

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No.: 14/882,973

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For: PROPPANT DISCHARGE
AND STORAGE SYSTEM

Confirmation No.: 6777

Examiner: Not yet assigned

Art Unit: Not yet assigned

PETITION TO INSTITUTE DERIVATION PROCEEDING
PURSUANT TO 35 USC § 135

Mail Stop **Patent Board**
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Patent and Trial Appeal Board:

This is a Petition to Institute a Derivation Proceeding (“Petition”) under 35 USC § 135 with respect to claims 1-18 in the following pending U.S. Patent Application:

Applicants: Kenneth W. Eiden et al.

Serial No.: 14/249,420 (“the ‘420 Application” or “Respondent’s Application”)

Filing Date: April 10, 2014

Priority Claim: U.S. Provisional Patent Application 61/811,493, filed April 12, 2013 (the ‘493 Provisional”)

Title: Intermodal Storage and Transportation Container

Confirmation No.: 1175

Examiner: Deuble, Mark A.

Art Unit: 3651

Pursuant to 35 U.S.C. § 135 and 37 CFR § 42 *et seq.*, Petitioner respectfully submits that this Petition should be granted and a derivation proceeding should be instituted based on the following: (1) this petition is timely filed, within one (1) year of first publication of the ‘420 Application; (2) Petitioner has standing by virtue of being the named Applicant on U.S. Patent Application Number 14/882,973 (“the ‘973 Application”), filed October 14, 2015; (3) the ‘420 Application published with 18 claims that are identical or substantially similar to claims in the ‘973 Application; (4) those 18 claims relate to invention(s) that were conceived by one or more inventors named on the ‘973 Application prior to a priority date to which each of the claims in the ‘420 Application is legally entitled, and that conception was communicated, directly or indirectly, to one or more inventors named on the ‘420 Application, including unauthorized access to the conception being provided to one or more inventors named on the ‘420 Application, resulting in direct or indirect communication of the conception; (5) by virtue of the disclosure, the inventions of those 18 claims in the ‘420 Application were derived from the inventor(s) named on the ‘973 Application; and (6) by the papers submitted herewith, this Petition is supported by substantial, corroborated evidence that supports a determination of derivation and institution of a derivation proceeding.

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A. Real Party in Interest

The real parties in interest for purposes of this Derivation Petition are Oren Technologies, LLC (hereinafter “Oren” or “Petitioner”), a business organized under the laws of Texas and owner of the ‘973 Application; SandBox Enterprises, LLC (hereinafter “SandBox Enterprises”), a business organized under the laws of Texas and a licensee of the ‘973 Application; and SandBox Logistics, LLC (hereinafter “SandBox”), a business organized under the laws of Texas, a wholly-owned subsidiary of SandBox Enterprises, and a sublicensee of the ‘973 Application.

B. Lead and Backup Counsel

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A Power of Attorney appointing these attorneys, using Customer Number 132858, with which both lead and backup counsel are hereby identified as being associated per § 1.32, was included with the '973 Application as filed, and a copy of the Power of Attorney has been submitted to the Board as a PDF file.

Please address all correspondence to the lead counsel indicated above.

Petitioner consents to electronic service by email at the email addresses provided above.

C. Related Petitions

There are no related petitions at this time. This response will be supplemented in the event related petitions are subsequently filed.

D. Standing

Pursuant to 37 CFR 42.402, “[a]n applicant for patent may file a petition to institute a derivation proceeding in the Office.” Petitioner is the Applicant for the '973 Application and the owner by Assignment of the entire right, title, and interest in all inventions disclosed in the '973 Application. The Assignment was filed with the USPTO at the time the '973 Application was filed and was submitted for recordation with the USPTO.

E. Timeliness of Petition

The ‘420 Application (attached hereto as Exhibit 1011 and referred to herein as “the ‘420 Application”) was filed on April 10, 2014 and claims a priority date of April 12, 2013, on which U.S. Provisional Patent Application No. 61/811,493 was filed. As discussed further herein, Petitioner does not concede that any of the 18 claims of the ‘420 Application are entitled to the April 12, 2013 priority date. The ‘420 Application was first published as U.S. Publication No. 2014/0305769 on October 16, 2014. This Derivation Petition was first filed with the USPTO, meeting all statutory requirements, on October 15, 2015; thus, this Derivation Petition was timely filed within one (1) year of the date of first publication of the ‘420 Application.

F. Relief Requested

Petitioner hereby requests any and all relief available under 35 U.S.C. § 135 and 37 CFR § 42 *et seq.*, including but not limited to: cancellation of all claims of the ‘420 Application derived from Petitioner, addition of the named inventors on the ‘973 Application to the ‘420 Application, and/or removal of such presently-named inventors from the ‘420 Application, as deemed appropriate by the Board.

G. Correspondence between Claims of the ‘420 Application and Claims of the ‘973 Application

The following table shows the correspondence between claims of the '420 Application and claims of the '973 Application. All corresponding claims are either identical or substantially similar.

Published Claims of the '420 Application	Corresponding Claims of the '973 Application
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18

H. Construction of the Claims at Issue

In accordance with 37 CFR § 42.405(b)(3)(ii), Petitioner submits that, except where otherwise indicated in this petition, all claim terms of the '420 Application are to be construed with the broadest reasonable interpretation in light of the specification of the '420 Application.

In the claim chart below, Petitioner has indicated where support for the terms of each of the ‘420 Application claims may be found within the ‘420 Application. None of the claims at issue include any language that clearly, or implicitly, invokes 35 U.S.C. § 112(f) or Pre-AIA 35 U.S.C. § 112, Sixth Paragraph, thus making the plain meaning appropriate. Each of claims 1-18 should be given the broadest reasonable interpretation in light of the ‘420 Application.

The following are proposed constructions of select claim terms:

clam shell gate: a gate allowing material to pass through when opened and preventing material from passing through when closed. *See* Exhibit 1011, ¶ [0044] (“a gate 102”) and Exhibit 1015, ¶ [0076] (metering gate 90).

‘37 CFR § 42.405(b)(3)(ii) requires that, for each of the Respondent's claims to the derived invention, the Petition must identify how the claim is to be construed. 37 CFR § 42.405(a)(2)(i) requires the Petition to show that the Petitioner has at least one claim that is the same or substantially the same as the respondent's claimed invention. The following claim chart satisfies both these requirements.

