

**UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF WISCONSIN**

Oxbo International Corp.,

Civil Action No. 15-cv-292-jdp

Plaintiff,

vs.

H&S Manufacturing Company, Inc.,

Defendant.

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendant H&S Manufacturing Company, Inc. ("H&S"), for its Answers to Plaintiff's First Set of Interrogatories, states under oath as follows:

RESERVATIONS OF RIGHTS

1. To the extent one is needed, H&S will produce a privilege log. H&S will not, however, include documents created after the filing date of the Complaint in this action.
2. H&S objects to each interrogatory to the extent it seeks information subject to the attorney-client privilege, work product doctrine, or other privileges and rules of law on the grounds that such matter is exempt from discovery.
3. H&S objects to any and all instructions or definitions provided by Plaintiff which seek to impose requirements beyond those required by the Federal Rules of Civil Procedure.
4. H&S reserves the right to serve supplemental answers to these Interrogatories as necessary or any reason, including, but not limited to, if it appears at any time that inadvertent errors or omissions have been made, additional evidence is discovered or disclosed, or additional evidence is determined to be otherwise responsive to any request(s).

Oxbo Int'l Corp., Patent Owner
Exhibit 2009

H&S Mfg. Co., Inc. v. Oxbo Int'l Corp.
IPR2016-00950

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5. H&S reserves all objections as to the competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the information or documentation referred to or responses given, or the subject matter hereof, in any subsequent proceeding in, or in the trial of, this action or any other action or proceeding; and the right to object to other discovery procedures involving or relating to the subject matter of the production of documents to which H&S herein responds.

6. H&S reserves the right to produce and to refer to, at trial or in any other hearing, any evidence, facts, documents, or information not yet discovered, or the relevance of which has not yet been determined, by H&S or its counsel.

7. In setting forth these responses, H&S does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to the information or material pursuant to or responsive of any request. In answering all or any portion of any request, H&S does not concede the relevance or materiality of the request or the subject matter to which the request refers.

8. The above-stated reservations are hereby made applicable to each and every answer stated herein and are incorporated by reference as if fully set forth in each response to Plaintiff's Interrogatories.

ANSWERS TO INTERROGATORIES

1. Describe in detail the design, development, manufacture, structure, function, operation, marketing, sales and distribution of each Accused Product, including when you first began designing said product, what prompted development, the location(s) of manufacture of the Accused Products and the three persons most knowledgeable in these areas.

ANSWER Objection. This request is overly broad and unduly burdensome, vague as to time period, and seeks information not calculated to lead to the discovery of admissible

evidence. H&S also objects to this request to the extent it seeks information subject to the attorney-client privilege, work product doctrine, or other privileges and rules of law on the grounds that such matter is exempt from discovery. Subject to and without waiving the foregoing objections, H&S states that it will produce non-privileged, responsive documents, to the extent such documents exist providing such information.

H&S states that windrow mergers utilizing a pickup and belt-type cross conveyor have been used to merge forage and other crops at least since New Holland introduced its Model 144 in 1987. H&S began selling its first model, the HM2000, in May of 1998 after several years of development. Other models of single mergers followed from H&S and numerous other companies. Greater horsepower and larger capacity choppers led to demand for more hay or other forage crop to be combined into the windrows the choppers were picking up. This led to the introduction of double mergers that could pick up two windrows and combine them onto a third windrow, often then merging two additional windrows onto the combined windrow from the other side. H&S introduced its Twin Merger, the Model TWM2 in February 2001, after several years of development. Numerous other companies also introduced twin headed mergers.

In addition to the choppers being capable of ever greater capacities, the technology of the forage cutters also evolved. To speed up the drying / harvesting process, cutters evolved to lay the cut crop out as widely as possible rather than gathering freshly cut crop into windrows. These higher capacity cutting machines evolved to generally utilize three separate cutting heads. On the self-propelled cutters, these heads were generally all on the front of the machine in a line. The tractor mounted cutters generally utilized one cutting head mounted on the front of the tractor and two bat wing

cutting heads mounted on the back of the tractor. Likewise, H&S introduced a front mount merger, its Model FMM9 in March 2006, to be paired with its Twin Merger being towed. It also introduced its 30' continuous head merger, the Model WMCH30 in April 2007. Because the combined front mount merger with a twin behind took so much field space to turn and the 30' continuous merger utilized a stiff frame that made the machine unwieldy on rolling terrain, planning and development of a triple head machine that could follow the contour of the ground began even before those machines were introduced. The planning and development of utilizing a windrow merger having three heads was the obvious next step in the windrow merger technology at the time H&S began planning and development of a triple head windrow merger.

The persons knowledgeable in these areas include Jim Kappel, Greg Landon and Chris Heikenen.

2. To the extent that Defendant contends it does not infringe any claim of the Patents in Suit, identify the complete factual and legal bases for that contention including identifying the limitation(s) of each patent claim you contend to be missing from the Accused Product(s), and for each identified limitation, identify the factual a basis for Defendant's interpretation of any relevant claim terms, and describe how Defendant has determined that the limitation or its equivalent is not part of the Accused Products.

ANSWER Objection. This request is overly broad and unduly burdensome, vague as to the claims in the patents-in-suit, and seeks information not calculated to lead to the discovery of admissible evidence. H&S also objects to this request to the extent it seeks information subject to the attorney-client privilege, work product doctrine, or other privileges and rules of law on the grounds that such matter is exempt from discovery. H&S further objects to this request as being premature as Plaintiff's infringement contentions that were due on November 2, 2015 fail to identify the complete factual and legal bases for their contentions, including identifying how each limitation of the asserted claims are present in the accused products, along with any relevant

interpretation of claim terms of such asserted claims. H&S still further objects to this request as being premature as the parties are to exchange claim terms with proposed constructions on March 2, 2016, along with responses due on March 16, 2016. Subject to and without waiving the foregoing objections, H&S states the following and specifically denies that its triple head windrow mergers infringe any valid claim of the asserted patents-in-suit, as the accused products do not have at least one claim limitation of the patents in suit. Discovery is ongoing and H&S will H&S supplement its answer in due course after Plaintiff properly meets its infringement contentions as set forth in the Court's Preliminary Pretrial Conference Order.

3. Describe in detail the sales of each Accused Product in the United States and worldwide, including, but not limited to, offers for sale, the number of units sold, their serial numbers and sale price, gross and net margins, invoices, price quotes, identification and location information of each purchasing customer, and the locations of such Accused Products.

ANSWER Objection. This request is overly broad and unduly burdensome, vague as to time period and worldwide location, and seeks information not calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, H&S states that it will produce non-privileged, responsive documents providing information, to the extent it exists that provides the requested information.

4. If Defendant contends there are any non-infringing alternatives, wherein non-infringing alternatives has the meaning ascribed in *Grain Processing Corp. v. American Maize-Products Co.* 185 F.3d 1341 (Fed. Cir. 1999), identify the name, model, make, and locations of each such non-infringing alternative device and identify whether such non-infringing alternative has been sold and if so, to whom.

ANSWER Objection. This request is overly broad and unduly burdensome, vague as to the claims in the patents-in-suit to which the non-infringing alternatives would apply, and seeks information not calculated to lead to the discovery of admissible evidence. H&S also objects to this request as being premature as discovery is ongoing and to the extent it seeks information not

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