/shop-talk-blog/drive-sprockets-and-track-drives (last accessed Feb. 25, 2024) (“Drive Sprockets and Track Drives”)
2035	Brochure for MY2017 of Nuhn’s Gen 1 Lagoon Crawler
2036	Operator’s/Safety Manual for the MY2017 of Nuhn’s Gen 1 Lagoon Crawler
2037	Parts Catalog for Nuhn’s Gen 1 Lagoon Crawler
2038	Brochure for Nuhn’s Gen 1 Lagoon Crawler
2039	Brochure for MY2018 of Nuhn’s Gen 2 Lagoon Crawler
2040	Operator’s/Safety Manual for the MY2019 of Nuhn’s Gen 2 Lagoon Crawler
2041	Parts Book for the MY2018 of Nuhn’s Gen 2 Lagoon Crawler
2042	Brochure for Gen 2 Lagoon Crawler
2043	Brochure for MY2022 of Nuhn’s Gen 3 Lagoon Crawler
2044	Operator’s/Safety Manual for the MY2020 of Nuhn’s Gen 3 Lagoon Crawler
2045	Parts catalog for the MY2021 of Nuhn’s Gen 3 Lagoon Crawler
2046	Brochure for Nuhn’s Crawler X
2047	Parts Catalog for the MY2022 of Nuhn’s Crawler X
2048	U.S. Provisional Patent Application No. 63/040,562 filed June 18, 2020
2049	U.S. Provisional Patent Application No. 63/104,887 filed October 23, 2020
2050	U.S. Patent Application Publication US 2021/0394571 published December 23, 2021
2051	Notice of Allowance in U.S. Application No. 17,590,125, Mailed April 22, 2022.
2052	Notice of Intent to Issue Ex Parte Reexamination Certificate, Control No. 90/019,107, Mailed November 2, 2022.
2053	Print No. 1 of Nuhn YouTube Video - "Nuhn Lagoon Crawler Unrivaled Lagoon Agitation!", accessed at https://www.youtube.com/watch?v=fEgvvq9HZk
2054	Lagoon Crawler Prototype Brochure, Aggressive Agitation
2055 (Under Seal)	Lagoon Crawler Sales Report - Consolidated Totals
2056 (Under Seal)	Lagoon Crawler Sales Report - 2014-2017.5
2057 (Under Seal)	Lagoon Crawler Sales Report - 2018-2019
2058	Lagoon Crawler Sales Report - 2020-2023

(Under Seal)	
2059 (Under Seal)	Lagoon Crawler Sales Report - X Models
2060	Print No. 2 of Nuhn YouTube Video - "Nuhn Lagoon Crawler Unrivaled Lagoon Agitation!", accessed at https://www.youtube.com/watch?v=fEgvvq9HZk
2061	New Lagoon Crawler Demos Will Satisfy Curiosity, Canada's Outdoor Farm Show Official Show Guide for September 9-11, 2014 in Woodstock, Ontario
2062	H. Rivers, Farm show opens with a splash, The Beacon Herald (Sept. 10, 2014)
2063	B. Shypula, Transforming farming, The London Free Press (Sept.9, 2013))
2064	B. Shypula, Crawler makes manure almost sexy, The Beacon Herald (Sept. 6, 2013)
2065	30th Annual AMC Engineering Conference Brochure for May 5-7, 2015 in Waterloo, Iowa
2066	Certificate of Services Awarded to Ian Nuhn
2067	M. Beitz, Crawler is turning heads, The Beacon Herald at A2(Jan. 30, 2014)
2068	C. Elmore, Innovative Uses of Horsepower – A real crapshoot, Diesel Progress North American Edition (Dec. 2014)
2069	D. Rankin, Nuhn Industries celebrates employees at expansion grand opening, 100th lagoon crawler unveiling, St. Marys Independent (Aug. 7, 2015)
2070	B. Reid, Agitator has reclaimed manure lagoons around the world, Ontario Farmer (Aug. 18, 2015)
2071	L. Cudworth, Nuhn marks major milestone, The London Free Press (Aug. 11, 2015)
2072	L. Cudworth, Marking a major milestone, The Stratford Beacon Herald (Aug. 7, 2015)
2073	J. Algie, Made-in-Sebringville lagoon crawler to be featured on Discovery Channel, Betterfarming.com (Sept. 2, 2015)
2074	B. Reid, Self-propelled, Western Dairy Farmer (Oct. 2015)
2075 (Under Seal)	March 21, 2022 Email to Nuhn re: Licensing Lagoon Crawler Technology
2076 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (Sept. 9, 2015)

