UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PAR-KAN COMPANY, LLC,
Petitioner,

v.

UNVERFERTH MANUFACTURING COMPANY, INC.,
Patent Owner

Case No. IPR2024-01426
U.S. Patent No. 8,967,940

Declaration of Shawn Gerdeman

I. INTRODUCTION AND BACKGROUND

1. I, Shawn Gerdeman, am the Product Manager at Unverferth Manufacturing Company, Inc. ("Unverferth").

2. In 1994, I attended The Ohio State University where I studied in their agricultural program. I received a bachelor's degree in Agricultural Mechanization in 1998, a degree that focuses on the business and economics of agriculture. While in college, I began working at Unverferth as an intern, where I assisted the company set up farming equipment at farm shows around the country.

3. In June 1998, Unverferth hired me full-time for their Product Support position, and I have worked at Unverferth since. In that role, I was responsible for the servicing of Unverferth's products, including customer service, technical support, review of product manuals, among other similar duties. I was later promoted to Product Manager, where I am responsible for similar duties as my old position, but now I also manage and oversee other colleagues in the product support group. For approximately the last sixteen years I have worked with customers that have purchased Unverferth's products.

4. I am providing this declaration in support of the Preliminary Response of Patent Owner Unverferth in this IPR Proceeding. I understand that Petitioner Par-Kan Company, LLC is challenging claims 16-23 of the '940 patent.

II. DEVELOPMENT OF THE SEED RUNNER 3500 PROTOTYPE

5. At Unverferth, in the mid-2000s, I was asked to assist with an Unverferth seed tender project. My role with respect to the project was in product support—essentially to be a resource for my colleagues Brian Petersen and Dave Smith as needed while they were developing the product. My work on the project did not involve assisting with the design of the product.

6. Once the design for the seed tender was finalized, I assisted in an oversight role with the building of the first prototype.

III. THE SEED RUNNER 3500 PROTOTYPE

7. The first seed tender prototype, which we called the Seed Runner 3500, was manufactured shortly before the National Farm Machinery Show in Louisville, Kentucky (the "Louisville Show"), which ran between February 15-18, 2006. Further, as discussed below, I personally observed the Seed Runner 3500 prototype working for its intended purpose before February 15, 2006. I also personally observed the prototype working for its intended purpose (i) no later than February 18, 2006, (ii) no later than February 28, 2006, and (iii) no later than May 16, 2006.

A. The Seed Runner 3500 Prototype Was Manufactured, Tested and Worked for Its Intended Purpose Prior to February 15, 2006

8. In early February 2006, Unverferth's Prototype Department had finished manufacturing the first prototype. It was completed shortly before Unverferth planned to display the device on February 15, 2006 at the Louisville

Show. Because the prototype would be on display at the Louisville Show, we needed to first confirm that it was working properly. Further, as the Product Manager, I was tasked with demonstrating the prototype at the show, so I needed to know how the device functioned before I arrived so that I could demonstrate its functionality and features and answer any questions I received from attendees. Therefore, before the prototype was shipped to Louisville, Kentucky, Mr. Petersen provided me with a demonstration at Unverferth's facility in Kalida, Ohio, which confirmed the device was properly working. As discussed below, I also manipulated the device and personally confirmed that the device was working properly.

9. The prototype used a hydraulic system to power and control the movement of mechanical components of the device. Before the device was shipped to Louisville, I watched Mr. Petersen turn on the hydraulic system powering the prototype and move the support arm (and conveyor) up and down, move the conveyor belt, and manually move the conveyor from side-to-side. After Mr. Petersen demonstrated to me how the prototype operated, I also operated the device. Using the hydraulic power system, I moved the support arm up and down to various heights, which also moved the conveyor up-and-down. I also manually maneuvered the support arm side-to-side using the handle of the lever mechanism. Next, I tested the conveyor belt, which is powered by the hydraulic power system, and which had an internal elevator within to move seed or grain from the conveyor hopper to the

conveyor discharge, and I confirmed it was moving properly. I also tested the main hopper doors, which open and close to release seed into the hopper on the conveyor, by turning the wheel handle mechanism. I also rotated the support arm to move the conveyor from a loading position to an unloading position.

10. Thus, I personally observed that the Seed Runner 3500 prototype worked for its intended purpose before February 15, 2006.

B. The Prototype Was Publicly Displayed at the Louisville Show from February 15-18, 2006 and Worked For Its Intended Purpose

11. As mentioned, the prototype was first shown to the public at the Louisville Show on February 15-18, 2006. I attended the show and demonstrated the prototype on display to the attendees. Ex. 2027 contains true and accurate photographs of the prototype displayed at the show.

