

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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

5 BOYDSTUN EQUIPMENT MANUFACTURING, LLC

6 Petitioner

7 v.

8 COTTRELL, INC.

9 Patent Owner

10 _____
11 IPR2017-00962

12 Patent No. 7,585,140
13 _____

14
15 VIDEOTAPED DEPOSITION OF GEORGE A. CLARK

16 Portland, Oregon

17 Friday, November 10, 2017
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23 Reported by:

24 MARLA SHARP, RPR, CCRR, CA CSR 11924, WA CSR 3408

25 Job No: 133120

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November 10, 2017
8:47 a.m.

Videotaped deposition of
GEORGE A. CLARK, held at the offices of
K&L Gates, One Southwest Columbia
Street, Suite 1900, Portland, Oregon,
pursuant to agreement before
Marla Sharp, a shorthand reporter in
and for the state of Oregon.

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I N D E X

EXAMINATION	PAGE
GEORGE A. CLARK	
BY MR. AMBORN	6, 103
BY MR. JONCUS	74

PREVIOUSLY MARKED EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1001	9-8-09 US Patent No. 7,585,140 B1 (15 pages)	24
Exhibit 1002	Declaration of George Clark (17 pages)	74
Exhibit 1003	1-19-06 US Patent Application Publication No. US 2006/0013667 A1 (7 pages)	20
Exhibit 1004	5-24-94 US Patent No. 5,314,275 (15 pages)	20
Exhibit 1005	11-30-04 US Patent No. 6,824,121 B2 (8 pages)	20

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A P P E A R A N C E S:

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ALSO PRESENT:

Lani Milton, Videographer

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PORTLAND, OREGON

FRIDAY, NOVEMBER 10, 2017

8:47 A.M.

THE VIDEOGRAPHER: We are now on the
record. The time is 8:47. Today's date is
November 10th, 2017.

This is a video-recorded deposition of
George Clark in the matter of Boydston Equipment
Manufacturing LLC versus Cottrell Inc. in the United
States Patent and Trademark Office before the Patent
Trial and Appeal Board. The case number is
IPR2017-00962. The US Patent No. is 7,585,140.

This deposition is being held at K&L Gates
at One Southwest Columbia Street, Suite 1900, in
Portland, Oregon.

My name is Lani Milton. I am the legal
video specialist with TSG Reporting. Our court
reporter is Marla Sharp in association with
TSG Reporting.

Counsel, can you please introduce
yourselves for the record?

MR. AMBORN: I'm Kyle Amborn from Perkins
Coie. I am counsel on behalf of the patent owner,
Cottrell Inc.

MR. JONCUS: Stephen Joncus, counsel for

1 Boydston and representing the witness today.
2 THE VIDEOGRAPHER: And our witness can be
3 sworn in.

4 GEORGE A. CLARK,
5 called as a witness, having been duly
6 sworn by the certified shorthand
7 reporter, was examined and testified as
8 follows:

9 EXAMINATION

10 BY MR. AMBORN:

11 Q All right. Good morning, Mr. Clark. As I
12 mentioned, I'm Kyle Amborn.

13 And would you mind just stating your full
14 name for the record, please?

15 A Sure. George Clark.

16 Q And do you ever use a middle initial?

17 A A.

18 Q A. Okay. And, Mr. Clark, how many times
19 have you been deposed before?

20 A This would be the first.

21 Q All right. So, then, let me just go over a
22 couple of ground rules here.

23 First of all, I assume that you understand
24 that you are under an obligation that you just took
25 to tell the truth today in your testimony.

1 A Correct.

2 Q And for -- this process is kind of like a
3 conversation, but it's a little mechanical since
4 we've got a video that's here and a court reporter
5 who's transcribing everything.

6 So if you give me time to finish my
7 questions and I'll try to do the same for you with
8 your answers so that we're not speaking at the same
9 time, that will ensure that the record we create
10 today will be accurate and understandable.

11 You're not under the influence of anything
12 today that would prevent you from testifying
13 completely or accurately, are you?

14 A No, I'm not.

15 Q Okay. And if at any point you feel the
16 need to take a break, feel free to just let me know.

17 A Okay.

18 Q I'll try to ensure that we take a break
19 every hour or so. But --

20 A Great.

21 Q -- we can take one earlier or whenever you
22 need.

23 A Thank you.

24 Q I think that does it for background ground
25 rules. If at some point you have a question, you

1 can feel free to let me know.

