

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ONE WORLD TECHNOLOGIES, INC., d/b/a  
TECHTRONIC INDUSTRIES POWER EQUIPMENT,  
Petitioner,

vs. Case Nos. IPR2020-00884  
IPR2020-00886,  
IPR2020-00887  
IPR2020-00888

CHERVON (HK) LIMITED,  
Patent Owner,  
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EXPERT DEPOSITION TESTIMONY OF  
FRED P. SMITH  
THURSDAY, APRIL 29, 2021  
CHICAGO, ILLINOIS

\* \* \*

Reported by:  
Rebecca Klanderud  
Illinois CSR  
License No. 084.003990

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4                   Expert Deposition Testimony of  
5   FRED P. SMITH taken via remote communication  
6   with the witness in Chicago, Illinois at the law  
7   offices of Greenberg Traurig, Suite 3100, 77  
8   West Wacker Drive, Chicago, Illinois on  
9   Thursday, April 29, 2021, commencing at 10:00  
10   a.m. before Rebecca L. Klanderud, a Certified  
11   Shorthand Reporter.

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19 \* \* \*

20 (All present appeared via remote communication.)

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4 \* \* \*

5 EXHIBITS:

6 SMITH EXHIBITS: PAGE MARKED

7 (No Exhibits Were Marked.)

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2                               FRED P. SMITH,

3               a witness in the above-entitled matter,

4                       having been first duly sworn,

5               testified on his oath as follows:

6                               \*     \*     \*

7                               EXAMINATION

8                               \*     \*     \*

9       BY MR. SIKORSKI:

10           Q.     Good morning, Mr. Smith.

11           A.     Good morning.

12           Q.     Can you please state your full name?

13           A.     Fred Peterson Smith.

14           Q.     And you understand that you're under  
15       oath today?

16           A.     I do.

17           Q.     It's the same oath that you would  
18       undertake if you were testifying in a court of  
19       law?

20           A.     Sure.

21           Q.     Yeah. Um, is there any reason you  
22       cannot --

23                       MR. LUKAS: Hey, can we just make  
24       introductions really quick?

1 Is that okay?

2 MR. SIKORSKI: Sure. Yeah.

3 MR. LUKAS: Sorry about that, and I  
4 hate to cut you off but -- um, go ahead.

5 MR. SIKORSKI: No. Sure. Edward  
6 Sikorski of DLA Piper on behalf of petitioner,  
7 One World Technologies.

8 MR. LUKAS: James Lukas of Greenberg  
9 Traurig on behalf of the witness Fred Smith and,  
10 uh, the patent owner, Chervon HK Limited.

11 Thanks.

12 MR. SIKORSKI: Yeah. Sure. No  
13 problem. I'll just start over again.

14 BY MR. SIKORSKI:

15 Q. Mr. Smith, can you please state your  
16 full name?

17 A. Fred Peterson Smith.

18 Q. And you understand that you're under  
19 oath right now?

20 A. I do.

21 Q. And you understand that it's the same  
22 oath you would have taken had you been  
23 testifying today in a court of law?

24 A. Sure.

1 Q. Uh, is there any reason why you  
2 cannot give full and truthful testimony today?

3 A. No.

4 Q. It's my understanding that you've  
5 been deposed well over a hundred times.

6 Is that right?

7 A. Correct.

8 Q. Yeah. So I'll dispense, uh, with  
9 some of the formalities. I'll just ask that if  
10 you don't understand any of my questions, please  
11 let me know, and I'll endeavor to clarify it.

12 Is that all right?

13 A. I will try and do that, yes. Thank  
14 you.

15 Q. And as the court reporter mentioned  
16 before we went on record, since this deposition  
17 is being taken remotely, there's probably going  
18 to be some sort of time delay between each  
19 person speaking. So, uh, let's all just try to  
20 endeavor to be, um, mindful of not speaking over  
21 one another. I'll try to wait until your answer  
22 is complete, um, and I guess you'll have to wait  
23 until my question is -- is finished as well.

24 Fair?

1 A. Sounds good to me.

2 Q. Uh, as I said, the deposition's being  
3 taken remotely.

4 Where are you today physically, sir?

5 A. Uh, I'm in the Chicago, uh, Greenberg  
6 Traurig office.

7 Q. And you're in a separate room as, uh,  
8 Mr. Lukas?

9 A. That's correct.

10 Q. Different floors or just down the  
11 hall?

12 A. Uh, I think he's just down the hall.

13 Q. Okay. Is there anybody in the room  
14 with you?

15 A. Just me.

16 MR. SIKORSKI: And, Mr. Lukas, is  
17 there anybody in the room with you?

18 MR. LUKAS: There's not.

19 MR. SIKORSKI: Okay. And I guess  
20 maybe a question for Mr. Lukas: Is there  
21 anybody who's attending by telephone or anything  
22 not -- not visible on the -- the portal that  
23 we're looking at?

24 MR. LUKAS: Uh, not that I'm aware

1 of. So, no, I don't think so.

2 MR. SIKORSKI: And no expectations  
3 for anybody to -- to drop by in the office or  
4 through a telephone link?

5 MR. LUKAS: None from -- none from  
6 me, no.

7 BY MR. SIKORSKI:

8 Q. And, Mr. Smith, it might sound like a  
9 silly question, but are you expecting anybody to  
10 drop by or -- or dial in by phone?

11 A. I -- I -- I don't have any  
12 expectation that way, no.

13 Q. Great. Um, are you familiar with the  
14 deposition rules that are specific to  
15 cross-examination in IPR proceedings?

16 A. I don't know that I am specifically.

17 Q. Okay. Let me just -- I'm sorry.  
18 I'm guilty of my own failure to wait  
19 until your answer was done.

20 I'll just read into the record two  
21 paragraphs that, uh, are in the Patent and Trial  
22 Appeal Board's Trial Practice Guide from  
23 November 9 -- uh, 2019.

24 So paragraph six of Appendix D of the

1 PTAB Trial Practice Guide says, and I quote,  
2 "Once the cross-examination of a witness has  
3 commenced, and until cross-examination of the  
4 witness has concluded, counsel offering the  
5 witness on direct examination," that would be  
6 Mr. Lukas, "shall not: (a) consult or confer  
7 with the witness regarding the substance of the  
8 witness' testimony already given, or anticipated  
9 to be given, except for the purpose of  
10 conferring on whether to assert a privilege  
11 against testifying or on how to comply with a  
12 Board order; or (b) suggest to the witness the  
13 manner in which any questions should be  
14 answered."

15 Do you understand what I read?

16 A. I -- I do. I was aware of that.

17 Q. Okay. And you agree to comply with  
18 that today?

19 A. Sure.

20 Q. The same document paragraph 7 states,  
21 and I quote, "An attorney for a witness shall  
22 not initiate a private conference with the  
23 witness or call for a break in the proceedings  
24 while a question is pending, except for the

1 purpose of determining whether a privilege  
2 should be asserted."

3 Do you understand that paragraph,  
4 sir?

5 A. I do.

6 Q. And you agree to comply with that  
7 today?

8 A. I think that was the attorney that  
9 has to comply with that, but, yeah, sure.

10 Q. Now, being under oath, and since this  
11 deposition is being taken remotely, do you agree  
12 to refrain from any exchange of communications  
13 or phone calls with counsel, uh, for Chervon or  
14 for other people at Greenberg during the course  
15 of this deposition?

16 A. Sure.

17 Q. And you agree not to look at any  
18 text, emails, or other correspondence that might  
19 coach your testimony today?

20 A. Correct. I do.

21 Q. Sir, when were you engaged to work on  
22 behalf of Chervon, the patent owner?

23 A. I believe it was about a year ago.

24 Q. All right. So can you be more

1 specific?

2 Like April, May, or -- or what month?

3 A. Uh, it was April, May'ish.

4 Q. And when you -- when you were  
5 engaged, what was the assignment as you knew it?

6 A. Uh, I don't know that I was given a  
7 specific assignment at that point. I was told  
8 that there was, uh, a number of patents and  
9 that, um, uh, they wanted to be able, um, use me  
10 in a District Court case and also in an IPR or  
11 several IPRs.

12 Q. Do you consider that two separate  
13 engagements, for example, on the District Court  
14 on the one hand and IPR proceedings on the  
15 other, or just one single engagement?

16 A. Uh, I -- I assume I would probably --  
17 I mean I keep the times separately on those  
18 things, so I would -- uh, I would bill them  
19 separately.

20 Q. Are you charging the same hourly rate  
21 for each of the District Court as opposed to IPR  
22 proceedings?

23 A. Yes.

24 Q. And what's that rate, sir?

1           A.     Four hundred dollars an hour.

2           Q.     Can you approximate for me how many  
3 hours you've worked since being engaged in this  
4 -- in -- for Chervon?

