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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UTEX INDUSTRIES, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 4:18-CV-01254
TROY WIEGAND and)
GARDNER DENVER, INC.,)
)
Defendants.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
VIDEOTAPED DEPOSITION OF
ROBERT ASH
Houston, Texas
Wednesday, October 30, 2019

Reported by:
SUSAN PERRY MILLER, RDR, CRR, CRC
JOB NO. 170133

October 30, 2019
9:22 a.m.

VIDEOTAPED DEPOSITION of ROBERT ASH,
held at the offices of Baker Botts LLP,
910 Louisiana Street, Houston, Texas, pursuant
to Notice and the Federal Rules of Civil
Procedure, before Susan Perry Miller,
Registered Diplomate Reporter, Certified
Realtime Reporter, Certified Realtime
Captioner, and Notary Public in and for the
State of Texas.

A P P E A R A N C E S

FOR PLAINTIFF, UTEX INDUSTRIES, INC.:

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VIDEO TECHNICIAN:

Madeline Nagy
TSG REPORTING

--oOo--

R. ASH
(Wednesday, October 30, 2019, 9:22 a.m.)
THE VIDEOGRAPHER: This is the
start of tape labeled No. 1 in the
Videotaped Deposition of Robert Ash in
the matter of UTEX Industries, Inc.
vs. Troy Wiegand and Gardner Denver,
Inc., in the United States District
Court for the Southern District of
Texas, Houston Division,
No. 4:18-CV-01254.

This deposition is being held at
Baker Botts LLP, 910 Louisiana Street,
Houston, Texas 77002, on Wednesday,
October 30, at approximately 9:23 a.m.

My name is Madeline Nagy from
TSG Reporting Inc., and I am the legal
video specialist. The court reporter is
Susan Miller, in association with
TSG Reporting.

Will counsel please introduce
yourself.

MR. McELDOWNEY: Sean McEldowney
from Kirkland & Ellis here on behalf of
the Defendants. Also here with me is

R. ASH

Ben Behrendt, also from Kirkland &
Ellis.

MS. EBER: Michelle Eber and
Natalie Gonzales from Baker Botts LLP on
behalf of the Plaintiff, UTEX
Industries, and the Witness.

THE VIDEOGRAPHER: Will the court
reporter please swear in the witness.
(Witness sworn by the reporter.)

P R O C E E D I N G S

ROBERT ASH,

having sworn or affirmed to tell the truth,
the whole truth, and nothing but the truth,
was examined and testified as follows:

EXAMINATION

BY MR. McELDOWNEY:

Q. Mr. Ash, can you please introduce
yourself?

A. My name is Robert Ash. I go by
Bob.

Q. Where do you work, sir?

A. I work at UTEX Industries.

Q. Which UTEX facility do you work at?

A. All of them.

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1 R. ASH
 2 interference.
 3 Q. Okay. So there's a geometric
 4 difference between a header and a pressure
 5 ring, in your opinion.
 6 A. Yes, sir.
 7 Q. You said there's also a functional
 8 difference. What's that difference?
 9 A. So the header ring is a wiper ring
 10 and the pressure ring is the component in the
 11 assembly that actually contains the pressure,
 12 the discharge pressure of the pump.
 13 Q. Okay. Do they both act as seals?
 14 A. No, sir.
 15 Q. Which one -- or do either of them
 16 act as a seal?
 17 A. The pressure ring is the sealing
 18 component.
 19 Q. Okay. And so does the header ring
 20 have any sealing function in a packing
 21 product?
 22 A. It has a wiping function.
 23 Q. What's the difference between
 24 wiping and sealing?
 25 A. You want to -- in order for the

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1 R. ASH
 2 A. Please rephrase that.
 3 BY MR. McELDOWNEY:
 4 Q. You're not able to answer that
 5 question?
 6 A. Restate the question, please.
 7 Q. Are you able to answer the question
 8 I asked?
 9 MS. EBER: Same objections.
 10 BY MR. McELDOWNEY:
 11 Q. I can repeat it -- I can repeat it
 12 if I need to.
 13 A. Please repeat it.
 14 Q. Sure.
 15 If the claims in the '691 patent
 16 were directed to a pressure ring, meaning a
 17 fabric-reinforced pressure ring, you'd agree
 18 that that would have been obvious in light of
 19 what people knew in the art in 2008?
 20 MS. EBER: Same -- same objections.
 21 Incomplete hypothetical, outside the
 22 scope, and vague as to what the question
 23 is directed to.
 24 A. You're asking me to speculate, and
 25 I'm not going to do that.

