

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARROWS UP, LLC

Petitioner

v.

OREN TECHNOLOGIES LLC,

Patent Owner

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Case No.: IPR2018-01230

Patent No.: 9,248,772

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Videotaped Deposition of FRED SMITH

Chicago, Illinois

Tuesday, July 30, 2019 - 9:40 a.m.

Reported by:

Stephanie A. Battaglia

Job No.: 25510

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3 BEFORE THE PATENT TRIAL AND APPEAL BOARD  
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5 ARROWS UP, LLC

6 Petitioner

7 v.

8 OREN TECHNOLOGIES LLC,

9 Patent Owner  
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11 Case No.: IPR2018-01231

12 Patent No.: 9,617,066  
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6 ARROWS UP, LLC

7 Petitioner

8 v.

9 OREN TECHNOLOGIES LLC,

10 Patent Owner  
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12 Case No.: IPR2018-01232

13 Patent No.: 9,682,815  
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3 BEFORE THE PATENT TRIAL AND APPEAL BOARD  
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5 ARROWS UP, LLC

6 Petitioner

7 v.

8 OREN TECHNOLOGIES LLC,

9 Patent Owner  
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11 Case No.: IPR2018-01233

12 Patent No.: 9,914,602  
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1  
2 The videotaped deposition of FRED SMITH, called by the  
3 Petitioner for examination, taken before Stephanie A.  
4 Battaglia, CSR and Notary Public in and for the County  
5 of DuPage and State of Illinois, at 131 South Dearborn  
6 Street, 30th Floor, Chicago, Illinois, on  
7 July 30, 2019, at 9:40 a.m.  
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1       PRESENT:

2               KIRKLAND & ELLIS, LLP  
3               BY: MR. KYLE M. KANTAREK, ESQ.  
4               MR. JOEL R. MERKIN, ESQ.  
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9               joel.merkin@kirkland.com

10               appeared on behalf of the Patent Owner;

11               HOLLAND & KNIGHT, LLP  
12               BY: MR. ROBERT S. HILL, ESQ.  
13               MS. ALLISON M. LUCIER, ESQ.  
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17               Robert.Hill@hklaw.com  
18               Allison.Lucier@hklaw.com

19               appeared on behalf of the Petitioner.

20       ALSO PRESENT:

21               Mr. Jean-Louis Ziesch, Videographer  
22  
23  
24  
25

## I N D E X

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Fred Smith	
EXAMINATION BY:	
Mr. Hill	10

## E X H I B I T S

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(Cont'd.):

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1 THE VIDEOGRAPHER: This is the Tape No. 1  
2 of the deposition of Fred Smith in the matter of  
3 Arrows Up, et al., versus Oren Technologies, et al.,  
4 in the USPTO Patent Trial and Appeal Board, Case Nos.  
5 IPR2018-01230, 01231, 01232, and 01233.

6 This deposition is held at 300 North  
7 LaSalle in Chicago, Illinois, on July 30, 2019 at  
8 approximately 9:40 a.m.

9 My name is Jean-Louis Ziesch from the  
10 firm of TransPerfect and I am the Certified Legal  
11 Video Specialist. The court reporter is Stephanie  
12 Battaglia in association with TransPerfect.

13 Will counsel please introduce yourself.

14 MR. HILL: Robert Hill of Holland &  
15 Knight for Arrows Up, Petitioner.

16 MS. LUCIER: Allison Lucier also for  
17 Holland & Knight for Arrows Up.

18 MR. KANTAREK: Kyle Kantarek, Kirkland &  
19 Ellis, for Patent Owner Oren Technologies.

20 MR. MERKIN: Joel Merkin of Kirkland &  
21 Ellis also on behalf of Patent Owner.

22 THE VIDEOGRAPHER: Will the court  
23 reporter please swear in the witness.

24 (Witness sworn.)

25 FRED SMITH,

1 called as a witness herein, having been first duly  
2 sworn was examined and testified as follows:

3 EXAMINATION

4 BY MR. HILL:

5 Q. Good morning, sir.

6 Please state your full name for the  
7 record.

8 A. Fred Peterson Smith.

9 Q. Sir, have you ever had your deposition  
10 taken before?

11 A. Many times.

12 Q. Approximately how many times?

13 A. Over 100.

14 Q. What kinds of cases have you had your  
15 deposition taken in?

16 A. Mostly patent and product liability.

17 Q. What is the last patent-related case you  
18 had your deposition taken in?

19 A. Actually, there is one past this. I  
20 don't recall which one it was.

21 Q. What is the one past that, which that are  
22 you referring to?

23 A. I was just looking at my list of previous  
24 testimony, so I have got IQASR versus Wendt and  
25 Cordelia Lighting versus Cooper, those are both patent

1 cases, and of course Grit versus Oren Technologies was  
2 also a patent case.

3 Q. What is Grit versus Oren Technologies?

4 A. A patent case.

5 Q. And that Oren Technologies relates to  
6 SandBox, is that correct?

7 A. Correct.

8 Q. So let's go over some ground rules even  
9 though I know you are a very experienced witness.

10 Let's try to talk one at a time; I will  
11 do my best and I am sure you will do yours.

12 If at any time you need a break please do  
13 let me know, I only ask that you don't take a break if  
14 a question is pending, just answer that question and  
15 we will take a break immediately after.

16 As you know, we have a court reporter so  
17 nonverbal responses will not be captured for the  
18 transcript, so please make sure you say yes or no  
19 rather than uh-huh, uh-uh, head nods and all of that.

20 If you don't understand a question,  
21 please ask me to rephrase it and I will do my best if  
22 I can.

23 If your counsel interposes an objection  
24 you are still obligated to respond unless your counsel  
25 directs you not to respond, in which case there may be

1 some discussion back and forth.

2 This comports with your understanding  
3 from your previous depositions, right?

4 A. Sure.

5 Q. Is there any reason that you haven't --  
6 that you can't testify fully today?

7 A. No.

8 Q. Is there any reason that you can't  
9 testify truthfully today?

10 A. No.

11 Q. I am going to ask you a few questions  
12 about your preparation today to testify today.

13 And without revealing the content of any  
14 communications with your counsel, what did you do to  
15 prepare for your deposition today?

16 A. I read through my declarations, reviewed  
17 the patents, looked at some of the prior art.

18 Q. What prior art did you look at?

19 A. Mintz, Sheesley, and however you  
20 pronounce his name, Uhryn. I have heard it pronounced  
21 a few different ways, however that is.

22 Q. You may hear it pronounced a few  
23 different ways today as well.

24 A. I imagine.

25 Q. Just to be clear, we are talking about

1 the reference that is spelled U-h-r-y-n, is that  
2 correct?

3 A. Yes, the '441.

4 Q. '441. Let me call that the Uhryn, for  
5 lack of a better phrase. If you have a better  
6 pronunciation please let me know.

7 Did you meet with any counsel to prepare  
8 for your testimony today?

9 A. Yes. I came in yesterday and met for a  
10 few hours.

11 Q. Who did you meet with?

12 A. The two gentlemen sitting here.

13 Q. How long did you meet for?

14 A. A few hours.

15 Q. Have you done any other meetings in  
16 preparation to testify today?

17 A. No.

18 Q. Have you had any other non-meeting  
19 communications with anyone in preparation to testify  
20 today?

21 A. No.

22 Q. Did you take any notes to prepare to  
23 testify today?

24 A. No.

25 Q. And have you -- whether in conjunction

1 with preparing to testify or not did you speak with  
2 anyone else about your testimony today?

3 A. No.

4 Q. Sir, we are putting in front of you a  
5 number of documents that have been premarked but I  
6 believe will be familiar to you, and I would like to  
7 spend just a few minutes going through and identifying  
8 whether you recognize these documents and what they  
9 are. And then I would ask you to keep them handy  
10 because we will be referring to them, I suspect,  
11 throughout the day.

12 (Document marked Smith Exhibit 1 for  
13 identification.)

14 BY MR. HILL:

15 Q. So let's begin, do you see a document  
16 that has been marked as Smith 1?

17 A. Yes.

18 Q. Please take a moment to look at that  
19 document and tell me if you recognize what it is.

20 A. I do, it is the '772 patent.

21 Q. And you understand that that is a patent  
22 that is subject of one of the IPRs you are testifying  
23 about today, is that correct?

24 A. Yes.  
25

1 (Document marked Smith Exhibit 2 for  
2 identification.)

3 BY MR. HILL:

4 Q. Please then turn your attention to  
5 Exhibit Smith 2. Do you recognize that document?

6 A. That is the '602 patent, yes.

7 Q. That is another one of the patents at  
8 issue with respect to these IPRs, is that correct?

9 A. Yes.

10 (Document marked Smith Exhibit 3 for  
11 identification.)

12 BY MR. HILL:

13 Q. And then if you look at the document  
14 marked as Exhibit Smith 3, tell me what that is,  
15 please.

16 A. That is the '815 patent.

17 Q. Another patent at issue in these IPRs,  
18 correct?

19 A. Yes.

20 (Document marked Smith Exhibit 4 for  
21 identification.)

22 BY MR. HILL:

23 Q. And then if you look at Item 4, Exhibit  
24 Smith 4, what is that document?

25 A. It is the '066 patent.

1 Q. And that is the fourth of the patents at  
2 issue in these IPRs, correct?

3 A. Correct.

4 Q. From your own terminology I take it you  
5 understand if I refer to any of these patents by their  
6 last three digits you understand what I am talking  
7 about?

8 A. I would think so, yes.

9 Q. That is good to be clear upfront.

10 A. This is true.

11 (Document marked Smith Exhibit 5 for  
12 identification.)

13 BY MR. HILL:

14 Q. I would like you to turn your attention  
15 now to Exhibit Smith 5, please. And if you would take  
16 a moment to look at that document and tell me what  
17 that document is.

18 A. This is my declaration on the '772  
19 patent.

20 Q. All right.

21 (Document marked Smith Exhibit 6 for  
22 identification.)

23 BY MR. HILL:

24 Q. If you turn next to Exhibit Smith 6, what  
25 do you understand that to be, if anything?

1           A.     That is my declaration on the '066  
2 patent.

3           Q.     Thank you.  
4                   (Document marked Smith Exhibit 7 for  
5 identification.)

6 BY MR. HILL:

7           Q.     Exhibit Smith 7, please, what is that  
8 document?

9           A.     My declaration on the '815 patent.

10          Q.     Thank you.  
11                   (Document marked Smith Exhibit 8 for  
12 identification.)

13 BY MR. HILL:

14          Q.     Exhibit Smith 8, what do you understand  
15 that document to be?

16          A.     My declaration on the '602 patent.

17          Q.     Thank you.  
18                   (Document marked Smith Exhibit 9 for  
19 identification.)

20 BY MR. HILL:

21          Q.     Now I would like to direct your attention  
22 to Exhibit Smith 9, if you can take a moment to look  
23 at that document and tell me what that document is.

24          A.     This is the Sheesley reference.

25          Q.     Is this the Sheesley prior art reference

1       that you mentioned when talking about your  
2       preparation?

3             A.       That's correct.

4             Q.       If I refer to this as Sheesley you will  
5       understand I am referring to this document?

6             A.       Yes, sir.

7             Q.       Thank you.

8                     (Document marked Smith Exhibit 10 for  
9                     identification.)

10       BY MR. HILL:

11            Q.       Next we look at Exhibit Smith 10, please.  
12       Have you seen that document before?

13            A.       I have.

14            Q.       What is that document?

15            A.       This is I think we are saying Uhryn.

16            Q.       And what is this document?

17            A.       This is another one of the prior art  
18       pieces.

19            Q.       That is one of the other ones that you  
20       referenced earlier during your preparation testimony,  
21       correct?

22            A.       Correct.

23                     (Document marked Smith Exhibit 11 for  
24                     identification.)

1 BY MR. HILL:

2 Q. And then finally for now if you can look  
3 at Exhibit Smith 11 and tell me what that document is.

4 A. This is Mintz.

5 Q. And that is the third prior art reference  
6 you mentioned earlier, is that correct?

7 A. That's correct.

8 Q. Thank you.

9 Let's keep that stack close for both of  
10 us because I am sure we will be referring to it  
11 throughout the day.

12 Let's now turn to your declaration for  
13 the '772 patent, which should be the Smith Exhibit 5.  
14 You have that document?

15 A. I do.

16 Q. I would like you to direct your attention  
17 to Paragraph 46 of that document. Please take a  
18 moment and let me know when you have read  
19 Paragraph 46.

20 A. Okay.

21 Q. I see a line that says, "A POSITA would  
22 understand that the other 'End Wall' could be the same  
23 as the visible 'End Wall'." Do you see that? You can  
24 take a moment to look. It is towards the end of the  
25 paragraph.

1 A. Yes.

2 Q. So first of all, when you are talking  
3 there POSITA -- first of all, do you use the POSITA or  
4 POSITA (phonetic)?

5 A. POSITA.

6 Q. POSITA.

7 For POSITA that is a person of skill in  
8 the art, correct, or person of ordinary skill in the  
9 art?

10 A. Ordinary skill.

11 Q. All right.

12 Then if we go to the next paragraph,  
13 Paragraph 47, you say that, "Because the structure of  
14 the other 'End Wall' is not shown to be the same as  
15 the visible 'End Wall,' Sheesley does not disclose  
16 limitation [1(a)(ii)]," is that correct, is that what  
17 that report says at that paragraph?

18 A. I think to be clear, actually -- it  
19 actually shows that they are the same, so I don't know  
20 that that -- because if you look at Figure 18 it does  
21 show them looking to be identical.

22 Q. Just -- you anticipated my question for  
23 this.

24 So that is a typo, this is supposed to be  
25 -- is this supposed to be different from or not the

1 same as?

2 A. I think the concept was there is -- it  
3 doesn't show either way extremely well. All of the  
4 views of the end wall in the Sheesley patent appear to  
5 show one side, but I suppose it could be showing both  
6 sides, you just can't tell that it is showing both  
7 sides.

8 Q. What do you mean by that?

9 A. So if you have doors on both ends of the  
10 Sheesley container you can't tell which end you are  
11 looking at because they would all look the same. And  
12 so if you look at Figure 3, for instance, all of the  
13 end views there show doors, you see doors in Figure 7,  
14 you see doors in Figure 8, you see doors in Figure --  
15 Figure 14. Again, you see -- when you look at  
16 Figure 18, which is a section view through the top.  
17 Again, the two ends in Figure 18 look to be identical.  
18 At least that is how a POSITA would see it.

19 Q. What you just described, is that your  
20 basis for your opinion that the end wall with doors  
21 132 and 134 is not structurally different from the  
22 other end wall?

23 A. That and everything that I had in my  
24 declaration.

25 Q. So let's talk a little bit more about

1        what Sheesley says about the doors 132 and 134. I  
2        would like to begin by directing your attention to  
3        Paragraph 50 in Sheesley's original pagination. Let  
4        me know when you are there.

5            A.        Okay.

6            Q.        So let's read this paragraph together.  
7        Do you see where it says, "The cargo container 130 is  
8        made out of corrugated metal and has doors 132 and  
9        134, on the one end thereof, which doors 132 and 134  
10       are operable by handles 136 and 138, respectively.  
11       Top hole 140 is cut into the top 142 of the cargo  
12       container 130. Bottom hole 144 is cut into bottom 146  
13       of the cargo container 130. Control panel openings  
14       148 and 150 are cut in doors 132 and 134,  
15       respectively." Do you see that?

16           A.        Sure.

17           Q.        Let's dig in a little bit.  
18                      So Figure 9 portrays these elements, is  
19        that correct?