Published Claims of the ‘420 Application	Claim Construction Identification	Claims of the ‘973 Application that are the same or substantially the same as Published Claims of the ‘420 Application
1. A container for carrying a fracking proppant such as sand,	‘420 Application, element 16 of FIGS. 1, 2; paragraph [0002]	1. A container for carrying a fracking proppant such as sand,

comprising:		comprising:
a support frame;	'420 Application, element 44 of FIG. 3; paragraphs [0033-0034]	a support frame;
a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant;	'420 Application, element 42 of FIG. 3; paragraphs [0033], [0036]	a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant;
a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening;	'420 Application, elements 70, 72, 74 of FIGS. 7, 8; paragraph [0039]	a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening;
a slide gate positioned beneath the discharge opening and selectively movable between an open and a closed position;	'420 Application, element 76 of FIGS. 3, 4; paragraph [0041]	a slide gate positioned beneath the discharge opening and selectively movable between an open and a closed position;
a load door mounted to a top wall of the storage body and movable between a closed position to cover a loading opening in the storage body and an open position to provide access to the loading opening; and	'420 Application, elements 56, 58 of FIGS. 3, 5; paragraph [0036]	one or more openings forming one or more passages into the open interior of the container, the one or more openings being positioned proximate a top wall of the storage body; and
a central opening formed in the load door, wherein fracking proppant can be loaded into the open interior of the storage body through the central	'420 Application, element 64 of FIG. 4; paragraph [0037]	at least one cover selectively moveable between open and closed positions to block access to the one or more openings.

opening when the load door is in the closed position.		
2. The container of claim 1 further comprising a top hatch mounted to the load door and movable to selectively cover the central opening.	‘420 Application, element 66 of FIGS. 3, 4; paragraph [0038]	2. The container of claim 1, wherein the at least one cover comprises an elongated load door, a hatch, or a combination thereof.
3. The container of claim 2 further comprising a filler cone mounted to the load door and movable into alignment with the central opening when the top hatch member is positioned away from the central opening.	‘420 Application, element 68 of FIGS. 3, 4; paragraph [0038]	3. The container of claim 1 comprising a guide lip directing the fracking proppant into the open interior via the one or more openings.
4. The container of claim 1 wherein the discharge opening is smaller than the central opening.	‘420 Application, plain and ordinary meaning	4. The container of claim 1 wherein the discharge opening is smaller than the central opening.
5. The container of claim 4 wherein the discharge opening is located such that the discharge opening of a first container is aligned with the central opening of a second container when the first container is stacked above the second container.	‘420 Application, FIG. 2; paragraph [0043]	5. The container of claim 4 wherein the discharge opening is located such that the discharge opening of a first container is aligned with the central opening of a second container when the first container is stacked above the second container.
6. The container of claim 1 wherein the sloped end walls each are positioned at an angle of approximately 35° relative to horizontal and the sloped sidewalls each are positioned at an angle	‘420 Application, paragraph [0039]	6. The container of claim 1 wherein the sloped end walls each are positioned at an angle of approximately 35° relative to horizontal and the sloped sidewalls each are positioned at an angle

of approximately 43° relative to horizontal.		of approximately 43° relative to horizontal.
7. A distribution system for delivering a fracking proppant, such as sand, to a blender at a well site, comprising:	‘420 Application, element 14 of FIG. 1; paragraphs [0002], [0028-0030]	7. A distribution system for delivering a fracking proppant, such as sand, to a blender at a well site, comprising:
a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of mounting locations;	‘420 Application, element 26, element 92, element 94 of FIG. 9; paragraph [0044]	a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of mounting locations;
at least one container supported on the base unit at each of the mounting locations, wherein each container includes a storage body for holding a supply of the fracking proppant and having a discharge opening;	‘420 Application, element 16, element 42 of FIGS. 2, 9; paragraph [0044]	at least one container supported on the base unit at each of the mounting locations, wherein each container includes a storage body for holding a supply of the fracking proppant and having a discharge opening;
a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	‘420 Application, element 112 of FIG. 10; paragraph [0046]	a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;
a plurality of support rollers mounted beneath the support rails to support the conveyor belt;	‘420 Application, element 122 of FIG. 11; paragraph [0052]	a plurality of support rollers mounted beneath the support rails to support the conveyor belt;
a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base	‘420 Application, element 40 of FIG. 9; paragraph [0044]	a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base

unit; and		unit; and
an actuator coupled to each of the discharge chutes to control the amount of fracking proppant delivered from the container onto the conveyor belt.	'420 Application, element 104 of FIGS. 9, 10; paragraphs [0046]-[0047]	an actuator coupled to each of the discharge chutes to control the amount of fracking proppant delivered from the container onto the conveyor belt.
8. The distribution system of claim 7 wherein each discharge chute includes an actuator operable to control the amount of fracking proppant delivered from the storage container.	'420 Application, paragraph [0047]	8. The distribution system of claim 7 wherein each discharge chute includes an actuator operable to control the amount of fracking proppant delivered from the storage container.
9. The distribution system of claim 8 wherein the discharge chute includes a clam shell gate coupled to the actuator, wherein the clam shell gate is movable relative to the discharge chute to control the amount of fracking proppant dispensed onto the conveyor belt.	'420 Application, element 102 of FIG. 10; paragraphs [0046]-[0047]	9. The distribution system of claim 8 wherein the discharge chute includes a slide gate coupled to the actuator, wherein the slide gate is movable relative to the discharge chute to control the amount of fracking proppant dispensed onto the conveyor belt.
10. The distribution system of claim 9 wherein the actuator is a hydraulic cylinder coupled to the clam shell gate.	'420 Application, paragraph [0046]	10. The distribution system of claim 9 wherein the actuator is a hydraulic cylinder coupled to the clam shell gate.
11. The distribution system of claim 8 further comprising a controller coupled to each of the actuators such that the controller controls the discharge of the fracking proppant onto the	'420 Application, element 114 of FIG. 16; paragraph [0048]	11. The distribution system of claim 8 further comprising a controller coupled to each of the actuators such that the controller controls the discharge of the fracking proppant onto the

conveyor belt at each of the mounting locations.		conveyor belt at each of the mounting locations.
12. The distribution system of claim 11 further comprising a user interface device in communication with the controller.	‘420 Application, element 114 of FIG. 16; paragraph [0050]	12. The distribution system of claim 11 further comprising a user interface device in communication with the controller.
13. The distribution system of claim 12 wherein the user interface device is in wireless communication with the controller.	‘420 Application, paragraphs [0048], [0050]	13. The distribution system of claim 12 wherein the user interface device is in wireless communication with the controller.
14. The distribution system of claim 7 wherein each of the containers includes a slide gate positioned beneath the discharge opening, wherein each slide gate is selectively movable between an open position and a closed position to selectively control the discharge of the fracking proppant from the container.	‘420 Application, element 76 of FIGS. 3, 4; paragraph [0041]	14. The distribution system of claim 7 wherein each of the containers includes a respective container slide gate positioned beneath the discharge opening, wherein each respective container slide gate is selectively movable between an open position and a closed position to selectively control the discharge of the fracking proppant from the container.
15. The distribution system of claim 14 wherein the slide gate is independently operable from the discharge chute.	‘420 Application, paragraphs [0040], [0046]	15. The distribution system of claim 14 wherein the respective container slide gates are independently operable from respective discharge chutes.
16. A base unit for supporting a plurality of containers each including	‘420 Application, elements 16 and 26 of FIG. 2; paragraph [0031]	16. A base unit for supporting a plurality of containers each including

a supply of a tracking proppant, such as sand, the base unit comprising:		a supply of a tracking proppant, such as sand, the base unit comprising:
a pair of spaced support rails extending from a first end to a second end, wherein the base unit defines a plurality of mounting locations that each receive one or more of the containers;	'420 Application, element 26, element 92, element 94 of FIG. 9; paragraph [0044]	a pair of spaced support rails extending from a first end to a second end, wherein the base unit defines a plurality of mounting locations that each receive one or more of the containers;
a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	'420 Application, element 112 of FIG. 10; paragraph [0046]	a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;
a plurality of support rollers mounted beneath the support rails to support an upper run of the conveyor belt;	'420 Application, element 122 of FIG. 11; paragraph [0052]	a plurality of support rollers mounted beneath the support rails to support an upper run of the conveyor belt;
a discharge chute located in each of the mounting locations, wherein the discharge chute is aligned with a discharge opening of the storage container mounted at the mounting location;	'420 Application, element 40 of FIG. 9; paragraph [0044]	a discharge chute located in each of the mounting locations, wherein the discharge chute is aligned with a discharge opening of the storage container mounted at the mounting location;
a clam shell gate positioned at each of the discharge chutes and selectively movable between an open position and a closed position; and	'420 Application, element 102 of FIG. 10; paragraphs [0046]-[0047]	a slide gate positioned at each of the discharge chutes and selectively movable between an open position and a closed position; and
an actuator coupled to each of the clam shell gates to control the position of the clam shell gate relative to the	'420 Application, element 104 of FIGS. 9, 10; paragraphs [0046]-[0047]	an actuator coupled to each of the slide gates to control the position of the slide gates relative to the discharge chute.