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1 R. ASH
 2 seal to work effectively with a degree of
 3 longevity, you want it to seal on a
 4 debris-free surface. So the wiper ring would
 5 be wiping the solids from the plunger.
 6 Q. Okay. And then the sealing
 7 function is done entirely by the pressure
 8 ring, then.
 9 A. In my opinion, yes, sir.
 10 Q. Okay. If the claims in the '691
 11 patent were directed to a pressure ring, so a
 12 fabric-reinforced pressure ring, you agree
 13 that would have been obvious in 2008 in light
 14 of what people knew at the time, right?
 15 MS. EBER: Objection, incomplete
 16 hypothetical.
 17 A. Please rephrase that.
 18 BY MR. McELDOWNEY:
 19 Q. If the claims in the '691 patent
 20 were directed to a pressure ring, meaning a
 21 fabric-reinforced pressure ring, you'd agree
 22 that that would have been obvious in light of
 23 what people knew in the art in 2008?
 24 MS. EBER: Objection, incomplete
 25 hypothetical and outside the scope.

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1 R. ASH
 2 BY MR. McELDOWNEY:
 3 Q. Okay. You'd agree that in
 4 two-thousand- -- before 2008, people knew to
 5 make pressure rings out of fabric-reinforced
 6 rubber, right?
 7 A. Correct.
 8 Q. In fact, UTEX was selling
 9 fabric-reinforced pressure rings long before
 10 2008, wasn't it?
 11 A. Yes, sir, they were.
 12 Q. Okay. In your opinion, what was
 13 the invention of the '691 patent?
 14 MS. EBER: Objection to the extent
 15 it calls for a legal conclusion, but go
 16 ahead and answer.
 17 MR. McELDOWNEY: Just to be clear,
 18 is he going to be offering an opinion
 19 about the scope of the claims?
 20 MS. EBER: He can testify about his
 21 opinion as to the scope --
 22 MR. McELDOWNEY: Is he going to
 23 offer an opinion about the scope of the
 24 claims?
 25 MS. EBER: You didn't even let me

1 R. ASH
 2 A. Of '691?
 3 Q. Correct.
 4 MS. EBER: Objection, outside the
 5 scope.
 6 A. I am not aware.
 7 BY MR. McELDOWNEY:
 8 Q. Okay. So back to column 2,
 9 starting at line 20, it's describing Figure 3
 10 and 4, which are prior art figures, right?
 11 A. They are artist representations,
 12 yes, sir.
 13 Q. Right. And the text in column 2
 14 starting at line 21 is describing those artist
 15 representations of the prior art, correct?
 16 A. Yes.
 17 Q. And for Section 36, starting around
 18 line 26, it says: Section 36 of body portion
 19 32 comprised of fabric- or fiber-reinforced
 20 material.
 21 Do you see that?
 22 A. Referring to which figure?
 23 Q. Well, I think that region is in
 24 both Figure 3 and 4.
 25 A. Okay.

1 R. ASH
 2 Q. So let's just start with you see
 3 where I'm reading from, "Section 36 of body
 4 portion 32 comprises a fabric- or
 5 fiber-reinforced material."
 6 Do you see that?
 7 A. I do.
 8 Q. Isn't this disclosing that the
 9 prior art -- that in the prior art, the region
 10 represented by 36 could have been
 11 fabric-reinforced?
 12 A. No.
 13 Q. How else do you read this sentence?
 14 What does the word "fabric" do in there?
 15 A. In regarding to Figure 3, it is
 16 referring to a dual durometer header ring that
 17 we manufactured.
 18 Q. Okay. Where does it say that in
 19 the specification? How would I know that,
 20 reading the specification?
 21 A. Because it tells you to go to
 22 Figure 3 or 4.
 23 Q. And where does it say that
 24 Figure 2 -- sorry, Figure 3 and 4 are the dual
 25 durometer header ring that UTEX manufactured?

1 R. ASH
 2 A. Fabric or fiber.
 3 Q. Okay. So the fiber-reinforced
 4 that's described here in your view
 5 corresponded to the dual durometer UTEX header
 6 ring.
 7 Do I have that right?
 8 A. Not only fabric, but also fiber.
 9 Q. Okay. Was the dual durometer UTEX
 10 header ring a fabric -- did it have
 11 fabric-reinforced material?
 12 A. It had varying degrees of chopped
 13 fabric; mostly depending on the degree of
 14 mincing of that compound, it could be reduced
 15 down to fibers.
 16 Q. I see. So some of the -- well, let
 17 me back up.
 18 What was the material? Was it
 19 cotton or something else?
 20 A. I believe in the case of our 1028
 21 header ring it was cotton.
 22 Q. Okay. And the way you made it was
 23 you started with cotton fabric and minced it
 24 up into small pieces?
 25 A. Not my degree of specialty.