2077 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (June 20, 2020)
2078 (Under Seal)	Nuhn Invoice to Eldon C. Stutsman, Inc. (Sept. 28, 2020)
2079	Print of Bazooka's YouTube Video - "Meet the Wolverine Agitation Boat," accessed at https://www.youtube.com/watch?v=ehAHKL442as
2080	Discovery Channel's Lagoon Crawler Feature (Sept. 3, 2015)
2081	U.S. Provisional Application No. 61/867,598 (filed August 19, 2013).
2082	US3384047 to Royle
2083 (Under Seal)	Declaration of Ian Nuhn
2084	US20100144220A1 to Bailey
2085- 2086	Intentionally omitted
2087	Curriculum Vitae of Douglas S. Prairie and Case List – updated April 2, 2024
2088	Patent Owner's Proposed Protective Order - Redline
2089	Patent Owner's Proposed Protective Order - Clean
2090	Intentionally omitted
2091	Dredge Yard Auger Dredger ECO200-A8-brochure
2092	Hydraulic Dredgers – Dredge Brokers LLC
2093- 2096	Intentionally omitted
2097	H. Landry et al., <i>Physical and Rheological Properties of Manure Products</i> , Applied Engineering in Agriculture, at 278 (2004)
2098	Intentionally omitted
2099	Declaration of Douglas S. Prairie in Support of Patent Owner's Response
2100	US 5,267,830 to Wickoren
2101	US 8,944,758 to Nuhn
2102	K. Smith et al., <i>Natural Crusting Of Slurry Storage As An Abatement Measure For Ammonia Emissions On Dairy Farms</i> , 97 Biosystems Engineering 464 (2007)
2103	Printout of Bazooka's webpage for its Wolverine Agitation Boat at: https://www.bazookafarmstar.com/equipment/wolverine-agitation-boat/
2104	Bazooka's brochure for the Bazooka Wolverine Agitation Boat from: https://www.bazookafarmstar.com/wp-content/uploads/2023/01/Cutsheet-

	Wolverine-1.pdf .
2105	Cornell Redi-Prime Pump Brochure

I. INTRODUCTION

Petitioner's Opposition (Paper 37) to Nuhn's Motion to Exclude (Paper 35) is not persuasive and the Board should exclude the declarations of Reidar Olofsson (EX1008), Ansgar Lonnemann (EX1013), Dr. Eric Winkel (EX1004, EX1079), and Benny D. Puck and Ernie Sundstrom (EX1099-EX1101).

II. PATENT OWNER'S OBJECTIONS ARE PROPER

The deficiencies of Mr. Olofsson's declaration (EX1008) and Mr. Lonnemann's declaration (EX1013) were not discovered until the depositions of Mr. Olofsson and Mr. Lonnemann in September of 2024. The objections could not have been made within ten business days of the Institution Decision (Paper 10), as the deficiencies were discovered months after these filings. Nuhn's Motion to Exclude (Paper 35) is timely.

III. PUBLIC AVAILABILITY

Petitioner argues that the Olofsson and Lonnemann Declarations (EX1008, EX1013) are limited to establishing the public availability of the Truxor and SenwaTec publications. (Paper 37, 2). But the declarations go far beyond testimony on the topic of public availability and impermissibly purport to describe the capabilities and/or uses of the Truxor and SenwaTec vehicles.

IV. OLOFSSON DECLARATION (EX1008)

Petitioner does not dispute that Mr. Olofsson's declaration (EX1008) was

drafted by Mr. Arnoldsson without any input from Mr. Olofsson. Petitioner argues there is no requirement for a declarant to draft their own declaration. (Paper 37, 3). But the case Petitioner cites is distinguishable because Mr. Olofsson did not work with someone else (e.g., an attorney) to draft his declaration – he had no part in the preparation of his declaration. *B/E Aerospace, Inc. v. MAG Aerospace Indus., LLC*, IPR2014-01511, Paper 104 at 14 (PTAB Mar. 18, 2016) (Declarant was involved in process of preparing the Declaration). Mr. Olofsson’s declaration is improper because the words in his declaration are Mr. Arnoldsson’s.

Nuhn has not cherry-picked statements from Mr. Olofsson’s deposition as Petitioner alleges. (Paper 37, 4). While Mr. Olofsson was questioned specifically about EX1008, Mr. Olofsson testified that he was not responsible for any aspect of Truxor’s website. (EX1110, 213:15-25). Mr. Olofsson was an engineer at Truxor. (EX1008, ¶1). He was not responsible for any aspect of Truxor’s website at any point during his employment (EX1110, 213:15-25) and lacks personal knowledge of many of the facts within his declaration. (Paper 35, 5-6). Mr. Olofsson’s lack of personal knowledge is fatal and his declaration must be excluded under FRE 602.