20                      If you need to take a moment to kind of  
21        orient this so you can look at the figure and look at  
22        the text at the same time, that may be helpful for  
23        you.

24           A.        I am good.

25           Q.        Okay.

1                   So Figure 9 portrays doors 132 and 134,  
2       correct?

3           A.     Correct.

4           Q.     And it also portrays handles 136 and 138,  
5       is that correct?

6           A.     Yes.

7           Q.     And control panel openings 148 and 150  
8       are on one end of the container, is that correct?

9           A.     Yes.

10          Q.     So does Sheesley disclose doors other  
11       than 132 and 134?

12          A.     Not that I am aware of because they don't  
13       do anything with doors on the other end.

14          Q.     What do you mean by that?

15          A.     Well, here they are describing they use  
16       the doors on one end to describe how they get the  
17       piece that they are adding in and that they have the  
18       control panels in those doors, they don't do anything  
19       with the other end.

20          Q.     Do they describe control panels on the  
21       other end anywhere in the patent?

22          A.     No.

23          Q.     Do they describe doors anywhere on the  
24       other end anywhere in the patent?

25          A.     Not that I am aware of, no.

1 Q. Does Sheesley disclose handles other than  
2 handles 136 and 138?

3 A. I don't believe so.

4 Q. Does Sheesley disclose control panel  
5 openings other than 148 and 150?

6 A. I don't believe so.

7 Q. So why then do you believe that all of  
8 these features are potentially present on Sheesley's  
9 other end wall?

10 A. There is -- just because there is no  
11 description on what the other end is, I am aware that  
12 they make containers that have doors on both ends. It  
13 simply doesn't say that there isn't.

14 Q. When you say they make containers with  
15 doors on both ends, who are you referring to?

16 A. ISO containers are made with containers  
17 on both ends.

18 Q. Are you saying all ISO containers are  
19 made with doors on both ends?

20 MR. KANTAREK: Objection, form.

21 THE WITNESS: No, that is not what I  
22 said.

23 BY MR. HILL:

24 Q. What exactly -- when you say ISO  
25 containers are made with doors on both ends, what are

1       you referring to specifically?

2               A.       That some ISO containers are made with  
3       doors on both ends.

4               Q.       Is there any indication in the Sheesley  
5       reference that they are using a  
6       double-ended/double-doored container?

7               A.       And my point is there is no indication  
8       one way or the other what is on the other end, so  
9       there is no disclosure that the other end of this  
10      container isn't identical to the end that we can see.

11              Q.       So if we look at Figure 9 of Sheesley,  
12      there are three sides that are not pictured, the back  
13      end wall, the obverse side wall, and the bottom wall,  
14      correct?

15              A.       Correct.

16                      MR. KANTAREK:  Objection, form.

17      BY MR. HILL:

18              Q.       Now, even though the bottom wall is not  
19      pictured, Sheesley takes care to indicate that  
20      features 144 and 146 are present in that bottom wall,  
21      correct?

22              A.       That's correct.

23              Q.       But you think it is unclear as to whether  
24      the back end wall has doors in it?

25              A.       Sure.  This would work just fine with

1 doors in the back wall.

2 Q. But at least as described in the actual  
3 Sheesley reference you would agree with me that in  
4 other places where non-visible features are referenced  
5 they are called out, correct?

6 MR. KANTAREK: Objection, form.

7 THE WITNESS: I wouldn't say that is  
8 always the case. I haven't been through the patent to  
9 look for that, but I wouldn't say that that is always  
10 the case, no.

11 BY MR. HILL:

12 Q. Do you have an instance where it is not  
13 the case?

14 A. Like I said, I haven't looked through the  
15 patent for that, no.

16 Q. And you would agree with me that, for  
17 example, of Figure 9 if we look at that there appears  
18 to be a circle that shows kind of an X-ray vision  
19 appearing through to 144 and 146 at the bottom wall,  
20 is that correct?

21 A. Sure.

22 Q. And you would agree with me, wouldn't  
23 you, that there is no comparable X-ray vision pointing  
24 to the back end wall that is not visible, correct?

25 A. Well, you don't have -- actually, you do

1 kind of have that because if you look at Figure 18,  
2 Figure 18 is a top sectional view of the modified  
3 container, so they have taken the whole top off of the  
4 container and as you can see there the two end walls  
5 appear to be identical.

6 Q. So first of all let's focus on Figure 9.  
7 You agree with me with respect to Figure 9 there is no  
8 view through to show the back wall, is that correct?

9 A. Correct.

10 Q. And with regard to Figure 18, where is  
11 handles one -- let's see, where are doors 132 and 134  
12 depicted in Figure 18?

13 A. They would be between the corner posts.

14 Q. I am not asking where they would be, I am  
15 asking where are they depicted.

16 A. Well, there is two lines that go between  
17 the corner posts and I -- those would be where the  
18 doors are.

19 Q. So when you say two lines, which two  
20 lines are you referring to?

21 A. Well, you see the corner posts 152?

22 Q. Yes.

23 A. The two lines that are the most outside,  
24 you know, to the left -- or to the right as you are  
25 looking at the figure.

1           Q.     Could you mark it on the figure, please  
2     where you think the doors are depicted in Figure 18?

3           A.     So you have the part that is inside and  
4     you can see that, so these would be at least  
5     schematically where the doors are, they don't show a  
6     line in between them or anything like that but they  
7     schematically show them as being identical.

8           Q.     That is my point. They don't show a line  
9     -- let's take a step back.

10           You agree with me on Figure 9, Figure 9  
11     on the visible door on the visible door side, let's  
12     say, that depicts two doors, right, 132 and 134,  
13     correct?

14           A.     Well, interestingly enough even there  
15     they don't show the line in the middle.

16           Q.     But they are depicting two doors, right,  
17     132 and 134?

18           A.     Well, they call them two doors, but,  
19     again here they didn't completely draw everything in,  
20     there is no line in the middle that shows the  
21     separation between those two doors.

22           Q.     But you agree that there is something  
23     calling out two doors through the 132 and 134  
24     markings, correct?

25           A.     Well, sure.

1 Q. And there is no comparable markings on  
2 Figure 18 with respect to the doors, correct?

3 A. Well, that is because Figure 18 isn't  
4 calling out the doors on that. I mean, that is pretty  
5 typical, you don't usually put everything on every  
6 figure.

7 Q. Exactly.

8 So Figure 18 is not a good place to look  
9 if you want to understand the door structure that is  
10 disclosed in Sheesley, correct?

11 A. I disagree.

12 You know, you want to look at all of the  
13 figures in a patent to be able to tell what is going  
14 on, and clearly if I want to look and see what is  
15 going on in that door structure or in a structure that  
16 I can see from a top view I want to look at the  
17 section view, which is Figure 18, and Figure 18 shows  
18 both ends of that container as being identical.

19 Q. Figure 18, what does it show you about  
20 how many doors there are on a given end?

21 A. Well, in fact, it doesn't show the line  
22 in between the doors as Figure 9 doesn't show the line  
23 in between the doors. So if I am just looking at the  
24 figure for what the figure shows me, Figure 9 doesn't  
25 show me there is two doors either.

1 Q. What about the fact it is marked as 132  
2 and 134 as doors?

3 A. Well, sure, that is different because now  
4 you are looking at what the specification calls out  
5 and certainly there is two doors there.

6 Q. And there is no line depicting those two  
7 doors in Figure 18?

8 A. Nor is there in Figure 9.

9 Q. And nor is there any marking identifying  
10 two doors in Figure 18, correct?

11 A. That's correct.

12 Q. Let's talk for a moment about the '772  
13 and the '066 patents, which should be marked as Smith  
14 1 for the '772 and Smith 4 for the '066. If you can  
15 just take a moment there, you have those two, right.

16 So do the '772 and '066 patents disclose  
17 two different end walls?

18 A. Where are you at in my declaration?

19 Q. I am just starting with just a general  
20 question for you about if the '772 and '066 patents  
21 disclose two different end walls.

22 A. As my recollection, I believe they do.

23 Q. Where does that occur?

24 A. I believe you can actually see that in  
25 Figure 1 where one end wall has a curved shape and the

1 other end wall does not.

2 Q. Figure 1, so when you say one end wall  
3 has a curved shape, what are you referring to?

4 A. Let's see where it says it in the patent  
5 itself.

6 So it talks about in Column 6, it says,  
7 "The convex shape of end wall 22 facilitates the  
8 ability to funnel proppant within the container within  
9 the interior volume of container 12 outwardly through  
10 the flow gate 28."

11 Q. You are saying that the end wall at 22 is  
12 an end wall in this, is that correct?

13 A. Yes.

14 Q. Let's just break that down a little bit  
15 further.

16 You are in Column 6, is that correct?

17 A. Yes.

18 Q. And so we see in Column 6, Line 32, we  
19 see, "The end wall 22 extends between the bottom wall  
20 14 and top wall 16." And then it says, "Similarly,  
21 the end wall 24 extends between the bottom wall 14 and  
22 the top wall 16 and also between the sidewalls 18 and  
23 20."

24 A. Correct.

25 Q. Do you see that?

1 A. What lines are you on?

2 Q. I believe that is 32 through 35.

3 A. Yes.

4 Q. Let's talk a little bit more about the  
5 end wall 22.

6 If I am looking at this correctly we have  
7 Line 37 through 38, it talks about, "A flow gate 28 is  
8 positioned on the end wall 22." Do you see that?

9 MR. KANTAREK: Objection, form.

10 THE WITNESS: Yes.

11 BY MR. HILL:

12 Q. Is that flow gate -- that flow gate  
13 corresponds to the Figure 1, Item 28, is that correct?

14 A. I believe that's correct, yes.

15 Q. Then if we go further down I think we get  
16 into, let's see -- I think it is actually -- so then  
17 you also reference to generally convex surface, if I  
18 recall your answer correctly, also referenced that  
19 which I believe they are saying convex surface -- just  
20 trying to find where that line is.

21 A. It is Line 46.

22 Q. 46, all right.

23 I believe there is also in this  
24 description a reference to an inlet, if we go down to  
25 approximately 57 perhaps, "As such, when the container

1 12 is at a well site or other location, additional  
2 proppant can be introduced into the interior volume of  
3 the container 12 through the proppant inlet 32." Do  
4 you see that?

5 A. I do.

6 Q. And so, let's see, we then get into "Vent  
7 34 is also positioned at the end wall 22." Is that  
8 another -- do you agree with me that is another  
9 statement that is describing the structure in Column  
10 6, correct?

11 MR. KANTAREK: Objection, form.

12 THE WITNESS: I believe so.

13 BY MR. HILL:

14 Q. Great.

15 Do the patents say that the -- let me ask  
16 you first a question before we move on.

17 In your opinion have you seen any  
18 differences in terms of the features that we just  
19 described between the '066 and the '772  
20 specifications? If you want to take a moment you can  
21 take a quick look to refresh your recollection.

22 A. I believe those are the same.

23 Q. Do the patents -- here again I am talking  
24 about the '066 and the '722 patent. Do they say the  
25 end wall 24 does not have these features?

1           A.     Well, you can actually see because in  
2     Figure 1 it is actually drawn so you can see all of  
3     the features and that there isn't a convex wall on 24.

4           Q.     When you say you can see all the  
5     features, why did you say that?

6           A.     Because they have drawn it as though the  
7     container is clear.

8           Q.     So are you saying that there is no  
9     structure of any kind on the wall 24?

10          MR. KANTAREK:  Objection, form.

11          THE WITNESS:  It is not -- there is no  
12     structure shown there.  Particularly you would show  
13     that wall as being convex the way they have drawn it  
14     and they have not shown it that way.

15     BY MR. HILL:

16          Q.     So it is your position then 24 is  
17     depicting a wall that is just a total flat white  
18     square, is that the -- I mean, obviously the color  
19     doesn't matter, but that is a featureless end white  
20     square?

21          A.     Yeah, and there is several other reasons  
22     why I would believe that so.  Additionally it talks  
23     about the purpose of those features, and as you tip  
24     this container you are not tipping it from both  
25     directions.  So part of the reason for the wall is to

1 make it so the material will flow out the flow gate.

2 Q. What is Triple Eight Containers Limited?

3 A. Where are you reading?

4 Q. This is just -- I am asking you a  
5 question in your general knowledge base, first of all.

6 What is Triple Eight Containers Limited?

7 MR. KANTAREK: Objection, scope.

8 THE WITNESS: Triple Eight Containers, I  
9 have no idea.

10 BY MR. HILL:

11 Q. Do you know if Triple Eight Containers  
12 Limited is a well-regarded player in its industry?

13 A. I don't know.

14 Q. Do you know what industry Triple Eight  
15 Containers is in?

16 MR. KANTAREK: Objection, form.

17 THE WITNESS: I don't.

18 MR. HILL: Let's take a five-minute  
19 break.

20 THE VIDEOGRAPHER: It is 10:14 a.m., we  
21 go off the record.

22 (Recess taken.)

23 THE VIDEOGRAPHER: It is 10:25 a.m., we  
24 are back on the record.

BY MR. HILL:

Q. Mr. Smith, I would like to direct your attention to your '772 declaration marked as Exhibit Smith 5, and if you can turn to Paragraph 46, do you see where you have written, "A POSITA at the time of invention would recognize that many ISO containers were made with doors on both ends, including the 20-foot long ISO container disclosed in Sheesley's Figure 9, Exhibit 1003 (Sheesley) at [0050], and were readily available -- and were readily available." And it says to See Exhibit 2010. Do you see that?

A. I do.

Q. So you are citing to an Exhibit 2010, is that correct?

A. I do.

Yeah, yeah, yeah, so here is where the Triple Eight comes in, I see that now.

(Document marked Smith Exhibit 12 for identification.)

BY MR. HILL:

Q. So I am going to hand you a document that has now been marked as Exhibit Smith 12, and I want you to just take a moment and tell me if you recognize that document.

A. I do.

1 Q. And that is the Exhibit 2010 that you are  
2 citing to for that portion of your report, is that  
3 correct?

4 A. That's correct.

5 Q. This is the containers made by the Triple  
6 Eight Containers Limited company, is that correct?

7 A. Correct.

8 Q. Now, the website refers to these  
9 containers as a 20-foot double door or double-doored,  
10 is that correct?

11 A. Correct.

12 Q. Let's -- if you look at this document in  
13 the second paragraph below the heading the website  
14 states, "As with our standard 20's, they are built to  
15 the highest international specifications for marine  
16 use." Do you see that?

17 A. Yes.

18 Q. Do you see that then the paragraph  
19 continues a couple lines down, "Like our standard  
20 20's, these double doored containers are factory  
21 painted in our fleet colour, dark cobalt blue,  
22 technically listed as RAL5013." Do you see that?

23 A. Yes.

24 Q. What does standard 20's mean to you?

25 A. I would assume that that means that they

1 have a 20-foot container that they call a standard.

2 Q. And by referencing it as the standard,  
3 that denotes to the industry that it is a common  
4 configuration, correct?

5 MR. KANTAREK: Objection, form.

6 THE WITNESS: No, not necessarily. That  
7 could be just their standard container, there could --  
8 it could be that their standard container is painted  
9 their color blue, for instance.

10 BY MR. HILL:

11 Q. So do you believe that their standard 20  
12 is referring to a color?

13 A. I don't know.

14 Q. Did you do any research with respect to  
15 what the standard 20 container was?

16 A. I did not.

17 Q. Would you agree with me that the  
18 containers referred to as the 20-foot double door  
19 containers are not Triple Eight Containers' standard  
20 20-foot container?