2 So, Mr. Clark, in your declaration I
3 believe you said that you are being paid by
4 Boydston.

5 Does that mean you were retained by them?

6 A I'm being paid by the hour for this work.

7 Q Okay. By the party Boydston?

8 A Yes.

9 Q Okay. And are you aware of the district
10 court action between the two companies here,
11 Boydston and Cottrell?

12 A You can familiarize me with it.

13 Q Oh, I'm just curious to know if you're
14 aware of it.

15 A I'm aware of some of it, yes.

16 Q Okay. And are you also working on that
17 district court action?

18 A I think the answer's no.

19 Q Okay. And in your declaration I think you
20 said that you were charging a rate of \$185 an hour.

21 A Correct.

22 Q That's correct? Okay.

23 And is that your normal consulting rate?

24 A Yes.

25 Q And do you charge a special rate for

1 testimony like today?

2 A No, we'll -- I do not.

3 Q Okay.

4 A That may change after today.

5 Q All right. I'll try to help ensure this is
6 as painless as possible.

7 Mr. Clark, do you recall when you were
8 retained for this case?

9 A The beginning of last year. Might have
10 been February. Or, sorry, 2017, so same year.

11 Q Okay. So February of this year, 2017?

12 A Correct.

13 Q Mr. Clark, what did you do, just generally
14 speaking, to prepare for your -- to offer the
15 declaration that you have in this case?

16 A I read over the patents that are involved
17 in this case.

18 Q Mm-hmm. Did you do anything else?

19 A No. Primarily, that's it.

20 Q So when you say "the patents involved in
21 this case," I assume you mean the '140 patent?

22 A Correct.

23 Q And then the three patents, the -- not
24 patents but the prior art references --

25 A That's correct.

1 Q -- Boice, Cottrell '275, and Ruan?
 2 A Right.
 3 Q Did you review anything else?
 4 A There's another patent, and the inventor's
 5 name was Boice.
 6 Q Yes. Boice.
 7 A Right. That's also in there.
 8 Q Did you review the file history of the '140
 9 patent?
 10 A Yes, I looked it over.
 11 Q And in this case there are excerpts of that
 12 file history that are exhibits.
 13 Did you review the full file history or
 14 just the parts that are being used as exhibits?
 15 A Just the parts that are being used as
 16 exhibits.
 17 Q Mr. Clark, did you review the parties'
 18 actual products, by any chance?
 19 A Yes. Not in -- physically, but, you know,
 20 online.
 21 Q Online. Okay. So did you look at the
 22 website, then?
 23 A Yes.
 24 Q Have you reviewed any materials other than
 25 what's available on their websites?

1 involved in preparing the actual petition for the
 2 IPR?
 3 A Yes.
 4 Q As opposed to your declaration?
 5 A Oh, no. I'm sorry.
 6 Q Okay.
 7 A No. I only prepared my declaration.
 8 Q I got you. All right.
 9 So, Mr. Clark, I'd like to ask you just a
 10 little bit about your background now and your
 11 qualifications.
 12 A Okay.
 13 Q What's your current occupation?
 14 A I'm an engineering consultant.
 15 Q Okay. And what type of engineering do you
 16 consult on?
 17 A Mechanical.
 18 Q Any other types of engineering?
 19 A Nope, just mechanical.
 20 Q And what is your -- what's your educational
 21 background? What degrees do you hold?
 22 A I have a bachelor's and a master's degree
 23 in mechanical engineering. A bachelor's from
 24 University of Missouri at Rolla and a master's from
 25 Purdue.

1 A No. I did see the Boydston invention in
 2 front of me, the pieces in front of me.
 3 Q So the Boydston Rapid Ratchet?
 4 A Correct.
 5 Q Where did you review that?
 6 A In Boydston's office.
 7 Q And, Mr. Clark, just generally speaking,
 8 about how much time did you spend on this case so
 9 far, to your recollection?
 10 A Oh, I think about 50 hours or so.
 11 Q Okay. And that includes your time
 12 preparing for this deposition?
 13 A Correct.
 14 Q Do you recall roughly how much of that time
 15 was spent preparing your declaration?
 16 A I would say a third of that, roughly.
 17 Q And what would the other two-thirds have
 18 been spent on?
 19 A Well, I guess you could say it's all the
 20 same. Reviewing the patents, getting ready to, you
 21 know -- some of it is writing the IPR; some of it is
 22 reviewing the patents in preparation for it. So...
 23 Q Okay. When you say "writing the IPR," did
 24 you -- without getting into any conversations about
 25 strategy or anything along those lines, were you