12. As the photographs show, the conveyor could be moved from an unloading position (*see* Ex. 2027 at 1-2, where the conveyor could be rotated further counterclockwise to result in the unloading position) to a loading position (*see id.* at 1-2, where the conveyor could be rotated further clockwise to result in the loading position). The support arm (and conveyor) are also shown at different horizontal and vertical positions. C*ompare* Ex. 2027 at 1 to *id.* at 3. In addition, as shown in some of the photographs, we used a black rectangular electrical box which powered the prototype during the show so that we did not need to run the engine. *Id.* at 1 at 1N;

see also Ex. 2033 at 1 at 1N. This allowed us to show attendees how the support arm moved up-and-down and also allowed us to run the conveyor belt.

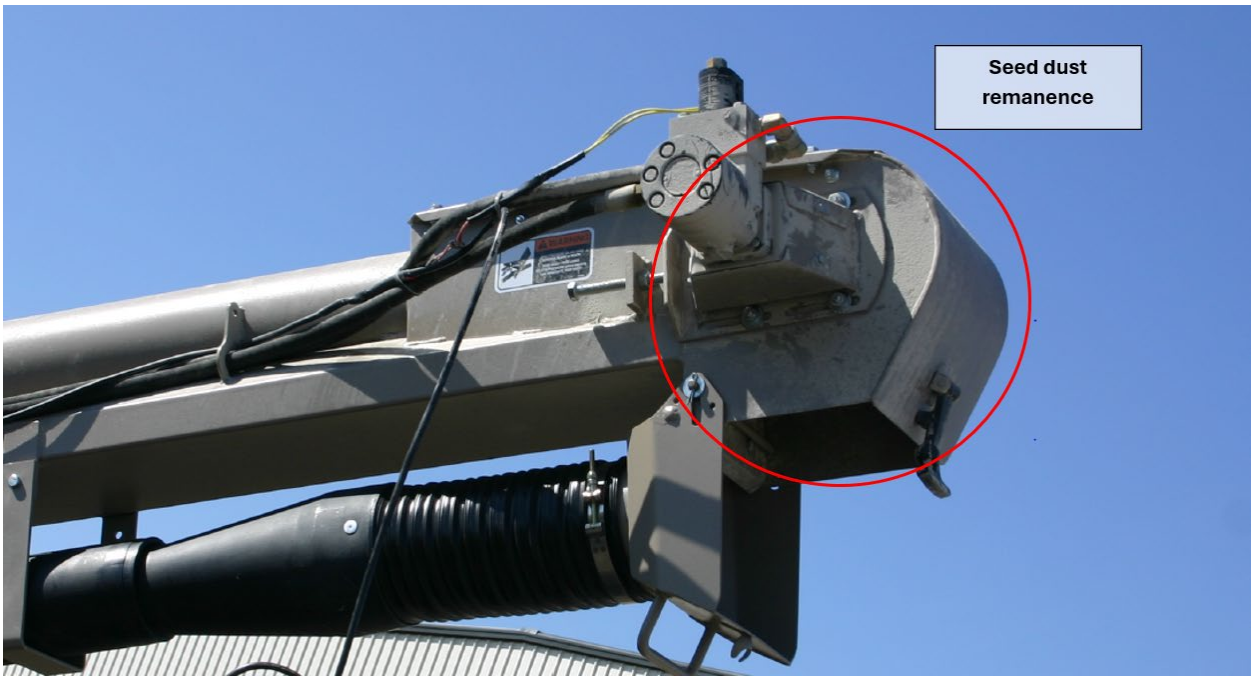
13. Ex. 2028 is a true and accurate copy of a marketing handout for the Seed Runner 3500 prototype that was prepared for the Louisville Show. I would have contributed to the preparation of this document and provided an overview of the features and benefits discussed in the document. Additionally, I would have reviewed the document and provided sign-off before it was finalized. The marketing handout contains photographs of the Seed Runner 3500 prototype in different positions to show how it works. I distributed this handout to attendees at the Louisville Show and can confirm that it shows the Seed Runner 3500 prototype in positions similar to those that I tested prior to February 15, 2006.

14. Ex. 2029 is a true and accurate copy of an Unverferth publication from the Spring of 2006, which is mailed to employees of Unverferth and friends of the company. Ex. 2029 reports on and shows pictures of the display of the Seed Runner 3500 prototype at the Louisville Show on February 15-18, 2006.