5           A.     You know what?

6                   I really can't. Um, I don't -- uh, I  
7 haven't looked to see what that would be.

8           Q.     Maybe a couple hundred hours  
9 ballpark?

10                   Is that a fair estimate?

11          A.     Well, if I could have given you an  
12 estimate, I would have. I -- I really -- I  
13 really can't give you an estimate.

14          Q.     Now, you've obviously worked with,  
15 uh, people from the Greenberg law firm, correct?

16          A.     That's correct.

17          Q.     Have you worked with anybody from  
18 Chervon?

19          A.     No.

20          Q.     So you've not -- not interacted  
21 either personally or via electronic or  
22 telephonic communications with anybody that you  
23 know to be employed by Chervon?

24          A.     That's correct.

1 Q. And at the Greenberg law firm, who --  
2 with whom have you been working?

3 A. Um, Ben and James.

4 Q. James being Mr. Lukas who's defending  
5 the deposition today?

6 A. That's correct.

7 Q. And Ben is Ben Gilford?

8 Is that right?

9 A. That's correct.

10 Q. But to your knowledge, just those two  
11 attorneys and nobody else?

12 A. I believe that's correct.

13 Q. The -- the court reporter didn't  
14 formally introduce the caption for today's  
15 deposition, but you understand that you're here  
16 today for four, uh, proceedings at the patent  
17 office, four IPR proceedings, correct?

18 A. I do.

19 Q. I'm not sure if you know them by  
20 number, but I'll just read them into the record.

21 IPR2020-00884, which pertains to U.S.  
22 Patent 9,596,806; Case Number IPR2020-00886,  
23 pertaining to U.S. Patent 9,826,686; IPR  
24 2020-00887 pertaining to U.S. Patent 9,986,686;

1 and IPR2020-00888 pertaining to U.S. Patent  
2 10,070,588.

3 Um, for those four proceedings, sir,  
4 you prepared a single declaration, correct?

5 A. That's correct.

6 Q. And you understand that your  
7 declaration was designated or marked Exhibit  
8 2027 in each of those four proceedings, correct?

9 A. Yes.

10 Q. So in the course of today, if I refer  
11 to your declaration, you'll understand that I'm  
12 referring to 2027 in the IPR records?

13 A. Yes.

14 Q. And, likewise, if I refer to Exhibit  
15 2027, you'll understand that I'm referring to  
16 your declaration?

17 Yes?

18 A. Sure.

19 Q. Now, I believe you have some hard  
20 copies to allow this deposition to move a little  
21 bit more swiftly.

22 Is that right?

23 A. I do, yes.

24 Q. Can you just let me know what -- what

1 it is that you have in hard copy in front of  
2 you?

3 A. Yeah. In fact, I have a -- I have a  
4 list that (witness indicating) -- because I had  
5 a tabbed book that I put together. So I have  
6 the four patents, I have the declaration of Reed  
7 Smith, I have, uh, each of the petitions, uh, I  
8 have the preliminary response, um, my  
9 preliminary declaration, um, the PTO's decision,  
10 um, obviously my declaration, and then I have  
11 exhibits Outils, Matsunaga, Langdon, Nakano,  
12 Mildahl [ph], Milcoy, Hilchey, Reichart, um,  
13 Roelle, and the, um, safety standard for  
14 walk-behind mowers.

15 Q. Which standard by number, please?

16 A. It is the 16 CFR 1205.4.

17 Q. Thank you.

18 Are the copies that you have in hard  
19 copy today, are those clean copies, or are there  
20 notes on them?

21 A. Uh, they're clean copies.

22 Q. I assume you've been through enough  
23 patent disputes to know that if I refer to a  
24 patent by the last few digits of its number, you

1 would understand which patent I'm referring to?

2 A. Yeah, except in this case.

3 Q. Yeah. I guess we had to go five  
4 digits on -- on a couple of them.

5 Um, but that convention, you  
6 understand that convention, correct?

7 A. Certainly.

8 Q. And, likewise, if I refer to the  
9 Chervon patents collectively, you'll understand  
10 that I'm just referring to all four of them as  
11 -- as a group.

12 Is that okay?

13 A. That's fine with me.

14 Q. Did anyone assist you in preparing  
15 your exhibit -- uh, excuse me -- your  
16 declaration, Exhibit 2027?

17 A. Um, normally, the way I do this is,  
18 um, you know, I do information loading. Uh,  
19 sometimes I'll have one of my engineers do some  
20 preliminary things, um, and, uh, I don't think I  
21 did that in this case though. Um, and, um, you  
22 know, then I'll work with the attorneys on  
23 format and the like and, um, you know, send them  
24 a draft, and we sometimes go back and forth a

1 bit (witness indicating).

2 Q. It's pretty typical for -- for law  
3 firms to do a first draft and then an expert  
4 review.

5 Is that generally how it works in  
6 this case as well?

7 A. Um, not with me. A lot of times I do  
8 the first draft. Um, I don't remember in this  
9 case, um, whether they did the first draft or I  
10 did. Um, typically -- typically, I do first  
11 drafts.

12 Q. But, again, you don't recall in this  
13 particular proceeding?

14 A. Uh, I don't. Uh, they may have, uh,  
15 done a first draft. I -- I -- I don't recall  
16 exactly how that went back and forth.

17 Q. Your declaration introduces four  
18 exhibits, uh, like 2030 through 2033.

19 Do you generally recall that?

20 A. Um, where are you at?

21 Q. Just in your declaration.

22 There are lawn mowers that have  
23 purportedly foldable handles?

24 A. Oh, you're talking about -- uh, yes.

1 I do recall that.

2 THE COURT REPORTER: Forgive my  
3 interruption. I'm sorry but every time you move  
4 that paper, it starts to cut out words. So we  
5 need to make sure you keep the paper away from  
6 the microphone. Unfortunately, it's one of the  
7 issues with using hardcopy paper. The rattling  
8 of the paper cuts out words, so thank you.

9 THE WITNESS: Um, all right. Well,  
10 we'll try not . . .

11 But, uh, yes, I -- um, I didn't put  
12 the exhibit numbers on there, but I am familiar  
13 with that, yes.

14 BY MR. SIKORSKI:

15 Q. So did you yourself find those  
16 exhibits, or were they provided to you?

17 A. Uh, I believe I found those.

18 Q. Now, you identified two lawyers at  
19 the Greenberg firm that you've been working  
20 with.

21 Are those same -- the same two  
22 individuals -- did those same two individuals  
23 help you prepare your declaration?

24 A. Uh, I believe so.

1 Q. Now -- now, did anybody else at your  
2 -- at your firm or company, uh, help you  
3 prepare?

4 A. Um, that wouldn't be unusual but in  
5 this case, I -- I don't recall anybody else  
6 working on it with me.

7 Q. If someone did work on it, would they  
8 have billed -- uh, would -- would your company's  
9 billing to the Greenberg or Chervon entities  
10 have included that person's time?

11 A. Likely, yeah.

12 Q. Yeah. Under your name or someone  
13 separate?

14 A. Uh, usually it would be -- um, well,  
15 they -- they would have a different billing  
16 rate.

17 Q. All right. But in -- in proceedings  
18 past, you -- your son apparently has helped you  
19 with certain tasks.

20 Did your son help in any of the tasks  
21 relating to your declaration?

22 A. Uh, I don't believe so.

23 Q. But you're not sure?

24 A. Uh, I'm not positive, no.

1           Q.     Now, in preparing your dec- -- your  
2     declaration, you no doubt compared the claims of  
3     the Chervon patents to at least some of the  
4     prior art identified in your declaration, right?

5           MR. LUKAS:   Objection, form.

6           MR. SIKORSKI:   I'm sorry?

7           MR. LUKAS:   Objection, form.

8     BY MR. SIKORSKI:

9           Q.     I'm sorry.

10           Mr. Smith, did you answer the  
11     question?

12           A.     I said sure.   I did -- I did --  
13     obviously looked at, you know, other prior art.

14           Q.     Uh, other than what?

15           A.     The prior art that's listed in my  
16     declaration.

17           Q.     What -- what other prior art not  
18     listed in your declaration did you review?

19           A.     Uh, other than the -- um, the folding  
20     handle, uh, pieces, I don't know that there were  
21     any other ones.

22           Q.     Okay.   So -- so as you sit here  
23     today, the prior art that you looked at, as well  
24     as the four additional pieces of prior art that

1     you yourself found, you don't recall looking at  
2     any other prior art for purposes of preparing  
3     your declaration?

4                   MR. LUKAS:  Objection, form.

5                   THE WITNESS:  Um, I don't believe so.

6     BY MR. SIKORSKI:

7           Q.     Yeah.  Have you endeavored to compare  
8     the claims of the Chervon patents to anything  
9     not identified in your report such as a product  
10    for example?

11          A.     Uh, no.  That wasn't the scope of  
12    what I was doing.

13          Q.     Right, but since -- since being  
14    engaged in the matter, is it fair to say that  
15    you have indeed compared the claims of the  
16    Chervon patents to -- to accused products?