21 A. I think you can assume that from reading  
22 that.

23 Q. Do you know whether Triple Eight  
24 Containers' standard 20-foot containers have two sets  
25 of doors?

1 A. Sorry, say that again.

2 Q. Sure.

3 Do you know whether Triple Eight  
4 Containers' standard 20-foot containers have two sets  
5 of doors?

6 A. I don't.

7 (Document marked Smith Exhibit 13 for  
8 identification.)

9 MR. KANTAREK: I am going to object to  
10 this on hearsay authenticity grounds.

11 BY MR. HILL:

12 Q. Sir, I would like to direct your  
13 attention to the document that is marked as Smith 13.  
14 Please take a moment and tell me if you recognize what  
15 this document is. I haven't seen it before, but it  
16 appears to be the same company as we were just talking  
17 about.

18 Does this appear in the top portion to  
19 reference the same containers that were referred to in  
20 your Exhibit 2010?

21 A. It appears so, yes.

22 Q. And it says containers for 20-foot double  
23 door, correct?

24 A. Yes.

25 Q. Do you see that there is above that line

1       there is also a 20-foot standard above the 20-foot  
2       double door in the far left column?

3             A.       Yes.

4             Q.       Do you know -- do you have any opinion  
5       with regard -- I would like to further direct your  
6       attention -- let's look for a moment at the URL at the  
7       bottom of the Smith 13 document. And I would like you  
8       to compare that to the URL at the bottom of the Smith  
9       12 document, and tell me if they appear to be the same  
10      URL or different URLs.

11            A.       Well, it looks like the one on Exhibit 13  
12      is an archived one from 2009.

13            Q.       With respect to the one from Exhibit 12,  
14      your Exhibit 2010 in the original pagination as it  
15      were?

16            A.       It does appear that they are the same  
17      URL.

18            Q.       Would you agree with me that the fact  
19      that Triple Eight Containers has named their 20-foot  
20      double door the double-door container whereas the  
21      20-foot standard is called the 20-foot standard,  
22      doesn't that imply that the 20-foot double door has a  
23      double door and the standard does not?

24                    MR. KANTAREK: Objection, form.

25                    THE WITNESS: I don't know that you can

1 make that leap there. You know, I mean, double-doored  
2 containers speaking as a POSITA are also standard  
3 containers, they are not -- they are not like some  
4 stepchild, they are certainly well known to those that  
5 have been around ISO containers.

6 BY MR. HILL:

7 Q. But certainly the company that you  
8 referenced in support of your declaration, they do use  
9 double-door terminology for some products and standard  
10 for other products, correct?

11 A. Well, I mean, if you certainly -- the  
12 standard one is only doors on one end you need to  
13 differentiate them somehow anyhow. So it doesn't make  
14 any difference to me.

15 Q. Let's turn back to your Exhibit 2015 now,  
16 the Smith 12.

17 Do you have an understanding as to  
18 whether the doors in this container, the double door  
19 container, have openings for control panels?

20 MR. KANTAREK: Objection, form.

21 THE WITNESS: I would doubt it.

22 BY MR. HILL:

23 Q. Well, why is that?

24 A. Because that is not something you would  
25 normally would put in an ISO container.

1           Q.     Now, Sheesley says in -- if we go back to  
2     Sheesley at Paragraph 50, Sheesley says that control  
3     panel openings --

4           A.     Hang on one second, let me find Sheesley  
5     if you would.

6           Q.     Sure, take your time.

7           A.     Thank you. All right. Paragraph 50?

8           Q.     Paragraph 50. If we look about, oh,  
9     two-thirds of the way down, do you see where it says,  
10    "Control panel openings 148 and 150 are cut in doors  
11    132 and 134," do you see that?

12          A.     I do.

13          Q.     So even if the container in Sheesley had  
14    two sets of doors, doors 132 and 134 would still be  
15    different from the other doors, wouldn't they, because  
16    of those control panels?

17                 MR. KANTAREK: Objection, form.

18                 THE WITNESS: They wouldn't be  
19    structurally different, no.

20    BY MR. HILL:

21          Q.     But they would be different in the sense  
22    that they had control panels and the others did not,  
23    right?

24          A.     Well, I mean, that certainly would be the  
25    case, but it doesn't change the structure of the doors

1 simply by cutting a control panel in there.

2 Q. Well, when you say it doesn't change the  
3 structure, certainly the structure is literally  
4 different if you make such a cutout, correct?

5 MR. KANTAREK: Objection, form.

6 THE WITNESS: No.

7 Actually, when I look at the structure I  
8 am looking at what makes the door strong and it is the  
9 tubing that goes around the door and that part, not  
10 the plate part, that would make any difference.

11 BY MR. HILL:

12 Q. But it is -- what I am getting at, it is  
13 literally not the same structure, I mean, it would be  
14 physically different to cut something with a hole than  
15 to not, correct?

16 MR. KANTAREK: Objection, form.

17 THE WITNESS: I don't think you need me  
18 to answer that.

19 BY MR. HILL:

20 Q. I am asking you to.

21 A. But, yes, I mean, if something has a hole  
22 in it and something else doesn't have a hole in it  
23 they are different.

24 Are they structurally different? I don't  
25 think I would say that.

1 Q. Would cutting holes in the walls weaken  
2 them?

3 A. Not necessarily, no. In fact, many times  
4 you cut holes in a structure just to lighten it  
5 without weakening it, that is done in like I-beams and  
6 things all the time.

7 Q. Let's talk for a little bit about some  
8 biographical materials related to you.

9 Sir, do you have experience working with  
10 ISO containers?

11 A. Yes.

12 Q. What is that experience?

13 A. I have designed trailers for ISO  
14 containers. I have actually designed some ISO  
15 containers for Road Systems.

16 Q. What sort of ISO containers did you  
17 design?

18 A. It has been a while ago, but I think we  
19 designed 20-, 30-, and 40-foot ISO containers, if I  
20 recall correctly.

21 Q. If I believe you said for Road Systems,  
22 is that correct?

23 A. Yes.

24 Q. Could you just briefly tell me what Road  
25 Systems is?

1           A.     Road Systems, I think, ended up being  
2           purchased by Consolidated Freight or they were a  
3           division of Consolidated Freight or something, I don't  
4           remember exactly what the relationship is there.

5           Q.     When did you design those ISO containers?

6           A.     So long ago that I can't tell you the  
7           date. It has been over 15 years ago.

8           Q.     Got it.

9                     Were you a direct employee or consultant  
10          or some other relationship?

11          A.     Just worked as a consultant, my  
12          consulting company.

13          Q.     How many sets of doors did the ISO  
14          containers that you designed for the Road Systems  
15          have?

16          A.     You know what, I really don't recall.

17          Q.     When you say that you designed these 20-,  
18          30-, and 40-foot ISO containers, what was the nature  
19          of the design work that you did?

20                     And what I am getting at here is ISO sets  
21          forth certain standards, correct?

22          A.     Well, there are ISO standards, yes.

23          Q.     And, I mean, to some -- on some level  
24          compliance with ISO standards determines whether it is  
25          an ISO container, correct?

1 MR. KANTAREK: Objection, form.

2 THE WITNESS: I guess that is reasonable.

3 BY MR. HILL:

4 Q. So I guess what I am getting at is when  
5 it comes to designing an ISO container like what is  
6 the difference between what you did when you were  
7 designing ISO containers and just what the  
8 specifications set forth, for example?

9 MR. KANTAREK: Objection, scope.

10 THE WITNESS: I mean, there is the  
11 standards set out certain things as far as size and  
12 capacity and the like but they don't tell you things  
13 like what material it has to be made out of, what the  
14 structure is going to be, how you are going to fit  
15 everything together, none of that is spelled out.

16 BY MR. HILL:

17 Q. I see.

18 Let's turn now to your declaration for  
19 the '772 patent. You may already have that in front  
20 of you.

21 If you go back to that document, I would  
22 like to direct your attention to Paragraph 56, which  
23 begins on Page 20 of the original pagination. If we  
24 start at the very bottom of that Page 20, it looks  
25 like you say that, "Bulk proppant containers such as

1 Sand Kings, Mountain Movers, or Frac Sanders are not  
2 'proppant transporting road vehicles'." Do you see  
3 that?

4 A. I do.

5 Q. What is your basis for that opinion?

6 A. That is not what they are designed for.  
7 You can look online, so, you know, if you actually are  
8 a POSITA you would know that, it is something that I  
9 pointed out to the attorneys in this case, and many of  
10 these things are heavy enough that they take up about  
11 as much weight as you can actually put on the road  
12 legally and so there is really not even any space, if  
13 you would, for putting sand in them. They are just  
14 not designed to do that. They are designed to be --  
15 to hold large amounts of sand when you get it to a  
16 frac site, as I pointed out in Stegemoeller.

17 Q. When you say many of these vehicles are  
18 so heavy that they are at or near weight restrictions,  
19 does that mean that some of them are not?

20 A. I haven't looked at all of them. I don't  
21 really know the answer to that.

22 Q. When you say as many as you can put on a  
23 road legally, what do you mean by that in terms of --  
24 I understand you are making a reference to some kind  
25 of weight restriction?

1 MR. KANTAREK: Objection, form.

2 THE WITNESS: Typically you get 80,000  
3 pounds total without having some sort of additional  
4 fee that you have to pay or whatever, so you have to  
5 subtract the truck from that and you get the rest of  
6 that for whatever is hooked up to it.

7 BY MR. HILL:

8 Q. What -- if you pay a fee in some  
9 circumstances you can get additional capacity?

10 A. Sure. You can get overweight permits.

11 Q. How far overweight can you get, do you  
12 know?

13 A. It depends on the state.

14 Q. When you say that, what do you mean?

15 A. It depends on the state. They control a  
16 lot of their roads and so it really depends on what  
17 the state law is as to what -- how much overweight you  
18 can put on the road.

19 Q. So what is the -- are you aware of what  
20 the maximum overweight limit is for any state?

21 MR. KANTAREK: Objection, form.

22 THE WITNESS: Actually, I think there are  
23 some states, in fact I think Michigan may be one of  
24 them, that just is a function of how many axles you  
25 put underneath it.

1 BY MR. HILL:

2 Q. So some states are doing it as an axel  
3 basis rather than a pure-weight basis?

4 A. Correct.

5 Q. What does over-the-road mean to you?

6 A. That means -- typically equipment is  
7 looked at as stuff that is not designed to be  
8 over-the-road equipment, it is not licensed to go on  
9 the road. It would be like a rough terrain forklifts  
10 or, you know, front-end loaders, that type of  
11 equipment that is off-road equipment. And  
12 over-the-road equipment is generally that that is  
13 licensed to be licensed to be on the road.

14 Q. Licensed by the state?

15 A. Yes.

16 Q. So the licensure requirements vary as we  
17 have established earlier, right?

18 A. I am not sure the licensure, we were  
19 talking about a whole different thing, we were talking  
20 about weight restrictions, which isn't the same thing.

21 Q. So to circle back on that in terms of my  
22 question of do you know what the maximum overweight  
23 limit is for any state, what is the answer to that?

24 A. I don't know. I would have to look.

25 Q. What does a road vehicle mean within the

1 context of the '772 patent in your opinion?

2 A. I think I have answered that already. I  
3 think it is a vehicle that is designed and licensed to  
4 go on the road.

5 Q. Does it require highway driving?

6 A. I believe so. That is generally what you  
7 consider to be a road vehicle.

8 Q. Are you familiar with over-the-road frac  
9 sanders?

10 A. You would have to point me to what you  
11 are actually talking about. I mean, they are in the  
12 same category as the Sand Kings and Mountain Movers  
13 and Frac Sanders, they are essentially the same type  
14 of unit, and they do go over-the-road.

15 Q. So let's go for a moment to Figure 3 of  
16 the '772 patent.

17 So Figure 3 of the '772 patent doesn't  
18 portray any roads, does it?

19 A. Not that I can see, no.

20 Q. Does anything in the patent specify what  
21 type of road the proppant transporting road vehicle is  
22 driven on?

23 MR. KANTAREK: Objection, form.

24 THE WITNESS: I think that is -- like I  
25 said, it is pretty clear that there is a division and

1 a POSITA knows that there is a division between  
2 over-the-road vehicles and off-road vehicles. The  
3 fact that you can drive an off-road vehicle on an  
4 off-road doesn't make it a road vehicle.

5 BY MR. HILL:

6 Q. What I am getting at is are you just  
7 basing that on the word road or is there any  
8 additional citation to the '772 patent you would give  
9 me with regard to what it means for a proppant  
10 transporting road vehicle to fit that category?

11 MR. KANTAREK: Objection, form.

12 THE WITNESS: I think, like I said, it is  
13 a terminology that is well known in the art. In fact,  
14 there is actually standards that talk about road  
15 vehicles and off-road vehicles, so it is not something  
16 that one even has to -- I mean, that is just known.

17 BY MR. HILL:

18 Q. Now, to confirm, does vehicle -- vehicle  
19 means here a trailer attached to the vehicle, not the  
20 vehicle itself, right?

21 MR. KANTAREK: Objection, form.

22 THE WITNESS: Well, first of all, where  
23 are you talking about here?

24 BY MR. HILL:

25 Q. With respect to the '772 patent --

1 MR. KANTAREK: Objection, form.

2 BY MR. HILL:

3 Q. -- and the claims that refer to a  
4 proppant transporting road vehicle that you are  
5 opining on.

6 MR. KANTAREK: Objection, form.

7 THE WITNESS: And your question was what  
8 again?

9 BY MR. HILL:

10 Q. The term vehicle means a trailer attached  
11 to the vehicle, not the vehicle itself, right?

12 A. No. I mean, the trailer is a vehicle  
13 also.

14 Q. Let's kind of go through this a step at a  
15 time, let's stick to Figure 3, for example.

16 If we look at Figure 3 and we look at,  
17 say, Elements 72, Elements 82, we have kind of a truck  
18 with a trailer being depicted, correct?

19 MR. KANTAREK: Objection, form.

20 THE WITNESS: Which numbers were you  
21 talking about?

22 BY MR. HILL:

23 Q. Let's start with truck 82, it is in the  
24 sort of upper central portion below the train  
25 depiction.

1 A. Okay.

2 Q. So when truck 82 is loaded with proppant  
3 the proppant doesn't like get filled into the cabin,  
4 right, it is going into the back portion container 70  
5 and 72, right?

6 A. Agreed.

7 Q. And that is the same with respect to the  
8 truck 108 which is also depicted as having like a  
9 trailer section in the back?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: So what are you asking?

12 BY MR. HILL:

13 Q. So what I am getting at is we agree that  
14 it is not the -- you could move the cabin portion, the  
15 truck portion separately without the containers that  
16 are actually containing the sand, right, the proppant?

17 A. Sure.

18 Q. And the point here is that when the sand  
19 is loaded it is not physically loaded into the cabin  
20 of the truck, it is located -- it is put within a  
21 container specifically to hold the sand, right?

22 A. Correct.

23 Q. So when the claim says conveying the  
24 proppant to one or more proppant transporting road  
25 vehicles, that encompasses conveying the proppant into

1 vessels that are attached to those vehicles, right?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: I would believe so.

4 BY MR. HILL:

5 Q. Let's look now --

6 A. In fact, it actually becomes part of the  
7 vehicle.

8 Q. Let's turn now to the Sheesley reference.  
9 This is your Smith 9 exhibit in front of you  
10 currently. Let's look --

11 One second, I am going to reattach my  
12 mic. I am reattached.

13 Let's look at Sheesley Figure 4. Let me  
14 know when you are there.

15 A. I am there.

16 Q. And if you look at Figure 4 component  
17 300, take a quick look at that element. Let me know  
18 when you are ready.

