

1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 -----

4 H&S MANUFACTURING COMPANY, INC.,

5 Petitioner,

6 -vs- Case No. IPR2016-00950

U.S. Patent No. 8,166,739

7

OXBO INTERNATIONAL CORPORATION,

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Patent Owner.

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12 Deposition of JONATHAN CHAPLIN, Ph.D.

13 Monday, April 10, 2017

14 9:02 a.m.

15 at

16 MERCHANT & GOULD

10 East Doty Street, Suite 600

17 Madison, Wisconsin

18

19

20

21

22 Reported by Lindsay DeWaide, RMR, CRR

23

24

25

H&S Mfg. Co., Inc.

v. Oxbo Int'l Co.

IPR2016-00950

**Deposition of Jonathan Chaplin, Ph.D. - 4/10/2017**  
**H & S Manufacturing Company, Inc. v. Oxbo International Corporation**

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1 Deposition of JONATHAN CHAPLIN, PH.D., a  
2 witness in the above-entitled action, taken at the  
3 instance of the Petitioner, before Lindsay DeWaide,  
4 Registered Merit Reporter, Certified Realtime Reporter,  
5 and Notary Public in and for the State of Wisconsin, at  
6 MERCHANT & GOULD, 10 East Doty Street, Suite 600,  
7 Madison, Wisconsin, on the 10th day of April, 2017,  
8 commencing at 9:02 a.m. and concluding at 2:31 p.m.  
9  
10 **A P P E A R A N C E S:**  
11 **PATTERSON THUENTE PEDERSEN, P.A.,** by  
12 Mr. Eric H. Chadwick  
13 4800 IDS Center  
14 80 South 8th Street  
15 Minneapolis, Minnesota 55402  
16 Appeared on behalf of the Petitioner.  
17  
18 **MERCHANT & GOULD,** by  
19 Mr. Shane A. Brunner  
20 10 East Doty Street, Suite 600  
21 Madison, Wisconsin 53703  
22 Appeared on behalf of the Patent Owner.  
23  
24  
25

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1 **E X A M I N A T I O N**  
2 **P A G E**  
3 BY MR. CHADWICK 4  
4 BY MR. BRUNNER 169  
5  
6 **E X H I B I T S**  
7 **N U M B E R** **P A G E I D E N T I F I E D**  
8 Exh. 1022 Engineering Principles of 153  
9 Agricultural Machines, Chapter  
10 8: Hay and Forage Harvesting 163  
11 Exh. 1023 Barley versus Oat: Which Makes  
12 the Superior Forage Crop  
13  
14 (Exhibits attached to original and copies of  
15 transcript. Exhibit 1022 was premarked.)  
16  
17  
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19  
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21  
22  
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24  
25

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1 **TRANSCRIPT OF PROCEEDINGS**  
2 **JONATHAN CHAPLIN, Ph.D.,** called as a  
3 witness herein, having been first duly sworn on  
4 oath, was examined and testified as follows:  
5 **E X A M I N A T I O N**  
6 **BY MR. CHADWICK:**  
7 **Q** Good morning, Dr. Chaplin.  
8 **A** **Good morning.**  
9 **Q** I met you a minute ago, and I'll just tell you  
10 again on the record, my name is Eric Chadwick.  
11 I represent the Petitioner, H&S Manufacturing.  
12 I'm going to ask you some questions  
13 here today. Hopefully we won't take all day.  
14 But before I get to that, I want to just ask  
15 you, have you had your deposition taken before?  
16 **A** **Yes, I have.**  
17 **Q** How many times?  
18 **A** **I don't know -- honestly don't know the total**  
19 **number.**  
20 **Q** Do you have a rough estimate?  
21 **A** **I wouldn't like to estimate that. I don't have**  
22 **that in my mind, and it may be in my CV.**  
23 **Q** Okay. So let me just ask you this: Have you  
24 been deposed more than a time or two?  
25 **A** **Yes.**