17          A.     Uh, I have not.

18          Q.     Your CV identifies your current  
19    employer, if that's the right word, as Alpine  
20    Engineering.

21                   Is that right?

22          A.     That's correct.

23          Q.     Am I characterizing it right to say  
24    that it's your employer, or what's a better way

1 to characterize that company?

2 A. Uh, it's my company.

3 Q. Okay. Thank you.

4 Your CV identifies what I understand  
5 to be predecessor companies, such as F.S. New  
6 Products.

7 Those companies, they don't currently  
8 exist today, right?

9 A. Uh, I don't believe so. I mean F.S.  
10 New Products is still a shell, but I don't -- I  
11 don't think it's even being used, um, at this  
12 point.

13 Q. I guess I'll rephrase my question a  
14 little bit differently.

15 So you don't work for anybody except  
16 for Alpine Engineering today, correct?

17 A. That's correct.

18 Q. So have you or Alpine Engineering  
19 received any compensation, funding,  
20 contributions, um, from Chervon other than the  
21 -- the billing that you've provided them, uh,  
22 since a year ago?

23 A. No.

24 Q. Have you or Alpine Engineering

1 received any kind of compensation, funding, or  
2 contributions from the Greenberg law firm, uh,  
3 since you were engaged in the Chervon case?

4 A. No.

5 Q. Have you received any monetary  
6 benefit, you being you or Alpine Engineering,  
7 from Chervon or Greenberg since being engaged in  
8 this matter?

9 A. My monetary benefit?

10 Other than my billing, no.

11 Q. Nonmonetary, sir, so my apologies.

12 A. Uh, no.

13 Q. Do you own a lawn mower, sir?

14 A. Uh, I do.

15 Q. Do you know what brand it is?

16 A. Uh, it's a ZTR. Uh, I don't remember  
17 who makes it though.

18 Q. ZTR being zero --

19 A. Yeah, turn radius.

20 Q. Turn radius, right.

21 So it's a riding mower?

22 A. It is, yes.

23 Q. Do you own any other powered  
24 gardening tools, such as a Weedwacker or

1 anything else?

2 A. Sure.

3 Q. Do you know what brand it or they  
4 are?

5 A. Um, I -- off the top of my head, I  
6 don't.

7 Q. Have you been provided access to any  
8 Chervon gardening equipment for purpose of this  
9 -- this or these disputes?

10 A. Um, uh, I did have them send me two  
11 lawn mowers, but they're still in the box in my  
12 shop. I haven't actually even taken them out of  
13 the box yet.

14 Q. Have you been provided any of the  
15 accused products in the -- from the District  
16 Court litigation?

17 A. Oh, actually, let me rephrase.

18 My understanding is that the mowers  
19 that I got were, um, accused products, and,  
20 again, I haven't looked at those at this point.

21 Q. And you don't know which models they  
22 are sitting here today?

23 A. I don't.

24 Q. So if you have your declaration

1     handy, sir, Exhibit 2027, let me know when you  
2     have that in front of you.

3             A.     I do.

4             Q.     In the back, you've attached your CV  
5     just past the signature page. Let me know when  
6     you're there.

7             A.     I'm there.

8             Q.     Was this CV specifically tailored  
9     for, uh, the Chervon disputes that you're here  
10    for today?

11            A.     No.

12            Q.     This is your standard CV?

13            A.     Yes.

14            Q.     On page one, toward the bottom, the  
15    last paragraph, you, uh, list what you call a  
16    wide variety of products.

17                    Do you see that, sir?

18            A.     Yes.

19            Q.     What -- what criteria did you use  
20    when deciding which products to list here?

21            A.     I'm not sure I had a criteria. Um,  
22    that was just a smattering of some of the things  
23    that I've done over the years.

24            Q.     So these are products that you

1 believe you have a particular expertise in?

2 A. Um, I mean certainly those are things  
3 that, um, you know, I've developed but it's just  
4 like I said a, uh, small slice of some of the  
5 things that I've done.

6 Q. Separately, on page two of your CV,  
7 you indicate in the last paragraph that you've  
8 been retained over 500 times as an expert.

9 Do you see that?

10 A. Yes.

11 Q. And that number, 500 times, is pretty  
12 current?

13 A. Uh, well, since it's over, I suppose  
14 that would be current. I'm not sure, uh, that  
15 -- you know, how much over that there is, but,  
16 uh, you know, it's somewhere in that ballpark.

17 Q. Right. And at the top of page two,  
18 uh, you say that your expertise extends to areas  
19 of product design.

20 Do you see that?

21 A. Yes.

22 Q. Is it -- is it fair to  
23 compartmentalize your experience into  
24 essentially two camps, one being product design

1 and the other being -- uh, being an expert for  
2 disputes?

3 A. Um, I think that's probably fair.

4 Q. In the year 2021, do you know what  
5 proportion of your time has been spent as an  
6 expert as opposed to time being spent in product  
7 design?

8 A. Uh, I don't know that I actually keep  
9 track of that. I've probably spent more time as  
10 an expert, uh, than in product design.

11 Q. Do you -- do you know of any product  
12 design projects that you've been hired for in  
13 the year 2021?

14 A. Oh, sure. We have -- we have lots of  
15 design projects going on.

16 Q. Yeah. Right. You said "we."

17 I'm just wondering whether -- whether  
18 you were participating in any of those?

19 A. Well, it's my business. I -- I do  
20 participate in them because I have -- I still  
21 oversee my engineers.

22 Q. The CV you provided had some  
23 information from the year 2016 through the  
24 present.

1                   In across that range of time from  
2   2016 to the present, do you know what proportion  
3   of your time was spent doing product design as  
4   opposed to being an expert in disputes?

5           A.     Uh, again, I don't really keep track  
6   of that.

7           Q.     Is it fair to say that more of your  
8   time was being -- was spent as an expert as  
9   opposed to doing product design?

10          A.     I think that's probably true.

11          Q.     Your CV has an Exhibit 3 where you  
12   list previous testimony.

13                   Let me know when you're looking at  
14   that.

15          A.     I've got that.

16          Q.     In preparing the list of previous  
17   testimony in your CV within Exhibit 2027, what  
18   information did you side to -- did you decide to  
19   include?

20                   Excuse me.

21          A.     Uh, I -- I don't understand your  
22   question.

23          Q.     Okay. So -- so I'll phrase it a  
24   little bit differently.

1 Does -- let me back up.

2 Exhibit 3 of your CV includes a list  
3 of cases, mainly disputes either in district  
4 courts, uh, state courts or the patent office,  
5 possibly elsewhere, right?

6 A. Yes.

7 Q. And the title of this list is, by  
8 your hands, Previous Testimony, correct?

9 A. Correct.

10 Q. So am I to understand that this is a  
11 list of, uh, disputes where you've provided  
12 either verbal or written testimony?

13 A. No. This is -- uh, this is the  
14 standard list that's required in District Court  
15 cases of testimony given by, uh, either  
16 deposition or in court.

17 Q. So verbal testimony, right?

18 A. Verbal, yes.

19 Q. This list identifies four IPRs in the  
20 right column.

21 Is that right?

22 A. That looks to be the case.

23 Q. But you've participated in other IPRs  
24 since 2016, correct?

1           A.     That's possible.  If I wasn't  
2     deposed, it wouldn't be on this list.

3           Q.     Right.  So it's -- it's possible that  
4     you submitted a declaration, but, for example,  
5     the, um, IPR petition was denied before any  
6     verbal testimony was taken, correct?

7           A.     That's possible, yes.

8           Q.     Do you know how many of those  
9     situations have occurred since 2016 where you  
10    gave a written declaration, but there was no  
11    need for verbal deposition testimony?

12          A.     I don't.

13          Q.     Do you -- do you keep a record of  
14    I'll call it wins and losses at the PTAB?

15          A.     I don't.

16          Q.     Getting back to page one of your CV,  
17    again, in your standard CV, you apparently  
18    identify numerous products.  And, again, I'm  
19    referring to that final paragraph, but I notice  
20    that no -- there's no listing of gardening  
21    equipment, right?

22          A.     Not specifically, no.

23          Q.     Your -- your CV has a list of patents  
24    in Exhibit 2 as well, correct?

1 A. It does.

2 Q. I -- I've looked through the list,  
3 and I didn't see any that pertained to gardening  
4 equipment.

5 Do you know if any do?

6 A. Uh, I don't believe so.

7 Q. Toward the front of your declaration,  
8 if you could flip to paragraph six, please?

9 Let me know when you get there.

10 A. I'm there.

11 Q. In the middle of paragraph six of  
12 your declaration, Exhibit 2027, you indicate  
13 that over your 30-year career, you've designed  
14 many different products, and you have a list.

15 Do you see that?

16 A. Yes.

17 Q. Was there -- what was the criteria  
18 you used when deciding which, uh, product types  
19 to list here in paragraph six of Exhibit 2027?