discharge chute.		
17. The base unit of claim 16 further comprising a controller coupled to each of the actuators such that the controller controls the position of each of the clam shell gates through operation of the actuators.	‘420 Application, element 114 of FIG. 16; paragraph [0048]	17. The base unit of claim 16 further comprising a controller coupled to each of the actuators such that the controller controls the position of each of the slide gates through operation of the actuators.
18. The base unit of claim 17 further comprising a user interface device in communication with the controller.	‘420 Application, paragraphs [0048], [0050]	18. The base unit of claim 17 further comprising a user interface device in communication with the controller.

I. Introduction

Petitioner seeks relief from the unauthorized derivation of Petitioner’s prior conception by Respondent. As shown below, Petitioner conceived of the subject matter of the claims of the ‘420 Application well before Respondent filed any application directed to the concepts conceived by Petitioner. This prior conception is corroborated by numerous Exhibits attached hereto. Petitioner directly communicated his conception to Timothy Stefan, a named inventor on the ‘420 Application, and Stefan took this knowledge communicated by Petitioner and without authorization used it to file the ‘420 application, the claims of which are directed to Petitioner’s prior conception.

As shown herein, Petitioner has satisfied 37 CFR § 42.405(a)(2)(i) by showing that the Petitioner has at least one claim that is the same or substantially

the same as the respondent's claimed invention; Petitioner has satisfied 37 CFR § 42.405(a)(2)(ii) by showing that the Petitioner has at least one claim that is the same or substantially the same as the invention disclosed to the respondent; and, Petitioner has satisfied 37 CFR § 42.405(b)(3)(i) by showing that, for each of the respondent's claims to the derived invention, why the claimed invention is the same or substantially the same as the invention disclosed to the respondent.

Therefore, Petitioner respectfully requests that the Petition be granted and the derivation proceeding be instituted so that appropriate relief may be granted.

J. Prior Conception of the Claimed Subject Matter and Communication of that Conception to an Inventor of the '420 Application

a. Statement of Facts: Prior Conception of the Claimed Subject Matter

John Oren (hereinafter, "Oren"), a named inventor on the '973 application, is a co-founder of Oren Technologies, SandBox Enterprises, and SandBox Logistics. (Ex. 1045, ¶ 3) (hereinafter, "Oren Affidavit"). Oren, through his companies, has been involved in the business of providing fracking proppant storage, transportation, and discharge systems for several years, at least back to 2011. (Oren Affidavit, ¶ 4-5). SandBox is a transportation and logistics company, providing fracking proppant in self-contained, modular storage containers to oil and gas service companies, among others, for use in hydraulic fracking, for example associated with exploration and production of oil and gas fields (Oren

Affidavit, ¶ 4). SandBox provides full-service delivery, storage, and discharge of fracking proppant at well sites for blending and subsequent injection into oil and gas formations (Id.).

Prior to modular fracking storage, Oren operated PSI Frac Logistics (hereinafter, “PSI”) to supply fracking proppant to well sites utilizing pneumatic storage containers (Oren Affidavit, ¶ 5). Oren noticed the inefficiencies associated with traditional pneumatic storage and delivery, and thereafter turned his attention to developing a modular system (Id.).

Oren began conceiving of features for modular fracking proppant storage, transportation, and discharge systems at least as early as the middle of 2011. (Id.). For example, Oren prepared sketches of aspects of his ideas in approximately the middle of 2011. (Oren Affidavit, ¶ 6, Ex. 1025, Ex. 1026). These conceptions, corroborated by the sketches, include at least the features of (a) a support frame; (b) a storage body mounted within the support frame having an open interior to receive a supply of the fracking proppant; (c) a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls that converge at a discharge opening; (d) a slide gate positioned beneath the discharge opening and selectively movable between an open and a closed position; (e) one or more openings forming one or more passages into the open interior of the container, the one or more openings being

positioned proximate a top wall of the storage body; (f) a discharge opening located such that the discharge opening of a first container is aligned with the loading opening of a second container when the first container is stacked above the second container; and (g) a conveyor system for receiving proppant discharged from all of the stacked containers through the bottom container. (Oren Affidavit, ¶ 6, Ex. 1025, Ex. 1026).

Oren had engineering drawings prepared by Chris Green and Frank Adamek some time between September 3, 2011 and October 3, 2011. (Oren Affidavit, ¶ 7, Ex. 1023). These drawings reflect the ideas embodied in those early conceptual sketches, and additionally provide clarifications regarding the prior conception, such as clearly indicating that a discharge section was formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening, and that the end walls and sidewalls may be formed at varying angles. (Id.) Moreover, Oren prepared calculations and conceived of potential staging options for the storage system in October 2011 (Ex. 1024).

Subsequently, over a period of several months, Oren continued to refine and develop his ideas, eventually fully conceiving of, and reducing to practice, various embodiments of a modular system, for example based on a twenty foot equivalent (TEU) container. (Oren Affidavit, ¶ 8). This is corroborated by U.S. Patent

Number 8,827,118 (“the ‘118 patent”), filed on December 21, 2011 and issued on September 9, 2014, with an Inventor’s Declaration from Oren. (Id., Ex. 1013).

Oren continued to conceive of additional features and refine existing features of the TEU container system; for example, after meetings with potential customers and partners describing their need for transporting multiple proppant containers on traditional roadways without incurring additional charges for weight overages or requiring escorts. (Oren Affidavit, ¶ 9-10). After evaluation of regulatory requirements and testing various prototypes, on or about February 19, 2012, Oren and SandBox co-founder Joshua Oren conceived of features of a smaller container (the “10-foot container”) that could meet long-felt customer needs. (Oren Affidavit, ¶ 9).

Oren and J. Oren enlisted the services of Bill Aiken (hereinafter, “Aiken”) of Aiken Engineering Co. to discuss various engineering specifications related to the 10-foot container. (Oren Affidavit, ¶ 11, Ex. 1019). Aiken provided initial drawings of engineering specifications related to Oren’s ideas on March 16, 2012. (Id.). Aiken subsequently provided additional drawings, dated May 1, 2012, reflecting Oren’s ideas for a modular system. (Oren Affidavit, ¶ 12, Ex. 1021, Ex. 1022). Some of the features conceived by Oren that are illustrated in these drawings include at least: (a) a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of

mounting locations; (b) a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end; (c) a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base unit; (d) a base unit for supporting a plurality of containers each including a supply of a fracking proppant, such as sand; (e) a pair of spaced support rails extending from a first end to a second end, the base unit defining a plurality of mounting locations that each receive one or more of the containers; and (f) a discharge chute located in each of the mounting locations, the discharge chute aligned with a discharge opening of the storage container mounted at the mounting location. (Id.).