19 A. Okay.

20 Q. Is it your opinion that the component 300  
21 is not and cannot be proppant transporting road  
22 vehicle?

23 A. Correct.

24 Q. Is that true even if it is attached to a  
25 trailer?

1 A. Correct.

2 Q. And that is your opinion even though, as  
3 you just testified, if a container is attached to a  
4 vehicle in your view is part of the vehicle for  
5 purposes of the depictions of the patents at issue, is  
6 that correct?

7 A. Correct. That is a Sand King, which we  
8 have discussed, and I discussed in my declaration,  
9 that is not designed to be transferred over-the-road  
10 filled.

11 MR. KANTAREK: Objection, form to that  
12 question.

13 BY MR. HILL:

14 Q. Let's turn to Paragraph 83 of Sheesley on  
15 Page 26 of 28 in the lower-right pagination. So I  
16 would like to walk through a few different things with  
17 you here.

18 Let's start in I say about the third line  
19 where it says, "The Rough Terrain Cargo Handler 298  
20 can pick up one of the modified cargo containers 270  
21 full of sand and unload the modified cargo container  
22 270 to a bulk sand container 300 at the frac site.  
23 The bulk sand container 300 may be the Frac Sander as  
24 is made by NOV-HPCO, located at 492 N. W.W. White  
25 Road, San Antonio, Texas, 78219." And then it says,

1 "From the Sand King 300, sand travels on a conveyor in  
2 the bottom thereof to the blender (not shown) at the  
3 frac site." Do you see that?

4 A. Yes.

5 Q. Do you know what the Rough Terrain Cargo  
6 Handler 298 is?

7 A. Sure.

8 Q. And what is that?

9 A. I don't know what you mean by the  
10 question.

11 Q. So I just asked you what it was and you  
12 said yes and then you said you weren't sure what the  
13 -- do you have an understanding of what that  
14 terminology means in the context of the frac sanding  
15 industry?

16 MR. KANTAREK: Objection, form.

17 THE WITNESS: Well, I understand what  
18 that is. I have been to its website and I have looked  
19 at videos of how to operate and everything else, so I  
20 am not sure what you are asking about.

21 BY MR. HILL:

22 Q. What I am asking is what is it and how  
23 does it operate.

24 A. It is a rough terrain container handler,  
25 which is made to -- they use it -- the military uses

1       it, it is primarily used to move containers around in  
2       an off-road situation, hence the rough terrain part.

3           Q.       All right. Let's keep that close at  
4       hand, I may refer back to it.

5                    I would like to direct your attention now  
6       to the Uhryn Smith 10 exhibit and Figure 3 of that  
7       when you are there. Are you at Figure 3?

8           A.       I am.

9           Q.       Thank you.

10                   If you look at Figure 3 of Uhryn and the  
11       component label 64 in the bottom left corner, do you  
12       see that component?

13          A.       I do.

14           Q.       Is it your opinion that component 64 is  
15       not and cannot be a proppant transporting road  
16       vehicle?

17                   MR. KANTAREK: Objection, form.

18                   THE WITNESS: Again, that is I think I  
19       have been through that, that is labeled as a Mountain  
20       Mover and they are filling the Mountain Mover here.

21       BY MR. HILL:

22           Q.       If we look to page -- Paragraph 20,  
23       Paragraph 20 is a large paragraph, I will direct your  
24       attention to the second column about two-thirds to  
25       three-quarters of the way down. Do you see where it

1        says, "a mountain mover 64, also called a sand king,  
2        may be connected to receive proppant from the proppant  
3        transfer device 58, the mountain mover 64 being  
4        provided to load one or more blenders 66 on site for  
5        mixing proppant into treatment fluids for injection  
6        downhole into well 68 at the well site 18." Do you  
7        see that?

8            A.        Sure.

9            Q.        So you have referenced it before, but I  
10       just want to make sure for the record that I  
11       understand what you mean by a Sand King, what your  
12       understanding of that term is.

13           A.        Well, this is a piece of equipment that  
14       is used to store large amounts of sand on frac sites  
15       and generally is used to feed a blender as we just  
16       read.

17           Q.        Is a frac -- is a Sand King in some way  
18       different than a Mountain Mover or in your view are  
19       those synonymous?

20           A.        They are very similar.

21           Q.        But that suggests they are not entirely  
22       the same?

23           A.        Made by different companies.

24           Q.        Are you aware of any technical  
25       differences between those kinds of products?

1           A.     They are -- I mean, I would have to look  
2     to be able to tell you what the small differences may  
3     be.

4           Q.     Do you -- are there any other names that  
5     you are familiar with for the technology you are  
6     broadly talking about as a Sand King or Mountain  
7     Mover?

8           A.     Frac Sanders.

9           Q.     Is that a similar situation?

10                  What I am getting at, does a frac sander  
11     have any implications from a technical perspective  
12     that Mountain Mover doesn't have?

13          A.     No.

14          Q.     Earlier we were talking about the  
15     Sheesley reference, there was a reference to the  
16     NOV-HPCO company. I can direct your attention to this  
17     more specifically. This is in Paragraph 83, and kind  
18     of that end -- two-thirds of the way down where they  
19     also give that address, they are indicating that the  
20     Frac Sander as is made by NOV-HPCO. Do you see that?

21          A.     I do.

22          Q.     Do you have a familiarity with what  
23     NOV-HPCO?

24          A.     You know, I actually went to look that up  
25     and I don't know that they are in business anymore is

1 my recollection.

2 Q. Do you know if the frac sander made by  
3 NOV-HPCO had wheels?

4 A. I don't know whether it did or not. I  
5 would assume it does because it is similar to the  
6 Mountain Mover, they had to get them to the site in  
7 order to set them up.

8 Q. Have you ever actually seen an NOV-HPCO  
9 frac sander?

10 MR. KANTAREK: Objection, scope.

11 THE WITNESS: Maybe. You know, I can't  
12 tell you -- I don't have any specific recollection of  
13 seeing that, but I have been to lots and lots of sites  
14 so I may have seen it and not known I had seen it.

15 BY MR. HILL:

16 Q. But at least in terms of preparing for  
17 your declarations and to testify today, you haven't  
18 seen an NOV-HPCO, a frac sander, recently?

19 A. No.

20 MR. KANTAREK: Objection, form.

21 BY MR. HILL:

22 Q. Is Sand King -- you indicated it might be  
23 dependent on who makes it. Do you know what company  
24 or companies make Sand Kings?

25 A. It has been a while since I looked at

1           that. I don't have that off the top of my head, no.

2           Q.       When you say it has been a while, how  
3           long has it been?

4           A.       Since I was looking at doing my  
5           declaration.

6           Q.       Do you recall if there was one or more  
7           companies that made Sand Kings?

8           A.       Again, I think that is a trade name. I  
9           just don't remember who it is that -- whose trade name  
10          it is.

11          Q.       Got it.

12                   Other than NOV-HPCO are you aware of any  
13          other companies that make products that they call frac  
14          sanders?

15          A.       I think Haliburton makes one. That is  
16          the main one that comes to mind.

17          Q.       And you believe they call that product a  
18          frac sander?

19                   MR. KANTAREK: Objection, form.

20                   THE WITNESS: I am not sure what they  
21          call it. Theirs may actually be one of the other  
22          trade names.

23          BY MR. HILL:

24          Q.       Like a Sand King or Mountain Mover?

25          A.       Yes.

1 Q. Did you look at any Haliburton products  
2 in this category as part of your declaration  
3 preparation?

4 A. I don't recall whether I did or not.

5 Q. Did you look at any Haliburton containers  
6 in preparation for your testimony -- I am sorry, did  
7 you look at any Haliburton technology in this Sand  
8 King/Frac Sander/Mountain Mover space in preparation  
9 to testify today?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: No.

12 BY MR. HILL:

13 Q. What companies make the Mountain Movers?

14 A. I don't remember who that is either.

15 Q. If we look back at Uhryn, component -- so  
16 if we look at Figure 3 again, we agree that element 64  
17 that is a movable component, correct?

18 MR. KANTAREK: Objection, form.

19 THE WITNESS: Sure. It has got wheels.

20 BY MR. HILL:

21 Q. Exactly.

22 And component 64 is further portrayed as  
23 the same size as the truck 32 in this Figure 3,  
24 correct?

25 MR. KANTAREK: Objection, form.

1 THE WITNESS: I don't -- I don't know  
2 that there is -- there is not enough to be able to  
3 tell that.

4 I mean, that is -- I mean, you see just  
5 the back end of it, it is drawn in schematic, that is  
6 taking a huge leap, which is not correct.

7 BY MR. HILL:

8 Q. Are the -- do you know if component 64 is  
9 movable when filled?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: Again, it is a -- the  
12 Mountain Mover/Sand Kings, those things, are not  
13 designed to be movable and filled.

14 BY MR. HILL:

15 Q. Are they ever moved when filled?

16 MR. KANTAREK: Objection, form.

17 THE WITNESS: I am not aware of them ever  
18 being moved when filled.

19 BY MR. HILL:

20 Q. Do you know if --

21 A. In fact, they probably can't be moved  
22 when filled because they would probably be -- the  
23 weight would be well over what the axles are designed  
24 to handle on the road.

25 Q. How much are the axles designed to handle

1 on the road in terms of weight?

2 A. Well, you normally don't design the axles  
3 to be way over what the normal weight is. And these  
4 are designed to be transferred over-the-road empty so  
5 you wouldn't design them to handle more than the empty  
6 weight.

7 Q. Do you know what any of them are actually  
8 -- what any of the axles on, say, a Sand King are  
9 actually rated to?

10 A. I have not looked, no.

11 Q. Do you know if those products ever get  
12 involved with overweight fees for purpose of being  
13 transported over-the-road?

14 MR. KANTAREK: Objection, form.

15 THE WITNESS: I don't think you need to  
16 because, as we have discussed, they are designed to be  
17 transported over-the-road empty and filled at a frac  
18 site.

19 BY MR. HILL:

20 Q. Let's talk for a moment about your work  
21 within the fracking industry.

22 What experience do you have in the  
23 fracking industry?

24 A. So I am not sure I would call it within  
25 the fracking industry, but I have designed a number of

1 pieces of equipment for the drilling field.

2 I am actually part owner in a number of  
3 wells and I have been to well sites all over the place  
4 as a result.

5 Q. What pieces of equipment did you design?

6 A. Well, several different ones. I have  
7 designed drill rigs. I have designed a drill pipe  
8 handler. I have done a number of cases, product  
9 liability cases, involving drilling and drilling  
10 sites.

11 Q. The wells that you own, are any of those  
12 wells -- have they been fracked?

13 A. I sure hope so because you don't get much  
14 out of them if they are not fracked.

15 Q. Do you know who performed that fracking?

16 A. I don't know.

17 Q. Did you ever -- were you ever onsite as  
18 any of those were being fracked?

19 A. Yes.

20 Q. Did you have any role in overseeing the  
21 logistical process of fracking for those well sites?

22 A. No.

23 Q. Do you know if Sand Kings are  
24 standardized in terms of their volume?

25 A. Well, you use the term Sand King, which I

1 believe is a trademark or a particular company, so I  
2 am sure that they make it a particular size.

3 Q. Do you know if Sand Kings are the same  
4 size as Mountain Movers?

5 A. I don't know. I have not looked.

6 Q. But do you know if they are the same size  
7 as Frac Sanders?

8 A. I have not looked.

9 Q. Do you know if anyone makes smaller  
10 versions of these products?

11 A. I have not looked.

12 Q. Do you know whether anyone makes versions  
13 of those products that are movable when filled?

14 A. I do not believe they do.

15 Q. Are you certain of that?

16 A. I am quite certain that that is --  
17 because that is not what they are designed to do, they  
18 are designed to be moved empty and store sand onsite.

19 Q. Now, when you say -- you are talking  
20 about the products you are familiar with though,  
21 right?

22 A. Correct.

23 Q. And you just identified that you are not  
24 familiar with the full range of products in this area,  
25 correct?

1 A. Well --

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: You never know what you  
4 don't know, so your question does someone make  
5 something, it is possible, but the ones that I have  
6 looked at are all designed just like the Stegemoeller  
7 patent says to be put up onsite and used to hold sand  
8 to put in to the mixer, so that is pretty typical.

9 BY MR. HILL:

10 Q. And the ones you looked at do not include  
11 the frac sander product?

12 MR. KANTAREK: Objection, form.

13 THE WITNESS: Do not include the frac  
14 sander product?

15 BY MR. HILL:

16 Q. Correct.

17 A. I think the frac sander is more of a  
18 generic term for like a Mountain Mover.

19 Q. Earlier didn't you testify that the frac  
20 sander was a specific product made by NOV-HPCO?

21 MR. KANTAREK: Objection, form.

22 THE WITNESS: I don't think I testified  
23 to that, but we did look that up and --

24 BY MR. HILL:

25 Q. If I may help --

1           A.     I think you are correct, you know, in the  
2     patent it has Frac Sander capitalized, so it appears  
3     that that may be their product.

4           Q.     Let's direct your attention back again to  
5     the '772 declaration.

6                     I would like to direct your attention to  
7     Paragraph 57. I will give you a moment to get there.

8           A.     Okay.

9           Q.     So you say that, "Unloading Sheesley's  
10    modified cargo containers into a separate proppant  
11    transporting road vehicle is contrary to the teachings  
12    of Sheesley. A POSITA reading Sheesley would  
13    understand that the belief is that the proppant can be  
14    transferred" --

15          A.     Benefit.

16          Q.     I am sorry, that "the benefit is that the  
17    proppant can be transported in the container from the  
18    quarry to the well site in the container, without  
19    being removed or transferred, saving time and money."  
20    Do you see that?

21          A.     Yes.

22          Q.     But Sheesley does teach unloading the  
23    proppant from the containers before it is used at the  
24    well site, right?

25          A.     Point me to where you are talking about.

1 Q. Sure.

2 Let's look together at Sheesley,  
3 Figure 4, Sheesley Figure 4. Let me know when you are  
4 there.

5 A. I am there.

6 Q. Great.

7 So that shows sand being unloaded from  
8 filled containers into another vessel, correct?

9 A. That is at the well site.

10 Q. It is not being used at the well site, is  
11 it?

12 A. Well, sure. That is at the well site.

13 Q. Let's look at Sheesley Paragraph 83. If  
14 we look at Paragraph 83, so we have the rough terrain  
15 container handler?

16 A. Which is used at the well site, by the  
17 way.

18 Q. Okay.

19 Let me be a little more specific in my  
20 question.

21 You would agree with me that Figure 4 of  
22 the Sheesley this depicts handling of sand, correct?

23 MR. KANTAREK: Objection, form.

24 BY MR. HILL:

25 Q. The sand is being moved from box 270 to

1 structure 300?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: Sure.

4 BY MR. HILL:

5 Q. And so is it fair to say that Sheesley  
6 teaches the complete elimination of handling sand  
7 between loading the containers and using the sand at  
8 the well site, is it?

9 A. Well, I think that exactly is what this  
10 is showing. I mean, you are using the sand at the  
11 well site here, you are not doing something in between  
12 the well site and where the container is loaded.

13 This is exactly what Sheesley is talking  
14 about. This is exactly what the benefit of Sheesley  
15 is, is you load it at the quarry and you get it all  
16 the way to the well site without ever having the sand  
17 out of the container.

18 Q. Sand is leaving the container at 270 to  
19 go into element 300, correct?

20 A. At the well site, yes.

21 MR. HILL: Maybe a five-minute break.

22 THE VIDEOGRAPHER: It is 11:15 a.m., we  
23 go off the record.

24 (Recess taken.)