20 A. Uh, again, I don't know that I have a  
21 specific criteria. It shows that, you know,  
22 I've designed all sorts of different things over  
23 the years.

24 Q. The first product you list is aerial

1 lifts.

2 Do you see that?

3 A. Yes.

4 Q. Aerial lifts are not at issue in  
5 these proceedings, correct?

6 A. No.

7 Q. Why is it that you included them?

8 A. Uh, I think it's -- it's to show that  
9 I have a wide berth of things that I've designed  
10 that -- uh, of -- you know, if someone comes to  
11 me and asks me to design something, there are a  
12 whole -- lots of things that I'm comfortable  
13 designing based on my experience.

14 Q. Briefly, what is an aerial lift?

15 A. Uh, that would be -- it's a broad  
16 category that would include things such as  
17 bucket trucks, um, boom lifts, scissor lifts,  
18 et cetera.

19 Q. You also list in paragraph six of  
20 your declaration refuse trucks.

21 You're aware that refuse trucks are  
22 not at issue in these proceedings, right?

23 A. Of course.

24 Q. Your list also includes dump

1 trailers, grain carts, and exercise equipment,  
2 right?

3 A. Sure.

4 Q. And you understand that those are  
5 likewise not at issue in these proceedings,  
6 correct?

7 A. Nor are portable putting greens.

8 Q. Right. Portable putting greens are  
9 also included in Exhibit 2027, paragraph six.  
10 Thank you.

11 Are you relying on your experience  
12 designing that list of products to support your  
13 qualifications as a person of ordinary skill in  
14 these proceedings?

15 A. Uh, I don't know that that's  
16 necessary, um, but, um, uh, the reality is is,  
17 um, you know, all of -- many of those things  
18 require, uh, knowledge of a lot of the same  
19 things that are at issue in these patents, uh,  
20 controls, linkages, uh, electronics. Uh, you  
21 know, a lot of those things have similar -- um,  
22 similar issues.

23 Q. When you say "linkages," what do you  
24 mean?

1           A.     Well, I think that's pretty  
2 self-explanatory. I don't --

3           Q.     For those -- for those reading -- I'm  
4 sorry. I spoke over you. You should answer  
5 again. Sorry.

6           A.     I think linkages are pretty  
7 self-explanatory. I don't know what more I can  
8 explain to you.

9           Q.     For those reading the deposition  
10 transcript who don't have an engineering degree,  
11 what might you tell them?

12          A.     Uh, so that would be things like, um,  
13 that connect one thing to another, uh, you know,  
14 allow it to move. You know, for instance,  
15 specifically like a Bowden cable might be a --  
16 might be a link that's pinned on each end.  
17 There's all sorts of things that would fall into  
18 that category.

19          Q.     My understanding from some of your  
20 previous testimony is that you did some  
21 consulting work with Husqvarna, correct?

22          A.     That's correct.

23          Q.     And one of those Husqvarna projects  
24 was for a walk-behind mower that used

1 hydrostatic drive, correct?

2 A. That's correct.

3 Q. Briefly, what's hydrostatic drive?

4 A. Uh, so, essentially, that's a -- a --  
5 um, a drive that uses hydraulics in order to  
6 drive the wheels.

7 Q. So that project was for a driven  
8 mower?

9 Is that right?

10 A. It was, yes.

11 Q. As opposed to a push mower, right?

12 A. That's correct.

13 Q. I believe at the same time, you had a  
14 second project for Husqvarna, uh, pertaining to  
15 a zero turn radius or a ZTR lawn mower, correct?

16 A. Correct.

17 Q. And, briefly, what's a zero turn  
18 radius lawn mower?

19 A. Uh, it allows you to -- you don't  
20 have to -- I mean it's kind of self-explanatory.  
21 There's -- there's -- uh, there's not a radius  
22 of the turn. You can turn on a dime so to  
23 speak.

24 Q. You can almost pivot you're saying?

1           A.     You can pivot, yes.

2           Q.     So that mower was a riding mower.

3                   Is that right?

4           A.     That's correct.

5           Q.     And, again, driven as opposed to

6 being pushed?

7           A.     Correct.

8           Q.     Now, my understanding, but please

9 correct me if I'm wrong, is that those two

10 projects were relatively concurrent.

11                   Yes?

12          A.     Uh, yeah. They were in the same time

13 period. I think we did the zero turn radius

14 work after the -- the controls.

15          Q.     And that work was done when you were

16 with . . .

17          A.     F.S. New Products.

18          Q.     I'm sorry?

19          A.     I believe that was -- well, let's

20 see. Uh, no. I think -- I think that would

21 have been with Alpine Engineering still.

22          Q.     Yeah. I think you testified pretty

23 firmly that that was with F.S. New Products.

24          A.     It was during that time period. It

1     may have been F.S. New Products. I -- I -- if  
2     that's what I said before, that may be, but it's  
3     that time period where it may have been one or  
4     the other.

5           Q.     Okay. So -- so, again, my  
6     understanding is that these Husqvarna projects  
7     were in the mid to late '90s.

8                   Is that about right?

9           A.     Um, you know, it's been so long ago,  
10    I -- I don't know for sure what those dates  
11    would be. I think it's more likely that they're  
12    the late '90s.

13          Q.     Do you recall, were you the principal  
14    engineering dealing with Husqvarna for those two  
15    projects?

16          A.     Yes.

17          Q.     For the -- for the hydrostatic  
18    lawnmower, did you design that from the ground  
19    up, or did you modify an existing model?

20          A.     So this was, uh, controls that we  
21    were designing for an existing model.

22          Q.     For the Husqvarna zero turn radius  
23    project, did you design that mower from the  
24    ground up, or did you modify an existing mower?

1           A.     Uh, that was designed from the ground  
2 up. Uh, that was a -- from the ground up  
3 design, um, and at some point, um, uh, we sought  
4 that design based off that design. I don't know  
5 what they had going on, but, um, we didn't  
6 actually finish that design.

7           Q.     Husqvarna basically pulled the plug  
8 on that project?

9                     Is that fair?

10          A.     Uh, that's probably a good way to put  
11 it.

12          Q.     So to know -- no consumer products  
13 available on the market came of the zero turn  
14 radius project with Husqvarna to your knowledge?

15          A.     Uh, actually, they -- they did come  
16 out with a zero turn radius mower. I'm not sure  
17 whether they used what we did or not. Uh, I  
18 haven't really examined that.

19          Q.     And for the hydrostatic drive project  
20 with Husqvarna, do you recall whether a consumer  
21 product ultimately came to market as a result of  
22 your design?

23          A.     Uh, they, uh, do have a walk behind.  
24 Uh, I'm not sure what of our design that they

1 used.

2 Q. My understanding is that those two  
3 projects collectively took just a few months.

4 Is that right?

5 A. Uh, it's been so long, I can't really  
6 tell you how -- how long, you know, that was for  
7 sure.

8 Q. Other than those two Husqvarna  
9 projects, have you participated in the design of  
10 any grass or turf mower?

11 A. Um, I do not believe so.

12 Q. So you've never participated in the  
13 design of a passive I'll call it push-type  
14 mower, in other words, one that doesn't have a  
15 driving mechanism?

16 A. I've not.

17 Q. Have you participated in the design  
18 of any battery-powered gardening equipment?

19 A. Uh -- uh, we were asked at one point  
20 to do some work on a, uh, Weedwacker, uh, type  
21 of unit. It's been so long ago, I don't -- I  
22 don't recall exactly any of the details of that.

23 Q. Would that have also been with the  
24 F.S. entity?

1 A. Uh, I don't know for sure.

2 Q. Forgive me, F.S. New Products.

3 Have you participated in any other  
4 type of -- uh, excuse me. I'll start again.

5 Have you participated in a -- in the  
6 design of any other powered gardening equipment,  
7 for example, powered by fossil fuels?

8 A. Um, so we designed a -- um, a  
9 spreader, um, that would have been designed by  
10 foss- -- powered by fossil fuels.

11 Q. Like a spreader, meaning something  
12 that spreads fertilizer or seed?

13 A. Seed, sand, yeah, anything like that.

14 Q. How big was this thing just generally  
15 speaking?

16 Can you describe it?

17 A. Uh, it would have been pulled behind  
18 a tractor.

19 Q. The patent owner, Chervon has never  
20 engaged you or your companies to design any  
21 products, correct?

22 A. Correct.

23 Q. And, likewise, the petitioner, One  
24 World Technologies, have they ever engaged you

1 or your companies to design a product?

2 A. No.

3 Q. Your CV at the end of your  
4 declaration, Exhibit 2027, identifies some  
5 disputes that you participated in on behalf of  
6 Toro.

