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Transcript of **Kevin J. Martin, Ph.D.**

Date: October 6, 2016

Case: E.I. Du Pont De NeMours and Company, et al. -v- Furanix Technologies B.V. (PTAB)

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1	1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 4 -----x 5 E.I. DU PONT DE NEMOURS AND) 6 COMPANY and ARCHER-DANIELS-) Case IPR2015-01838 7 MIDLAND COMPANY,) Patent 8,865,921 8 Petitioners,) 9 v.) 10 FURANIX TECHNOLOGIES B.V.,) 11 Patent Owner.) 12 -----x 13 14 15 DEPOSITION OF KEVIN J. MARTIN, Ph.D. 16 WASHINGTON, D.C. 17 THURSDAY, OCTOBER 6, 2016 18 9:35 A.M. 19 20 Job No.: 124153 21 Pages: 1 - 124 22 Reported by: Leslie A. Todd	3
2	1 A P P E A R A N C E S 2 3 ON BEHALF OF PETITIONERS: 4 JONATHAN W. S. ENGLAND, ESQUIRE 5 MICHAEL S. MARCUS. ESQUIRE 6 BLANK ROME LLP 7 1825 Eye Street, NW 8 Washington, DC 20006-5403 9 (202) 420-2201 10 11 12 ON BEHALF OF PATENT OWNER: 13 PAUL M. RICHTER, JR., ESQUIRE 14 ANDREWS KURTH KENYON LLP 15 One Broadway 16 New York, New York 10004 17 (212) 425-7200 18 19 20 21 22	4
2	1 Deposition of KEVIN J. MARTIN, Ph.D., held at the 2 offices of: 3 4 5 BLANK ROME LLP 6 1825 Eye Street, N.W. 7 Washington, D.C. 20006 8 (202) 420-2200 9 10 11 12 Pursuant to notice, before Leslie Anne Todd, Court 13 Reporter and Notary Public in and for the District of 14 Columbia, who officiated in administering the oath to 15 the witness. 16 17 18 19 20 21 22	4
2	1 C O N T E N T S 2 EXAMINATION OF KEVIN J. MARTIN, Ph.D. PAGE 3 By Mr. Richter 5 4 By Mr. England 119 5 6 E X H I B I T S 7 (Attached to transcript) 8 MARTIN DEPOSITION EXHIBITS PAGE 9 Exhibit 2021 Article entitled: "Gold-catalyzed 10 Aerobic Oxidation of 5- 11 Hydroxymethyl-Furfural in Water at 12 Ambient Temperature" 87 13 Exhibit 2022 International Patent Application 14 No. WO 2015/005942 89 15 Exhibit 2023 United States Patent No. 4,338,462 95 16 17 18 19 20 21 22	4

5

1 PROCEEDINGS
2 -----
3 KEVIN J. MARTIN, Ph.D.,
4 having first been duly sworn, was
5 examined and testified as follows:
6 EXAMINATION BY COUNSEL FOR PATENT OWNER
7 BY MR. RICHTER:
8 Q Good morning, Dr. Martin.
9 A **Good morning.**
10 Q How are you doing?
11 A **Very well. Thank you, sir.**
12 Q My name is Paul Richter, and I'm with the
13 law firm of Andrews Kurth and Kenyon. I'm here to
14 take your deposition on behalf of my client Furanix
15 Technologies.
16 A **I understand.**
17 Q So you've already had your deposition
18 taken once in this proceeding.
19 A **That's correct, yes.**
20 Q This deposition is directed to your
21 submission of your second declaration in this case.
22 Do you understand that?

6

1 A **I do.**
2 Q If you don't understand any question I
3 ask, please let me know that before answering. Is
4 that agreeable to you?
5 A **It certainly is.**
6 Q And if I speak too quickly, I'm from the
7 East Coast, and you would like me to slow down my
8 cadence so that it's easier to understand, I'm happy
9 to do that as well.
10 A **Okay.**
11 Q I would like to start by showing you a
12 copy of your -- it's entitled, "Declaration No. 2 of
13 Dr. Kevin J. Martin," and it's been marked as
14 Petitioners' 1028.
15 I will place that in front of you.
16 A **All right.**
17 Q Here you go.
18 So Dr. Martin, could you take a look
19 through that exhibit, please, and confirm for me that
20 it is in fact a copy of your second declaration in
21 this matter.
22 A **(Perusing document.)**

