

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 _____
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 _____

5
6 TENNANT COMPANY,

7 Petitioner,

8 v.

9 OXYGENATOR WATER TECHNOLOGIES, INC.,

10
11 Patent Owner.

12
13 Patent No. RE45,415

14
15 Reissue Date: March 17, 2015

16
17 Title: FLOW-THROUGH OXYGENATOR
18 _____

19
20 VIDEO-RECORDED DEPOSITION OF:

21 DR. MARIO TREMBLAY
22 _____

23
24 Reported by: Gale Sweeney Christensen,
CSR, RPR
25

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1 APPEARANCES
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 11
 Also present: Dennis Goering, videographer
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 15
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 24
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1 PROCEEDINGS
 2 THE VIDEOGRAPHER: We are on the
 3 record. Here begins media unit 1 in the
 4 video deposition of Dr. Mario Tremblay with
 5 the United States Patent and Trademark Office
 6 before the Patent Trial and Appeal Board,
 7 case number IPR 2021-00625, patent RE45,415,
 8 Tennant Company, Petitioner, versus
 9 Oxygenator Water Technologies, Patent Owner.
 10 Today's date is October 21st, 2021.
 11 The time on the video monitor is 9:11. The
 12 videographer for today is Dennis Goering,
 13 representing Veritext Corporation.
 14 The video deposition is taking
 15 place at the offices of Fredrikson & Byron,
 16 111 East Grand Avenue, Suite 301, Des Moines,
 17 Iowa.
 18 Will Counsel please voice identify
 19 themselves and state whom they represent.
 20 MR. VANDENBURGH: For the Patent
 21 Owner this is Derek Vandenburg of the
 22 Carlson Caspers firm.
 23 MR. PEDERSON: Also Aaron Pederson
 24 of the Carlson Caspers firm.
 25 MR. JOHNSON: And for the

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1 Petitioner this is Scott Johnson with
 2 Fredrikson & Byron.
 3 MR. PATTON: And Thomas Patton,
 4 Fredrikson & Byron.
 5 THE VIDEOGRAPHER: The court
 6 reporter today is Gale Sweeney, representing
 7 Veritext. Would the court reporter please
 8 swear in the witness.
 9 MARIO TREMBLAY, PH.D.,
 10 called as a witness, having been first duly
 11 sworn, testified as follows:
 12 CROSS-EXAMINATION
 13 BY MR. VANDENBURGH:
 14 Q. Good morning, Dr. Tremblay.
 15 A. Good morning.
 16 Q. I don't know if we had a chance to
 17 introduce ourselves. I'm Derek Vandenburg,
 18 representing the Patent Owner, OWT, in this
 19 case. If would you please just for the
 20 record spell your first and last name and
 21 also give us your home address.
 22 A. Yes. So my name is Mario Tremblay,
 23 M-a-r-i-o, T-r-e-m-b-l-a-y. My home address
 24 is 145 Fourteenth Avenue North,
 25 St. Petersburg, Florida 33701.

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1 Q. Great. Have you had your deposition
2 taken before?
3 A. Yes.
4 Q. So you understand that you are under
5 oath this morning just as if we were in a
6 court of law?
7 A. I do.
8 Q. And you understand that the basic rules
9 of the road, that I'm going to try to ask you
10 clear questions. I'd ask that you try to
11 give me clear answers. And if you do answer
12 my question, I'm going to assume you
13 understood it. Is that fair?
14 A. That's fair.
15 Q. And one of the biggest difficulties that
16 often happens is us talking over each other.
17 Try to let me finish my questions, and I'll
18 try to let you finish your answer. Is that
19 fair?
20 A. That's fair.
21 Q. All right. And then I think the last
22 one that often comes up is we need to have
23 you try to avoid head shakes, either yes or
24 no or, you know, uh-huh or huh-uh because
25 those are very difficult for the court

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1 reporter to decipher. So I'd ask that you
2 try to remember to use, you know, yes or no
3 if that's the appropriate part of your
4 answer. Fair?
5 A. Yes.
6 Q. Great. All right. Let's jump into it.
7 How many times have you had your deposition
8 taken?
9 A. Twice.
10 Q. In either of those instances were you
11 serving as an expert witness?
12 A. Yes.
13 Q. And is that the case of both of them?
14 A. Yes.
15 Q. Let's start with the most recent one.
16 How long ago was that deposition?
17 A. Last year.
18 Q. And what was that case?
19 A. It was a case regarding perfumes and
20 reverse engineering via GC—MS. Do you want
21 me to explain what GC—MS stands for?
22 Q. Sure.
23 A. Gas chromatography—mass spectrometry.
24 Q. Was that in connection with a lawsuit of
25 some sort?