7 Is that right?

8 A. Uh, yes.

9 Q. Has Toro -- excuse me.

10 Toro is the lawn and garden equipment  
11 that's pretty recognizable, right?

12 A. That's correct.

13 Q. Has Toro ever engaged you or your  
14 companies to help design a product?

15 A. Uh, I don't believe so. Uh, they've  
16 just engaged me on several occasions as an  
17 expert for them.

18 Q. And after the two projects that we  
19 discussed earlier today, Husqvarna did not  
20 further engage you or your companies to design  
21 any products, correct?

22 A. That's correct.

23 Q. You indicated that among the hardcopy  
24 documents you have in front of you is the code

1 of regulation 16 CFR 1205.

2 Am I right?

3 A. That's correct.

4 Q. Have you ever consulted or attempted  
5 to have a product comply with those regulations?

6 A. Um, not these regulations  
7 specifically, but I do that sort of thing on a  
8 regular basis.

9 Q. What do you mean by "that sort of  
10 thing"?

11 A. Uh, we have, um, uh, you know, helped  
12 -- helped, uh, you know, products become, um,  
13 certified. Uh, we've, uh, you know, helped a  
14 number of companies look to see that their  
15 products meet certain safety standards, uh, so  
16 that's something that we do on a regular basis.

17 Q. So compliance with safety standards  
18 would probably include ANSI standards, correct,  
19 A-N-S-I?

20 A. Absolutely.

21 Q. All right. Among the exhibits in  
22 these proceedings for which we're here today,  
23 uh, among them are the ANSI B71.1 standards.

24 Do you recall seeing those?

1 A. Yes.

2 Q. Have you in your career ever  
3 consulted or attempted to have a product comply  
4 with ANSI B71.1?

5 A. Uh, I don't believe that that -- um,  
6 that that was one of the standards that I've  
7 ever, uh, needed to do that for, no.

8 Q. Among the exhibits in these  
9 proceedings is ANSI B175.3.

10 Do you recall seeing that in the  
11 course of your work?

12 A. Yes.

13 Q. Uh, have you ever consulted or  
14 attempted to have a product comply with ANSI  
15 B175.3?

16 A. Uh, the -- I don't know that I can  
17 answer that question. That may have been  
18 something that, uh, was consulted when we were  
19 looking at, uh, you know, Weedwackers.

20 Q. Before being engaged by Chervon in  
21 the proceedings for which we are here today, do  
22 you recall ever looking at 16 CFR 1205?

23 A. Um, uh, I don't know -- um, I don't  
24 have a specific recollection of that.

1 Q. Same question for ANSI B71.1.

2 A. Uh, again, I don't have a specific  
3 recollection of that either.

4 Q. Are you aware of the European  
5 counterparts to ANSI B71.1 or ANSI B175.3?

6 A. Uh, uh, not without looking up what  
7 they are. I don't have the numbers off the top  
8 of my head.

9 Q. Or any experience with those European  
10 counterparts?

11 A. Oh, we do lots of things with, uh,  
12 for instance, ISO standards and -- and the like.  
13 Um, so, yeah, I'm familiar with, um, you know,  
14 ISO standards in general, uh, not specifically  
15 for, um, you know, a push-behind mower.

16 Q. Your CV in Exhibit 2027 also  
17 indicates that your -- uh, your experience  
18 extends to the patent process. It's on page two  
19 of your CV or, again, I believe it's in  
20 paragraph six of your declaration.

21 What type of expertise are you  
22 referring to when you say you have expertise in  
23 the patent process?

24 A. Well, uh, the fact that I have 73

1 patents, uh, you know. I've been through that  
2 process a few times, uh, anymore. We actually  
3 usually, um, you know, write our own, uh,  
4 patents, the specification. Uh, usually, you  
5 know, we do all the provisionals, um, and then  
6 we usually, uh, engage a patent attorney to help  
7 when we, you know, turn that over to a -- a  
8 utility patent for instance and -- and then even  
9 assist at that point in writing claims and --  
10 and, um, you know, helping with that.

11 Q. You haven't been asked in this case  
12 -- or let me strike that.

13 You haven't been asked for -- by  
14 Chervon to participate in any claim drafting  
15 exercise, correct?

16 A. No, and we wouldn't do that because  
17 those aren't our patents.

18 Q. So -- so -- so your participating --  
19 participation in the patent process is  
20 exclusively for you and your companies.

21 Am I understanding that correctly?

22 A. Well, um, you know, certainly as far  
23 as -- as that interaction, but then we also have  
24 all of the patent suits that we have, um, been

1 engaged on and so I -- you know, you gain some  
2 experience there also.

3 Q. In your career developing products,  
4 have you ever looked at other parties' patents?

5 A. Well, certainly.

6 Q. And what would the purpose of doing  
7 that be?

8 A. Well, actually, um -- um, we  
9 actually, um, many times will do that as part of  
10 our information loading, um, when we go to do a  
11 -- um, you know, design a product. Uh, there's  
12 actually several purposes to that. One is to  
13 see what is out there and, you know, to, um, you  
14 know, try and make sure that we -- we don't step  
15 on anybody's toes so to speak unawares.

16 Q. By -- by stepping on people's toes,  
17 you mean that you try to avoid infringing other  
18 people's patents, or did you mean something  
19 else?

20 A. No. That's what I meant.

21 Q. So you would agree that in the  
22 process of designing a product, the mere fact  
23 that you look at third-party patents, there's  
24 nothing nefarious about that, correct?

1 A. No, not at all.

2 Q. To your knowledge, have your  
3 qualifications as an expert ever been  
4 challenged?

5 A. Um, I think there -- uh, there's one  
6 case, uh, that I'm aware of where I think the  
7 court said the case had more to do with, uh,  
8 sales than it did with design. Um, that would  
9 be the only one that I can think of.

10 Q. Is that the Etagz case?

11 A. That would be the Etagz case.

12 Q. And in that case, your -- your  
13 report, opinions, and testimony were -- were  
14 excluded, correct?

15 A. I -- uh, I believe that's the case.

16 Q. But to your knowledge, that's the  
17 only instance where your, um, reports, opinions,  
18 or testimony have been excluded by some sort of  
19 judicial authority?

20 A. Uh, the only other one that I'm aware  
21 of is a -- a case, um, in California on -- um,  
22 on Malibu Boats. It was a design patent case  
23 where, uh, the court said that I had been given  
24 the wrong law to rely on.

1 Q. And as a result of that, your  
2 opinions were excluded from those proceedings?

3 A. Um, not completely, but just the ones  
4 that relied on that law it was my understanding.

5 Q. You know, we've been going about an  
6 hour.

7 Why don't we take a break right now?

8 A. Sounds good to me.

9 \* \* \*

10 (Whereupon, a short recess was taken.)

11 \* \* \*

12 BY MR. SIKORSKI:

13 Q. Mr. Smith, generally speaking, when  
14 consumers use a push lawn mower, uh, you would  
15 agree, would you not, that while undesirable,  
16 it's certainly possible for the lawn mower to  
17 strike a stationary object, like a tree trunk or  
18 a rock?

19 A. Sure.

20 Q. And, likewise, you would agree, would  
21 you not, that using a Weedwacker, while  
22 undesirable, the user might inadvertently  
23 encounter a fence or rock, a tree trunk,  
24 something like that?

1 A. Sure.

2 Q. Now, you've indicated -- and I can  
3 point to your declaration, paragraph 83. Let me  
4 know when you're there.

5 A. I'm there.

6 Q. The second to the last sentence in  
7 paragraph 83 of your declaration, Exhibit 2027  
8 says, and I quote: "Lawnmowers are also heavier  
9 than hedge trimmers and require a lot more power  
10 than hedge trimmers because they are used to cut  
11 a larger area."

12 In order to qualify as a lawn mower,  
13 is there a minimum blade diameter?

14 A. Um, I don't know that there is a,  
15 um --

16 Q. You're flipping to something.  
17 What is that?

18 A. Uh, I'm just looking at the, um, 16  
19 CFR 1205. It -- it talks about a number of  
20 different, um -- um, yeah. So it actually talks  
21 about, uh, walk-behind lawn mowers defined as a  
22 grass cutting machine with a minimum cutting  
23 width of 12 inches.

24 Q. And you had to look at the CFRs to

1 know that?

2 A. I don't have them memorized.

3 Q. Right. Now, your statement in  
4 paragraph 83 says lawn mowers are heavier than  
5 hedge trimmers.

6 Is there a minimum weight requirement  
7 in order to qualify as a lawn mower in your  
8 opinion?

9 A. Well, I think the -- the -- uh,  
10 the -- the thing is that, you know, you're not  
11 lifting the entire lawn mower, which you are in  
12 like a hedge trimmer. So, uh, you know,  
13 clearly, you know, there's a -- there's a  
14 difference there (witness indicating). One is  
15 designed to be held up off the ground; the other  
16 is designed to be primarily held up by the  
17 wheels.