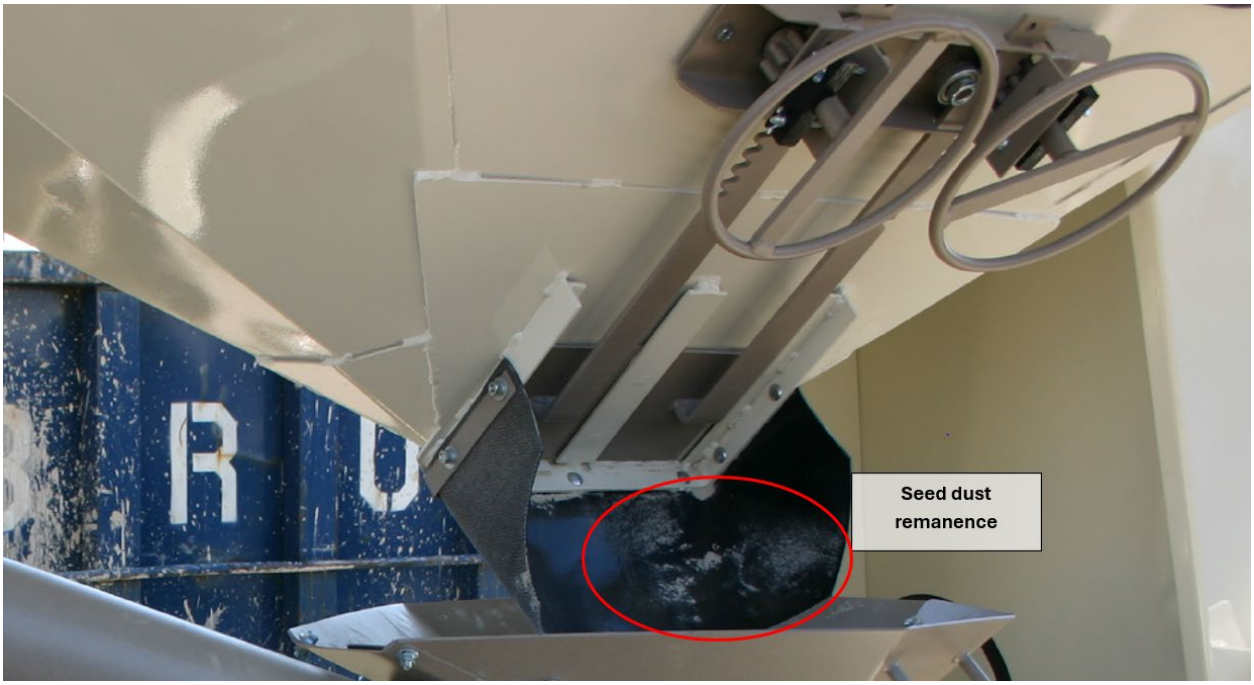
15. Thus, I personally observed that the Seed Runner 3500 prototype worked for its intended purpose at the Louisville Show.

C. The Prototype Was Tested at Unverferth's Facility in Kalida, Ohio Further Demonstrating that It Worked For Its Intended Purpose No Later Than February 28, 2006

16. After the Louisville Show, the prototype was sent back to Unverferth's facility in Kalida, Ohio. When it got back, Unverferth employees and I conducted more testing. For example, this testing included running seed through the conveyor in the load and unload positions, and powering on and moving the support arm up and down, which further confirmed to us that the prototype worked for its intended purpose. Ex. 2030 are true and accurate photographs of the prototype on the lot at Unverferth's facility, which were uploaded to Unverferth's computer systems on February 28, 2006. Therefore, the photographs were taken on or before February 28, 2006. Seed dust remanence is visible on the conveyor discharge in certain photographs, demonstrating that seed had been tested through the machine, as shown annotated below. *E.g.*, Ex. 2030 at 9. Seed dust remanence is also visible on the flap, which is just below the main hopper discharge, as shown below. *E.g.*, *id*. at 10-13.



Ex. 2030 at 9 (zoomed in and annotated).



Ex. 2030 at 11 (zoomed in and annotated).

17. Further, as shown and annotated below, some photos show remanence of corn in the conveyor hopper, which also confirms that corn had been tested with the device. *Id.* at 14-15.

Ex. 2030 at 15 (zoomed in and annotated).

18. Mr. Peterson is the person in several of these photographs, which shows him manually, and via use of the hydraulics, moving the support arm and the conveyor to several vertical and horizontal positions in both the load and unload configurations. *Id.* at 2-8.

19. As shown in Exs. 2027, 2028, and 2029, the first prototype used a metal conveyor hopper. The conveyor hopper was eventually swapped with a vinyl

version. *See e.g.* Ex. 2031 at 6. The vinyl version of the conveyor hopper was used during the large-scale testing at two farms in April and May 2016, as I discuss below. The photographs in Ex. 2030 show a metal hopper and thus further confirms that the testing at Unverferth on or around February 28, 2006 were of the first prototype that was built in early February.

20. For the above reasons, I can attest that I personally tested and observed the testing of the prototype, which took place on or before February 28, 2006, and which further confirmed the prototype was working for its intended purpose.