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1 A. Yes.
2 Q. Where was that lawsuit venue?
3 A. In Charlotte.
4 Q. Were you representing the patent owner
5 in that case or the accused infringement?
6 A. The accused infringement.
7 Q. And then tell me about the second case
8 that you served as an expert in where you
9 were deposed. First of all, how long ago was
10 that one?
11 A. More than 30 years ago.
12 Q. All right. Do you recall what the
13 general subject matter of that was?
14 A. It was about coffee analysis and there
15 was a foreign material thought to be a
16 poison, and I analyzed the material,
17 confirmed what the material was, and I
18 testified in court what I -- what I did.
19 Q. Did you say coffee?
20 A. Coffee, Folgers coffee.
21 Q. Yeah, okay. All right. Are you
22 currently employed?
23 A. I'm a consultant.
24 Q. What sort of consulting do you do?
25 A. Personal care, home care, COVID, and

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1 other related things in this field. The
2 personal care is products.
3 Q. For how long have you been a consultant?
4 A. Four years.
5 Q. During your consulting time have you
6 been involved in any consulting projects
7 other than this case that involves
8 electrolysis?
9 A. No.
10 Q. I think in the declaration you gave in
11 this case you did indicate that you did have
12 some work in the area of electrolysis earlier
13 in your career; is that correct?
14 A. That's correct.
15 Q. And where were you employed during that
16 time?
17 A. Procter & Gamble.
18 Q. And when is the latest that you can
19 recall that you were involved in doing
20 electrolysis work while you were at Procter &
21 Gamble, how recent?
22 A. It was before 9/11.
23 Q. So prior to 2001?
24 A. Yes.
25 Q. I take it, do you recall that because we

3 (Pages 6 - 9)

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1 all sort of know what we were doing around
2 that time in the world?
3 A. Because I designed electrolysis cell for
4 DARPA and the Pentagon.
5 Q. And you recall that was in 2001 or
6 shortly before that?
7 A. I did work before that. The majority of
8 the work prior to that.
9 Q. And over what time period did you work
10 on that project for DARPA, you said?
11 A. DARPA and the Pentagon.
12 Q. Yes. And over what time frame did you
13 do that work?
14 A. That work -- that work carried on for
15 three years. I worked on it about a year and
16 a half.
17 Q. And was that your only project at
18 Procter & Gamble involving electrolysis?
19 A. No.
20 Q. How many other projects did you have
21 while at Procter & Gamble involving
22 electrolysis?
23 A. Several.
24 Q. Did they all involve the electrolysis of
25 water?

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1 A. Water as a base material, but more than
2 just water.
3 Q. Okay. Did any of those projects involve
4 electrolysis of ordinary water?
5 A. Yes.
6 Q. Does the electrolysis reaction change
7 depending on what's in the water?
8 A. Yes.
9 Q. I want to talk about the work that
10 you've done in this case. Now, you've
11 prepared a declaration that got submitted in
12 connection with this IPR; correct?
13 A. Yes.
14 Q. And who have you been retained by for
15 your work in this case?
16 A. Scott.
17 Q. And when were you retained?
18 A. Approximately one and a half year ago.
19 Q. So that would make it in the spring of
20 of 2020?
21 A. I am not certain on the time.
22 Q. But you're confident it was in 2020?
23 A. I'm confident it was about a year ago to
24 a year and a half ago. I really don't know
25 the first of the date.

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1 Q. What were you asked to do?
2 MR. JOHNSON: Objection, form,
3 instruct the witness not to answer to the
4 extent it calls for attorney-client or work
5 product protections.
6 Q. Are you going to not answer my question?
7 A. Do I have to?
8 Q. I believe so, yes.
9 A. Okay. I was asked to reproduce cells,
10 and I reproduced a cell that was based on
11 Wykey and a cell that was based on Davies.
12 Q. Break that down a little bit. We'll be
13 talking a lot about Wykey and Davies patents
14 today. First of all, how did you become
15 aware of the Wykey patent?
16 A. So after Scott called me, I did a prior
17 art search, sent a series of patents.
18 Several were selected and discussed, and
19 those two were chosen to create cells that
20 represented the Wykey and Davies design.
21 Q. So you identified both Wykey and Davies
22 in the course of a prior art search that you
23 did?
24 A. I identified several of the patents that
25 I sent, and some patents were sent to me.