18 MR. SIKORSKI: Rebecca, can you read  
19 back my last question, please.

20 THE COURT REPORTER: Yes. I'd be  
21 happy to. Just one moment, please.

22 \* \* \*

23 (Whereupon, the reporter read back  
24 the requested portion of the record.)

1                                   \*     \*     \*

2       BY MR. SIKORSKI:

3           Q.     Mr. Smith, can you -- can you answer  
4       that question, please?

5           A.     Uh, a minimum weight to -- to -- I  
6       don't -- I don't recall that there's anything  
7       that as far as a minimum weight would be, other  
8       than, you know, the -- you know, what I just  
9       explained to you.

10          Q.     Your statement in paragraph 83 says  
11       that lawn mowers are used to cut a larger area.

12                   Is there a minimum area that must be  
13       cut in order for a device to qualify as a lawn  
14       mower?

15          A.     Well, again, like I told you, lawn  
16       mowers have, um, you know, um, you know, at  
17       least a cutting width of 12 inches, and it  
18       employs an engine or motor as the power source,  
19       um, and it's controlled by an operator walking  
20       behind it. So that's a lot different than, uh,  
21       you know, a piece of equipment that's designed  
22       to be carried.

23          Q.     You have no doubt looked at the  
24       claims of the Chervon patents, uh, and you'll

1 recall that several are directed in the preamble  
2 to a mower.

3 Do you recall that?

4 A. I do.

5 Q. I can direct you to one of the  
6 patents if you -- if you want to, but, um, my  
7 question is: In order to qualify as a mower for  
8 the Chervon patent claims, is there a minimum  
9 weight the device must have?

10 A. Uh, I don't believe so. I don't  
11 think that's something that's in the claims  
12 anywhere.

13 Q. In order to qualify as a mower in the  
14 Chervon patent claims, must the blade have a  
15 minimum diameter?

16 A. Uh, not according to the -- to the  
17 claims, but, uh, if you're looking at what a  
18 person of ordinary skill in the art would  
19 consider a mower, I think they would look to  
20 something like the, um, safety standard that I  
21 quoted earlier (witness indicating).

22 Q. So do -- do you think the scope of  
23 the mowers -- excuse me.

24 Do you think the scope of the Chervon

1 patent claims whose preambles introduce the  
2 device as a quote/unquote "mower," do you think  
3 those claims are limited by the 12-inch diameter  
4 requirement you referred to?

5 A. Um, I've -- I haven't looked at that.  
6 I doubt it. I doubt the preamble is limiting  
7 even. I haven't -- I haven't addressed that  
8 issue. I don't -- I can't tell you.

9 Q. In order to qualify as a mower in the  
10 Chervon patent claims, must the device be  
11 capable of cutting a certain minimum square  
12 footage or area?

13 A. Uh, no.

14 Q. In order to qualify as a mower in the  
15 Chervon patent claims, must the device be  
16 capable of cutting a certain area per unit time?

17 A. Uh, I don't believe so.

18 Q. Other claims in the Chervon patents  
19 are introduced in the preambles as gardening  
20 tools.

21 Do you recall that?

22 A. I do.

23 Q. I should say as a singular, gardening  
24 tool, right?

1 I'm glad to direct you to a patent if  
2 you want to look at it.

3 A. I'm good.

4 Q. In order to qualify as a gardening  
5 tool in the Chervon patent claims, must the  
6 blade have a minimum diameter?

7 A. Uh, I don't, um, recall that that's  
8 anywhere in the claims.

9 Q. Must the device have a minimum weight  
10 in order to qualify as a gardening tool in the  
11 Chervon patent claims?

12 A. Uh, again, I don't know that that's  
13 in the claims anywhere.

14 Q. In order to qualify as a gardening  
15 tool in the Chervon patent claims, must the  
16 device be capable of cutting a certain minimum  
17 square footage or area?

18 A. Uh, again, I don't -- I don't recall  
19 that being in the claims.

20 Q. In order to qualify as a gardening  
21 tool in the Chervon patent claims, must the  
22 device be capable of cutting a certain area per  
23 unit time?

24 A. Uh, again, I haven't looked at all of

1 the claims for that, but I don't recall that  
2 being in there either.

3 Q. Mr. Smith, can you, uh, take a copy  
4 -- or can you please grab the '806 patent, and  
5 let me know when you have that?

6 A. I have it.

7 Q. Give me one second. My computer is  
8 slow.

9 In Figure 1 of the '806 patent, you  
10 see an illustration of a lawn mower, correct?

11 A. Yes.

12 Q. There are vertical tubes, 20a and  
13 20b.

14 Do you see them?

15 A. Yeah. I wouldn't call them vertical  
16 but, nonetheless, I see those tubes.

17 Q. When the -- when the operator of this  
18 lawn mower is -- is using it, pushing it to cut  
19 turf, would you expect his or her hands to be on  
20 the tube 20a?

21 MR. LUKAS: Objection, form.

22 THE WITNESS: Um, I think what you're  
23 -- you know, you're parsing things. I think  
24 that, uh, you -- I would expect the user's hands

1 to be on the handle which is not 20a, it's --  
2 it's all of 20.

3 BY MR. SIKORSKI:

4 Q. I'll -- I'll ask my question again,  
5 sir.

6 During ordinary use of the lawn mower  
7 depicted in Figure 1 of the '806 patent, would  
8 you expect either of the user's hands to be on  
9 the tube 20a?

10 MR. LUKAS: Objection, form.

11 THE WITNESS: No. I would expect  
12 them to be on the handle 20 which 20a is part  
13 of.

14 BY MR. SIKORSKI:

15 Q. In the ordinary use of the lawn mower  
16 depicted in Figure 1 of the '806 patent, would  
17 you expect the user to have either hand on the  
18 tube 20b?

19 A. Well, and, actually, uh, let me go  
20 back because I actually think that 20a, um, I  
21 think that -- I think they would have hands on  
22 tube 20a.

23 Q. Would they have their hands on the  
24 portion to which the lead line for 20a points?

1           A.     Um, likely not, but they certainly  
2     would have them on that tube.

3           Q.     During the ordinary use of the lawn  
4     mower depicted in Figure 1 of the '806 patent,  
5     would you expect the user to have either hand on  
6     the tube 20b?

7           A.     Um -- uh, probably not while they're  
8     pushing it. Uh, you know, they may put it on  
9     there when they're dumping the grass or the  
10    like.

11          Q.     But when pushing it to cut turf, you  
12    would agree that the tube to which the lead line  
13    associated with the number 20b is not a location  
14    where the user would be expected to have one or  
15    both of their hands, correct?

16          A.     Correct.

17          Q.     I believe in one of your earlier  
18    responses, you referred to a situation where an  
19    operator might be dumping grass.

20                 Do you recall that?

21          A.     Yes.

22          Q.     You would agree that -- never mind  
23    the Chervon patents but just in general, it's  
24    undesirable to have the blade operating while

1 the operator is dumping grass from, for example,  
2 a grass receptacle, correct?

3 A. I would agree.

4 Q. If you could, uh, grab a copy of the  
5 Outils reference. I'm sure each of us  
6 pronounces it differently.

7 A. Yeah. I've been pronouncing it  
8 oodles, but whatever.

9 Q. If you can flip to Figure 10 of that  
10 reference, please?

11 A. Okay.

12 Q. Just so we're on the same page, in  
13 Figure 10 -- excuse me.

14 In Figure 10 of the Outils reference,  
15 you would agree that reference numeral six  
16 designates the main body of a lawn mower?

17 A. Uh, I think as used in the patent, I  
18 would agree.

19 Q. The patent being what?

20 A. The --

21 Q. The Chervon patent you mean or the --

22 A. The Chervon patent.

23 Q. And you would agree that numeral one  
24 in Figure 10 of Outils points to a handle,

1 right?

2 A. I believe that's what the -- the  
3 patent actually calls it a handlebar, yes  
4 (witness indicating).

5 Q. And just to be consistent with one of  
6 your recent answers, uh, when the handle one in  
7 Figure 10 of the Outils is in its raised  
8 position, that position is associated with a  
9 person potentially dumping grass out of a  
10 receptacle.

11 Is that right?

12 A. Um, I believe that is correct.

13 Q. And as is true with your statement  
14 about lawn mowers in general, you would agree  
15 that in the Outils reference when the handle  
16 number one in Figure 10 is raised, so as to  
17 allow grass dumping, it's undesirable to have  
18 the blade mower operative, correct?

19 A. Uh, I believe that's correct.

20 Q. And is it your understanding of the  
21 Outils reference with reference to Figure 10  
22 that the motor, the blade motor can only be  
23 operated when the handle number one is in its  
24 lower -- lower angled use position?

1           A.     No.  That's not what the patent  
2     teaches.  The patent teaches that it -- uh, that  
3     the purpose of that is, um, to stop the motor if  
4     it is running.