25 THE VIDEOGRAPHER: It is the beginning of

1 Tape No. 2 of the testimony of Fred Smith, it is  
2 11:30 a.m., we are back on the record.

3 BY MR. HILL:

4 Q. Mr. Smith, I would like you to direct  
5 your attention now to your '066 declaration,  
6 Exhibit 6. I will also be making some references to  
7 the '066 patent itself, Exhibit 4, so it probably  
8 makes sense for you to get that close at hand as well.

9 A. It is here somewhere.

10 Q. Take your time. It might take a moment.

11 A. There it is.

12 Q. Great, thank you.

13 If you can then direct your attention to  
14 Paragraph 48 on Page 18 of your declaration. So if I  
15 am looking at this paragraph correctly you opine that  
16 -- with respect to Sheesley's auger 303 that an auger  
17 is a conveyor, it is not a source from which to full  
18 the plurality of empty proppant containers.

19 Please take a moment and tell me if you  
20 agree with that characterization of your Paragraph 48.

21 A. Yes.

22 Q. Thank you.

23 So it is your opinion that Claim 3  
24 requires the conveyor to be separate from the source?  
25 And if you need a moment to confirm what claim this

1 relates to, that is certainly fine, it is on the  
2 previous page, I believe.

3 A. So your question was is the source  
4 different from the conveyor?

5 Q. Yes, that Claim 3 requires the conveyor  
6 to be separate from the source.

7 A. It uses two different words so I believe  
8 that is correct.

9 Q. What do you view as the conveyor in the  
10 '066 patent before you as Smith Exhibit 4 now?

11 A. They actually talk about the conveyor, I  
12 think it is 80 and 84, are the conveyor that takes it  
13 from the rail vehicle.

14 Q. Let's take this a step at a time. Let's  
15 look at Figure 3 of the '066.

16 So you are describing elements 80 and 84  
17 as depicted in that Figure 3 as the conveyors, is that  
18 correct?

19 A. They are -- two of the conveyors that are  
20 discussed, yes.

21 Q. Where does conveyor 80 discharge its  
22 proppant?

23 MR. KANTAREK: Objection, form.

24 THE WITNESS: It is unloaded into vessel  
25 70 if you look at Column 8 around Line 30.

1 BY MR. HILL:

2 Q. All right.

3 What about 72?

4 A. Sure, that, too.

5 Q. And where does conveyor 84 discharge its  
6 proppant?

7 MR. KANTAREK: Objection, form.

8 BY MR. HILL:

9 Q. I might direct your attention to Column  
10 80, the last several lines --

11 A. 80?

12 Q. Column 8.

13 A. That would be a really long patent.

14 Q. I hear that.

15 A. It says container 74.

16 Q. It also says that the container 76 can be  
17 maintained in proximity to another hopper of the bulk  
18 material train 64 so that further unloading can occur,  
19 is that correct?

20 A. Yes.

21 Q. So these conveyors 80 and 84 are  
22 unloading directly into empty containers, right?

23 A. Yes.

24 Q. So where is the source from which to fill  
25 the plurality of empty proppant containers as claimed

1 in the '066 patent?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: If you look you also have  
4 -- let's see. Let me see something in here real  
5 quick.

6 It also talks about filling using  
7 conveyor 106 and material coming out of 92.

8 BY MR. HILL:

9 Q. I am sorry, where are you referring to?

10 A. It talks about -- if you look at Column 8  
11 it also talks about that you can fill the containers  
12 90 and 92 and then they can be tilted and dumped and  
13 then it is conveyed up and dumped into the other  
14 containers.

15 Q. Those are different containers than were  
16 identified up above with respect to conveyors 80 and  
17 84, correct?

18 A. I don't know that they have to be  
19 different containers. But even if they are they are  
20 still empty proppant containers.

21 Q. Does the patent describe filling  
22 containers from the pneumatic bulk trailers that you  
23 referenced?

24 MR. KANTAREK: Objection, form.

25 THE WITNESS: From the pneumatic bulk

1 trailers?

2 BY MR. HILL:

3 Q. Yes.

4 A. I think you are actually filling the  
5 pneumatic bulk trailers, not the other way around.

6 Q. And where is that being filled from?

7 A. It is being filled from container 90.

8 Q. And where is container 90 being filled as  
9 described in the patent?

10 A. I don't know that it says specifically,  
11 but container 90 would be filled from the train.

12 Q. Why is container 90 -- so, first of all,  
13 do you have any citation for that?

14 A. So if you look at -- if you look at  
15 Column 8 about at 45, it talks about how it has taken  
16 the full containers 70, 72, 74 and that it has removed  
17 them from the truck and then it has placed containers  
18 92 -- and I think that is a typo, it should be 90 and  
19 92 -- upon the tilting mechanisms, 94 and 96  
20 respectively. So it is just telling you what you can  
21 do with these containers that have been filled up.

22 Q. Thank you.

23 Let's turn back to your '602 -- let's  
24 turn to your '602 declaration, and not the '066, but  
25 the '602, which should be -- that should be --

1 A. Exhibit 8.

2 Q. Yes, correct.

3 And as before it probably makes sense to  
4 get the '602 patent close at hand, Exhibit 2 in the  
5 Smith exhibit markings.

6 If you can turn to Paragraph 56 of your  
7 declaration on Page 20, if you look at Line 56 -- I am  
8 sorry, the first line of Paragraph 56, do you see  
9 where you say that the system disclosed in Sheesley  
10 would not work with a forklift?

11 A. Yes.

12 Q. What is your basis for that opinion?

13 A. Well, so the patent describes  
14 specifically using the rough terrain container handler  
15 because of its ability to place these containers on  
16 the trailer longways or, in other words, so that they  
17 are transversed to the trailer axis, and as you can  
18 see in Figure 7 you have a number of things in the  
19 road to put them on from the other direction, namely  
20 the trailer gooseneck and the control tower, and so it  
21 makes it impossible to put them on the trailer from  
22 that direction. And it is even harder because not  
23 only do you have to get over the gooseneck but you  
24 have to place them eight feet away, so now you are  
25 taking this heavy container and trying to place it

1 16 feet away and get over the gooseneck, which you  
2 can't do either. It makes it impossible.

3 Q. Just for clarity of the record, that is  
4 Figure 7 of which patent?

5 A. Of Sheesley.

6 Q. But Sheesley also teaches positioning  
7 containers the other way such that the short ends of  
8 the container are aligned, correct?

9 A. Where do you read that?

10 Q. So let's take a look together at Figure 2  
11 of Sheesley. Tell me when you are there.

12 A. Okay.

13 Q. Several of the containers portrayed in  
14 Figure 2 are loaded onto truck trailers, correct?

15 A. Sure.

16 Q. Could the containers portrayed in  
17 Figure 2 be loaded and unloaded with a forklift?

18 A. Sure. But that is not the same thing. I  
19 mean, this is the transport to get to the well site.  
20 If you are talking about if you read Sheesley, now  
21 when it gets to the well site you are supposed to put  
22 it on this trailer that allows you to get the sand out  
23 of it and take it off to wherever it needs to go to,  
24 the mixer or whatever, so you are talking about apples  
25 and oranges. So what is in Figure 2 has nothing to do

1 with what is in Figure 6 and 7 and likewise.

2 Q. But do you agree that the containers  
3 positioned on truck trailers could be loaded and  
4 unloaded with a forklift?

5 A. That is not my -- sure, you could load  
6 them onto the truck trailer without any problem, but  
7 my point is is that Sheesley doesn't work with a  
8 forklift and so you couldn't load those containers  
9 with fork pockets on the sides onto the Sheesley  
10 trailer shown in Figure 7A, it just won't work, you  
11 can't get to it, so Sheesley becomes unusable.

12 Q. By the way, have you ever seen a forklift  
13 moving a container where it is interacting with the  
14 forklift position such that the container is upside  
15 down?

16 MR. KANTAREK: Objection, form.

17 THE WITNESS: Such that the container is  
18 upside down?

19 BY MR. HILL:

20 Q. Yes.

21 A. You mean so the fork -- I don't think I  
22 ever have actually seen one with it upside down.

23 Q. Let me --

24 A. In fact, you wouldn't do that because  
25 they are not designed to work upside down.

1 Q. Let me ask you a quick question.

2 If we can turn for a moment to let's just  
3 say the '602 patent, that is Smith Exhibit 2, if you  
4 can then look at Figure 3. Are you there?

5 A. I am.

6 Q. So do you see there is what appears to be  
7 a forklift lifting 116 on the left portion about the  
8 top half left portion?

9 A. Yes.

10 Q. Do you see a forklift that is depicted to  
11 the right of that?

12 A. I do.

13 Q. What is that forklift depicting?

14 A. I have no idea.

15 Let me read and see what it says.

16 It just says that it is position to allow  
17 for the lifting and transport of containers 70, 72,  
18 74, and 76.

19 Q. Would you agree with me that forklift 86  
20 appears to be holding that container from at least as  
21 you look at it, the top, from the perspective of a  
22 person looking at the setup?

23 MR. KANTAREK: Objection, form.

24 THE WITNESS: So there are forklifts that  
25 -- well, first of all, they are not really forklifts,

1       okay.

2                   The only way you would do that is with  
3       the corner castings and they actually make a -- they  
4       actually make a whole container handling unit that  
5       would engage the top corner castings. You would not  
6       lift that with a forklift like that, no.

7       BY MR. HILL:

8               Q.     So you consider this to be not --  
9       non-forklift loader/unloaders?

10            A.     Well, so the one is discussed as a --  
11       let's see what it actually says, it just calls it a  
12       loader/unloader 86, and that would not be using the  
13       forks. You would not lift the top from forks that  
14       way. You want to lift it with the corners, that is  
15       how they are designed to be lifted, and it is strong  
16       enough to do it that way, you wouldn't do it with  
17       forks.

18            Q.     Is that depicted in Figure 3 in any way?

19            A.     Yes. I think you can actually see the --  
20       you can actually see on top of that container you can  
21       actually see a post that is all the way at the end  
22       that goes all the way across the container, that is  
23       essentially what a container handler would look like.  
24       In fact, if you look at Sheesley you can kind of see  
25       the same thing, and if you look at -- and, see,

1 Sheesley is also picking it up from the top.

2 Let's see, where did my Sheesley go? If  
3 you look at let's say Figure 3 or Figure 4, you can  
4 see that beam that goes all the way across as it is  
5 picking that container up, and so that thing is the  
6 size of the whole container and engages the corner  
7 pockets. That is essentially what you are saying in  
8 Figure 3 of the patent.

9 Q. Let's go back to the Sheesley reference  
10 for a moment and look at Figure 5. Which way are  
11 those containers positioned?

12 A. Well, the long axes in concert with the  
13 long axis of the rail vehicle.

14 Q. Could that figure be loaded and unloaded  
15 with a forklift as depicted?

16 A. Well, first of all, there is no forklift  
17 pockets even in there so I likely would not be  
18 unloading that with a forklift.

19 Q. Do you know what a telehandler is?

20 A. Sure.

21 Q. What is a telehandler?

22 A. It is a -- some people call them rough  
23 terrain forklifts. They have a telescoping boom with  
24 forks on it.

25 Q. Are you familiar with that from previous

1 cases of work?

2 A. I do a lot of work for JLG who makes  
3 their -- one of the premier companies making  
4 telehandlers.

5 Q. What is a telehandler used for?

6 MR. KANTAREK: Objection, scope.

7 THE WITNESS: They use it for all sorts  
8 of things, but typical use would be, for instance, to  
9 lift a load of shingles up onto the top of a roof, for  
10 instance.

11 And I will also note that telehandlers  
12 are not made in this size of -- to pick up this size  
13 of a container, won't do it.

14 BY MR. HILL:

15 Q. Why are telehandlers sometimes called  
16 rough terrain forklifts?

17 MR. KANTAREK: Objection, scope.

18 THE WITNESS: They have bigger wheels,  
19 they are made to be used off-road.

20 BY MR. HILL:

21 Q. Let's turn to Paragraph 58 of your  
22 declaration for the '602. That should be Exhibit 8.

23 A. Pardon me, what paragraph?

24 Q. Paragraph 58, please. Do you see where  
25 it says at Paragraph 58, the first line, "Sheesley's

1 containers are modified ISO containers," do you see  
2 that?

3 A. Yes.

4 Q. Do you agree with that statement today?

5 A. Yes.

6 Q. Forklift pockets are standard on ISO  
7 containers, correct?

8 MR. KANTAREK: Objection, form.

9 THE WITNESS: No.

10 BY MR. HILL:

11 Q. What do you mean by that?

12 A. What do I mean by no? I mean that they  
13 are not necessarily standard on containers. In fact,  
14 I think I explained that. In fact, on 20-foot  
15 containers you don't have to have forklift pockets at  
16 all. In fact, I think, it has been a while since I  
17 read it, but I don't think you have to have forklift  
18 pockets at all.

19 Q. Do ISO containers sometimes have forklift  
20 pockets?

21 A. They can, especially the smaller ones.

22 Q. Let's go back to Smith Exhibit 13,  
23 please.

24 A. Okay.

25 Q. This is describing an ISO container,

1 correct?

2 MR. KANTAREK: I am just going to object  
3 again to the authenticity and hearsay of this  
4 document.

5 THE WITNESS: I don't see where they have  
6 actually described it as an ISO container.

7 BY MR. HILL:

8 Q. So you would say this is not an ISO  
9 container?

10 A. Well, actually it does say that it is  
11 certified to ISO standard.

12 Q. Earlier we talked a bit about what it  
13 means to be an ISO container, right?

14 A. Yes.

15 Q. And if something is certified to meet ISO  
16 standards in typical industry parlance people would  
17 understand what you meant if you said that was an ISO  
18 container, correct?

19 MR. KANTAREK: Objection, form.

20 THE WITNESS: Essentially, yes.

21 BY MR. HILL:

22 Q. Do you see in the last entry under the  
23 general spec it says Vents & Pockets?

24 A. Yes.

25 Q. Do you see where it says, "Normally a

1 minimum of 4 vents on each side & fork lift pockets at  
2 the front, back and sides"?

3 A. Yes.

4 Q. And the Triple Eight double door  
5 container is what you relied on to show standard  
6 features in an ISO container, right?

7 A. No.

8 Q. What do you mean by that?

9 A. That is not what I relied on it for. I  
10 relied on it to show that you can have doors on both  
11 sides of the containers. In fact, I am not -- I don't  
12 believe that forklift pockets would be standard on  
13 especially containers. In fact, Sheesley doesn't show  
14 forklift pockets at all.

15 Q. So certainly you agree with me that you  
16 have pointed to the 20-foot double door product from  
17 Triple Eight Containers with respect to what it would  
18 teach a person of ordinary skill in the art, correct?

19 MR. KANTAREK: Objection, form.

20 THE WITNESS: The only thing that I was  
21 pointing to this exhibit for is to show to bolster my  
22 opinion that ISO containers can have doors on both  
23 ends.

24 BY MR. HILL:

25 Q. You agree, don't you, that ISO containers

1 can have forklift pockets at the front back and sides,  
2 correct?

3 MR. KANTAREK: Objection, form.

4 THE WITNESS: You know, I don't believe  
5 the ISO standard has anything -- in fact, it does not  
6 have forklift pockets on the ends.

7 BY MR. HILL:

8 Q. Would inclusion of forklift pockets on  
9 the end make it no longer ISO-compliant?

10 A. Not necessarily. But, again, that would  
11 also be a really, really weird container because the  
12 vast majority of container -- in fact, I frankly  
13 haven't seen in all the ISO containers that I have  
14 looked at containers that have ISO -- that have  
15 forklift pockets on the ends.

