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

Proceeding	91194706
Party	Defendant UVCleaning Systems, Inc. dba Puralytics Corporation
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Attachments	MARK OWEN 1-7-13 DEPOSITION.pdf (62 pages)(4963787 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
1047406 ONTARIO LTD. and PURIFICS ES, INC.,
Opposers,
vs. Case No. 91194706
UVCLEANING SYSTEMS, INC., d/b/a PURALYTICS
CORPORATION,
Applicant.

DEPOSITION OF MARK OWEN
Taken on behalf of the Applicant
January 7, 2013

ORIGINAL

1 BE IT REMEMBERED THAT, the deposition of
2 MARK OWEN was reported by Marcel N. Johnson,
3 Certified Shorthand Reporter and Registered
4 Professional Reporter, on January 7, 2013,
5 commencing at the hour of 2:10 p.m., the proceedings
6 being reported in the law offices of Klarquist
7 Sparkman, LLP, 121 Southwest Salmon Street, Suite
8 1600, Portland, Oregon.

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25 * * *

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1 MARK OWEN,
2 was thereupon produced as a witness and, after
3 having been duly sworn on oath, was examined and
4 testified as follows:

EXAMINATION

BY MS. LOESCH:

7 Q. Mr. Owen, I will be taking your deposition
8 today. Is there any reason you can think of
9 why you will not be able to answer my questions
10 fully, accurately, and truthfully?

11 A. No.

12 Q. Okay. We're here to talk about the trademark
13 opposition filed by Purifics against
14 Puralytics. Have you been deposed in this
15 matter before?

16 A. Yes.

17 Q. And when was that deposition?

18 A. The last time.

19 Q. A few months ago?

20 A. Yeah. A few months ago.

21 Q. Okay. And what is your relevant experience to
22 this matter?

23 A. So you're asking -- yeah. So I was involved in
24 the development of the trademark, and I am the
25 CEO of the company and founder and am familiar

1 with the process of this particular dispute --

2 Q. Okay.

3 A. -- challenge.

4 Q. So what are your primary duties at Puralytics?

5 A. So as the CEO, I'm responsible for the running
6 of the company, bringing in finance investment,
7 and oversight of the engineering, sales, and
8 marketing activities of the company.

9 Q. Are you involved in the technology?

10 A. Yes. So some of the patents are mine. I was
11 the original inventor, and I am an engineer by
12 background. So I get involved in the
13 development of the technology and of the
14 products of the company.

15 Q. Are you involved in any of the marketing?

16 A. Yes. So I've -- I usually review all of the
17 marketing materials before they go out. But I
18 also go to trade shows and get involved in
19 writing or presenting materials about our
20 company for marketing purposes.

21 Q. Okay. And are you involved in the sales and
22 finance aspect of it?

23 A. The sales, yes. So there would be some of the
24 accounts, more early stage business
25 development-type accounts that I would be

1 directly responsible for.

2 Finance, I have a finance team that mostly
3 handles that. I only get involved at
4 discussions of changes and reviewing the
5 finances. But not -- and raising money.

6 Q. And as far as sales goes, are you involved with
7 and knowledgeable about the products?

8 A. Yes.

9 Q. And can you briefly summarize the products that
10 Puralytics has?

11 A. Yeah. We have two product families. The
12 Shield product family, which is based on an
13 LED-powered water purification technology
14 that's photochemical in nature.

15 Then we have a SolarBag product family,
16 which is sunlight-powered water purification.
17 And each of those has more than one product in
18 the family.

19 So currently, we have, within the Shield
20 product family, a -- one that's aimed at
21 drinking water, and one that's aimed at
22 industrial ultrapure water.

23 And in the SolarBag family we have --
24 they're all aimed at drinking water, but there
25 is a retail version and one aimed at the

1 developing world and nonprofit organizations.

2 Q. Okay. Is it accurate to say that you manage
3 the day-to-day activities at Puralytics?

4 A. Yes.

5 Q. Okay. And is it accurate to say that you're
6 aware of all of the marketing efforts and
7 materials, generally?

8 A. Yes.

9 Q. Is it accurate to say that you're aware of your
10 sales and financial information, generally?

11 A. Yes.

12 Q. And this includes your competitors and who they
13 are?

14 A. Yes.

15 Q. And it includes your customers and to whom you
16 market --

17 A. Yes.

18 Q. -- your products?

19 Okay. Now, I'm going to just turn to this
20 trademark opposition. Are you aware that what
21 is in dispute in this opposition is your
22 trademark application?

23 A. Yes.

24 MS. LOESCH: And I'm going to mark it here
25 as Exhibit -- it's 119.

1 (Exhibit 119 was marked.)

2 BY MS. LOESCH:

3 Q. And this is a printout from the trademark --
4 the USPTO website. And it shows your
5 Puralytics application. Have you seen this
6 before?

7 A. Yes.

8 Q. And are you familiar with what it says?

9 A. Yes.

10 Q. And can you tell me what the application --
11 your application here, what the goods and
12 services are?

13 A. Yes. We make water purification equipment. So
14 we're specifically making equipment that could
15 be used in industrial and drinking water
16 applications for purification of water.

17 Q. And these products, these fit within the
18 wastewater purification units, water
19 purification and filtration apparatus, and
20 water purification units registration --

21 A. That's correct.

22 Q. -- or explanation?

23 A. Yes.

24 Q. And would this -- would your two product lines,
25 the Shield and the SolarBag, fit within this

1 category?