5           Q.     I'm sorry, but the lower angle in  
6     Figure 10 is --

7           A.     Sorry (witness indicating).

8           Q.     Sorry.  We're both cutting each other  
9     off.  So maybe I'll ask my -- my question again.

10                    Would you agree that the Outils  
11     reference, Figure 10, uh, the intention is for  
12     the motor only to be operable when the handle  
13     number one is in the lower angle use position  
14     illustrated in Figure 10?

15                   MR. LUKAS:  Objection, form.

16                   THE WITNESS:  That's not what the  
17     patent teaches.  Uh, the patent teaches that  
18     it's operable in the lower position, and that it  
19     stops the mower when it goes to the upper  
20     position, but it doesn't mean it couldn't be  
21     restarted.  It never says that.

22     BY MR. SIKORSKI:

23           Q.     It could never be restarted when?

24                   I didn't quite understand that part

1 of your answer.

2 A. So the -- the patent never teaches  
3 that you couldn't restart the mower with the  
4 handle in the upper position. It's not in there  
5 (witness indicating).

6 Q. So you -- just so I understand your  
7 testimony, you're saying that if the -- if --  
8 with reference to Figure 10, if Outils handle  
9 rotates upward to the nonuse position, the motor  
10 stops but can be immediately restarted?

11 Is that what you're saying?

12 MR. LUKAS: Objection, form.

13 THE WITNESS: So, no, that's not --  
14 so let me -- let me clarify a couple of things  
15 first.

16 I'm not sure I would even couch, uh,  
17 that it's a nonuse position when it's in the  
18 upper position because you're still using the  
19 mower. Um, so we probably need to straighten  
20 that out, um, but what I'm saying is that the  
21 patent teaches that, um -- uh, let me just find  
22 it for you here.

23 So if we're looking at page eight,  
24 paragraph 25, um, all the patent is teaching is

1     that, um, the forward tilting of the handlebar 1  
2     results in action on actuator 23 by the means of  
3     the cam 24 and thus in the activation of the  
4     stoppage of the motor and/or decoupling, uh, and  
5     breaking of the cutting blade.

6                 So it's teaching that the purpose of  
7     that is to stop an already operating mower.

8     BY MR. SIKORSKI:

9             Q.     Stop an already operating motor?

10            A.     Stopping the cutting blade.

11            Q.     By virtue of stopping the motor  
12     itself, correct?

13            A.     Uh, um, well, not necessarily. Um,  
14     it says stoppage of the motor and/or decoupling  
15     and breaking the cutting blade.

16                 So you don't actually even need to  
17     stop the motor. You could just decouple the  
18     blade and break it is what it's teaching.

19            Q.     So -- so getting back to Figure 10, I  
20     -- I'm -- maybe I'm still at a loss as to your  
21     earlier testimony.

22                 So in the upper angled illustration  
23     of handle one in Figure 10, is it your testimony  
24     that that position causes in one embodiment the

1 stoppage of a mower's motor?

2 A. Um, well, that's a -- that's a  
3 possibility. It may also only decouple and  
4 break the cutting blade.

5 Q. Right, but the sentence that you  
6 identified at page eight, lines 27 to 29 also  
7 suggests stopping the motor itself, correct?

8 A. Correct.

9 Q. Right. Now, when the -- again, in  
10 reference to Figure 10, when the handle is  
11 returned to its lower angled illustrated  
12 position, is it your opinion that the motor can  
13 be started?

14 A. Uh, yes.

15 Q. And then to complete the cycle, if  
16 the user again moved the handle, number one,  
17 illustrated in Figure 10, to its higher angled  
18 position, you would agree that the same sentence  
19 at page eight, lines 27 to 29 says what would  
20 happen?

21 A. So maybe I can clarify for you.

22 Um, the patent only teaches that when  
23 you move the handle up to that position, that it  
24 would stop the mower. It doesn't say that it

1 would necessarily keep the motor from being  
2 restarted even if the handle is in that  
3 position.

4 Q. So it's a little bit difficult over  
5 the communication lines, but let me see if I  
6 understand what you're saying.

7 Your understanding with reference to  
8 Figure 10 of Outils, if the handle is rotated  
9 upward, the motor stops but keeping the handle  
10 in that upward position, a user might be able to  
11 start it again.

12 Is that what you're saying?

13 A. What I'm saying is that the patent is  
14 silent on that and the -- uh, you know, there's  
15 -- there's nothing that it teaches about being  
16 able to start it in that position and that's --  
17 and it's possible to actually do that. Not that  
18 you would but, you know, the patent doesn't say  
19 anything about it.

20 Q. I understand. Thank you.

21 You would agree, of course, that the  
22 Outils reference is directed to a gardening  
23 tool, correct?

24 A. Uh, in the generic sense, it's --

1 it's a lawn mower and I think that's -- I think,  
2 you know, gardening tool is used in the patents  
3 as -- as a lawn mower so, sure.

4 Q. When you referred to the patents in  
5 that answer, you're referring to the Chervon  
6 patents, correct?

7 A. Yes.

8 Q. If you could please grab the Reichart  
9 reference, and let me know when you have that?

10 A. I have it.

11 Q. If you could look at Figure 4 and  
12 adjacent Figure 3 on the second page of  
13 illustrations in the Reichart reference, and let  
14 me know when you have that in front of you?

15 A. Uh, Figure 4 and what else?

16 Q. Uh, Figure 4 happens to be right next  
17 to Figure 3, so we may as well look at them  
18 together.

19 A. Sure. I have it.

20 Q. If you'll recall in your declaration,  
21 you annotated Figure 4, correct?

22 A. Again, where are you at in the  
23 declaration just so I'm on the same page with  
24 you?

1 Q. Sure. Page 60.

2 A. Okay.

3 Q. You recall illustrating Figure 4 for  
4 the purposes of paragraph 200 in your  
5 declaration, right?

6 A. Yes.

7 Q. Now, your contention in that  
8 paragraph is that Reichart most likely discloses  
9 a gasoline mower, correct?

10 A. Yes.

11 Q. Now, you would agree that gasoline  
12 mowers generate a lot of heat, correct?

13 A. I don't know what you mean by "a lot  
14 of heat," but, yeah, they do generate some heat.

15 Q. And a typical gas mower would have  
16 heat dissipating fins, right?

17 A. Well, and you have to remember that  
18 this -- um, you know, um, this patent certainly  
19 doesn't show all of the -- um, all of the  
20 components of the mower, um, you know, in  
21 detail. It's really more schematically driven,  
22 uh, because it's primarily about the handles.

23 Q. That's right.

24 So the -- the mower is just casually

1 illustrated, correct?

2 A. I would say that that's the case, but  
3 I mean you do see the capacitor, and you do see  
4 what appears to be the magneto.

5 Q. Yeah. There's no -- there's no gas  
6 tank that you've been able to find in the  
7 illustrations, right?

8 A. Uh, no. And, again, that's probably  
9 that -- that same reason. In fact, I actually  
10 find it a little curious that they put the, uh,  
11 you know, the ignition system for a gas mower on  
12 here without, you know, all of the other, uh,  
13 you know, things like a gas tank but,  
14 nonetheless, they did.

15 Q. Right. There's no --

16 A. And I think that -- sorry.

17 I think that, you know, is in line  
18 with their use of the word engine as I said in  
19 my declaration.

20 Q. Right. This -- this patent comes  
21 from Great Britain, correct?

22 A. Yes.

23 Q. And you're not an expert on the  
24 linguistics of Great Britain's terminology for

1     motors and engines then?

2           A.     Uh, actually, um, uh, yeah. It is a  
3     Great Britain application, but it looks like  
4     the -- um, it looks like the applicants are  
5     actually from Germany.

6           Q.     All right. And you're not purporting  
7     to -- to know the language differences between  
8     either German or Great British parlance of  
9     motors and engines as compared to the U.S.  
10    lingo, correct?

11          A.     Um, that wouldn't be my forte but  
12    when you look at what's shown and the usage, I  
13    think they comport with each other.

14          Q.     And you've worked with electric  
15    motors in your career, correct?

16          A.     I have.

17          Q.     And you would agree that some  
18    electric motors have cylindrical components,  
19    such as batteries or capacitors or solenoids,  
20    correct?

21          A.     Um, there are on occasion some things  
22    that would be cylindrical. Um, you generally  
23    wouldn't -- you know, uh, I mean a battery that  
24    size certainly wouldn't run a mower, so you can

1     pretty well count that one out. Um, and, again,  
2     there's no batteries shown which are -- would be  
3     significant to run a mower, so, you know, you  
4     can kind of leave that out, too. If you're  
5     talking about the gas tank, well, there's no  
6     batteries either.

7           Q.     Right. So it seems -- it seems  
8     there's -- there's no conclusion to be drawn  
9     without a battery source or a gasoline tank I  
10    guess, right?

11          A.     I disagree.

12          Q.     In Figure 1 and 2, you would agree  
13    that there's even less detail illustrated,  
14    correct, vis-à-vis the motor?