D. The Prototype Was Tested on Two Farms No Later Than May 16, 2006 and Further Demonstrated that It Worked for Its Intended Purpose

21. Unverferth's Prototype Department had built at least one additional Seed Runner 3500 prototypes by April 2006.

22. On or around April 13, 2006, one of the Seed Runner 3500 prototypes was shipped from Unverferth to Fillmore Equipment Co. ("Fillmore") in Holland, Michigan. Similarly, on or around April 19, 2006, another prototype was shipped from Unverferth to Holland & Sons Inc. ("Holland") in Dixon, Illinois. Fillmore and Holland were two agricultural equipment dealers who were contacted by Unverferth's territorial managers to assist with the placement of the prototypes with farmers for large scale testing. After Filmore and Holland received the prototypes, the devices were delivered to two nearby farms for testing.

23. Shortly after the shipment of these two prototypes in April 2006, invoices were created to track the delivery of the units to the dealers. On April 17, 2006, an invoice was generated to track the shipment of the prototype to Fillmore. Ex. 2034 at 8 is a true and accurate copy of the April 17, 2006 invoice, which shows a "Ship Date" of April 13, 2006 of one of the prototypes to Fillmore. On April 20, 2006, an invoice was generated to track the shipment of the prototype to Holland. Ex. 2034 at 10 is a true and accurate copy of the April 20, 2006 invoice, which shows a "Ship Date" of April 19, 2006 of one of the prototypes to Holland.

24. On or around April 13, 2006, one of the Seed Runner 3500 prototypes was delivered from Fillmore to a nearby farm in Holland, Michigan. A second prototype device was delivered from Holland to a nearby farm in Dixon, Illinois.

25. In May 2006, Mr. Petersen and I travelled to the farm in Michigan to observe large-scale testing of the device. Mr. Petersen and I also travelled to the farm in Illinois, where on May 16, 2006, we observed more large-scale testing.

26. Ex. 2031 contains true and accurate photographs of the Seed Runner 3500 prototype in operation at the farm in Michigan as observed by me. I am pictured in several of these photos. Ex. 2031 at 1, 2, 4, and 5. The pictures also reflect that we swapped out the metal conveyor hopper shown in the pictures above with a vinyl version of the conveyor hopper. *Compare* Ex. 2030 at 15 *with* Ex. 2031 at 6.

27. The photographs further show that the prototype was operating for its intended purpose. They show the device loading seed, which was in seed containers on a forklift (Ex. 2031 at 4-5), into the conveyor hopper of the prototype (*id.* at 6), through and up the conveyor, and out of the conveyor discharge into the main hopper. This is while the device was in the load position. *Id.* at 2-4. I am shown standing on the ground (wearing a light brown jacket) in Ex. 2031 at 4 and 5 observing the prototype in operation, and in Ex. 2031 at 2 standing on the prototype's ladder observing the seed discharge from the conveyor into the main hopper.

28. The photographs also show the prototype in the unload configuration. They show seed being discharged from the main hopper discharge of the prototype into the conveyor hopper, through the conveyor, out the conveyer discharge, and into a John Deere planting device. Ex. 2031 at 1. These photographs also show the support arm and the conveyor at different up-and-down and side-to-side positions in both the loading and unloading positions. *E.g.*, *id.* at 1, 2, 4.

29. Ex. 2032 is a true and accurate copy of a field report that I wrote, and Mr. Petersen reviewed, from May 16, 2006 discussing our visit to the farm in Illinois. We reported that the "[c]ustomer used SeedRunner on 6000 acres of corn." Ex. 2032 at 1. We also reported that the farmer encountered a minor issue where the cleats of the conveyor "belt [were] rubbing" against the bottom side of the housing of the conveyor. This was "causing cleats to bend back." *Id.* The farmer stated that he

clipped "the tops of the cleats off to provide appropriate clearance for the belt to operate." *Id.* We installed a new belt with more clearance, which stopped the cleats from rubbing against the bottom of the conveyor housing. The belt would need to be modified before we commercialized the product. However despite this minor issue with the belt cleats, the machine was still operating for its intended purpose, as I personally witnessed and as shown in the photos discussed above. Notably, we did not witness this belt cleat issue when we were operating the device on smaller scales, such as after the Louisville show, as I discussed above in Section III.A-C.

30. After this large scale testing in Michigan and Illinois, the prototypes were returned to Unverferth in Kalida, Ohio. Ex. 2034 at 12 is a true and accurate copy of the credit memo for the return of the prototype from Fillmore, created on June 7, 2006. Ex. 2034 at 14 is a true and accurate copy of the credit memo for the return of the prototype from Holland, created on July 27, 2006. Finally, Ex. 2003 is a true and accurate copy of a 2023 marketing material for Unverferth's Seed Tenders.

31. Based on this large-scale testing, I can confirm that I personally witnessed and can attest that the prototypes were operating for their intended purpose no later than May 16, 2006.

* * *

32. I acknowledge that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the '940 patent. I declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Date: December 20, 2024

Shawn W. Gerdeman