Oren filed a patent application (U.S. Patent Publication Number 2014/0020765 (“the ‘635 application”)), published on January 23, 2014, directed to features for the 10-foot container on July 23, 2012. (Oren Affidavit, ¶ 13, Ex. 1016).

Oren continued to develop his ideas and filed additional patent applications. One application (U.S. Patent Publication Number 2014/0023463 (“the ‘702 application”)) was filed on September 27, 2012, and published on January 23, 2014. (Oren Affidavit, ¶ 14, Ex. 1015). Another application naming Oren as inventor was filed on October 25, 2012 and issued on November 19, 2013, as U.S. Patent Number 8,585,341 (“the ‘341 patent”).

As Oren and Joshua Oren began to provide fracking storage and transportation services to their customers, they conducted further refinement and modifications to their designs to meet customer needs and to improve efficiencies. For example, an opening in the top lid to receive the sand was modified as an elongated opening to facilitate loading of the containers, resulting in at least one or more openings forming one or more passages into the open interior of the container, the one or more openings being positioned proximate a top wall of the storage body and at least one cover selectively moveable between open and closed positions to block access to the one or more openings. (Oren Affidavit, ¶ 16, Exs. 1028-1030, Ex. 1031, Ex. 1034).

b. Substantial Evidence of Prior Conception Has Been Presented

The Oren Affidavit and the attached Exhibits demonstrate substantial corroborated evidence of prior conception of each and every limitation of the claims of the '420 Application. For example, with regard to independent claim 1 of the '420 Application, the Oren Affidavit and corroborating evidence demonstrate that Oren conceived of the following limitations no later than April 2013: A container for carrying a fracking proppant such as sand; a support frame; a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant; a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of

sloped end walls and a pair of sloped sidewalls that converge at a discharge opening; a slide gate positioned beneath the discharge opening and selectively movable between an open and a closed position; one or more openings forming one or more passages into the open interior of the container, the one or more openings being positioned proximate a top wall of the storage body; and at least one cover selectively moveable between open and closed positions to block access to the one or more openings.

The testimony of the Oren affidavit regarding conception of the above limitations is corroborated by numerous items of documentary evidence, all of which date prior to the filing date of the '420 Application. For example, drawings created by third parties (e.g., Chris Green, Bill Aiken, Shanghai Jingsheng Container Manufacturing Co., Ltd., and Dave Hansen), which are accompanied by contemporaneous e-mail communications and Non-Disclosure Agreements. Additionally, U.S. patent applications and issued U.S. patents, and the corresponding Inventor Declarations filed in each application, demonstrate conception of limitations of the '420 Application no later than the filing date of each application.

Similar to the limitations of claim 1 of the '420 Application, the Oren Affidavit and the Exhibits provide substantial evidence that Oren conceived of all limitations of the '420 Application prior to the earliest alleged conception by the

inventors of the ‘420 Application. The following chart demonstrates representative evidence of Petitioner’s prior conception of each and every limitation of the ‘420 Application. Cumulative and/or complementary evidence is not included in the chart in order to reduce the size of the Petition; for example, the Oren Affidavit.

Published Claims of the ‘420 Application	Evidence of Prior Conception, either Anticipatory or Obviousness-based
1. A container for carrying a fracking proppant such as sand, comprising:	At least Exhibit 1017; Exhibit 1015: element 10 of FIG. 1; paragraphs [0046], [0066];
a support frame;	At least Exhibit 1017; Exhibit 1015: element 14 of FIG. 1; paragraphs [0067]-[0068]
a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant;	At least Exhibit 1017; Exhibit 1015: element 12 of FIGS. 1, 3; paragraph [0066]
a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening;	At least Exhibit 1017; Exhibit 1015: elements 34, 40, 42, 52, and 54 of FIGS. 2, 4; paragraphs [0068], [0071]
a slide gate positioned beneath the discharge opening and selectively movable between an open and a closed position;	At least Exhibit 1017; Exhibit 1019; Exhibit 1015: element 44 of FIG. 3; paragraph [0070]
a load door mounted to a top wall of the storage body and movable between a closed position to cover a loading opening in the storage body and an open position to provide access to the loading opening; and	At least Exhibit 1031, page 3; Exhibit 1028-1030, page 7 (“roof hatch”) and page 8; Exhibit 1034; Exhibit 1044
a central opening formed in the load door, wherein fracking proppant can be loaded into the open interior of the	At least Exhibit 1017; Exhibit 1015: element 30 of FIG.1; paragraphs [0066], [0068]; Exhibit 1034; Exhibit 1044

storage body through the central opening when the load door is in the closed position.	
2. The container of claim 1 further comprising a top hatch mounted to the load door and movable to selectively cover the central opening.	At least Exhibit 1017; Exhibit 1015: element 30 of FIG.1; paragraphs [0066], [0068]
3. The container of claim 2 further comprising a filler cone mounted to the load door and movable into alignment with the central opening when the top hatch member is positioned away from the central opening.	At least The “lip” around the elongated hatch shown in Exhibit 1031, page 3; Exhibit 1028-1030, page 7 (“roof hatch”) and page 8; Exhibit 1034; Exhibit 1044 is either anticipatory or renders the filler cone obvious
4. The container of claim 1 wherein the discharge opening is smaller than the central opening.	At least Exhibit 1031, page 3; Exhibit 1028-1030, page 7 (“roof hatch”) and page 8; Exhibit 1015; element 44 of FIG. 3
5. The container of claim 4 wherein the discharge opening is located such that the discharge opening of a first container is aligned with the central opening of a second container when the first container is stacked above the second container.	At least Exhibit 1023; Exhibit 1013: elements 12, 16, 24, 28 of FIG. 1; col. 5, lines 28-45
6. The container of claim 1 wherein the sloped end walls each are positioned at an angle of approximately 35° relative to horizontal and the sloped sidewalls each are positioned at an angle of approximately 43° relative to horizontal.	At least Obvious in light of Exhibit 1028-1030, page 7 (angles of 25 degrees in “Section ‘A’” drawing and angles of 20 degrees in “Section ‘B’” drawing
7. A distribution system for delivering a fracking proppant, such as sand, to a blender at a well site, comprising:	At least Exhibit 1017; Exhibit 1015: FIG. 9, paragraph [0086]
a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of mounting locations;	At least Exhibit 1021; Exhibit 1015: elements 60, 62; FIGS. 5-6, 9-10; paragraphs [0073]-[0074], [0080]-[0082]
at least one container supported on the	At least Exhibit 1021; Exhibit 1015:

base unit at each of the mounting locations, wherein each container includes a storage body for holding a supply of the fracking proppant and having a discharge opening;	elements 10, 36, 60, 110, 112, 114, 116, 118 of FIGS. 5, 7, 9-10; paragraphs [0071], [0075]-[0076], [0080]-[0082]
a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	At least Exhibit 1027; Exhibit 1015: element 86, 120 of FIGS. 5-9; paragraphs [0075]-[0076], [0079]-[0080]
a plurality of support rollers mounted beneath the support rails to support the conveyor belt;	At least Exhibit 1027; Exhibit 1015: FIG. 9, paragraph [0080]
a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base unit; and	At least Exhibit 1021; Exhibit 1015: element 88 of FIGS. 5-9; paragraphs [0075]-[0077], [0080]
an actuator coupled to each of the discharge chutes to control the amount of fracking proppant delivered from the container onto the conveyor belt.	At least Exhibit 1015: elements 100, 102 of FIG. 6; paragraph [0077]
8. The distribution system of claim 7 wherein each discharge chute includes an actuator operable to control the amount of fracking proppant delivered from the storage container.	At least Exhibit 1015: elements 76, 78 of FIG. 5; paragraphs [0072], [0074]
9. The distribution system of claim 8 wherein the discharge chute includes a clam shell gate coupled to the actuator, wherein the clam shell gate is movable relative to the discharge chute to control the amount of fracking proppant dispensed onto the conveyor belt.	At least Exhibit 1015: element 90 of FIG. 6; paragraph [0077]
10. The distribution system of claim 9 wherein the actuator is a hydraulic cylinder coupled to the clam shell gate.	At least Exhibit 1015: paragraphs [0072], [0085]
11. The distribution system of claim 8 further comprising a controller coupled to each of the actuators such that the	At least Pages 6-7 of Exhibit 1034; Exhibit 1035

controller controls the discharge of the fracking proppant onto the conveyor belt at each of the mounting locations.	
12. The distribution system of claim 11 further comprising a user interface device in communication with the controller.	At least Pages 6-7 of Exhibit 1034; Exhibit 1035
13. The distribution system of claim 12 wherein the user interface device is in wireless communication with the controller.	At least Pages 6-7 of Exhibit 1034; Exhibit 1035
14. The distribution system of claim 7 wherein each of the containers includes a slide gate positioned beneath the discharge opening, wherein each slide gate is selectively movable between an open position and a closed position to selectively control the discharge of the fracking proppant from the container.	At least Exhibit 1019; Exhibit 1015: element 44 of FIG. 4; paragraphs [0071]-[0072]
15. The distribution system of claim 14 wherein the slide gate is independently operable from the discharge chute.	At least Exhibit 1019; Exhibit 1015: paragraphs [0072], [0077]
16. A base unit for supporting a plurality of containers each including a supply of a tracking proppant, such as sand, the base unit comprising:	At least Exhibit 1021; Exhibit 1015: elements 60, 62; FIGS. 5-6, 9-10; paragraphs [0073]-[0074], 0080]-[0082]
a pair of spaced support rails extending from a first end to a second end, wherein the base unit defines a plurality of mounting locations that each receive one or more of the containers;	At least Exhibit 1021; Exhibit 1015: elements 60, 62; FIGS. 5-6, 9-10; paragraphs [0073]-[0074], 0080]-[0082]
a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	At least Exhibit 1027; Exhibit 1015: element 86, 120 of FIGS. 5-9; paragraphs [0075]-[0076], [0079]-[0080]
a plurality of support rollers mounted beneath the support rails to support an upper run of the conveyor belt;	At least Exhibit 1027; Exhibit 1015: FIG. 9, paragraph [0080]
a discharge chute located in each of the	At least Exhibit 1021; Exhibit 1015:

mounting locations, wherein the discharge chute is aligned with a discharge opening of the storage container mounted at the mounting location;	element 88 of FIGS. 5-9; paragraphs [0075]-[0077], [0080]
a clam shell gate positioned at each of the discharge chutes and selectively movable between an open position and a closed position; and	At least Exhibit 1015: element 90 of FIG. 6; paragraph [0077]
an actuator coupled to each of the clam shell gates to control the position of the clam shell gate relative to the discharge chute.	At least Exhibit 1015: elements 76, 78 of FIG. 5; paragraphs [0072], [0074]
17. The base unit of claim 16 further comprising a controller coupled to each of the actuators such that the controller controls the position of each of the clam shell gates through operation of the actuators.	At least Pages 6-7 of Exhibit 1034; Exhibit 1035
18. The base unit of claim 17 further comprising a user interface device in communication with the controller.	At least Pages 6-7 of Exhibit 1034; Exhibit 1035

As demonstrated above and in the attached Exhibits, Petitioner has presented substantial evidence that supports a determination that Petitioner conceived the invention claimed by the '420 Application prior to the filing date of the '420 Application. Additionally, Exhibits 1013, 1014, 1015, and 1016 all serve as prior art under at least both pre-AIA 35 U.S.C. 102(e) and post-AIA 35 U.S.C. 102 to the '420 Application (or the provisional application to which it claims priority).

c. Statement of Facts: Communication of Conceived Subject Matter

During development of the TEU container and the 10-foot container, SandBox submitted documentation to various vendors for the purposes of manufacturing, development, and testing. (Oren Affidavit, ¶ 17, Ex. 1017, Ex. 1018, Ex. 1019, Ex. 1021, Ex. 1022, Ex. 1023, Ex. 1027). For example, as described above, SandBox contacted Aiken to begin preliminary engineering design of the conceived 10 foot container in March of 2012. (Oren Affidavit, ¶ 11-12, Ex. 1019, Ex. 1021, Ex. 1022). SandBox contacted several manufactures to discuss production of the 10 foot containers. (Oren Affidavit, ¶ 18, Ex. 1024, Ex. 1025). As development continued, SandBox agreed in principle for manufacturing with Pro Box, One Way Lease, and Shanghai Jingsheng Container Manufacturing Co., Ltd in Shanghai, China on June 26, 2012. (Id.).

While SandBox communicated features conceived by Oren that are claimed in the '973 Application as part of the manufacturing discussions with Pro Box, One Way Lease, and Jingsheng, Mike Shannon of Shannon Welding developed a prototype containing features conceived by Oren that are claimed in the '973 Application. (Oren Affidavit, ¶ 19, Ex. 10130). Furthermore, SandBox contacted Dave Hansen of Cambelt International to manufacture items that embodied various features conceived by Oren and claimed in the '973 Application; for example, a cradle to support the 10-foot container. (Oren Affidavit, ¶ 19-20).