1 R. ASH
 2 Q. Okay. However it was made, what
 3 the end product was was there were some
 4 individual cotton fibers and some larger
 5 pieces of cotton fabrics that were still
 6 intact in the right half of the header ring in
 7 Figure 3?
 8 A. Are you referring to the header
 9 rings that I'm familiar with from CDI? Or
 10 from UTEX?
 11 Q. So let's stick with UTEX for right
 12 now and then let's just look at Figure 3 so
 13 that we have this -- so we can be more
 14 specific.
 15 The region that's identified as 36
 16 in Figure 3, that was made up of rubber that
 17 was reinforced with cotton, correct?
 18 A. I'm not privy to that information.
 19 That's not my realm of expertise,
 20 manufacturing.
 21 Q. So you're not sure if it was cotton
 22 or something else?
 23 A. I'm not sure.
 24 Q. Okay. Whatever --
 25 A. It could have been a different

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1 R. ASH
 2 fiber.
 3 Q. Okay. And that region identified
 4 as number 36 in Figure 3 would have had some
 5 individual fibers and then some larger chunks,
 6 depending on the mincing, that would have been
 7 small pieces of fabric in region 36?
 8 A. Potentially.
 9 Q. And that's why, in the patent, you
 10 referred to it as a fabric- or
 11 fiber-reinforced material in column 2, because
 12 some of it would have been fibers and some of
 13 it could have been small pieces of fabric?
 14 A. Yes.
 15 Q. Okay. Do you know when UTEX
 16 started selling the dual durometer product
 17 that we're talking about?
 18 A. I do not.
 19 Q. Okay. You know it was before the
 20 '691, though?
 21 A. Yes.
 22 Q. Okay. And that's why it's
 23 described as prior art in the '691 patent?
 24 A. Yes.
 25 Q. Okay. Now, you mentioned the CDI

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1 R. ASH
 2 corresponds to the second annular portion
 3 touch the plunger when this header ring is
 4 installed?
 5 A. I'm sorry, '691 patent?
 6 Q. Yeah.
 7 A. Is that the one you're referring
 8 to?
 9 Q. Correct.
 10 A. Figure 6?
 11 Q. Figure 6, and if you need look at
 12 Figure 8 where it has the installed
 13 configuration, you can look there as well.
 14 But my question ultimately is does
 15 that region that corresponds to what you've
 16 marked as the second annular portion, does
 17 that rub up against or touch the plunger when
 18 it's in operation, installed?
 19 A. No, it does not.
 20 Q. And so the fabric-reinforced
 21 section of the -- well, let me back up and get
 22 some -- and make sure I understand where the
 23 XLH header ring fits in.
 24 So UTEX makes a product that's
 25 described in this patent, right?

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1 R. ASH
 2 header ring a minute ago. What did you have
 3 in mind there?
 4 Let me back up. CDI had made some
 5 header rings before the '691 patent that had
 6 some fabric reinforcement, correct?
 7 A. They also manufactured a dual
 8 durometer header ring.
 9 Q. And you used to work at CDI, right?
 10 A. I did.
 11 Q. Okay. And when you were -- when
 12 did you move from CDI to UTEX?
 13 A. January 2005.
 14 Q. And before you left CDI, CDI was
 15 selling their dual durometer header ring,
 16 right?
 17 A. Correct.
 18 Q. And that dual durometer header ring
 19 would have had fiber and/or fabric
 20 reinforcement in the elastomer, right?
 21 A. That is my understanding.
 22 Q. Okay. So let's talk about a few of
 23 the other figures in the patent. So Figure 6,
 24 and maybe you need to refer to Figure 8 also,
 25 but my question is: Does the region that

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1 R. ASH
 2 A. Of '691?
 3 Q. Yes.
 4 A. Yes.
 5 Q. And you call it the XLH header
 6 ring?
 7 A. Correct.
 8 Q. Now, Figures 5, 6 and 7 in the
 9 patent show three different configurations?
 10 Do you see that?
 11 A. Correct. I do.
 12 Q. Okay. And figure -- and the
 13 difference between the three is how much of
 14 the outer surface is covered or wrapped in
 15 fabric, right?
 16 A. Rephrase that for me.
 17 Q. Sure.
 18 The difference between Figures 5, 6
 19 and 7 is the extent to which the outer surface
 20 is covered in the fabric-reinforced elastomer,
 21 right?
 22 A. The degree to which it's
 23 reinforced.
 24 Q. So in Figure 7, for instance, the
 25 entire outer surface all the way around the

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