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1 **Q** And when was the last time you had your  
2 deposition taken?  
3 **A** **A week ago today.**  
4 **Q** And what was that deposition -- what was the  
5 subject matter of that deposition?  
6 **A** **The subject matter was a defective design in an**  
7 **agricultural machine.**  
8 **Q** Okay. So let me ask you this: In terms of  
9 having had your deposition taken a week ago, are  
10 you comfortable with regard to the rules of  
11 depositions and what the two of us need to do to  
12 make the deposition go more smoothly, or do you  
13 want me to run through those things?  
14 **A** **Why don't you run through them to remind me.**  
15 **Q** Okay. So -- and there may be others, and other  
16 lawyers may have told you other things, but I'll  
17 just tell you the ones that matter to me.  
18 First and foremost, we have the court  
19 reporter here transcribing what we say, and we  
20 need to be courteous of what she's trying to do  
21 and courteous of one another and take turns. So  
22 what I'd ask you to do is let me get my question  
23 completely out, and then if you would respond;  
24 and I will try not to interrupt you as well.  
25 Do you understand that?

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1 **A Yes, I do.**  
2 Q Second thing, also with regard to the court  
3 reporter, is I need you to respond verbally and  
4 not with hand gestures or kind of speech tics  
5 like "uh-huh" because those are very difficult  
6 to transcribe, and they make for an unclear  
7 record.  
8 Can you do that?  
9 **A Yes, I can.**  
10 Q If you need a break today, just let me know.  
11 We'll take one. The only thing I would ask is  
12 if we're in the middle of a question, I'd like  
13 you to respond before we take the break. And  
14 it's my plan right now to take breaks about  
15 every hour or so; but if you need one before  
16 then, let me know. Okay?  
17 **A Yes. That's fine.**  
18 Q And I'm going to assume that you understand my  
19 questions. If you don't understand what I'm  
20 asking you, please ask me to rephrase or  
21 clarify, and I'd be happy to do that.  
22 Can you do that?  
23 **A Yes, I can.**  
24 Q First, let me ask you, what did you do to  
25 prepare for your deposition today?

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1 **A I met with counsel over the weekend to prepare**  
2 **for today's deposition.**  
3 Q How long did you meet with counsel?  
4 **A I don't know exactly.**  
5 Q Roughly?  
6 **A I wouldn't like to guess.**  
7 Q Were you here on Saturday?  
8 **A Yes.**  
9 Q And when did you start your preparation with  
10 counsel?  
11 **A 9:00 in the morning.**  
12 Q And how long did it go?  
13 **A Until 6:00, maybe.**  
14 Q Did you take breaks during that nine-hour  
15 period?  
16 **A Yes, we did.**  
17 Q Roughly, how long were the breaks? Do you know?  
18 **A Lunch, half an hour. Bathroom breaks, I don't**  
19 **know.**  
20 Q And on Sunday did you meet with counsel as well?  
21 **A Yes, I did.**  
22 Q And when did you begin on Sunday?  
23 **A 9:30.**  
24 Q When did your meeting with counsel conclude on  
25 Sunday?

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1 **A 4:00.**  
2 Q And roughly the same types of breaks on Sunday  
3 as you'd had on Saturday?  
4 **A Yes.**  
5 Q And you said you'd met with counsel. Who was it  
6 that you met with?  
7 **A I don't recall all of the people that were here.**  
8 Q Who do you recall?  
9 **A Shane.**  
10 Q Do you recall there being other lawyers there as  
11 well?  
12 **A Other people came in. I can't remember their**  
13 **names.**  
14 Q Do you know if they were attorneys or not?  
15 **A I don't know.**  
16 Q Did you review documents during your meetings on  
17 Saturday and Sunday with Mr. Brunner?  
18 **A Yes.**  
19 Q Do you recall what documents you looked at?  
20 **A I looked at my report in this case.**  
21 Q Anything else?  
22 **A Some of the reference materials in that report.**  
23 Q Anything else?  
24 **A Not that I recall.**  
25 Q Do you recall which reference materials you

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1 looked at?  
2 **A Some of the patents. I don't recall exactly**  
3 **which ones, but some of the patents.**  
4 Q Do you recall any of them that you looked at?  
5 **A I recall Declementi, U.S. Honey, and Lohrentz.**  
6 Q And do you recall any of the specific  
7 conversations that you had with Mr. Brunner  
8 about Declementi?  
9 MR. BRUNNER: And I'm going to object  
10 and instruct the witness not to answer to the  
11 extent that it was a conversation with me as a  
12 work product privilege.  
13 BY MR. CHADWICK:  
14 Q Are you going to follow his instruction?  
15 **A Yes.**  
16 MR. CHADWICK: Do you think that's a  
17 proper objection, work product, with an expert?  
18 MR. BRUNNER: I do.  
19 MR. CHADWICK: Okay. All right.  
20 MR. BRUNNER: Rule 26.  
21 MR. CHADWICK: Yeah. I don't think  
22 it's a proper objection, but that's all right.  
23 I don't think it's privileged.  
24 MR. BRUNNER: The matters that are not  
25 privileged under Rule 26 are assumptions that he