SandBox was a Bronze Sponsor of the 2013 Proppants Summit held in Houston, TX on May 21-22, 2013. (Oren Affidavit, ¶ 26, Ex. 1020). While attending the presentations, Oren met Stefan, who introduced himself as being affiliated with “Grit Sand.” (Oren Affidavit, ¶ 23; Joshua Oren Affidavit, ¶ 6). Oren agreed to give Stefan a tour of the SandBox facilities on May 22, 2013. (Oren Affidavit, ¶ 24; Joshua Oren Affidavit, ¶ 7-8). During the tour, Oren communicated the conception of features embodied in the claims of the ‘973 application, including a central opening formed in the load door, wherein fracking proppant can be loaded into the open interior of the storage body through the central opening when the load door is in the closed position. (Oren Affidavit, ¶ 25; Joshua Oren Affidavit, ¶ 8).

d. Substantial Evidence of Communication Has Been Presented

The Oren Affidavit contains specific, corroborated evidence that Oren communicated Oren’s inventions to Stefan. (Oren Affidavit, ¶¶ 23-25; Joshua Oren Affidavit, ¶¶ 6-9). This communication included materials displayed at the 2013 Proppants Summit. (Oren Affidavit, ¶¶ 23-25; Joshua Oren Affidavit, ¶¶ 6-9, Ex. 1031, Ex. 1034, Ex. 1013). This communication also included a viewing of SandBox modular storage units, including answering numerous questions about the units, the related equipment, and the processes used. (Oren Affidavit, ¶¶ 24-25; Joshua Oren Affidavit, ¶¶ 7-9). The modular storage units and associated

equipment comprised units on which Oren had previously filed for patent protection. (Oren Affidavit, ¶ 24; Joshua Oren Affidavit, ¶¶ 8-9; Ex. 1013, 1014, 1015, and 1016). As discussed above, at least the patents reflected in Exhibits 1013, 1014, 1015, and 1016 disclose features that were conceived prior to the filing of the '420 Application (or the provisional application to which it claims priority). Oren testified that he showed Stefan equipment on “which we had filed for patent protection”, and the equipment contained features reflected in at least Exhibits 1013, 1014, 1015, and 1016. Additionally, at their meeting, at Stefan’s prompting, Oren specifically told Stefan about the “elongated loading door” in a 10-foot container. (Oren Affidavit, ¶ 24; Joshua Oren Affidavit, ¶¶ 8-9). Embodiments of this “elongated loading door” may be seen in various exhibits, such as Exhibit 1031, page 3; Exhibit 1028-1030, page 7 (“roof hatch”) and page 8; Exhibit 1034; and Exhibit 1013. Oren explained to Stefan how the elongated load door aided the sand loading process. Oren also discussed his other designs having a centralized opening, and the various benefits and drawbacks of the centralized opening.

Through the viewing of the SandBox containers, the viewing of materials from the 2013 Proppant Summit, and the answering of numerous pointed questions, Oren directly communicated information comprising each and every limitation of the '973 Application to Stefan.

The following chart shows that Petitioner has demonstrated substantial, corroborated evidence of a claim of Petitioner’s being the same or substantially the same as the invention disclosed to the Respondent, and the invention disclosed to the Respondent being the same or substantially the same as the corresponding claim of the Respondent.

Published Claims of the ‘420 Application	Evidence of Communication of Conception	Invention Disclosed to Respondent
1. A container for carrying a fracking proppant such as sand, comprising:	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	1. A container for carrying a fracking proppant such as sand, comprising:
a support frame;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a support frame;
a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a storage body mounted within the support frame and having an open interior to receive a supply of the fracking proppant;
a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a discharge section formed as part of the storage body in the support frame, the discharge section being formed from a pair of sloped end walls and a pair of sloped sidewalls that converge at a discharge opening;
a slide gate positioned beneath the discharge opening and selectively	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8;	a slide gate positioned beneath the discharge opening and selectively

movable between an open and a closed position;	corresponding Exhibits	movable between an open and a closed position;
a load door mounted to a top wall of the storage body and movable between a closed position to cover a loading opening in the storage body and an open position to provide access to the loading opening; and	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	one or more openings forming one or more passages into the open interior of the container, the one or more openings being positioned proximate a top wall of the storage body; and
a central opening formed in the load door, wherein fracking proppant can be loaded into the open interior of the storage body through the central opening when the load door is in the closed position.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	at least one cover selectively moveable between open and closed positions to block access to the one or more openings.
2. The container of claim 1 further comprising a top hatch mounted to the load door and movable to selectively cover the central opening.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	2. The container of claim 1, wherein the at least one cover comprises an elongated load door, a hatch, or a combination thereof.
3. The container of claim 2 further comprising a filler cone mounted to the load door and movable into alignment with the central opening when the top hatch member is positioned away from the central opening.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	3. The container of claim 1 comprising a guide lip directing the fracking proppant into the open interior via the one or more openings.
4. The container of claim 1 wherein the discharge opening is smaller than the central opening.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	4. The container of claim 1 wherein the discharge opening is smaller than the central opening.
5. The container of claim	At least Oren Affidavit ¶¶	5. The container of claim

<p>4 wherein the discharge opening is located such that the discharge opening of a first container is aligned with the central opening of a second container when the first container is stacked above the second container.</p>	<p>22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits</p>	<p>4 wherein the discharge opening is located such that the discharge opening of a first container is aligned with the central opening of a second container when the first container is stacked above the second container.</p>
<p>6. The container of claim 1 wherein the sloped end walls each are positioned at an angle of approximately 35° relative to horizontal and the sloped sidewalls each are positioned at an angle of approximately 43° relative to horizontal.</p>	<p>At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits</p>	<p>6. The container of claim 1 wherein the sloped end walls each are positioned at an angle of approximately 35° relative to horizontal and the sloped sidewalls each are positioned at an angle of approximately 43° relative to horizontal.</p>
<p>7. A distribution system for delivering a fracking proppant, such as sand, to a blender at a well site, comprising:</p>	<p>At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits</p>	<p>7. A distribution system for delivering a fracking proppant, such as sand, to a blender at a well site, comprising:</p>
<p>a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of mounting locations;</p>	<p>At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits</p>	<p>a base unit having a pair of spaced support rails each extending from a first end to a second end, the base unit including a plurality of mounting locations;</p>
<p>at least one container supported on the base unit at each of the mounting locations, wherein each container includes a storage body for holding a supply of the fracking proppant and having a discharge opening;</p>	<p>At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits</p>	<p>at least one container supported on the base unit at each of the mounting locations, wherein each container includes a storage body for holding a supply of the fracking proppant and having a discharge opening;</p>

a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;
a plurality of support rollers mounted beneath the support rails to support the conveyor belt;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a plurality of support rollers mounted beneath the support rails to support the conveyor belt;
a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base unit; and	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a discharge chute located in each of the mounting locations and aligned with the discharge opening of one of the storage containers when the storage containers are supported on the base unit; and
an actuator coupled to each of the discharge chutes to control the amount of fracking proppant delivered from the container onto the conveyor belt.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	an actuator coupled to each of the discharge chutes to control the amount of fracking proppant delivered from the container onto the conveyor belt.
8. The distribution system of claim 7 wherein each discharge chute includes an actuator operable to control the amount of fracking proppant delivered from the storage container.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	8. The distribution system of claim 7 wherein each discharge chute includes an actuator operable to control the amount of fracking proppant delivered from the storage container.
9. The distribution system of claim 8 wherein the discharge chute includes a clam shell gate coupled to the actuator, wherein the clam shell gate is movable relative to the discharge	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	9. The distribution system of claim 8 wherein the discharge chute includes a slide gate coupled to the actuator, wherein the slide gate is movable relative to the discharge chute to