16 Q. So you agree then that the 20-foot double  
17 door container from Triple Eight is a really, really  
18 weird container, is that correct?

19 MR. KANTAREK: Objection, form.

20 THE WITNESS: I didn't say that either.

21 All I am saying is, you know, my  
22 experience I have seen lots of containers with double  
23 doors, doors on both ends. This is just to show that  
24 there are containers out there with doors on both  
25 ends. It bolsters that opinion and shows that there

1 are companies that make double door containers like  
2 that.

3 BY MR. HILL:

4 Q. So of all the containers that you have  
5 looked at that are ISO containers, what percentage  
6 have had double doors?

7 A. I don't think I can give you a -- I don't  
8 think I can give you a percentage.

9 Q. Can you estimate roughly?

10 A. I don't think I can even estimate because  
11 a lot of times you can't see what is on the other side  
12 because they are stacked in a large stack and frankly  
13 that has never really been an issue that I have been  
14 concerned about so I never really paid much attention  
15 to it other than that they are out there.

16 Q. Can you estimate what percentage of the  
17 ISO containers you have seen have been 20-foot long?

18 A. No. It depends on what -- where you are  
19 and what they are being used for and everything else.  
20 That is a standard sized container just like 30's and  
21 40's.

22 Q. So with respect to the door issue, how do  
23 you know if you can't see most of the -- a good  
24 portion of the containers that you look at because of  
25 how they are stacked what their structure is on the

1 side you can't see?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: Well, you can't.

4 My point is I have seen lots of  
5 containers that do have doors on both sides so I know  
6 that they are made, I know it is a standard container  
7 that is made with double doors. So the fact that I  
8 can't tell you how many or what the percentage is  
9 doesn't mean that I haven't seen lots of containers  
10 with double doors.

11 BY MR. HILL:

12 Q. And when you call it a standard  
13 container, on what are you basing the word standard?

14 MR. KANTAREK: Objection, form.

15 THE WITNESS: It is a container that if I  
16 went to go find a ISO container it would not be out of  
17 -- it would be something that a person of ordinary  
18 skill in the art would be very familiar with and that  
19 is being used in industry all the time.

20 BY MR. HILL:

21 Q. Going back to your statement on  
22 Paragraph 58 that Sheesley's containers are modified  
23 ISO containers, you agree that 20-foot ISO containers  
24 can be moved around with a forklift, right?

25 A. They can if they have forklift pockets.

1 I wouldn't be moving like Sheesley's containers around  
2 without forklift pockets with a forklift.

3 Q. Now, earlier you commented with respect  
4 to one of the other patents at issue in this case that  
5 schematics don't always depict all details, correct?

6 MR. KANTAREK: Objection to form.

7 THE WITNESS: If it is a schematic, yes.  
8 But Sheesley's containers, I mean, this is more than a  
9 schematic when you look at the side view. I mean, I  
10 would have expected them to put forklift pockets in  
11 there if they cared about forklift pockets, but, see,  
12 Sheesley doesn't care about forklift pockets because  
13 they use the rough terrain container handler to move  
14 them around and so they don't need forklift pockets.

15 BY MR. HILL:

16 Q. So is your position that patents would  
17 show forklift pockets but not doors?

18 MR. KANTAREK: Objection, form.

19 THE WITNESS: I think you have to look at  
20 the entirety of what is being shown and, for instance,  
21 there is good reason when you look at Sheesley why you  
22 wouldn't see forklift pockets because they are not  
23 needed and it explains how the containers are moved  
24 around so I wouldn't expect even to see forklift  
25 pockets on the container because they are not needed.

1                   As far as the door situation goes, you  
2                   know, they didn't show all of the lines. They do show  
3                   it being identical in how they have drawn it  
4                   particularly in the -- I think it was Figure 17/18.

5                   BY MR. HILL:

6                   Q.       With respect to Sheesley, Sheesley did  
7                   not invent the rough terrain cargo handler technology,  
8                   right?

9                   MR. KANTAREK: Objection, form.

10                  THE WITNESS: Rough terrain container  
11                  handler?

12                  BY MR. HILL:

13                  Q.       Yes -- let me take a step back.

14                           Is there a difference between a rough  
15                   terrain cargo and rough terrain container handlers?

16                  A.       I think they call it a rough terrain  
17                   container handler, if I am not mistaken.

18                  Q.       All right.

19                  A.       It is rough terrain container handler,  
20                   Paragraph 83.

21                  Q.       That technology existed before Sheesley,  
22                   correct?

23                  A.       Yes.

24                  Q.       And that was used to move ISO containers  
25                   prior to Sheesley, is that correct?

1 A. Yes.

2 Q. If we look here, you see that this patent  
3 uses the RTCH acronym.

4 A. Yes.

5 MR. KANTAREK: Objection, form.

6 BY MR. HILL:

7 Q. Is that an acronym you heard before?

8 A. The only way I can honestly answer that  
9 is maybe. I really don't know. I may have. I don't  
10 know.

11 Q. Just so -- typically people in the  
12 industry tend to just call it the rough terrain  
13 container handler rather than giving it a  
14 universally-accepted acronym or something?

15 MR. KANTAREK: Objection, form.

16 THE WITNESS: I probably agree with that.

17 BY MR. HILL:

18 Q. The rough terrain container handler, that  
19 lifts ISO containers by the corners, is that right?

20 A. Correct.

21 Q. And yet at least some ISO containers also  
22 contain forklift pockets, right?

23 A. Some, yes.

24 Q. And so there are advantages in some  
25 circumstances to have multiple ways to move ISO

1 containers, right?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: In some instances that may  
4 be true. If you are a hammer everything looks like a  
5 nail they say, so if you are a forklift you would be  
6 moving to move it with forklift pockets, I suppose.

7 But I might also add, there really isn't  
8 an advantage, in fact there is multiple disadvantages  
9 to using a forklift with the system that Sheesley  
10 proposes.

11 BY MR. HILL:

12 Q. Let's talk about Paragraph 54 of your  
13 declaration. Again, this is for the '602, Exhibit 8.  
14 Do you see where it says Sheesley does not mention  
15 forklifts at all?

16 A. In Paragraph 54.

17 Q. Yes, the very first line.

18 A. Yes.

19 Q. Do the '602 and '815 patents mention  
20 forklifts? And you can take a moment to look to  
21 these.

22 A. It is a lot easier if I have Word Search.  
23 Again, I don't recall it using forklift anywhere. I  
24 recall calling it a loader/unloader, but that doesn't  
25 mean -- I don't know that you really want me to read

1 the whole patent to give you the answer to that, which  
2 is what I would have to do.

3 Q. You can't point to a reference to  
4 forklift?

5 A. No.

6 Q. And, just to be clear, with respect to  
7 Figure 3, my understanding earlier is you explained  
8 that the device lifting on 116 and the device lifting  
9 on -- as 86, those are not forklifts?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: I don't know that I can  
12 tell you for sure that they are not forklifts. There  
13 is -- I mean, they are not described that way. They  
14 are described as a loader/unloader and, you know, it  
15 appears at least in the one that is labeled 86 that it  
16 is lifting it from the top, which you wouldn't do with  
17 a forklift.

18 MR. HILL: Maybe we should take like a  
19 20-minute lunch break?

20 MR. KANTAREK: Sure.

21 THE WITNESS: You eat awfully fast, I am  
22 taking longer than a 20-minute lunch break.

23 MR. HILL: If you need more that is fine.

24 THE WITNESS: I can't even get over there  
25 in 20.

1 MS. REPORTER: Let's go off the record.

2 THE VIDEOGRAPHER: It is 12:13 p.m., we  
3 go off the record.

4 (Lunch recess taken.)

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1                   A F T E R N O O N     S E S S I O N

2                   THE VIDEOGRAPHER: It is the beginning of  
3 Tape No. 3 of the testimony of Fred Smith. It is  
4 1:01 p.m., we are back on the record.

5 BY MR. HILL:

6                   Q.     Mr. Smith, I would like to direct your  
7 attention to your '815 declaration that has been  
8 marked as Smith Exhibit 7. Take a moment to look at  
9 that. It would also make sense for you to get the  
10 Mintz prior art reference and have that available for  
11 reference as well.

12                  A.     Doing a little cleanup.

13                  Q.     Not a problem. Just let me know when you  
14 have got the materials. I know there is a lot of  
15 shuffling today.

16                  A.     All right, I think we are good.

17                  Q.     Let's turn to Paragraph 46 on Page 16 and  
18 over on to 17 of your declaration. I would like to  
19 direct your attention with particularity to the line,  
20 "Mintz teaches two separate ways to get sand out of  
21 the container. The first, and preferred, way is to  
22 blow the sand through discharge port 4 and the second  
23 way is to unload or dump sand into a dolly hopper  
24 through the gate valve." Do you see that?

25                  A.     You are in Paragraph 46?

1 Q. 46, and it really I think kicks in on  
2 Page 17, the second portion --

3 A. Got it.

4 Q. -- of that paragraph.

5 A. Yes.

6 Q. So that -- and that accurately  
7 characterizes your opinion with respect to that  
8 subject matter?

9 A. Yes.

10 MR. KANTAREK: Objection, form.

11 BY MR. HILL:

12 Q. I would now like you to turn to the Mintz  
13 reference marked as Smith Exhibit 11. I would like to  
14 direct your attention to Column 5, starting at  
15 Line 38. I am going to ask you some questions about  
16 how these things relate.

17 But do you see where it says, "Referring  
18 again to Figures 1 through 8, there is a pair of  
19 tubular input ports 3 disposed atop roof 8," and it  
20 goes on to say some additional things, and then it  
21 says at the end of that paragraph, "Also seen is  
22 transverse discharge port 4 with a mechanical valve or  
23 the like typically having a four-inch outlet and a 24  
24 by 24 sliding gate valve," where there appear to be  
25 two marks after each 24, do you see that?

1           A.     Yes.

2           Q.     Your opinion is that the discharge port 4  
3     and the sliding gate valve are alternative approaches,  
4     is that correct?

5           A.     Yes, that they would not be used  
6     together.

7           Q.     And this relates to your concept that  
8     first is to blow the sand through the discharge port  
9     and the second is to unload or dump sand into the  
10    dolly hopper, is that correct?

11          A.     Correct.

12          Q.     Where does Mintz say that?

13          A.     If you keep reading the next two  
14    paragraphs, essentially it says that, it says, "It  
15    will be appreciated that the 24-by-24-inch gate valve  
16    or the like is particularly advantageous under  
17    circumstances in which frac sand is being unloaded  
18    into a mobile hopper unit or the like. But, it should  
19    be understood that, if such mobile hopper units are  
20    apt to be unloaded under the influence of a blower or  
21    the like through the four-inch piping, then use of  
22    such a gate valve would probably be unnecessary." And  
23    then it goes on to explain if you are loading it into  
24    a dolly hopper how that would be done.

25          Q.     And that is your opinion even though if

1 we look back to Column 5 near the end it says, "Also  
2 seen is transverse discharge port 4 with a mechanical  
3 valve or the like typically having a four-inch outlet  
4 and a 24-by-24 sliding gate valve," is that still your  
5 opinion even though it talks about and there?

6 A. It is.

7 And you will also notice that that is not  
8 shown in any of the Figures 1 through 8 either, the  
9 sliding gate valve.

10 Q. Is your opinion that a POSITA reading  
11 Mintz would use a four-inch gate valve instead of a  
12 24-inch gate valve?

13 A. No.

14 MR. KANTAREK: Objection, form.

15 THE WITNESS: Actually, they probably  
16 wouldn't use a gate valve at all. Typically when we  
17 have designed pneumatic systems it is usually just a  
18 butterfly valve that is used to control that.

19 BY MR. HILL:

20 Q. The reference though references a sliding  
21 gate valve, correct?

22 A. Yes.

23 Q. What is a butterfly valve?

24 A. Essentially a -- it has a plate that is  
25 in a -- round plate that is in a round tube and you

1 rotate it and that can shut off the flow.

2 Q. Is that depicted anywhere in the Mintz  
3 reference?

4 A. It is not.

5 Something similar is depicted in the  
6 Mintz reference though when you look at I think it is  
7 Figures 18 and 19 which show a different kind of valve  
8 that uses a flexible piece that controls the flow into  
9 the bottom pneumatic tube.

10 Q. And where is the flexible piece depicted?

11 A. It is Y.

12 Q. And that is with respect to Figure 18?

13 A. That's correct.

14 Q. Is that also with respect to Figure 19?

15 A. Yes. I think it is actually VU, I would  
16 have to look.

17 Q. Does a butterfly valve control flow?

18 MR. KANTAREK: Objection, scope.

19 THE WITNESS: It can.

20 BY MR. HILL:

21 Q. Do you have an understanding what the  
22 word flange means?

23 A. Generally.

24 Q. What do you understand flange to  
25 generally mean?

1 MR. KANTAREK: Objection, scope.

2 THE WITNESS: Well, like you have a  
3 flange of an I-beam which is the top piece and the  
4 bottom piece that are connected by a web.

5 MS. REPORTER: I didn't get an answer to  
6 the question "Does a butterfly valve control flow?"

7 THE WITNESS: I said it can.

8 BY MR. HILL:

9 Q. When you say the top piece and the bottom  
10 piece are connected by a web, what do you mean by  
11 that?

12 MR. KANTAREK: Objection, scope.

13 THE WITNESS: Do you know what an I-beam  
14 looks like?

15 BY MR. HILL:

16 Q. I do know what an I-beam looks like.

17 A. Well, the top piece of the I and the  
18 bottom piece of the I are the flanges and the stem is  
19 the web.

20 Q. What makes the top and bottom pieces  
21 flanges in your view?

22 MR. KANTAREK: Objection, scope.

23 THE WITNESS: That is just what they are  
24 always called.

25

1 BY MR. HILL:

2 Q. So -- I mean, what I am getting at, what  
3 is the structural characteristic of a flange that  
4 makes them called that?

5 MR. KANTAREK: Objection, scope.

6 THE WITNESS: I don't know that I have an  
7 answer for you. It is -- there is lots of things that  
8 can be called flanges and it kind of depends on the  
9 way that it is being used.

10 BY MR. HILL:

11 Q. Can you draw a flange what you mean by  
12 flange when you are talking about it, like freehand  
13 it?

14 MR. KANTAREK: Objection, scope.

15 THE WITNESS: All depends. There is lots  
16 of things that might be called a flange, so -- you  
17 know, that question is way too broad, I can't just --  
18 I mean, I can draw you an I-beam and show you a flange  
19 but it won't get you anywhere.

20 BY MR. HILL:

21 Q. Can you we borrow a piece -- we will just  
22 use this. And let's mark this as Smith 14.

23 (Document marked Smith Exhibit 14 for  
24 identification.)  
25

1 BY MR. HILL:

2 Q. Sir, if you can start by drawing out the  
3 I-beam example that you have been talking about and  
4 mark where you think a flange is in an I-beam.

5 MR. KANTAREK: Objection, scope.

6 BY MR. HILL:

7 Q. I am just going to take a quick look  
8 here. I see you have identified the flange with an  
9 arrow piece. Does that include the entire bottom  
10 structure or only the parts that protrude past this I  
11 believe you call it a center web?

12 A. Typically it is the entire bottom piece.

13 Q. It sounds like you are familiar with  
14 flanges in other context other than I-beams as well,  
15 is that a correct statement?