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1 is given. Those aren't privileged, but  
2 communications are privileged.  
3 BY MR. CHADWICK:  
4 Q Did Mr. Brunner give you any assumptions with  
5 regard to the testimony that you're to provide  
6 today?  
7 **A Could you repeat that question.**  
8 Q Sure. Did Mr. Brunner provide you any  
9 assumptions to use with the testimony that you  
10 would give today?  
11 MR. BRUNNER: Object to form.  
12 THE WITNESS: Not that I recall.  
13 BY MR. CHADWICK:  
14 Q I want to ask you some basic questions before we  
15 get started looking at some of the exhibits with  
16 regard to some terms and some processes. Okay?  
17 **A Yes.**  
18 Q So, first -- and if you have a definition,  
19 that's fine. If you don't, that's fine too.  
20 And I'm not asking in the context of the patents  
21 at this time. Just as a general matter.  
22 Do you understand that?  
23 **A Yes.**  
24 Q So if you've got a different viewpoint as it  
25 relates to the patent, feel free to elaborate.

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1 I'm just trying to set metes and bounds of the  
2 testimony today. All right?  
3 So the first question I have is you're  
4 familiar with the term "windrow"?  
5 **A Yes.**  
6 Q What's your definition of windrow?  
7 MR. BRUNNER: Object to form.  
8 THE WITNESS: I believe that's defined  
9 in my Report 1, and I'd like to refer to  
10 Report 1 to get an accurate definition.  
11 BY MR. CHADWICK:  
12 Q When you say "Report 1," are you referring to  
13 the expert declaration of Jonathan Chaplin in  
14 the inter partes review?  
15 **A I'm referring to a report that was submitted**  
16 **last April.**  
17 Q Okay. Your expert report in the litigation? Is  
18 that what you're talking about?  
19 **A I believe that's it.**  
20 Q Okay. And I don't have that with me, so let's  
21 just see if we can mow through this.  
22 Outside of what you defined the term  
23 "windrow" in your April 15, 2016, report, do you  
24 have any other definition of "windrow"?  
25 MR. BRUNNER: Object to form.

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1 THE WITNESS: No, I don't.  
2 BY MR. CHADWICK:  
3 Q The next term I've got a question about is the  
4 term "swath."  
5 Do you have a definition for swath?  
6 **A I believe that would be in my first report, and**  
7 **I'd refer to that.**  
8 Q The first report being the same one you just  
9 referenced?  
10 **A That's correct.**  
11 Q How about "hay"? Do you have a definition for  
12 hay?  
13 **A Hay is grassy material that's harvested for**  
14 **cattle and animal fodder. It is also probably**  
15 **defined in my first report.**  
16 Q Are you familiar with the term "silage"?  
17 **A Yes, I am.**  
18 Q What's your understanding of the word "silage"?  
19 **A Silage is fermented forage products that's used**  
20 **to feed cattle and other animals. There's**  
21 **probably another definition in my report.**  
22 Q Is hay a form of silage?  
23 **A No.**  
24 Q Why is that?  
25 **A Hay has not been fermented. It's been dried.**

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1 Q I just want to give you a hypothetical here.  
2 First of all, alfalfa -- you're  
3 familiar with alfalfa being used as a forage  
4 crop, I take it?  
5 **A Yes, I am.**  
6 Q And when alfalfa is cut by a mower, is it  
7 accurate that it can be put down in either a  
8 windrow or a swath?  
9 **A I think that's inaccurate, not accurate.**  
10 Q Why not?  
11 **A I think those terms are potentially used**  
12 **synonymously.**  
13 Q Do you think they're synonyms?  
14 MR. BRUNNER: Object to --  
15 THE WITNESS: I some --  
16 MR. BRUNNER: Object to form.  
17 THE WITNESS: I sometimes use them as  
18 synonyms, but that's me.  
19 BY MR. CHADWICK:  
20 Q Do you always use them as synonyms?  
21 **A I don't know.**  
22 Q Do you think a windrow is different than a  
23 swath?  
24 **A I'd have to look at my definition in Report 1.**  
25 Q Irrespective of how the alfalfa is laid down in

