

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

OXYGENATOR WATER  
TECHNOLOGIES, INC.

Plaintiff,

v.

TENNANT COMPANY

Defendant.

Civil Action No. 0:20-cv-00358  
(ECT/HB)

**TENNANT’S PROPOSED CLAIMS TERMS  
FOR CONSTRUCTION AND EXTRINSIC EVIDENCE**

In accordance with the Court’s Pretrial Case Management Order (ECF 43), Defendant Tennant Company (“Tennant”) hereby provides its Preliminary Proposed Claim Constructions. Tennant makes this disclosure based on information presently known to it, without the benefit of full discovery. Tennant reserves the right to supplement or amend the information contained herein in response to any arguments, allegations, or evidence presented by Plaintiff, as information is discovered or confirmed during fact discovery, information is discovered, confirmed or provided by a party’s consultant or expert after the party’s contentions have been served, new products are launched or accused, amendments are made to the amended complaint and/or any counterclaims, information is learned from or positions are taken by another party during the exchange of contentions or the constructions process set forth in the Pretrial Case Management Order, rulings are made

Tennant Company  
Exhibit 1013

by the Court, amendments are made to infringement or validity contentions, or as otherwise permitted or required under the Federal Rules of Civil Procedure, the Local Rules, and the Court's Pretrial Case Management Order. Further, Tennant reserves the right to change its position in response to Plaintiff's identification of its preliminary claim constructions and supporting evidence, changes in the parties' constructions, and as information is learned during the course of claim construction discovery.

Tennant relies on the '415 Patent, the '415 Patent's Prosecution History, including the file histories of related patents and applications. Further, Tennant identifies the following preliminary identification of extrinsic evidence:

- Dictionary definitions from Webster's Third New International Dictionary, including the definitions of the following terms and phrases:
  - Aquarium
  - Aqueous
  - Axis
  - Composition
  - Concave
  - Connected
  - Contain
  - Contained
  - Emit
  - Factor

- Flow
  - Housing
  - Inlet
  - Outlet
  - Oxygenated
  - Oxygenated Water
  - Radial
  - Suspension
  - Tube
  - Tubular
- Van London/pHoenix Co., *Education Series Conductivity Guide*, <http://www.vl-pc.com/tasks/render/file/?fileid=10CA7CE7-B9B7-08EF-AD30B324EEF84B9D>.
  - U.S. Patent No. 7,396,441 file history
  - Provisional App. No. 60/358,534
  - Expert Testimony from Mario Tremblay who may provide testimony through written declaration or live testimony to discuss indefiniteness issues, the level of skill in the art, and / or explain how the terms and phrases at issue would be understood by one of ordinary skill in the art.

Subject to the foregoing, Tennant identifies the preliminary claim constructions and supporting evidence in the charts below.<sup>1</sup> Where any construction for a term or phrase is given, Tennant incorporates that construction into its other proposed constructions, e.g., where Tennant’s construction refers to “water,” such construction incorporates Tennant’s proposed construction of “water” as well. Tennant further submits the same terms or phrases should be construed in the same manner across all asserted claims and all asserted patents consistently.

Dated: February 12, 2021

*/s/ R. Scott Johnson*

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<sup>1</sup> Tennant notes that, in its invalidity contentions, Tennant identified two additional phrases as unsupported by the specification: “flowing water at a flow rate no greater than 12 gallons per minute” and “delivers a current to the electrodes at a ratio of 1.75 amps or less per 3 square inches of active electrode.” OWT has failed to suggest any construction for these terms is necessary. Tennant maintains that these terms are unsupported by the specification, regardless of construction.

**I. THE '415 PATENT**

Tennant's Identified Claim Term(s)	Applicable Claims	Tennant's Proposed Construction	Extrinsic Evidence
"oxygenated aqueous composition"	13	A composition of water and oxygen.	<ul style="list-style-type: none"> <li>• Definition of oxygenated</li> <li>• Definition of oxygenated water</li> <li>• Definition of aqueous</li> <li>• Definition of composition</li> </ul>
"water"	13, 18, 19, 20, 21, 25, 27	Tennant maintains this term is indefinite and unsupported by the specification. Without waiving this position, to the extent any construction is possible, Tennant relies on the definition in the patent as follows: "Water means any aqueous medium with resistance less than one ohm per square centimeter, that is, a medium that can support the electrolysis of water. In general, the lower limit of resistance for a medium that can support electrolysis is water containing more than 2000 ppm total dissolved solids."	<ul style="list-style-type: none"> <li>• This construction may be supported by expert testimony from Mario Tremblay, who will discuss the indefiniteness issues associated with this claim and explain how this term would be understood by one of ordinary skill in the art.</li> </ul>
"tubular housing"	13, 26	an enclosure shaped like a cylinder, hose, or tube	<ul style="list-style-type: none"> <li>• Definition of tubular</li> <li>• Definition of housing</li> <li>• U.S. Patent No. 7,396,441 file history, Figure 7, page 293</li> </ul>

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