15          A.     Uh, yeah. And on Figure 2, they  
16    don't even show anything up above the deck  
17    (witness indicating).

18          Q.     Right. Certainly no gas tank, right?

19          A.     Eh, well, not that you -- not that  
20    you would readily identify, no.

21          Q.     Right. And -- and, again, in Figure  
22    4, there's no spark plug that you've been able  
23    to identify, right?

24          A.     Uh, I don't believe it shows any

1 spark plug, no.

2 Q. And you've not identified any  
3 carburetor that would be associated with a  
4 gasoline-type motor, correct?

5 A. Uh, no.

6 Q. And you've not identified any kind of  
7 camshaft that would be associated with a  
8 gasoline mower, correct -- excuse me, gasoline  
9 motor, correct?

10 A. Um, there's -- I don't see a  
11 camshaft, no, but along those same lines, just  
12 to clarify, the magneto, if you look at Figure 4  
13 versus Figure 3, you can actually see that it is  
14 in a position where, um, you know, you would be  
15 able to generate, uh, electricity as the motor  
16 turns.

17 MR. SIKORSKI: Let's -- let's go off  
18 the record. Let's take a break.

19 \* \* \*

20 (Whereupon, a lunch recess was taken.)

21 \* \* \*

22 BY MR. SIKORSKI:

23 Q. Mr. Smith, I have one follow-up  
24 question on the '806 patent if you can grab

1     that, please?

2           A.     I've got it.

3           Q.     So you might recall earlier I was  
4     asking you a question with regard to Figure 1.

5                   Do you have Figure 1 in front of you?

6           A.     I do.

7           Q.     So earlier, I asked with relation to  
8     Figure 1 of the '806 patent whether in the  
9     course of pushing the mower in order to cut  
10    turf, if you would expect a person to put one or  
11    both of their hands on the pipe designated 20a  
12    or perhaps it's called a tube in the patent,  
13    20a?

14                   MR. LUKAS:  Objection to form.

15   BY MR. SIKORSKI:

16           Q.     Do you recall that question?

17                   And I believe you said that -- but  
18    correct me if I'm wrong -- that in your opinion,  
19    the tube 20a extends in a U-shape, meaning it  
20    includes the component identified as 20a, its  
21    counterpart on the other side of the mower, and  
22    the -- the uppermost horizontal portion where a  
23    person might use -- put their hands.

24                   Is that what you're view of the

1 handle is in the '806 patent?

2 MR. LUKAS: Objection, form.

3 THE WITNESS: Uh, no.

4 Actually, the handle is the entire  
5 piece 20, which includes 20a and 20a.

6 BY MR. SIKORSKI:

7 Q. And with regard to 20a, is it your  
8 opinion that it's U-shaped and continues like it  
9 -- it -- it is a singular tube spanning from the  
10 left to the right side of the mower?

11 MR. LUKAS: Objection, form.

12 THE WITNESS: Uh, I don't know that  
13 the patent says one way or the other. The way  
14 it's drawn in the photos or in the figures  
15 rather, uh, I think you'd probably assume that.

16 BY MR. SIKORSKI:

17 Q. You would assume what to be clear?

18 A. Uh, that it is, you know, essentially  
19 a horseshoe shape.

20 Q. If you'll look at column two,  
21 starting at line 49 of the '806 patent, if you  
22 could read that paragraph, and let me know when  
23 you're done?

24 A. I've read it.

1           Q.     So you would agree that this passage  
2     at column two, lines 49 to 60 of the '806 patent  
3     indicates that the handle 20 "comprises two  
4     handlebars"?

5                     Do you see that?

6           A.     Uh, I do see that.

7           Q.     So that means that there's two  
8     components, each of them being referred to as a  
9     handlebar, right?

10          A.     Uh, I haven't read the patent  
11     completely for that but just that passage,  
12     that's -- I think that's reasonable.

13          Q.     So with reference to Figure 1, can --  
14     can you explain what the two individual  
15     handlebars are that are described here at column  
16     two, lines 49 to 60?

17          A.     Uh, well, I think you have, uh, you  
18     know, 20b that's a horseshoe-shaped piece, and I  
19     think you also have 20a which is a  
20     horseshoe-shaped piece.

21          Q.     That passage refers also to an  
22     operational -- excuse me -- an operation  
23     assembly between what the specification calls  
24     "the ends away from the main body 10."

1                   What -- what in Figure 1 of the '806  
2   patent do you believe illustrates the operation  
3   assembly?

4           A.     Uh, I -- I think it's just what it  
5   says.  It's that -- uh, that end of the -- of  
6   the handle, so it would include likely the  
7   operating trigger B and the end of the handle  
8   and, um, uh, uh, you know, the -- all the stuff  
9   at that end of the handle.

10          Q.     All right.  So -- so in Figure 1 of  
11   the '806 patent, we see a lead line from the  
12   referenced letter capital B, extending to a  
13   somewhat thin bar, correct?

14          A.     Yeah.  They call it the trigger B,  
15   um-huh.

16          Q.     Right.  And above that, in the  
17   illustration of Figure 1, there's another  
18   horizontal piece.

19                   Do you see that?

20                   It has no reference numeral.

21          A.     Sure.

22          Q.     Do you -- do you believe that to be  
23   part of 20a?

24          A.     Um, like I said, from the -- from,

1     um, you know, the figure, um, you know, I  
2     haven't -- you know, let me preface this. I  
3     haven't read the patent for that, um, but, you  
4     know, simply from looking at the figure, it  
5     appears that that would be a one  
6     horseshoe-shaped piece.

7           Q.     You've certainly expressed an opinion  
8     that the handle includes an area where the peop-  
9     -- the operator puts his or her hands, correct?

10          A.     Sure.

11          Q.     All right. And it's your opinion --  
12     no. Strike that.

13                     Okay. Thank you. Mr. Smith, that's  
14     all the questions I have for you. Appreciate  
15     your time.

16          A.     All right. Thank you.

17                     MR. LUKAS: I have no questions.

18                     THE COURT REPORTER: Counsel, can I  
19     just understand your orders on this record, what  
20     you'd like to see and when, please?

21                     MR. SIKORSKI: I'll take a rough if  
22     you don't mind, and I believe I've already  
23     asked, um, for the formal transcript to arrive  
24     by I think next Friday the 7th.

1 THE COURT REPORTER: Okay. So a  
2 five-day delivery would be next Thursday, so  
3 you'd like a six-day delivery on Friday?

4 MR. SIKORSKI: Yeah. I think that's  
5 what we asked for.

6 THE COURT REPORTER: Okay. Very  
7 good. Thank you for that.

8 Mr. Lukas, what can I get for you,  
9 sir?

10 MR. LUKAS: I'll just have the final.  
11 Regular delivery is fine.

12 THE COURT REPORTER: And would you  
13 like a rough draft at all?

14 MR. LUKAS: I do not.

15 THE COURT REPORTER: Okay. Very  
16 well.

17 Thank you everyone. Have a great  
18 afternoon.

19 \* \* \*

20 (Whereupon, the deposition was  
21 concluded at approximately 1:15  
22 p.m.)

23

24

## DEPOSITION ERRATA SHEET

Our Assignment No. 713043

Case Caption: One World Technologies, Inc., et  
al. vs. Chervon (HK) Limited

## DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of  
my Deposition taken in the captioned matter  
or the same has been read to me, and  
the same is true and accurate, save and  
except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION  
ERRATA SHEET hereof, with the understanding  
that I offer these changes as if still under  
oath.

Signed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
FRED P. SMITH

1	DEPOSITION ERRATA SHEET
2	
3	Page No. _____ Line No. _____ Change to: _____
4	_____
5	Page No. _____ Line No. _____ Change to: _____
6	_____
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## C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me in the deposition of the above matter, and that this is a correct transcript of the same.

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Rebecca L. Klanderud

Certified Shorthand Reporter

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May 03, 2021

James J. Lukas, Jr., Esquire  
Greenberg Traurig, LLP  
77 West Wacker Dr.  
Suite 3100  
Chicago, IL 60601

Re: One World Technologies, Inc., d/b/a Techtronic Industries Co., Ltd. v. Chervon

Date: 4/29/2021

Deponent: Mr. Fred Peterson Smith

Job #: 713043

Dear James Lukas,

The witness did not waive the right to read and sign his/her deposition in the above referenced matter. Enclosed is the copy of the transcript, together with an errata sheet and additional signature page. Please instruct the deponent to read the transcript, list any corrections (including page and line number) on the errata sheet, sign and date the errata sheet, and also sign the signature page.

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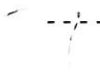
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4 hereby certify that I have read the  
5 foregoing pages, 1 - PGS, and that the  
6 same is a correct transcription of the  
7 answers given by me to the questions  
8 therein propounded, except for the  
9 corrections or changes in form or  
10 substance, if any, noted in the attached  
11 Errata Sheet.

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