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1 And I don't recall if these two were
2 identified by me solely or if it was part of
3 the overall search. I put all of the art
4 together.
5 Q. What did you search for?
6 A. I searched for electrolysis of water.
7 Q. Were you looking for anything more
8 specific? What caused you to focus in on
9 Wykey and Davies?
10 A. I was sent a patent on Senkiw.
11 Q. So I take it you had reviewed the Senkiw
12 patent before you did your prior art search?
13 A. I did.
14 Q. And how was the Senkiw patent identified
15 to you?
16 A. It was sent by Scott.
17 Q. So is it fair to say that your prior art
18 search was to look for prior art that you
19 believed was similar to what's disclosed in
20 the Senkiw patent?
21 A. Yes.
22 Q. So you weren't asked to just find prior
23 art, you know, that deals with a particular
24 problem or that produces a particular
25 publicize; correct?

4 (Pages 10 - 13)

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1 A. Correct.
2 Q. Were you familiar with either the Wykey
3 or the Davies patents prior to your work in
4 this case?
5 A. No.
6 Q. Were you aware of any commercialized
7 products based on those patents prior to your
8 work in this case?
9 A. No.
10 Q. Are you aware of any commercialized
11 products now relating to those patents?
12 A. No.
13 Q. At the time you did your prior art
14 search, were you already contemplating that
15 you would be making samples according to some
16 patents?
17 A. No.
18 Q. When was that decision made?
19 A. After several conversations with Scott.
20 Q. And why did you decide to make
21 reproductions of devices that you believed
22 were in accordance with those patents?
23 A. I was asked by Scott.
24 Q. And what was the purpose of your doing
25 so?

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1 A. I was asked to reproduce the Wykey
2 patent and the Davies patent, the cells.
3 Q. You also in your report I think indicate
4 that you -- well, strike that. We're going
5 to be looking at physical reproductions that
6 you were involved in testing of. Did you
7 physically yourself build those?
8 A. No.
9 Q. Who built them?
10 A. Russ Bilski (phonetic).
11 Q. Pylkki, I believe?
12 A. Pylkki.
13 Q. I think it's P-y-l-l-k-i {sic}?
14 A. P-y-l-l-k-i {sic}.
15 MR. JOHNSON: I thought it was two
16 ks, but --
17 A. I'll take your word.
18 MR. VANDENBURGH: We'll get it at a
19 break.
20 MR. JOHNSON: We'll get it at a
21 break.
22 BY MR. VANDENBURGH:
23 Q. Did he make them per your instructions?
24 A. Yes.
25 Q. When and how did you provide those

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1 instructions?
2 A. I provided them over the phone, and it
3 was shortly after I was asked to find a
4 contract lab to build the cells.
5 Q. So I'm a little confused by that. So
6 are you saying that Mr. Pylkki did not build
7 the cells?
8 A. He did build the cells.
9 Q. You had investigated a contract lab but
10 instead went to Mr. Pylkki?
11 A. I looked at many contract lab. It would
12 have taken -- it was during the pandemic. It
13 would have taken six months to a year for any
14 of my contract lab to build a cell like the
15 Wykey and Davies.
16 Q. And you understand that Mr. Pylkki at
17 the time was working for Tennant?
18 A. Yes.
19 Q. Was he employed by Tennant at that time
20 point?
21 A. As far as I believe.
22 MR. JOHNSON: And I do have a
23 spelling on that. It's P-y-l-k-k-i.
24 BY MR. VANDENBURGH:
25 Q. When you asked Mr. Pylkki to build these

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1 reproductions, was that the first time you
2 had spoken with him?
3 A. Yes.
4 Q. Was there anybody else on the call
5 during that conversation?
6 A. I don't believe our first call when I
7 called Russ directly.
8 Q. And during that first call what did you
9 tell him to do?
10 A. I asked him if he would be capable to
11 build these two cells that I described to
12 him.
13 Q. Did you provide specific dimensions
14 during that call?
15 A. The first call?
16 Q. Correct.
17 A. I don't believe so.
18 Q. And what did Dr. Pylkki tell you in
19 response to your request?
20 A. He was fairly certain that he had the
21 equipment to be able to reproduce the cells
22 that I described to him.
23 Q. Now, he also built a reproduction
24 purported to be of a patent of yours;
25 correct?

5 (Pages 14 - 17)

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