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

VERMEER MANUFACTURING COMPANY, Case No.
Plaintiff, 4:19-cv-00050
v.
THE TORO COMPANY,
Defendant.

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY

DEPOSITION OF JOHN AZURE
Taken October 29, 2019
Scheduled for 9:00 a.m.

REPORTED BY: JONATHAN WONNELL, RMR

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Videotaped deposition of JOHN AZURE, taken on October 29, 2019, commencing at 9:07 a.m., at the law offices of Briggs & Morgan, 2200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, before Jonathan Wonnell, Registered Merit Reporter (NCRA #835577) and Notary Public of and for the State of Minnesota.

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A P P E A R A N C E S

On behalf of the Plaintiff:

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(APPEARANCES continued on next page)

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A P P E A R A N C E S (Continued)

On behalf of the Defendant:

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ALSO PRESENT:

KRAIG HILDAHL, Videographer

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P R O C E E D I N G S

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THE VIDEOGRAPHER: We're on the record. This is the videotaped deposition of John Azure taken on October 29th, 2019. The time is 9:07 a.m. The deposition will be taken in the matter of Vermeer Manufacturing Company versus The Toro Company filed in the U.S. District Court, Southern District of Iowa, Central Division, Case Number 4:19-cv-00050.

This deposition is taking place in Minneapolis, Minnesota. My name is Kraig Hildahl, the videographer, representing Henderson Legal Services. Will counsel please identify themselves for the record?

MR. LAFEBER: Good morning. Michael Lafeber from Briggs & Morgan on behalf of defendant Toro.

MR. BROPHY: Richard Brophy and Mark Vander Tuig on behalf of the plaintiff.

MR. LAFEBER: Before we swear in the witness I'd just like to note for the record that the transcript will be treated as highly confidential, attorney's eyes only, subject to our opportunity to designate following receipt of the transcript pursuant to the protective order.

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JOHN AZURE,

duly sworn, was examined and testified as follows:

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EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BROPHY:

Q Good morning.

A Good morning.

Q I'd like to start by having you state your name and home address, please.

A My name is John Azure. My home address?

Q Yes, please.

A REDACTED

REDACTED

Q And have you ever been deposed before?

A I have, yes.

Q How many times?

A Just once.

Q Just once. What was the nature or purpose of that deposition?

A It was a personal injury case.

Q Out of curiosity, were you the injured party or --

A No.

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kind of how we wrote this patent.

Q Did you supply the information that's reflected in column 2, lines 20 through 26?

MR. LAFEBER: I'm going to object to the extent it calls for attorney-client privileged information, I'm going to instruct the witness not to answer.

BY MR. BROPHY:

Q Are you following your counsel's advice on that?

A Yes.

Q Prior to Toro's development of the TX-1000 did you believe that adapting a vertical lift type mechanism from a full-sized skid steer machine to a compact utility loader chassis would be difficult or impossible to achieve?

A No.

Q Why is this written in this passage then?

A It's in the context of the patent and the method that we did it and our claims are very specific about our front supports and things we did for that to get the durability we wanted.

Q Where does it mention front supports or anything else you just testified to in this passage, column 2, lines 20 through 33?

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A It's back in our claims here somewhere.

Q Well, but that's not the question I asked. Where does the discussion of front supports or anything else regarding what you just testified to appear in this paragraph, column 2, lines 20 through 33?

A Well, you have to read the entire context of the document.

Q Okay.

A So that's more of a preface to the current market.

Q Well, this statement doesn't say it would be difficult or impossible to develop front mounts, right?

A No, it doesn't say that.

Q It says it would be difficult or impossible to adapt a full-size loader arm to a compact utility loader chassis, right?

MR. LAFEBER: Objection to the extent it mischaracterizes the language in the patent.

A Let's see. What section was this again? I lost it.

BY MR. BROPHY:

Q Column 2, line 20 and forward.

A So it says "due to the size and durability

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constraints." And that's how we tailored our claim, was specific to our durability concerns and the way we wanted to do it on a CUL.

Q And size, right?

A Generally speaking that was one of the constraints.

Q At the time this application was filed, did you believe it would be a further advance in the art to provide a way to safely and durably provide high-lift loader arms on compact utility loaders?

A Are you reading that from somewhere?

Q That's just my question.

A Say that one more time.

Q Sure. At the time this patent application was filed, did you believe it would have been a further advance in the art to provide a way to safely and durably provide high-lift loader arms on compact utility loaders to extend vertical reach?

A Not necessarily.

Q Why not?

A Because the art is out there for the skid steers. That's easily adaptable. That's why we kind of tailored this patent specific to our front supports and the way we did it.

Q Can you point to me in this patent where

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it indicates that the front supports you just described are an important inventive concept?

A Well, let's see. Let's start with the description in some of the graphics. So we've got item 42 called out.

Q Which figure are you referring to?

A Figure 4. That also relates to item 46, so we'll have to read through any sections of those that describe that.

Q And I'm sorry. On Figure 4 you're referring to which reference numeral?

A 46.

Q And what is 46?

A 46 is our upper link. So 36 -- let's see. We'll have to read through it. 42, 36. 40 is also our cylinder location. 35 we'll have to read through that. 33 looks like our cross support inside our tower.

Q So where in the actual written language of the specification does it describe that front tower you described as being the key inventive concept of the patent?

A You're talking about in the detailed description?

Q Yes. Well, anywhere within the written

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language of this specification.

A Let's see. Well, I'll start to look for some of these numbers. That will be a giveaway. (Perusing document). So I know in column 5 there's references.

Q Which lines.

A Generally starting before 10 there. That's the first reference I see to support assembly 33. And then it mentioned U-shaped support beams, 34.

Q Is there anywhere else within the specification that you believe the patent identifies those front supports as being the key inventive aspect?

MR. LAFEBER: John, if you need to take your time to read the patent, read the patent.

BY MR. BROPHY:

Q I certainly don't mean to rush you.

A It will take a while. So there's a lot of this column 5 that relates to the description of that. (Perusing document). That leaks into column 6 quite a bit too in that description. I don't know if it describes it earlier here in column 4.

Q And where in column 4?

A Well, that's what I'm looking. I'll have

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to read through it. (Perusing document).

Column 4 mainly describes the connection of the pivots to the arm. So I think it mainly starts at column 5 where we get to our -- we call them our towers, but it's that front support structure. And that goes right up to the end in column 6 around 42 or so before it switches to our -- describing our traction control, which is actually in a different patent number.

Q Right. Other than those areas in columns 5 and 6 that you've referenced, is there anywhere else in the patent that you believe addresses the inventive nature of those front towers?

A Let's go to the claims.

Q Mm-hmm.

A So that's right in the first claim. It describes how our pivot arm is connected to the front support assembly.

Q And that's in which claim?

A Right in claim 1.

Q Okay.

A And that describes our linkages going from the rear, our loader arm, forward towards our front support.

Q And that's, for example, claim 1,

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