

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

OXYGENATOR WATER
TECHNOLOGIES, INC.

Plaintiff,

v.

TENNANT COMPANY

Defendant.

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

**AMENDED EXHIBIT B TO THE JOINT PATENT CASE STATUS
REPORT AND CLAIM CONSTRUCTION STATEMENT**

**TENNANT'S PROPOSED CLAIMS TERMS
FOR CONSTRUCTION WITH INTRINSIC AND EXTRINSIC EVIDENCE**

Pursuant to the Pretrial Scheduling Order (ECF No. 43, modified by ECF No. 62) and the agreement of the parties, Defendant Tennant Company (“Tennant”) hereby provides its list of terms, phrases, or clauses that Tennant believes require the Court’s construction, including: (i) Tennant’s proposed construction of each disputed claim term, phrase, or clause; (ii) an identification of all references from the specification or prosecution history to support Tennant’s constructions (the “Intrinsic Evidence”); (iii) an identification of any extrinsic evidence on which Tennant intends to rely either in support of its proposed construction or to oppose another party’s proposed construction (the “Extrinsic Evidence”); and (iv) the identity of every witness, including experts, that Tennant proposes to call to offer testimony relating to claim construction; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful

deposition of that expert. Tennant incorporates the proposed briefing schedule submitted in the Joint Claim Construction Statement (ECF No. 64).

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 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 Exhibit A (the Plaintiff's proposed claims terms for construction with intrinsic and extrinsic evidence), changes in the parties' constructions, and as information is learned during the course of claim construction discovery.

Tennant relies on the asserted patents, the asserted patents' prosecution history, including the file histories of related patents and applications. Further, Tennant identifies the following preliminary identification of extrinsic evidence which has been previously provided to Plaintiff:

- 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

- U.S. Patent No. 7,396,441 file history
- Provisional App. No. 60/358,534

With regard to (iv) above, Tennant identifies Dr. Mario Tremblay and incorporates his declarations and CV as submitted in the pending petitions for inter partes review of U.S. Patent No. RE 45,415 (“the ‘415 Patent”), Exhibits 1003 and 1004 in IPR2021-00602 and Exhibits 1103 and 1104 in IPR2021-00625, produced herewith, as well as any potential testimony identified in the chart below. Dr. Tremblay reserves the right to testify in response to opinions raised or testimony or declarations offered by any OWT expert as needed. Dr. Tremblay may provide testimony through written declaration or live testimony to discuss indefiniteness issues, the level of skill in the art, and/or to 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 chart below.¹ Where any construction for a term or phrase is given, Tennant incorporates that construction into its other proposed constructions, *e.g.*,

¹ 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.

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: June 9, 2021

/s/ R. Scott Johnson

Lora M. Friedemann (#0259615)
Timothy O'Shea (#0386437)
Adam R. Steinert (#0389648)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Telephone: 612.492.7000
lfriedemann@fredlaw.com
toshea@fredlaw.com
asteinert@fredlaw.com

R. Scott Johnson (*Admitted Pro Hac Vice*)
Cara S. Donels (*Admitted Pro Hac Vice*)
FREDRIKSON & BYRON, P.A.
111 E. Grand Avenue, Suite 301
Des Moines, IA 50309
Telephone: 515.242.8900
rsjohnson@fredlaw.com
cdonels@fredlaw.com.

Attorneys for Defendant Tennant Company

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