chute to control the amount of fracking proppant dispensed onto the conveyor belt.		control the amount of fracking proppant dispensed onto the conveyor belt.
10. The distribution system of claim 9 wherein the actuator is a hydraulic cylinder coupled to the clam shell gate.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	10. The distribution system of claim 9 wherein the actuator is a hydraulic cylinder coupled to the clam shell gate.
11. The distribution system of claim 8 further comprising a controller coupled to each of the actuators such that the controller controls the discharge of the fracking proppant onto the conveyor belt at each of the mounting locations.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	11. The distribution system of claim 8 further comprising a controller coupled to each of the actuators such that the controller controls the discharge of the fracking proppant onto the conveyor belt at each of the mounting locations.
12. The distribution system of claim 11 further comprising a user interface device in communication with the controller.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	12. The distribution system of claim 11 further comprising a user interface device in communication with the controller.
13. The distribution system of claim 12 wherein the user interface device is in wireless communication with the controller.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	13. The distribution system of claim 12 wherein the user interface device is in wireless communication with the controller.
14. The distribution system of claim 7 wherein each of the containers includes a slide gate positioned beneath the discharge opening, wherein each slide gate is selectively movable between an open position	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	14. The distribution system of claim 7 wherein each of the containers includes a respective container slide gate positioned beneath the discharge opening, wherein each respective container slide gate is

and a closed position to selectively control the discharge of the fracking proppant from the container.		selectively movable between an open position and a closed position to selectively control the discharge of the fracking proppant from the container.
15. The distribution system of claim 14 wherein the slide gate is independently operable from the discharge chute.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	15. The distribution system of claim 14 wherein the respective container slide gates are independently operable from respective discharge chutes.
16. A base unit for supporting a plurality of containers each including a supply of a tracking proppant, such as sand, the base unit comprising:	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	16. A base unit for supporting a plurality of containers each including a supply of a tracking proppant, such as sand, the base unit comprising:
a pair of spaced support rails extending from a first end to a second end, wherein the base unit defines a plurality of mounting locations that each receive one or more of the containers;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a pair of spaced support rails extending from a first end to a second end, wherein the base unit defines a plurality of mounting locations that each receive one or more of the containers;
a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a conveyor belt supported beneath the pair of support rails and extending from the first end to the second end;
a plurality of support rollers mounted beneath the support rails to support an upper run of the conveyor belt;	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a plurality of support rollers mounted beneath the support rails to support an upper run of the conveyor belt;
a discharge chute located in each of the mounting	At least Oren Affidavit ¶¶ 22-25; Joshua Oren	a discharge chute located in each of the mounting

locations, wherein the discharge chute is aligned with a discharge opening of the storage container mounted at the mounting location;	Affidavit ¶¶ 6-8; corresponding Exhibits	locations, wherein the discharge chute is aligned with a discharge opening of the storage container mounted at the mounting location;
a clam shell gate positioned at each of the discharge chutes and selectively movable between an open position and a closed position; and	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	a slide gate positioned at each of the discharge chutes and selectively movable between an open position and a closed position; and
an actuator coupled to each of the clam shell gates to control the position of the clam shell gate relative to the discharge chute.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	an actuator coupled to each of the slide gates to control the position of the slide gates relative to the discharge chute.
17. The base unit of claim 16 further comprising a controller coupled to each of the actuators such that the controller controls the position of each of the clam shell gates through operation of the actuators.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	17. The base unit of claim 16 further comprising a controller coupled to each of the actuators such that the controller controls the position of each of the slide gates through operation of the actuators.
18. The base unit of claim 17 further comprising a user interface device in communication with the controller.	At least Oren Affidavit ¶¶ 22-25; Joshua Oren Affidavit ¶¶ 6-8; corresponding Exhibits	18. The base unit of claim 17 further comprising a user interface device in communication with the controller.

e. Substantial Evidence of Derivation Has Been Presented

Derivation is proved by establishing prior conception of the claimed subject matter and communication of that conception to an inventor of the other party.

Cooper v. Goldfarb, 154 F.3d 1321, 1332 (Fed. Cir. 1998). Conception is proved

by corroborating evidence which shows that the inventor disclosed to others his completed thought expressed in such clear terms as to enable those skilled in the art to make the invention. *Coleman v. Dines*, 754 F.2d 353, 359 (Fed. Cir. 1985). A rule of reason applies to determining whether the inventor's testimony has been corroborated. *Price v. Symsek*, 988 F.2d 1187, 1194 (Fed. Cir. 1993). The rule does not limit the form that corroboration may take. "Changes to Implement Derivation Proceedings" 77 Federal Register 176 (September 11, 2012), p. 56075. The knowledge acquired from the petitioner, either directly or indirectly, determines the scope of the subject matter that would have been anticipated or obvious from the acquired knowledge. *Id.* Documentary evidence may be sufficient as corroborative evidence. *Id.* The respondent's claimed invention does not have to be identical to the invention disclosed to the respondent. *Cooper v. Goldfarb*, 154 F.3d 1321, 1332 (Fed. Cir. 1998).

As demonstrated above, Petitioner has established corroborated conception of each and every limitation of the '973 Application prior to the filing date of the '420 Application and the provisional application to which it claims priority. Petitioner's patents and patent application, including at least those reflected in Exhibits 1013, 1014, 1015, and 1016, all serve as prior art to the '420 Application and the provisional application to which it claims priority. Therefore, nothing in the '420 Application or the provisional application to which it claims priority can

be patentable over at least the patents and patent applications reflected in Exhibits 1013, 1014, 1015, and 1016.

The corroborated communication from Oren to Stefan in May 2013 comprises communication of the prior conception to an inventor of the other party. The communication included features of Oren's inventions that are disclosed in the patents reflected in Exhibits 1013, 1014, 1015, and 1016, as well as features described in the Exhibits attached to this Petition. These features include each and every limitation of the claims of the '973 Application, and this communication occurred in May 2013, almost one year prior to the filing date of the '420 Application.

Additionally, the '420 Application includes numerous features that are not described and/or supported in the provisional application to which it claims priority. This includes, but is not limited to, the following claims of the '420 Application. This list is illustrative and not exhaustive, as Petitioner does not concede that any claims of the '420 Application have adequate support in the provisional application, such that they could be entitled to the filing date of the provisional application.

- 1: No load door disclosed or supported in the provisional application
- 2: No hatch disclosed or supported in the provisional application
- 3: No filler cone disclosed or supported in the provisional application

4: Size of either opening not disclosed or supported in the provisional application

6. Differing angles not disclosed or supported in the provisional application

7: No actuator disclosed or supported in the provisional application

8: No actuator disclosed or supported in the provisional application

9: No actuator disclosed or supported in the provisional application

10: No actuator disclosed or supported in the provisional application

11: No controller disclosed or supported in the provisional application

12: No user interface disclosed or supported in the provisional application

13: No wireless communication disclosed or supported in the provisional application

16: No actuator disclosed or supported in the provisional application

17: No controller disclosed or supported in the provisional application

18: No user interface disclosed or supported in the provisional application

Because at least these features are absent, inadequately supported, and/or inadequately enabled and/or described in the provisional application, Respondent's claims of the '420 Application are not entitled to the date of the provisional application, nor could Respondent have possibly invented the claims of the '420 Application prior to April 10, 2014, the filing date of the '420 Application; therefore, Petitioner's communication of a complete conception prior to

Respondent filing the '420 Application means that Respondent derived each and every claim of the '420 Application from such communication.

Stefan derived at least these features from the materials shown to him at the 2013 Proppant Summit and his attendant visit to Oren's facilities, which included viewing SandBox containers and equipment, as well as receiving answers to numerous questions. The corroborated communication in May 2013 of each and every limitation of the claims of the '973 Application was received by Stefan and incorporated into the '420 Application, which was filed on April 10, 2014. This communication was such that either the claims of the '420 Application were anticipated by the communication or were obvious variations in light of the communication.