7

1 **It is, yes.**
2 Q So that's your signature on the last page
3 there, page 17?
4 A **Yes, it is.**
5 Q And at the beginning of the declaration
6 in paragraph 1, you indicate that you were asked to
7 submit an opinion in support of a reply brief.
8 Do you see that?
9 A **Yes.**
10 Q Who asked you to submit an opinion?
11 A **I was asked by the counsel here at Blank
12 Rome.**
13 Q And do you recall when they asked you?
14 A **I don't recall the exact date, no.**
15 Q After your first deposition in this
16 matter on your initial declaration, did you talk to
17 anybody other than the attorneys here at Blank Rome
18 about your testimony?
19 A **I talked with our attorneys in-house.**
20 Q Anybody else besides that?
21 A **Beyond general descriptions with my
22 co-workers and my manager, no.**

8

1 Q What did you say to your co-workers and
2 your manager?
3 A **That it was not an enjoyable experience.**
4 Q I hope today is better than the previous
5 deposition.
6 Anything else besides that general --
7 A **Just -- in general, just the nature of
8 the questions that were asked, and how I felt the
9 deposition went, and, you know, my impressions of
10 it.**
11 Q Anything special about the nature of the
12 questions?
13 A **No. It's my first one, so it was just a
14 learning experience for me to learn what the process
15 entailed.**
16 Q Now, if I could direct you to paragraphs
17 5 through 7 of your second declaration, which runs
18 from pages 2 to 5.
19 A **Yes.**
20 Q I'm not asking you to read them all right
21 now, but could you briefly skim those and confirm
22 that you have that in front of you.

9

1 **A (Peruses document.)**
2 **Yes, I do. All right.**
3 Q Now, what was your intention in drafting
4 these paragraphs of your declaration with respect to
5 a person of ordinary skill in the art?
6 MR. ENGLAND: Objection.
7 THE WITNESS: My intention was to
8 indicate that I felt that a person of ordinary skill
9 in the art would be more experienced and more capable
10 than Dr. Schammel's description, specifically in
11 terms of being able to synthesize or take information
12 from a variety of sources as a way to design
13 experiments and to arrive at experiments,
14 experimental design.
15 BY MR. RICHTER:
16 Q Are there any particular sources that you
17 are referring to in your answer?
18 **A Any sources of?**
19 Q You said they -- I'm just looking at your
20 answer in realtime.
21 It says, quote: "... specifically in
22 terms of being able to synthesize or take information

10

1 from a variety of sources as a way to design
2 experiments." But which sources are you referring
3 to?
4 **A Well, as we -- as further explained in**
5 **the deposition, the '318 patent application,**
6 **specifically with the examples shown there with more**
7 **examples of temperature and pressure operation**
8 **ranges.**
9 Q And the '318 reference that you're
10 referring to is discussed at pages 4 and 5 of your
11 second declaration.
12 **A That's correct.**
13 Q And that's part of paragraph 7 with
14 respect to a person of ordinary skill in the art; is
15 that right?
16 **A That's correct.**
17 Q Now, the '318 reference was not discussed
18 in your opening declaration; is that correct?
19 **A That's correct.**
20 Q And so you made no reference in your
21 opening declaration with regard to the '318 reference
22 in forming the knowledge of a person of ordinary

11

1 skill in the art; is that correct?
2 **A That's correct.**
3 Q Now, I think you mentioned earlier --
4 well, before I go there, you also in paragraph 7
5 referenced the '732 publication; is that correct?
6 **A Yes.**
7 Q And, again, in your opening declaration,
8 you made no reference to the '732 publication in
9 forming the knowledge of a person of ordinary skill
10 in the art; is that correct?
11 **A I believe that's correct as far as the**
12 **person of ordinary skill in the art. Obviously, the**
13 **reference was discussed extensively in the first**
14 **declaration. I --**
15 Q And -- I'm sorry.
16 **A I used these as examples of places to**
17 **look for temperature and pressure and operating**
18 **ranges that a person would go to in order to**
19 **synthesize or understand the previous art and be able**
20 **to design experiments.**
21 Q And the same is true with regard to the
22 Partenheimer reference which is also discussed

