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Via ECF

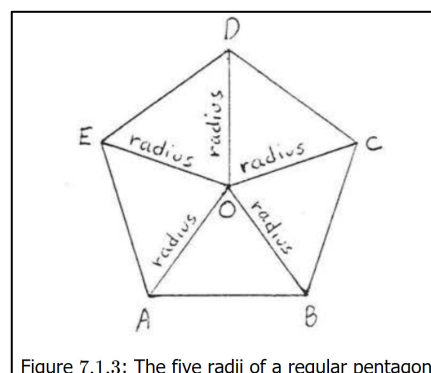
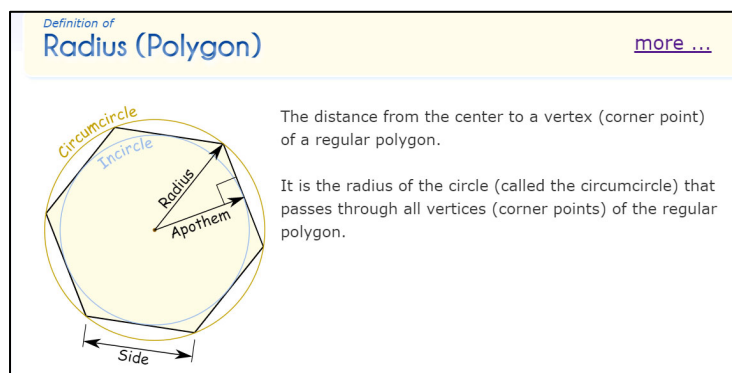
The Honorable Eric C. Tostrud
United States District Court
316 N. Robert Street
St. Paul, MN 55101

Re: *Oxygenator Water Technologies, Inc. v. Tennant Company*
Civil Action No. 20-cv-0358 (ECT/HB)

Dear Judge Tostrud:

Pursuant to Local Rule 7.1(j), Plaintiff OWT respectfully requests leave to file a motion for reconsideration of the Court's construction in connection with the claim term "tubular housing" in independent claim 13 of the '415 patent.

Compelling circumstances exist that justify a motion for reconsideration of the Court's construction of this term. The Court's conclusion that "tubular housing" requires a circular cross-sectional shape was based on the phrase "along the radius of the tubular housing" in dependent claim 14 and on the Court's understanding that only circles have radii. Dkt. 162 at 38-39. However, the Court's understanding is not correct—other geometric shapes, including squares and triangles, have a "radius." Below are exemplary illustrations showing this:



The Honorable Eric C. Tostrud
August 26, 2021
Page 2

<https://www.mathsisfun.com/definitions/radius-polygon-.html>;
[https://math.libretexts.org/Bookshelves/Geometry/Book%3A_Elementary_College_Geometry_\(Africk\)/07%3A_Regular_Polygons_and_Circles/7.01%3A_Regular_Polygons;_see_also_https://www.mathopenref.com/polygonradius.html](https://math.libretexts.org/Bookshelves/Geometry/Book%3A_Elementary_College_Geometry_(Africk)/07%3A_Regular_Polygons_and_Circles/7.01%3A_Regular_Polygons;_see_also_https://www.mathopenref.com/polygonradius.html) (all links last accessed August 26, 2021). Indeed, even the dictionary definition relied on by the Court lists multiple definitions for “radius,” not all of which require there be a circle associated therewith (see definitions 3c and 4).

Neither party submitted evidence on the meaning or scope of the term “radius.” This is understandable considering that the term was not identified by the parties as needing construction and appears only in dependent claim 14, which is not asserted to be infringed by Tennant. Because of this, the Court did not have the benefit of evidence submitted by the parties on the meaning of “radius,” but rather relied on its own research. *See* Dkt. 162 at 38-39.

Moreover, the Court’s narrow understanding of “radius” was material. The Court expressly characterized its decision on construction of “tubular housing” as a “close call.” Dkt. 162 at 36. And while the Court also discussed other evidence relied on by Tennant, the Court ultimately did not reject OWT’s arguments regarding this other evidence but instead found that OWT’s arguments were “outweighed by Claim 14’s reference to the ‘radius’ of the tubular housing.” *Id.* at 38. Considering that claims are ordinarily entitled to the full scope of their ordinary meaning, OWT respectfully submits that this other evidence is equivocal at best and does not justify narrowing the ordinary meaning of “tubular.” *See Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012).

Given the Court’s reliance on an unduly narrow understanding of a claim term (“radius”) that was not formally identified for construction, OWT respectfully submits that further briefing on this close call is appropriate. *See Lamoureux v. AnazaoHealth Corp.*, No. 3:03-cv-01382, 2010 U.S. Dist. LEXIS 4976, at *5-7 (D. Conn., Jan. 22, 2010) (granting reconsideration because the court initially relied on an unduly narrow definition of “biodegradable”); *Wi-LAN, Inc. v. Acer, Inc.*, No. 2:07-cv-473, 2010 U.S. Dist. LEXIS 138111 (E.D. Texas, Dec. 30, 2010). OWT requests leave to file a motion for reconsideration with additional evidence regarding the term “radius” in dependent claim 14 and its impact on the interpretation of “tubular housing” in independent claim 13.

Very truly yours,

s/J. Derek Vandenburg

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