V. LONNEMANN DECLARATION (EX1013)

It is undisputed that Mr. Lonnemann required a German to English translator at his deposition (EX1109, 6:11-12) and that he first prepared his declaration in German and then used software translation tools and the help of a friend to translate

it into English. (EX1109, 9:14-25, 125:7-22, 143:11-144:2). Mr. Lonnemann lacked a sufficient grasp of the English language to appreciate the distinction between the term “manure” (i.e., livestock waste) and human waste when he informally translated his declaration. (EX1109, 180:6-182:5).

Petitioner argues Mr. Lonnemann “understood that the SenwaTec vehicles worked in manure lagoons” (Paper 37, 7), but this is directly contradicted by his deposition testimony that he had no knowledge of the SenwaTec vehicle being used in manure (i.e., livestock waste). (EX1109, 182:7-183:2). The SenwaTec article (EX1030) provides further clarification on this point, as it indicates that the fecal matter that was in the sewage pond was human waste. (Paper 7, 55-56). Thus, Mr. Lonnemann’s declaration statements the SenwaTec vehicle was used in liquid manure (EX1013, ¶¶5-6) appear to be the result of Mr. Lonnemann’s limited understanding of the English language, his informal translation efforts, and his lack of personal knowledge of the statements made in his declaration related to manure. Mr. Lonnemann’s declaration should therefore be excluded for failing to comply with 37 C.F.R. § 1.69(b) and 37 C.F.R. § 42.63(b) and FRE 602.

Petitioner has now filed Mr. Lonnemann’s German Declaration as EX1139 and a certified translation at EX1140. However, Petitioner’s attempt to remedy the failures of Mr. Lonnemann’s declaration are untimely and are futile and misleading given his deposition testimony.

VI. WINKEL DECLARATIONS (EX1004 and EX1079)

Nuhn's definition of a POSITA is proper because, unlike Petitioner's definition, it is tied to liquid manure agitation/pumping equipment, which is the field described in the '835 Patent and explicitly recited in the claims. Dr. Winkel lacks experience in designing agricultural equipment and knowledge of manure agitation equipment, so he is not a POSITA under Nuhn's definition and his Declarations (EX1004 and EX1079) should be excluded, in their entirety, for that reason.

In the '425 Patent IPR, the Board adopted an expansive view of a POSITA that blends the parties' POSITA definitions. If the same approach is taken in this IPR, the portions of Dr. Winkel's declaration related to the characteristics of manure and manure pumps (EX1004, ¶¶ 68-85; EX1079, ¶¶ 19, 59) should still be excluded because they are outside the scope of his experience and expertise.

Dr. Winkel is an engineer with general experience in fluid mechanics, acoustics, and dynamics and vibrations. (EX1004 ¶3). None of Dr. Winkel's education or work experience is related to livestock farming, agricultural equipment, or liquid manure agitation/pumping equipment. Dr. Winkel is therefore not qualified to offer expert testimony under FRE 702 on these topics, even if he is considered a POSITA under an expansive definition of who a POSITA may be.

Petitioner argues that "an expert is supposed to use **their expertise** to explain how a POSA would understand the prior art of record." (Paper 37, 12) (emphasis

added). However, Dr. Winkel is not using his expertise when he offers opinions on the characteristics of manure and manure pumps because he has no experience or training on these subjects. Dr. Winkel is simply not qualified to make these statements given his background and experience.

VII. PUCK AND SUNDSTROM DECLARATIONS (EX1099-EX1101)

The Puck and Sundstrom declarations (EX1099-EX1101) both include expert opinions presented by fact witnesses. Petitioner argues that Mr. Puck's and Mr. Sundstrom's testimony is based on their perception and personal knowledge. However, the testimony of both Mr. Puck and Mr. Sundstrom goes beyond perception and personal knowledge and because they offer broad, sweeping opinions about liquid manure and water pumps without disclosing sufficient facts or data to support those opinion. Additionally, Petitioner has not and cannot show that Mr. Puck and Mr. Sundstrom actually qualify as POSITAs under either the definition Petitioner proposed or the definition the Board adopted in the '425 IPR. As a result, their opinions are inadmissible lay witness testimony under FRE 701 and 702. Further, the statements made by both witnesses related to public prior uses and/or sales are irrelevant and should be excluded under FRE 402/403.

VIII. CONCLUSION

For the foregoing reasons, it is respectfully requested that Patent Owner's motion to exclude evidence (Paper 37) be granted in all respects.

Dated: February 12, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type volume limitations of 37 C.F.R. § 42.24(c)(2), and that Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude Evidence is 5 pages or less.

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

Dated: February 12, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. 42.6(e), I certify that on this 12th day of February, 2025, a true and correct copy of the foregoing **Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude Evidence** was served by electronic mail on Petitioner's lead and backup counsel at the following addresses:

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