12

1 briefly in paragraph 7 of your declaration?
2 **A Correct.**
3 MR. ENGLAND: Objection.
4 Give me a second to make my objection.
5 THE WITNESS: I'm sorry.
6 MR. RICHTER: I appreciate the direction
7 of your answers, but if you could give me a chance to
8 finish my question, that would be helpful. Thank
9 you.
10 Everybody watching the debate the other
11 night probably can appreciate this.
12 That's off the record and in jest.
13 THE WITNESS: Okay.
14 BY MR. RICHTER:
15 Q With regard to Partenheimer, you also
16 reference Partenheimer in paragraph 7 with regard to
17 informing the knowledge of a person of ordinary skill
18 in the art; is that correct?
19 **A I do, yes.**
20 Q And that was not done in your opening
21 declaration; is that correct?
22 **A Not as part of a discussion of a person**

13

1 **of ordinary skill in the art, that's correct.**
2 Q Now, you mentioned at the beginning of
3 paragraph 7 that Dr. Schammel, in his declaration,
4 disagrees with your definition of a person of
5 ordinary skill in the art; is that right?
6 **A Yes.**
7 Q So you read the declaration of
8 Dr. Schammel thoroughly before you prepared the
9 second declaration, correct?
10 **A I did, yes.**
11 Q Okay. Did you also notice that in
12 paragraph 46, I believe, of his opening declaration,
13 Dr. Schammel indicated that his opinions would not
14 change even if he adopts your definition of a person
15 of ordinary skill in the art?
16 **A May I see his declaration?**
17 Q Sure. But sitting here -- I will show it
18 to you. But sitting here today, do you recall that?
19 **A Not those specific words, no.**
20 Q Okay. Anything to that effect?
21 MR. ENGLAND: Objection.
22 BY MR. RICHTER:

14

1 Q I'm happy to show you his declaration.
2 I will place in front of you
3 Exhibit 2003, which is a copy of the declaration of
4 Wayne P. Schammel, Ph.D.
5 So if you take a look at that, please,
6 Dr. Martin, and confirm that that is indeed a copy of
7 Dr. Schammel's declaration.
8 **A As I recall receiving it, yes, it's the**
9 **same.**
10 Q And, again, you read his declaration
11 before you authored your second declaration?
12 **A Correct.**
13 Q So if you could turn to page 19 of
14 Exhibit 2003, paragraph 44.
15 **A Mm-hmm.**
16 Q And it continues on to the next page
17 through paragraph 46. Is that a discussion of
18 Dr. Schammel's view of a person of ordinary skill in
19 the art?
20 **A It is.**
21 Q At paragraph 46, Dr. Schammel opines
22 that, quote: "Opinions provided in this declaration

15

1 do not change whether Dr. Martin's definition of a
2 person of ordinary skill in the art is used or my
3 definition is used."
4 Do you see that?
5 **A I do.**
6 Q So did you have that understanding in
7 mind when you authored your second declaration?
8 **A Yes.**
9 Q You understood that Dr. Schammel's view
10 was that his opinions would not change whether using
11 his definition of a person of ordinary skill in the
12 art or your definition?
13 **A I understand that he said that, yes.**
14 Q And you understood that at the time you
15 authored your second declaration?
16 **A I did.**
17 MR. RICHTER: You can put that one aside
18 for now.
19 BY MR. RICHTER:
20 Q I would like to show you now two exhibits
21 at the same time. I will only ask you questions one
22 at a time.

16

1 So the first exhibit that I will place in
2 front of you is Exhibit 1002, which is a copy of the
3 '732 publication which I believe is referenced in
4 your second declaration.
5 And the second exhibit is a copy of the
6 Partenheimer reference, it's Exhibit 1003, which is
7 also referenced in your second declaration.
8 So could you verify for me, please, that
9 Exhibits 1002 and 1003 are copies of the '732
10 publication and the Partenheimer reference, please.
11 **A Yes, they are.**
12 Q Now, in paragraph 12 of your declaration,
13 you discuss Examples 35 through 40 of the '732
14 publication; is that correct?
15 **A I do, yes.**
16 Q And you indicate that those Examples 35
17 through 37 are run at a single temperature, while 38
18 through 40 are run at a staged temperature; is that
19 correct?
20 **A That's correct.**
21 Q And the single temperature was 105
22 degrees C; is that right?

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