

**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

Jury Trial Demanded

DECLARATION OF SHEILA HATCHELL

STATE OF MINNESOTA)

) ss

COUNTY OF RAMSEY)

1. I am the Library Director for the Minnesota Department of Transportation (“MnDOT”). I have held this position since mid-December, 2007. In this position, I am responsible for the overall operations of the library including staffing, budget, space, leadership and strategic planning.

2. My educational background is a master’s degree in Library and Information Science from Dominican University.

3. MnDOT maintains a physical library in MnDOT’s Central Office Building, located at 395 John Ireland Boulevard, St. Paul, Minnesota 55155. The catalog includes significant collections in civil and transportation engineering, planning, leadership,

management, and diversity and inclusion.

4. All titles in the library are publicly available.

5. MnDOT's catalog of titles is available online at

<http://www.dot.state.mn.us/library/>. The public version of the catalog is known to library staff as Primo. The online Primo catalog is available to MnDOT staff as well as the general public. A google-type search is available as well as more advanced searching capabilities that allow for combining terms such as title, author, subject, publication date, and format. A search in the catalog produces either a direct hit on a title or a list of related titles. The client or working side of the catalog is known to library staff as Alma. The information maintained in individual catalog records includes the date on which the library cataloged any particular title and is viewable through the Alma client.

6. When a new title is added to the library catalog, an electronic catalog record is created using a coding system known as MARC – MAchine Readable Cataloging. The “005” field in the MARC bibliographic record is automatically populated with the date and time on which the title was added to the catalog. The first seven characters of MARC bibliographic field 005 represent the date on which a title is added to the catalog. The first four characters reflect the year, the next two characters reflect the month, and the next two characters reflect the day. An explanation of all of the characters in the MARC bibliographic field 005 can be found in Exhibit B.

7. On December 15th, 2020, I received a request via our reference tracking system (RefTracker) from Janelle K. Beitz of the law firm of FREDRIKSON & BYRON, P.A. requesting a declaration or similar document stating that, prior to 2003, MnDOT's library catalog included a publicly available copy of Burns, Susan E. Yiacoumi, Satira Frost, I

David, and Tsouris, Costas, Application of Digital Image Analysis for Size Distribution Measurements of Microbubbles (hereinafter the “Article”). A true and correct copy of Ms. Beitz’s request is attached hereto as Exhibit A. Ms. Beitz had previously requested the title page, table of contents, and copyright page for a conference proceedings entitled Imaging Technologies: Techniques and Applications in Civil Engineering: Proceedings of the Second International Conference, Cresta Sun Hotel, Davos, Switzerland, May 25-30, 1997 (the “Conference Materials”).

8. In response to Ms. Beitz’s request of December 15, 2020, I accessed MnDOT’s online Alma client of the catalog and verified that MnDOT’s library catalog includes a copy of the Conference Materials.

9. I further verified that the Conference Materials include the Article by locating the Article title in the table of contents and verifying that the Article was included therein. Field 005 in the MARC bibliographic record for the Conference Materials contains the data 20000310092336.0. As described above in paragraph 6, the data in field 005 indicates that the Conference Materials have been included in MnDOT’s library catalog since March 10, 2000. A true and correct copy of a print-out of the MARC bibliographic field 005 record for the Conference Materials in Alma is attached hereto as Exhibit C.

10. MnDOT’s online catalog does not contain a separate electronic catalog record for the Article. MnDOT’s online catalog includes only an electronic catalog record for the Conference Materials. To find the Article in MnDOT’s online catalog, one must search Primo for the Conference Materials. A search in Primo for the Article itself will not return any results for the Article.

11. Since the Conference Materials were added to MnDOT’s catalog, the catalog

has twice been migrated to a new system. To the best of my knowledge and understanding, the MARC fields in the Conference Materials' record, including the MARC bibliographic field 005 migrated properly to the new systems.

12. The Conference Materials continue to be publicly available today.

13. Members of the public may identify that the Conference Materials are included in MnDOT's library catalog by either searching the catalog or contacting the library for assistance. Members of the public may check-out the Conference Materials by registering with the library, which requires a valid driver's license or ID card, or making an interlibrary loan request through their local public library.

14. Neither MnDOT nor I take any position on the merits of the above-captioned action.

15. All statements made in this declaration are true and correct and are based upon my personal knowledge.

Sheila Hatchell Digitally signed by Sheila Hatchell
Date: 2021.02.25 08:38:59 -06'00'


Sheila Hatchell

Library Director


Minnesota Department of Transportation

Exhibit A

Tuesday,
December 15, 2020
04:11 PM

 Janelle Beitz

Re-open requested (requester)

 **More info request**
Hello again:

About a month ago you helpfully provided me with a cover page, a TOC and a copyright page for Imaging technologies : techniques and applications in civil engineering : proceedings of the second international conference, Cresta Sun Hotel, Davos, Switzerland, May 25-30, 1997, which I requested because it indicated the date that the article, Application of Digital Image Analysis for Size Distribution Measurements of Microbubbles, by Susan E. Burns, Sotira Yiacoumi, J. David Frost, and Costas Tsouris, was available. I am sorry to bother you again about this, but I'm now requesting another copy of those items, along with the article itself, if that is possible.

Additionally, if possible, I am seeking a declaration, certification, or affidavit that substantiates that your library had this item available to the public before 2003. This legal document will be used in patent litigation in an effort to prove prior art. Prior art is evidence that the inventor's invention or concept is already known. When an inventor seeks a patent, they must prove that the invention or concept is new, that there is no prior art. On the flip side, if an inventor is suing for patent infringement, they must prove that the invention or concept is not new, that prior art existed prior to the filing of the patent application. This document will be filed with the court and must be signed by someone in your library. We will, of course, be more than happy to pay any fees you might require for this service.

Please do not hesitate to reach out with any questions.

Thank you for any assistance you can provide.

Janelle K. Beitz, J.D., M.L.I.S. | Research Librarian
Fredrikson & Byron, P.A.
200 South Sixth Street Suite 4000 | Minneapolis, Minnesota 55402
Direct: 612.492.7663 | Fax: 612.492.7077 | jbeitz@fredlaw.com

This is a transmission from the law firm of Fredrikson & Byron, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (612) 492-7000. The name and biographical data provided above are for informational purposes only and are not intended to be a signature or other indication of an intent by the sender to authenticate the contents of this electronic message.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.