

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Kuemper, James A.

June 19, 2019

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

-----  
VERMEER MANUFACTURING COMPANY,

Plaintiff, Case No. 4:19-cv-00050

VS.

THE TORO COMPANY,

Defendant.  
-----

\* \* \*

CONFIDENTIAL - ATTORNEYS' EYES ONLY

\* \* \*

VIDEO DEPOSITION TESTIMONY OF

JAMES A. KUEMPER

WEDNESDAY, JUNE 19, 2019

MINNEAPOLIS, MINNESOTA

\* \* \*

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

1 \* \* \*

2

3 Video Deposition Transcript of  
4 JAMES A. KUEMPER taken at the law offices of  
5 Briggs & Morgan, P.A., 2200 IDS Center, 80 South  
6 Eighth Street, Minneapolis, Minnesota on  
7 Wednesday, June 19, 2019, commencing at 9:00  
8 a.m. before Rebecca L. Klanderud, a Certified  
9 Shorthand Reporter.

10

11

12

13

14 \* \* \*

15

16

17

18

19

20

21

22

23

24

25

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

1 APPEARANCES:

2 ARMSTRONG TEASDALE, LLP

3 BY: RICHARD L. BROPHY, ESQUIRE

4 rbrophy@armstrongteasdale.com

5 MARGARET R. SZEWCZYK, ESQUIRE

6 mszewczyk@armstrongteasdale.com

7 Suite 1800

8 7700 Forsyth Boulevard

9 St. Louis, Missouri 63105

10 314.621.5070

11 Counsel for Plaintiff

12

13 BRIGGS & MORGAN, P.A.

14 BY: MICHAEL LAFEBER, ESQUIRE

15 mlafeber@briggs.com

16 PATRICK S. WILLIAMS, ESQUIRE

17 pwilliams@briggs.com

18 2200 IDS Center

19 80 South Eighth Street

20 Minneapolis, Minnesota 55402

21 612.977.8400

22 Counsel for Defendant

23 ALSO PRESENT (via telephonic communication):

24 WILLIAM BARRON, ESQUIRE, The Toro Company

25 \* \* \*

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

1 THE VIDEO TECHNICIAN: We're on the  
2 record.

3 This is the videotaped deposition of  
4 James A. Kuemper taken on June 19th, 2019. The  
5 time is 9:11 a.m. Central. This deposition is  
6 being taken in the matter of Vermeer  
7 Manufacturing Company versus The Toro Company  
8 filed in the U.S. District Court for the  
9 Southern District of Iowa, Central Division.  
10 The Case Number 4:19-CV-00050. This deposition  
11 is taking place in Minneapolis, Minnesota.

12 My name is Kraig Hildahl. I'm the  
13 legal videographer representing Henderson Legal  
14 Services.

15 Will counsel please identify  
16 themselves for the record?

17 MR. BROPHY: Richard Brophy and  
18 Margaret Szewczyk on behalf of the plaintiff  
19 Vermeer.

20 MR. LAFEVER: Mike Lafeber from  
21 Briggs & Morgan on behalf the defendant Toro and  
22 the deponent Mr. James Kuemper.

23 MR. WILLIAMS: And Pat Williams,  
24 Briggs & Morgan, on behalf the defendant.

25 MR. BARRON: William Barron, in-house

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

1 crown for The Toro Company.

2 THE VIDEO TECHNICIAN: Will the court  
3 reporter please swear in the witness, and then  
4 we can proceed.

5 \* \* \*

6 JAMES A. KUEMPER,  
7 a witness in the above-entitled matter,  
8 having been first duly sworn,  
9 testified on his oath as follows:

10 \* \* \*

11 EXAMINATION

12 \* \* \*

13 BY MR. BROPHY:

14 Q. Good morning.

15 A. **Good morning.**

16 Q. How are you today?

17 A. **It's a great day.**

18 Q. That's a good attitude to have.

19 Would you mind stating your full name  
20 for the record, please?

21 A. **James Allen Kuemper.**

22 Q. And, Mr. Kuemper, where do you live?

23 A. **I live in REDACTED**

24 Q. Would you mind giving me your street  
25 address, please?

314

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 Q. Lastly, sir, Mr. Brophy asked you  
8 some questions about some language in Toro's  
9 patent for which you are a listed inventor, the  
10 '540 Toro patent marked as Vermeer Exhibit  
11 Number 1. And I'll again call your attention to  
12 that section, sir, which is located in column  
13 two.

14 Do you remember those questions, sir?

15 A. Yes.

16 Q. And you indicated to Mr. Brophy that  
17 you agreed with the section he read to you in  
18 the -- in the record?

19 A. Yes.

20 Q. Specifically, the section that  
21 includes a statement that: While high lift  
22 loader arms are known on full size skid steer  
23 loaders as disclosed in U.S. Pat. No. 5,542,814,  
24 the use of such high lift loader arms on a  
25 compact utility loader has been considered

315

1 difficult if not impossible to -- due to size  
2 and durability constraints.

3 Do you remember being asked about  
4 that language?

5 **A. I remember being asked about that.**

6 Q. And do you -- I think you agreed that  
7 you believe that language is accurate, correct?

8 **A. Well, if you take the size and**  
9 **durability of a compact utility loader and you**  
10 **try to increase the lift capacity not -- and**  
11 **also the reach and the height that it could go,**  
12 **it would be, seem to be almost impossible to do.**  
13 **Yet we went and with our designs and in a very**  
14 **short time created these -- a compact utility**  
15 **loader with a vertical lift that worked very**  
16 **well.**

17 Q. Did -- do you interpret that  
18 statement, sir, to mean that the concept of  
19 applying vertical lift or four-bar linkage to a  
20 compact utility loader is difficult or  
21 impossible?

22 **A. I would say, no. It would not be**  
23 **difficult or impossible (witness indicating).**

24 Q. Why not, sir?

25 **A. Because there are so many other**

316

1     loaders out there that have vertical lift on  
2     them, but what we did is take the whole concept  
3     instead of attaching the linkage to the frame,  
4     we made a front support assembly in which is a  
5     innovative idea which gave us the lifting  
6     capacity that far exceeded any other machines  
7     that we had.

8           Q.     Okay. Thank you, sir. That's all I  
9     have.

10                  MR. BROPHY: I actually have a little  
11     bit of follow-up.

12                               \*     \*     \*

13                               EXAMINATION

14                               \*     \*     \*

15     BY MR. BROPHY:

16           Q.     That -- that forward assembly you  
17     just mentioned, is it your belief then that that  
18     forward assembly is the key to the vertical lift  
19     system in the TX 1000?

20           A.     Yes, it is.

21           Q.     And the key to the invention that's  
22     claimed in the patent that you're named on?

23           A.     Yes.

24           Q.     Where does it say that in the  
25     paragraph that your counsel just read to you?