Based on the corroborated evidence presented herein and in the attached exhibits, substantial evidence supports a determination that Petitioner conceived the invention claimed by the '420 Application prior to the filing date of the '420 Application and the provisional application to which it claims priority, and communicated that conception to an inventor of the other party.

K. The '420 Application was Filed Without Authorization

John Oren, the named inventor on the '973 Application, which serves as the basis for this Petition, has confirmed that the '420 Application was filed without his knowledge or authorization. (Oren Affidavit, ¶ 30).

L. Fee – 37 CFR § 42.404

The fee of \$400 for this Petition, pursuant to 37 CFR § 42.15(c), is submitted concurrently herewith. If the USPTO determines that any additional fees are required, the Commissioner is hereby authorized and requested to charge any deficiency and/or credit any refund owed to Deposit Account No. 50-6763.

M. Conclusion

In view of the foregoing, the undersigned hereby requests that this Petition be granted, and a derivation proceeding be instituted forthwith.

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APPENDIX OF EXHIBITS

Exhibit 1010: Copies of the specification, drawings, claims, Inventors' Declarations, Application Data Sheet, Power of Attorney, Assignments, and Acknowledgments of Petitioner's Patent Application Serial No. 14/882,973 as filed (the '973 Application).

Exhibit 1011: Copy of U.S. Patent Publication No. 2014/0305769 (the '420 Application).

Exhibit 1012: Copies of all papers filed as U.S. Provisional Patent Application No. 61/811,493, filed on April 12, 2013.

Exhibit 1013: Copies of U.S. Patent No. 8,827,118 (issued September 9, 2014) to John Oren, the Inventor's Declaration, and the assignment record showing assignment to Oren Technologies, LLC.

Exhibit 1014: Copies of U.S. Patent No. 8,585,341 (issued November 19, 2013) to John Oren and Joshua Oren, the Inventors' Declarations, and the assignment record showing assignment to Oren Technologies, LLC.

Exhibit 1015: Copies of U.S. Patent Publication No. 2014/0023463 to John Oren, filed on September 27, 2012, the Inventor's Declaration, and the assignment record showing assignment to Oren Technologies, LLC.

Exhibit 1016: Copies of U.S. Patent Publication No. 2014/0020765 to John Oren, filed on July 23, 2012, the Inventor's Declaration, and the assignment record showing assignment to Oren Technologies, LLC.

Exhibit 1017: Email correspondence dated August 16, 2012, including drawings, from Howard Leggett of One Way Lease, Inc.

Exhibit 1018: Email correspondence dated August 23, 2012, including drawings, from Howard Leggett, of One Way Lease, Inc.

Exhibit 1019: Email correspondence dated between March 13, 2012, and March 16, 2012, including drawings, from Bill Aiken of Aiken Engineering Co. to John Oren.

Exhibit 1020: Copy of a website (www.infocastinc.com/events/proppants3), printed on September 30, 2015, showing on page 2 that SandBox Logistics, Inc. was a sponsor of the "3rd Proppants Summit: Supply Chain Evolution," held on May 21-23, 2013.

Exhibit 1021: Five (5) pages of drawings dated May 1, 2012 (Drawing No. PN1895-2), provided to SandBox Logistics, LLC by Aiken Engineering Co.

Exhibit 1022: Six (6) pages of drawings dated May 1, 2012 (Drawing No. PN1895-1), provided to SandBox Logistics, LLC by Aiken Engineering Co.

Exhibit 1023: Email thread dated between September 3, 2011, to October 3, 2011, including drawings, between Chris Green and John Oren.

Exhibit 1024: Activity Log dated October 14, 2011, and October 21, 2011, drafted by John Oren.

Exhibit 1025: Drawing by John Oren, circa 2011.

Exhibit 1026: Drawing by John Oren, circa 2011.

Exhibit 1027: Email correspondence dated between March 13, 2012, and March 16, 2012, including drawings, between Bill Aiken of Aiken Engineering Co. and John Oren.

Exhibit 1028: Drawing No. JS-SB4-10H-00B, dated February 25, 2013, from Shanghai Jingsheng Container Manufacturing Co. and provided to John Oren.

Exhibit 1029: Email correspondence dated February 15, 2013, between Howard Leggett of One Way Lease and John Oren.

Exhibit 1030: Email correspondence dated between January 24, 2013, and February 3, 2013, including drawings, between various parties and John Oren.

Exhibit 1031: Sandbox Logisitics, LLC Brochure provided at the “3rd Proppants Summit: Supply Chain Evolution,” held on May 21-23, 2013.

Exhibit 1032: Email correspondence dated between June 4, 2012, and July 13, 2012, between John Puckett and John Oren.

Exhibit 1033: Email correspondence dated May 6, 2014, between Bill Miller and John Oren.

Exhibit 1034: Screenshots of a video shown at the “3rd Proppants Summit: Supply Chain Evolution,” held on May 21-23, 2013.

Exhibit 1035: Four (4) pages of a Cambelt International Corp. manual for a CF2445 Master Sandbox Conveyor.

Exhibit 1036: Non-Disclosure Agreement dated May 16, 2012, between Bawco Fabricators, Inc., Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1037: Non-Disclosure Agreement dated May 16, 2012, between Huber Construction, Inc., Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1038: Non-Disclosure Agreement dated June 13, 2012, between Agrico Sales, Inc., Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1039: Non-Disclosure Agreement dated June 6, 2012, between Shannon Welding, Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1040: Non-Disclosure Agreement dated May 10, 2012, between One Way Lease, Inc., Shanghai JingSheng Container Manufacturing Co., Ding Jian, Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1041: Non-Disclosure Agreement dated May 10, 2012, between One Way Lease, Inc., Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1042: Non-Disclosure Agreement dated September 16, 2011, between Pro Box, Inc., PGC Logistics, LLC, Pinch Flatbed, Inc., Oren McCormick Ventures, Inc., and PSI Frac Logistics, LLC.

Exhibit 1043: Non-Disclosure Agreement dated August 21, 2012, between Cambelt International Corp., Rockpile Energy Services, Oren McCormick Ventures, Inc., and Sandbox Logistics, LLC.

Exhibit 1044: Email correspondence dated between August 30, 2012, and August 31, 2012, including drawings, between Dave Hansen, Josh Oren, and John Oren.

Exhibit 1045: Affidavit of John Oren (hereinafter, the “Oren Affidavit”).

Exhibit 1046: Affidavit of Joshua Oren.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION TO INSTITUTE DERIVATION PROCEEDING PURSUANT TO 35 U.S.C. § 135 has been served on counsel for Applicants of the '420 Application, namely Kenneth W. Eiden, III, Brian Andrew Hunter, Mathew Carley, Timothy Stefan, Mark D'Agostino, and Scott D'Agostino, by mailing said copy on October 15, 2015, via Federal Express, Standard Overnight Delivery, to counsel of record on Public PAIR and the ADS for the '420 Application:

Joseph D. Kuborn
Andrus Intellectual Property Law, LLP
100 E. Wisconsin Ave., Suite 1100
Milwaukee, WI 53202

The undersigned is hereby designated as the domestic representative for Petitioner, upon whom notice or process in any instituted derivation proceeding resulting from the foregoing petition may be served.

Date: October 15, 2015

/Jeffrey S. Whittle/
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