16 MR. KANTAREK: Objection, scope.

17 THE WITNESS: It is used in a lot of  
18 different cases, sure.

19 BY MR. HILL:

20 Q. What is another case other than I-beams  
21 where flange is used?

22 MR. KANTAREK: Objection, scope.

23 THE WITNESS: It might be used, for  
24 instance, where they connect two pressure pipes  
25 together.

1 BY MR. HILL:

2 Q. Could you draw a circumstance where a  
3 flange is connecting two pressure pipes?

4 MR. KANTAREK: Objection, scope.

5 THE WITNESS: They many times will have  
6 multiple holes around the flange to be able to connect  
7 it to another pipe.

8 BY MR. HILL:

9 Q. Could you draw an arrow to the flange in  
10 the structure that you just showed?

11 MR. KANTAREK: Objection, scope.

12 BY MR. HILL:

13 Q. For completeness is the pressure pipe the  
14 two parallel lines that extend past the circle, is  
15 that what you are referring to as a pressure pipe?

16 MR. KANTAREK: Objection, scope.

17 THE WITNESS: Yes.

18 BY MR. HILL:

19 Q. Let's turn now to -- let's just talk for  
20 a moment more about the prior art reference that we  
21 have been chatting about for a second. How would the  
22 sand get out of the container with the sliding gate  
23 valve?

24 A. Well, you know, the interesting thing  
25 about that is it is not really disclosed in Mintz.

1 Q. So you have no idea how the Mintz  
2 describes sliding gate valve would work?

3 MR. KANTAREK: Objection, form.

4 THE WITNESS: In fact, it doesn't even  
5 describe the sliding gate valve or where it is or how  
6 it would be implemented or anything.

7 BY MR. HILL:

8 Q. You see Column 5 it says, "Also seen in  
9 traverse -- is transverse discharge port 4 with a  
10 mechanical valve with the like typically having a  
11 four-inch outlet and a 24-inch by 24-inch sliding gate  
12 valve," is that correct?

13 A. Where are you at?

14 MR. KANTAREK: Objection to scope.

15 BY MR. HILL:

16 Q. That is Column 5, it is around Line 44.

17 MR. KANTAREK: Sorry, that should be  
18 objection to form, not scope.

19 THE WITNESS: Clearly that is not shown  
20 in those figures.

21 BY MR. HILL:

22 Q. So you think that there is a second  
23 embodiment that isn't described at all rather than a  
24 gate valve at the outlet which is depicted, is that  
25 correct?

1 MR. KANTAREK: Objection, form.

2 THE WITNESS: There certainly is not a  
3 gate valve depicted in the figures.

4 BY MR. HILL:

5 Q. There is an outlet, so let me rephrase  
6 that then.

7 So you think a second embodiment that  
8 isn't described is what is referenced rather than a  
9 gate valve at the outlet which is depicted?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: There is -- there is no  
12 gate valve depicted at all, whether that be -- so we  
13 don't even know where that would be. There is no  
14 numbered gate valve, there is no -- in the Figures 1  
15 through 8 there is nothing there that shows anything  
16 that a POSITA would consider to be a gate valve.

17 BY MR. HILL:

18 Q. Do you see if you turn to Figure 4 of the  
19 Mintz reference, do you agree with me that there are  
20 discharge ports?

21 A. Sure.

22 Q. Do you see that Column 5 states as seen  
23 in transverse discharge port 4 with a mechanical valve  
24 -- let me step back, "also seen is transverse  
25 discharge port 4 with a mechanical valve or the like

1 typically having a four-inch outlet and a 24-inch by  
2 24-inch sliding gate valve." Do you see that?

3 A. I do see that, but that is not -- that is  
4 not depicted in these figures anywhere.

5 Q. What is a sliding gate valve in your  
6 view?

7 A. Typically that is just an opening that  
8 has a guillotine type of door that slides in a track  
9 that opens and shuts an opening.

10 Q. Mr. Smith, I would ask you to draw what  
11 you think of as an example of sliding gate structure,  
12 sliding gate valve on the blank space there in  
13 Exhibit 14, if you would.

14 MR. KANTAREK: Objection, scope.

15 BY MR. HILL:

16 Q. If I just may for a moment, could you  
17 describe in words what you depicted there?

18 MR. KANTAREK: Objection, scope.

19 THE WITNESS: Sure.

20 You essentially have a plate that  
21 operates in a track and that generally will slide  
22 underneath an opening or be in an opening in order to  
23 operate.

24 BY MR. HILL:

25 Q. And the double -- it appears to be a

1 double-sided arrow, am I seeing that correctly,  
2 depicted to the side of the rectangular structure?

3 A. Sure.

4 Q. And does that reference the moving back  
5 and forth action of that?

6 A. It does.

7 Q. And with one position representing a  
8 closed state and the other an open state, is that how  
9 it works?

10 A. Generally, yes.

11 Q. Are there circumstances where it works  
12 differently?

13 A. You can have in between also.

14 Q. So like it is partially obscuring the  
15 opening and partially not?

16 A. Sure.

17 Q. Let's --

18 A. And this type of a gate can be put  
19 anywhere in a -- you could have this kind of a gate  
20 valve in, for instance, a plenum that was very long to  
21 shut the whole plenum off, for instance. So it can be  
22 located anywhere.

23 Q. Let's turn to your declaration for the  
24 '815 patent.

25 MR. KANTAREK: I think you have it in

1 front of you.

2 THE WITNESS: The same one?

3 BY MR. HILL:

4 Q. It is Smith 7.

5 A. I got it.

6 Q. Thank you.

7 If you can turn to Paragraph 60 of this.

8 So what are you -- let's take this a piece at a time.

9 What are you showing here in terms of  
10 your calculations in Paragraph 60?

11 A. So this is in relation to the limitation  
12 that states that the structural integrity of the  
13 plurality of containers being enhanced by a plurality  
14 of structural uprights positioned to extend from the  
15 bottom to the top of each of the plurality of  
16 containers and thereby increase the carrying capacity  
17 of each of the plurality of containers when fracking  
18 prompted as positioned therein.

19 And so what I have done is I have shown  
20 what amount of proppant you could take in the Sheesley  
21 container, and that is 50,310 pounds, and then I also  
22 show that the Sheesley container without any of the  
23 structure in there could take well over that, so there  
24 is nothing that they are adding that would increase  
25 the -- that would increase the -- let me use the same

1        wording as the claim -- that would increase the weight  
2        carrying capacity of the container.

3            Q.        So if we look at the final sentence of  
4        your Paragraph 60 you conclude that, "The hopper  
5        module walls thus reduce the carrying capacity of  
6        Sheesley's container from at least 95,220 pounds to  
7        50,310 pounds," is that correct?

8            A.        Yes.

9            Q.        And how did you determine that carrying  
10       capacity of Sheesley's container?

11          A.        So Sheesley explains that it is using an  
12       ISO container and one of the tests that ISO requires,  
13       it requires a 1.8 times R test, which ends up being  
14       95,220 pounds, because the container is rated for  
15       52,900 pounds and it can carry well over that.

16          Q.        When you say rated, what does that mean  
17       in the context of your statement just now?

18          A.        So ISO gives a container a rating, but it  
19       is actually designed to be much stronger than that so  
20       it can take a higher load than what it is rated for.

21          Q.        If I look in your first line it appears  
22       that you have used the bulk density of proppant to be  
23       approximately 90 pounds per cubic foot, is that  
24       correct?

25          A.        Yes.

1 Q. Where does 90 pounds per cubic foot come  
2 from?

3 A. That is pretty standard density for  
4 proppant.

5 Q. When you say it is pretty standard, what  
6 do you mean by that?

7 A. Well, I don't know how to explain it  
8 better than that. In a lot of the previous things  
9 that have been done between PropX and SandBox, that is  
10 a number we have been using for the density of  
11 proppant. So it is a well-known average number.

12 Q. Can you fill it with more than  
13 95,220 pounds?

14 MR. KANTAREK: Objection, form.

15 BY MR. HILL:

16 Q. This is referring again to your final  
17 line in Paragraph 60, your final sentence.

18 MR. KANTAREK: Objection, form.

19 THE WITNESS: Can you fill the container  
20 with more? I haven't done that calculation, I don't  
21 know.

22 MR. HILL: I am going to mark this as 15.

23 MR. KANTAREK: I am going to object to  
24 the authenticity on hearsay grounds to this document.  
25

1 MR. HILL: I am going to put that in  
2 front of you.

3 I am going to put two other documents in  
4 front of you as well.

5 I handed you the 20/40 version, right?

6 MR. KANTAREK: I have 40/70.

7 MR. HILL: The green, that was out of --

8 MS. LUCIER: Did you mark yours?

9 MR. HILL: We will say that --

10 MS. LUCIER: That is your copy.

11 MR. HILL: I handed the colored version.

12 MR. KANTAREK: You marked your copy, you  
13 have highlighting.

14 MR. HILL: I am going to hand that back  
15 then.

16 MR. KANTAREK: It has highlighting, too  
17 you if you guys want this.

18 MR. HILL: You may notice I don't see so  
19 great and this lighting is not so great either. I am  
20 going to turn -- I cannot see the difference.

21 MS. LUCIER: This is your last copy.

22 MR. KANTAREK: At a break I will try to  
23 turn the lights up.

24 MS. LUCIER: Where is the one that is  
25 marked, 15?

1                   It has Rob's writing on it, you can  
2       ignore it.

3                   MR. HILL: It does not matter, I can tell  
4       you that much.

5                   We are going to go through this for a  
6       moment here to make sure we are all on the same page  
7       because they are similar-looking documents.

8                   (Document marked Smith Exhibit 15 for  
9       identification.)

10       BY MR. HILL:

11               Q.     Let's take a moment and go through to  
12       make sure we are on the same literal page here.

13                   So you have in front of a document that  
14       has been marked as Smith 15?

15                   MR. KANTAREK: Which one is that?

16       BY MR. HILL:

17               Q.     Tell me if the document you have --

18               A.     20/40.

19               Q.     Does it say 20/40 at the top?

20               A.     It does.

21                   MR. KANTAREK: Objection to this document  
22       on hearsay and authenticity. It will be the same for  
23       all three.

24                   (Document marked Smith Exhibit 16 for  
25       identification.)

1 BY MR. HILL:

2 Q. If you look at Smith 16, what does that  
3 document say at the top?

4 A. 30/50.

5 MR. KANTAREK: Same objection.

6 (Document marked Smith Exhibit 17 for  
7 identification.)

8 BY MR. HILL:

9 Q. For Smith 17, what does that say at the  
10 top?

11 A. 40/70.

12 MR. KANTAREK: Same objection for that  
13 document.

14 BY MR. HILL:

15 Q. I would like to direct your attention --  
16 first of all, have you seen these documents before?

17 A. I don't believe so.

18 Q. Do you understand what US Silica is?

19 A. Sure.

20 Q. What is US Silica?

21 MR. KANTAREK: Objection, relevance.

22 THE WITNESS: They are a company that  
23 sells frac sand.

24 BY MR. HILL:

25 Q. Do you know what relation, if any, they

1 have to Oren Technologies?

2 MR. KANTAREK: Objection, scope.

3 THE WITNESS: I am not exactly sure what  
4 that is. I think they purchased the ability to use  
5 the container, I am not sure exactly what that  
6 relationship is.

7 BY MR. HILL:

8 Q. Let's turn -- at each of these documents  
9 do you see that there is a bulk density in pounds per  
10 cubic foot listed?

11 A. Sure.

12 MR. KANTAREK: Objection, form.

13 BY MR. HILL:

14 Q. Do you agree with me that it appears to  
15 depict a 92 to 100 pound per cubic foot density for  
16 all three of these documents?

17 A. Sure.

18 Q. Do you -- have you ever experienced sand  
19 with a density in the 92 to 100 pound per cubic foot  
20 range?

21 A. Have I ever experienced?

22 Q. Have experienced.

23 A. I am not sure what you mean by that, but  
24 that would be a typical frac sand also.

25 Q. Do you have a sense of what the range of

1 a typical frac sand is with regard to bulk density?

2 A. Like I said, it kind of depends where  
3 they get the sand from, how angular it is, there is a  
4 number of things. So it could vary from below 90 to,  
5 you know, up to 100 would probably be getting pretty  
6 close to the top end.

7 Q. What is the -- do you know what the  
8 lowest bulk density you have ever seen in sand is?

9 MR. KANTAREK: Objection, scope.

10 THE WITNESS: I haven't really looked,  
11 but it is in the 80s.

12 BY MR. HILL:

13 Q. Do you know what the highest density you  
14 have ever seen with respect to bulk density in sand?

15 MR. KANTAREK: Objection, scope.

16 THE WITNESS: I would imagine it is close  
17 to that 100 number.

18 BY MR. HILL:

19 Q. Is the moisture content of the proppant  
20 important with regard to its bulk density?

21 MR. KANTAREK: Objection, scope.

22 THE WITNESS: This is usually done dry  
23 because you usually don't want water in the proppant.

24 BY MR. HILL:

25 Q. Well, does water ever get in proppant in

1 the actual fracking operations, if you know?

2 MR. KANTAREK: Objection, scope.

3 THE WITNESS: That is an interesting  
4 answer because you usually don't want it in the sand  
5 until you actually add water to the sand in the mixer,  
6 so you want it dry so that it will flow and operate  
7 the way you want it to operate and you want to keep it  
8 dry until you actually put it into the mixer where you  
9 mix it with water and some other chemicals and the  
10 like.

11 BY MR. HILL:

12 Q. So prior to mixing you want to keep the  
13 moisture content as low as possible for the frac sand,  
14 is that correct?

15 MR. KANTAREK: Objection, scope.

16 THE WITNESS: I would say that is  
17 correct.

18 BY MR. HILL:

19 Q. Do you know the extent to which moisture  
20 varies in fracking locations that are commercially  
21 used?

22 MR. KANTAREK: Objection, scope.

23 THE WITNESS: Generally it is you keep  
24 the frac sand dry.

1 BY MR. HILL:

2 Q. If moisture content is relatively higher  
3 it will cause a relative increase in density for the  
4 material, is that correct?

5 MR. KANTAREK: Objection to scope.

6 THE WITNESS: You mean if I put water in  
7 the sand?

8 BY MR. HILL:

9 Q. Yes.

10 A. Well, sure, because then it is not just  
11 sand, you are sand and water.

12 Q. The same would be true for environmental  
13 moisture, is that correct?

14 MR. KANTAREK: Objection, scope.

15 THE WITNESS: That doesn't change it an  
16 awful lot because that is in the air, you already have  
17 the air, so that probably doesn't change it hardly at  
18 all.

19 BY MR. HILL:

20 Q. Have you done any calculations with  
21 respect to that issue?

22 MR. KANTAREK: Objection, scope.

23 THE WITNESS: I have not. Not needed to.

24 BY MR. HILL:

25 Q. Do you know what -- do you know if the

1 sand is located -- let me ask this.

2 Do you know where frac sand physically  
3 comes from?

4 A. It comes from all over. There is a lot  
5 of it comes from the Minnesota area, but they are  
6 opening up more and more local frac sand sites that  
7 are closer to where the frac sand is actually being  
8 used.

9 Q. Let's look at the '815 patent now. I  
10 would like to direct your attention to Claim 1,  
11 subpart A. But I will give you a moment to get there,  
12 there is a lot to shuffle through. I would like to  
13 direct your attention now to let's say Line 66 of  
14 Column 11 going over to the next column. Do you see  
15 where it says, "The structural integrity of the  
16 plurality of the containers being enhanced by a  
17 plurality of structural uprights positioned to extend  
18 from the bottom to the top of each of the plurality of  
19 containers and thereby increase the weight carrying  
20 capacity of each of the plurality of containers when  
21 fracking proppant is positioned therein," so do you  
22 see that statement?