1 Q Okay. And roughly when did you obtain
 2 those degrees?
 3 A 1979 and 1980, respectively.
 4 Q And have you held any positions, as a
 5 professional engineer or otherwise, in an
 6 engineering capacity for companies?
 7 A Yes.
 8 Q What are the companies that you've worked
 9 for in the past?
 10 A General Motors, the proving grounds in Ann
 11 Arbor, Michigan. International Harvester outside of
 12 Chicago.
 13 THE COURT REPORTER: What was the last one?
 14 THE WITNESS: I'm sorry. International
 15 Harvester.
 16 It's funny, these businesses are out of
 17 business now. That would have been during the early
 18 '80s.
 19 RCA Astro, also out of business, where we
 20 built satellites -- weather and communication
 21 satellites. Two or three different consulting
 22 firms. And now working for myself.
 23 BY MR. AMBORN:
 24 Q Okay. And now that you're working for
 25 yourself, do you have a company --

1 A Yes.
 2 Q -- that you run?
 3 What is that company?
 4 A It's called the Mercury Group LLC.
 5 Q Okay. And is the Mercury Group just you?
 6 A That's right.
 7 Q You mentioned that you worked at the
 8 General Motors proving grounds?
 9 A Mm-hmm.
 10 Q What did you do there?
 11 A My focus was on acoustics at the time,
 12 which -- so it's trying to measure and mitigate the
 13 sound that gets transmitted into the car's interior.
 14 Q Okay. Was that a position -- I mean, was
 15 General Motors your employer?
 16 A Yes.
 17 Q Okay. So, now, Mr. Clark, I'd just like to
 18 ask you some questions, just generally speaking,
 19 about the nature of your analysis, how you went
 20 about forming the opinions that you did.
 21 A Okay.
 22 Q So you mentioned that you reviewed the '140
 23 patent and the prior art references at issue here.
 24 A Correct.
 25 Q How -- again, just generally speaking, what

1 BY MR. AMBORN:
 2 Q Okay. And when you say "what one of skill
 3 in the art would have thought" --
 4 A Mm-hmm.
 5 Q -- again, what is -- from your perspective,
 6 how do you figure out what one of skill of art would
 7 have thought --
 8 A Okay.
 9 MR. JONCUS: Objection.
 10 BY MR. AMBORN:
 11 Q -- in that analysis?
 12 MR. JONCUS: Objection. Form.
 13 THE WITNESS: That would be someone
 14 typically with a bachelor's degree, perhaps a couple
 15 of years' experience but not much, or the
 16 equivalent, and made up by years of experience in
 17 dealing with these sorts of devices -- designing,
 18 developing these sorts of devices.
 19 I would look at it from their point of
 20 view.
 21 BY MR. AMBORN:
 22 Q And in this case, how did you go about
 23 figuring out what such a person's point of view
 24 would have been?
 25 A I had a number of those kind of people

1 is your standard for whether something is obvious --
 2 whether a claimed patent like the '140 is obvious --
 3 A Okay.
 4 Q -- in light of prior art?
 5 A Okay. In --
 6 MR. JONCUS: Objection. Form.
 7 BY MR. AMBORN:
 8 Q Go ahead.
 9 A I would review it, review the prior art,
 10 think back in time to what it was at the time -- now
 11 these things haven't changed much over this time so,
 12 you know -- but where the state of the art was for
 13 the development for these types of products at that
 14 time.
 15 Q Mm-hmm.
 16 A And then see if they kind of pass, at first
 17 blush, a test of obviousness.
 18 Q And when you say "a test of obviousness,"
 19 what do you mean by that?
 20 MR. JONCUS: Objection. Form.
 21 THE WITNESS: That they are obvious to one
 22 who's skilled in the art; that is to say that anyone
 23 who typically would be skilled in the art at the
 24 time would look at these features and say that,
 25 "Well, of course, you'd do that."

1 working for me in the past, so I kind of looked at
 2 it from their point of view.
 3 Q Okay. And when you say "those kind of
 4 people," who do you mean?
 5 A Those people who are skilled in the art.
 6 These are people with, let's say, a bachelor's
 7 degree in mechanical engineering and one or two
 8 years of experience.
 9 Q Okay. And did you -- you said that you've
 10 had some of these people work for you in the past?
 11 A Yes.
 12 Q Did any of those people work on ratchets?
 13 A One, yes.
 14 Q And what kind of ratchet was that?
 15 A That was a ratchet in a -- it was a medical
 16 instrument, and it was a grabber -- endoscopic
 17 grabber used to, you know, grab whatever the doc is
 18 working on. And the ratchet was meant to hold the
 19 compression on a member so that he could take his
 20 hands off, much in the same way that the strap is
 21 held in tension on the car transport carriers.
 22 Q Did you work on that --
 23 A Yes.
 24 Q -- ratchet as well?
 25 A Mm-hmm.

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