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1 the hypothetical I just gave you, can it be  
2 harvested as hay?  
3 **A I believe you can make hay out of alfalfa.**  
4 Q And can it be harvested as silage?  
5 **A Yes, it can be harvested as silage.**  
6 Q And is that true of most crops that are  
7 harvested as a forage crop, that it can either  
8 be harvested as hay or silage?  
9 **A I don't know.**  
10 Q Do you know of any other crops besides alfalfa  
11 that can be harvested as both a hay and a  
12 silage?  
13 **A Various grasses can be used as hay or silage.**  
14 Q Like what?  
15 **A Timothy is one name of a grass I know. I don't**  
16 **know all the names of grasses.**  
17 Q Do you know any others?  
18 **A Ryegrass.**  
19 Q Any others?  
20 **A Not that I recall.**  
21 Q What about oats?  
22 MR. BRUNNER: Object to form.  
23 THE WITNESS: Oats I would consider as  
24 a cereal crop.  
25

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1 BY MR. CHADWICK:  
2 Q Is it your opinion oats cannot be harvested as  
3 hay?  
4 **A I don't know.**  
5 Q Is it your opinion that hay -- or I'm sorry. Is  
6 it your opinion that oats cannot be harvested as  
7 silage?  
8 **A I don't know.**  
9 Q Do you believe barley can be harvested as a hay?  
10 **A I don't know.**  
11 Q Do you know whether barley can be harvested as  
12 silage?  
13 **A I don't know.**  
14 Q Okay. Are you familiar with the term "forage"?  
15 **A Yes, I am.**  
16 Q What's your working understanding of the word  
17 "forage"?  
18 **A Forage is a general term that's given to food**  
19 **that can be kept for animal feed during the**  
20 **winter.**  
21 Q Does forage include hay?  
22 **A Yes.**  
23 Q Does forage include silage?  
24 **A Yes.**  
25 Q And have you ever heard the term "draper" or

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1 "draper belt"?  
2 **A Yes, I've heard of that.**  
3 Q Do you know what that -- well, let me ask you  
4 this: What's your working understanding, if you  
5 have one, of the term "draper" or "draper belt"?  
6 **A I haven't heard that term since I lived in the**  
7 **United Kingdom. It's part of a harvesting**  
8 **system.**  
9 Q What is it, from what you heard in the  
10 United Kingdom?  
11 **A It's part of what we might call a pickup**  
12 **attachment for a combine harvester.**  
13 Q Is it similar to a conveyor belt?  
14 **A No.**  
15 Q How is it different?  
16 **A It has times on it.**  
17 Q Any other way that it's different from a  
18 conveyor belt?  
19 MR. BRUNNER: Object to form.  
20 THE WITNESS: I don't know.  
21 BY MR. CHADWICK:  
22 Q When did you first hear the term "draper"?  
23 Well, let me ask you this: Is it draper or  
24 draper belt that you heard when you were in the  
25 United Kingdom?

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1 **A Draper.**  
2 Q And when was that?  
3 **A Many years ago.**  
4 Q Like, how long? 40 years ago?  
5 **A 50 years ago.**  
6 Q In your report, or your declaration in the inter  
7 partes review, you talked about grain  
8 harvesting.  
9 Do you remember that?  
10 **A I'm sorry. I missed about the third word of**  
11 **your question.**  
12 Q Sure. In your declaration in the inter partes  
13 review, you put forth some opinions or text  
14 about grain harvesting.  
15 Do you recall that?  
16 **A I still didn't get part of your question. Some**  
17 **opinions and --**  
18 Q Well, I'll rephrase it.  
19 In your declaration for this inter  
20 partes review, you had some text in your report  
21 related to grain harvesting.  
22 Do you recall that?  
23 **A I don't understand the question.**  
24 Q Do you know what grain harvesting is?  
25 **A Yes, I do.**

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