23 A. Yes.

24 Q. Is it your opinion that the language  
25 "increase the weight carrying capacity" refers to an

1 increase relative to a completely unmodified  
2 container?

3 MR. KANTAREK: Objection, form.

4 THE WITNESS: I don't think it makes any  
5 difference because even on -- even if you take the  
6 modification of Sheesley the uprights that are being  
7 put in there doesn't allow you to increase the weight  
8 carrying capacity of that container either. So it  
9 doesn't make any difference, you can read it either  
10 way and it doesn't make any difference.

11 BY MR. HILL:

12 Q. In your opinion does the '815 patent  
13 disclose using supports inside the container?

14 MR. KANTAREK: Objection, form.

15 THE WITNESS: I don't know that I have  
16 actually even bothered to look at that.

17 BY MR. HILL:

18 Q. Would you like to take a moment?

19 A. Is there a question?

20 Q. So, first of all, let me direct your  
21 attention to Figure 1, and I see there is an element  
22 36 depicted in Figure 1 of the '815. I am going to  
23 ask you what that element is.

24 A. It calls it a longitudinal member.

25 Q. Well, what is the purpose of that

1 longitudinal member?

2 A. It says that, "Connection will maintain  
3 the integrity of the end walls 22 and 24 in spite of  
4 the large weight of proppant urging there against."

5 Q. So that is a form of support, correct?

6 A. I would say so.

7 Q. I would also like to direct your  
8 attention to elements 38 and 40 of Figure 1. What are  
9 those elements?

10 A. It calls them cross-members.

11 Q. What is the purpose of those  
12 cross-members?

13 A. It says the cross-member 30 and 40 are  
14 configured to maintain the integrity of the sidewalls  
15 against the large weight of proppant contained within  
16 the interior volume of the container.

17 Q. And that is cross-member 38, correct?

18 A. And 40.

19 Q. Thank you.

20 Do those components 36, 38, and 40 reduce  
21 the amount of proppant that may be stored in the  
22 container?

23 MR. KANTAREK: Objection, form.

24 THE WITNESS: As opposed to what?

25

1 BY MR. HILL:

2 Q. As opposed to if they weren't there.

3 A. It -- they may or they may not.

4 Q. What determines that?

5 A. Well, you may already be at a maximum  
6 weight that you can take in that container based on  
7 what it is designed for so that you have room at the  
8 top, so to speak.

9 Q. So you would not fill past the maximum  
10 weight, is that what you are saying?

11 MR. KANTAREK: Objection, form.

12 THE WITNESS: What I am saying is a lot  
13 of times you design a container for a particular  
14 weight and you may have extra volume that you can --  
15 that you can use to get to that maximum weight.

16 BY MR. HILL:

17 Q. Let's turn now to Paragraph 52 of your  
18 '815 declaration. I would like to direct your  
19 attention in particular to the final sentence of that  
20 Paragraph 52 where it says, "Mintz's saddle supports 5  
21 and end supports 6 do not satisfy this additional  
22 claim language." Do you see that?

23 A. Yes.

24 Q. The claim language that you are referring  
25 to there is what? You can take a moment to look at

1 the document, you don't have to remember.

2 A. It is at intervals between the sidewalls  
3 and the end walls.

4 Q. So what do you -- what is the basis for  
5 your opinion that the saddle supports 5 and end  
6 support 6 do not satisfy that claim language?

7 A. Well, because if you look at the saddle  
8 supports of Mintz there is multiple ones of them that  
9 are put in there at intervals between the end walls  
10 but they go completely across so they aren't at  
11 intervals between the sidewalls.

12 Q. And what about the -- were you talking  
13 just about the saddle supports or about the end  
14 supports as well?

15 A. Let me find Mintz.  
16 What are you calling the end supports,  
17 you are talking about those as 6?

18 Q. Yes.  
19 I am trying to match my language to the  
20 language that you are using in the declaration.

21 A. Then I would have been including those,  
22 yes.

23 Q. How would the saddle supports of Mintz  
24 need to be modified to satisfy the limitation that we  
25 are talking about with respect to intervals between

1 the sidewalls and the end walls?

2 MR. KANTAREK: Objection, form.

3 THE WITNESS: You know what, I think that  
4 is something that I haven't considered and I think  
5 that is something that perhaps your expert should have  
6 considered. I haven't really thought about that.

7 BY MR. HILL:

8 Q. Do you have an understanding of what the  
9 structural uprights in the '815 patent are?

10 MR. KANTAREK: Objection, form.

11 THE WITNESS: I am not sure what you are  
12 calling the structural uprights.

13 BY MR. HILL:

14 Q. Let's take a look for a moment at  
15 Column --

16 A. Are you talking about 44? Sorry to  
17 interrupt you.

18 So you do have 44 and 46 which are called  
19 structural uprights?

20 Q. Yes, I did have that in mind to make sure  
21 we are talking about the same thing.

22 If we look at Column 8, Line 39  
23 through 40, for example, we see, "As such, the end  
24 surface 30 has structural uprights 44 and 46 thereon,"  
25 do you see that?

1 A. Yes.

2 Q. And that is what you were referring to?

3 A. Yes.

4 Q. Okay.

5 Are these at intervals between the  
6 sidewalls and end walls under your interpretation?

7 MR. KANTAREK: Objection, form.

8 THE WITNESS: You know what, I haven't  
9 really looked at that. I would have to -- I haven't  
10 -- I don't have an opinion on that at this point, I  
11 haven't really dug into that.

12 BY MR. HILL:

13 Q. Can you take a moment and see what you  
14 think?

15 A. Again, I don't -- it has been a -- I  
16 don't -- I haven't looked at that. I would have to  
17 read the whole specification for that, that is what I  
18 usually do when I am looking at what something is  
19 called and what it would be, so.

20 Q. You looked at the patent when determining  
21 what claims meant though, didn't you?

22 MR. KANTAREK: Objection form.

23 THE WITNESS: Sure.

24 BY MR. HILL:

25 Q. You still don't have an understanding of

1 what elements 44 and 46 are with respect to the  
2 structural -- let me rephrase that.

3 So having looked at this you still can't  
4 tell me whether structural uprights 44 and 46 are at  
5 intervals, is that what you are saying?

6 MR. KANTAREK: Objection, form.

7 THE WITNESS: Well, simply because, you  
8 know, I look in this case I am looking at comparing  
9 the claims to the prior art, so I haven't spent an  
10 awful lot of time other than reading the patent to  
11 understand the meaning of the claims. That is -- at  
12 intervals is pretty straightforward. I think I pretty  
13 well understand what that is.

14 BY MR. HILL:

15 Q. So what element is depicted at intervals  
16 within the meaning of the claim in the '815 patent?

17 MR. KANTAREK: Objection, form.

18 THE WITNESS: Again, I haven't looked at  
19 it or that so I can't answer that as I am sitting  
20 here.

21 BY MR. HILL:

22 Q. Let's look at Figure 1. Do you see a  
23 structural upright at intervals in Figure 1?

24 MR. KANTAREK: Objection, form.

25 THE WITNESS: Figure 2 has what are

1 called the structural uprights, they are not labeled  
2 in Figure 1.

3 BY MR. HILL:

4 Q. So with respect to Figure 2 what are you  
5 referring to?

6 A. Well, the structural uprights as we have  
7 discussed are 44 and 46.

8 Q. Are these uprights at intervals?

9 MR. KANTAREK: Objection, form.

10 THE WITNESS: If you are just talking  
11 about those two I would say probably not.

12 BY MR. HILL:

13 Q. What about if we include -- why do you  
14 say that?

15 A. Well, because at intervals means you are  
16 going to have it divided up into pieces so to speak.

17 Q. What about structural elements at the  
18 other end of the container?

19 MR. KANTAREK: Objection, form.

20 BY MR. HILL:

21 Q. Uprights. You understand if there are  
22 uprights at the other end of the container?

23 MR. KANTAREK: Objection, form.

24 THE WITNESS: Again, I haven't read the  
25 patent for that question so, I mean, I would have to

1 read the whole patent to be able to answer that  
2 because it is not something that I needed to look at  
3 in order to prepare my declaration.

4 BY MR. HILL:

5 Q. But you do understand the specification  
6 informs the scope of the claim language, correct?

7 A. Well, sure, especially for things that  
8 don't have a meaning that you can't understand and, I  
9 mean, I understand what that meaning is as far as  
10 uprights at an interval.

11 Q. Do you understand that the patentee acts  
12 as his own lexicographer to create the language that  
13 will be set forth in the claims, have you heard that  
14 before?

15 A. Well, not usually. Usually claim  
16 elements are given their plain and ordinary meaning  
17 and only if the patentee has specifically said this is  
18 what something is going to mean, you know, then they  
19 can be their own lexicographer, sure, but that is not  
20 typical.

21 Q. Just to make sure I understand, what do  
22 you understand at intervals between the sidewalls and  
23 the end walls to mean?

24 A. So there would be -- you would have it  
25 divided up into at least two groups.

1 Q. What do you mean by that?

2 A. You would have more than one interval  
3 between the end walls and you would have more than one  
4 interval between the sidewalls.

5 Q. And can you point to any upright elements  
6 in the '815 that accomplished that under your  
7 definition?

8 A. I don't know that I even need to.

9 Q. Let me just ask you under your definition  
10 is anything depicted in Figure 1 that satisfies that  
11 limitation?

12 A. Again, I am not going to answer that  
13 while I sit here. I take too much effort to make  
14 those kind of decisions and I haven't read the patent  
15 all for that. Sometimes I take multiple reads of a  
16 patent to be able to make a determination like you are  
17 asking to do and I am not going to do it while I am  
18 sitting here.

19 Q. And the same answer for Figure 2?

20 A. Same answer.

21 MR. KANTAREK: Objection to form.

22 BY MR. HILL:

23 Q. So other than the limitations addressed  
24 in your declaration is it your opinion that the  
25 remaining limitations are present in the prior art?

1           A.     Again, I have not looked at all of those.  
2     There may be some other ones, but -- I haven't  
3     addressed them so I don't really have an answer one  
4     way or the other.

5           Q.     Do you have an understanding of whether  
6     terms in the IPR are given their broadest and  
7     reasonable interpretation?

8           MR. KANTAREK:   Objection, calls for a  
9     legal conclusion.

10          THE WITNESS:   I believe for this IPR I  
11     believe that is the case.

12     BY MR. HILL:

13          Q.     That is in view of the claim language,  
14     patent spec, and an understanding of the POSITA are  
15     all relevant to that, is that your understanding?

16          MR. KANTAREK:   Objection, calls for a  
17     legal conclusion.

18          THE WITNESS:   That is my understanding,  
19     yes.

20     BY MR. HILL:

21          Q.     Mr. Smith, you have provided opinions  
22     only as to the limitations as set forth in your  
23     declarations, is that correct?

24          A.     That's correct.   And what I have talked  
25     about here today, of course.

1 Q. And you closely reviewed the claims at  
2 issue, is that correct?

3 A. I did.

4 MR. HILL: Let's take a five-minute  
5 break.

6 THE VIDEOGRAPHER: It is 1:53 p.m., we go  
7 off the record.

8 (Recess taken.)

9 THE VIDEOGRAPHER: It is the beginning of  
10 the Tape No. 4, the testimony of Fred Smith, it is  
11 2:02 p.m., we are back on the record.

12 BY MR. HILL:

13 Q. Mr. Smith, if during your review you had  
14 concluded that an additional limitation was not  
15 present in the prior art you would have put that in  
16 your declarations, right?

17 A. Well, I would imagine.

18 Q. And sitting here today can you name any  
19 limitations other than those that we have addressed  
20 here that are not present in the prior art?

21 A. You mean addressed here --

22 MR. KANTAREK: Objection to form.

23 THE WITNESS: And in my declarations,  
24 right?

1 BY MR. HILL:

2 Q. Yes, inclusive of your declarations.

3 A. I don't believe so.

4 Q. Mr. Smith, you have in front of you a  
5 binder that you brought and looked down at several  
6 times during the deposition?

7 A. I think I looked at it once.

8 Q. What is that?

9 A. It is just it has got the declarations,  
10 the patents, drafts -- declarations, Mintz, Sheesley,  
11 and Uhryn in it.

12 Q. Are there any notes in that document?

13 A. There are not.

14 Q. There appears to be a pocket portion on  
15 the left, what documents are there, it looks like it  
16 might be your flight information?

17 A. That is my flight.

18 Q. Is there anything other than clean copies  
19 of documents we looked at today or that you just  
20 referenced in that binder?

21 A. No.

22 Q. During breaks today have you had any  
23 substantive communications with your counsel?

24 A. Substantive as far as what is going on in  
25 here?

1 Q. Yes.

2 A. No.

3 Q. Have you had any communication with your  
4 counsel relevant to this deposition at all?

5 A. No.

6 Q. Have you had communication --

7 A. Not today. I mean, I certainly did  
8 yesterday.

9 Q. Right. I am talking only about during  
10 breaks today.

11 A. No.

12 Q. Did you have substantive communications  
13 with your counsel about other matters relating to  
14 Arrows Up?

15 A. No.

16 MR. HILL: With that I believe I have  
17 nothing further unless there is a recross after  
18 redirect or something.

19 MR. KANTAREK: We will take a short  
20 break.

21 THE VIDEOGRAPHER: It is 2:04 p.m., we go  
22 off the record.

23 (Recess taken.)

24 THE VIDEOGRAPHER: It is 2:11 p.m., we  
25 are back on the record.

1                   We don't have any questions for Mr. Smith  
2                   and we reserve the right to review and sign the  
3                   transcript.

4                   MR. HILL: Thank you for your time,  
5                   Mr. Smith.

6                   THE WITNESS: You are welcome.

7                   THE VIDEOGRAPHER: It is the end of the  
8                   testimony of Fred Smith. It is 2:11 p.m., we go off  
9                   the record.

10                  (End of video record.)

11                  MS. REPORTER: Do you need a two-day  
12                  turnaround?

13                  MR. KANTAREK: No, we do not, just  
14                  standard for us, and if you can send the rough.

15                  (WHICH WERE ALL OF THE PROCEEDINGS HAD OR  
16                  TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)



1 STATE OF ILLINOIS)  
 ) SS.  
2 COUNTY OF DUPAGE )

3 I, STEPHANIE A. BATTAGLIA, CSR and Notary  
4 Public in and for the County of DuPage and State of  
5 Illinois, do hereby certify that on July 30, 2019, at  
6 9:40 a.m., at 300 North LaSalle Street, Chicago,  
7 Illinois, the deponent FRED SMITH personally appeared  
8 before me.

9 I further certify that the said FRED SMITH  
10 was by me first duly sworn to testify and that the  
11 foregoing is a true record of the testimony given by  
12 the witness.

13 I further certify that the deposition was  
14 terminated at 2:11 p.m.

15 I further certify that I am not counsel for  
16 nor related to any of the parties herein, nor am I  
17 interested in the outcome hereof.

18 In witness whereof, I have hereunto set my  
19 hand and seal of office this \_\_\_\_\_ of August, 2019.  
20

21 \_\_\_\_\_  
22 STEPHANIE A. BATTAGLIA

23 Notary Public

24 CSR No. 084-003337 - Expiration Date: May 31, 2021.  
25

\*\*\* ERRATA SHEET \*\*\*  
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 NEW YORK, NEW YORK 10017  
 (212) 400-8845

CASE: Arrows Up, LLC v. Oren Technologies, LLC  
 DATE: July 30, 2019  
 WITNESS: Fred Smith REF: 25510

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\_\_\_\_\_  
 Fred Smith

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 Notary Public

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