2 A. Yes.

3 Q. Okay.

4 MS. LOESCH: And I'm going to mark as
5 Exhibit 120 a printout from the USPTO's website
6 of the Purifics trademark registration.

7 (Exhibit 120 was marked.)

8 BY MS. LOESCH:

9 Q. Can you read what their goods and services
10 list?

11 A. Environmental remediation services; namely,
12 soil, waste and water treatment services and
13 air purification services.

14 Q. And do you understand that what is at dispute
15 in this trademark opposition is your
16 application as seen in Exhibit 119 and how it
17 may conflict with Purifics' registration seen
18 in Exhibit 120?

19 A. Yes.

20 Q. And if you look at Exhibit 120, it says
21 environmental remediation services.

22 Does Puralytics perform or provide
23 environmental remediation services?

24 A. No. So we don't do any services, and
25 environmental remediation is primarily related

1 to contaminated ponds or waste repositories
2 that you're cleaning it up. So it's cleaning
3 up something in the environment.

4 And that is very different from the
5 equipment that we provide, which is aimed at
6 purifying water processes for drinking water
7 or -- or for industrial process.

8 Q. Can you elaborate a little bit more on that?
9 So you clean -- can you explain exactly where
10 in the process your products provide the water
11 purification?

12 A. Yes. So as to an industrial customer, so it
13 could be a semiconductor or a pharmaceutical
14 customer, they'll use water somewhere in their
15 process flow of their product, and the water
16 would be purified to typically better than
17 drinking water quality.

18 Our equipment would be in that process
19 step purifying the water. So that would be how
20 that works. So it's -- we're selling some
21 equipment to be specific in that process.

22 In the drinking water applications, you're
23 taking water that's already relatively clean,
24 municipal tap water-type water, and you're
25 cleaning it further to remove residual

1 contaminants that might be left in the water.

2 (A glass of water spilled.)

3 MS. LOESCH: You know what? Let's take a
4 break for a moment.

5 (Pause in the proceedings.)

6 THE DEPONENT: Yes. Where were we? You
7 asked me to explain --

8 BY MS. LOESCH:

9 Q. What your processes are. So where are you --
10 so the question was --

11 MS. LOESCH: Can you just repeat the
12 question?

13 (The last question was read back as
14 follows: "Can you elaborate a little bit more
15 on that? Can you explain exactly where in the
16 process your products provide the water
17 purification?")

18 THE DEPONENT: Did I answer that?

19 BY MS. LOESCH:

20 Q. I think you were going to the SolarBag.

21 A. Yeah. In the SolarBag, you're usually starting
22 with water from a river, a well, or a, you
23 know, village-level tap water, and you're
24 treating it all the way to safe water. Safe
25 drinking water.

1 Q. So you had said that your products are involved
2 in the process flow of a customer's product.

3 Can you explain what that means as opposed
4 to what it would mean to provide environmental
5 remediation services, where in the process,
6 where in the flow that would be?

7 A. All right. So they would buy a piece of
8 equipment from us. They would incorporate it
9 into a process line and it would be based in
10 their facility and it would be used in that one
11 step of their manufacturing process.

12 An environmental remediation service is
13 you're going into a site and you're treating
14 contaminated water on the site as a service for
15 the company. So they hire you to clean up a
16 waste dump.

17 Q. And in your -- in the registration -- in your
18 application, excuse me, in Exhibit 119, do you
19 have listed anything that resembles
20 environmental remediation services?

21 A. No.

22 Q. And does Puralytics perform any environmental
23 remediation services?

24 A. No.

25 Q. Okay. Now I want to talk to you a little bit

1 more about what Puralytics does. You explained
2 a little bit about your products.

3 Can you explain where -- can you explain
4 what industry your products are in and go into
5 some detail about the industry, generally?

6 A. Okay. So the water industry is a big field. I
7 think I saw recently a \$600 billion industry.
8 So that is services like the supply of water to
9 homes. It involves remediation of water. It
10 involves a variety of sectors.

11 The portion that we're in is a small
12 subset of that whole. It's primarily to do
13 with industrial process steps, embedded
14 equipment, industrial processes, and then
15 drinking water applications that are more
16 remote. So not municipal-scale drinking water,
17 but local facility-scale drinking water
18 solutions or household drinking water
19 solutions.

20 Q. And would you consider this water industry to
21 have many different subindustries or subparts?

22 A. Yeah. In fact, if you go to conference, water
23 engineers can't even talk to each other because
24 they are so different in the sectors that
25 they're in.

1 But the people that -- I've seen
2 descriptions that put it into 13 different
3 industries within the water theme. So you
4 could say that water is used in every market.
5 So every product requires water to be
6 manufactured. Every service requires water.

7 But when you look at how they're sold,
8 they tend to be sold in a handful of industrial
9 and commercial and residential and municipal
10 segments. So maybe about a dozen.

11 Q. And so what segments would the Shield products
12 be in?

13 A. So we sell the Shield products both to the
14 drinking water market, so this would be what we
15 call decentralized drinking water. So not
16 municipal scale, but facility or household
17 scale.

18 And we sell it to industrial markets. And
19 particularly where we're focused right now is
20 ultrapure water for laboratories.

21 Q. And when you say you sell it to industrial
22 markets or household drinking water, within
23 those markets, is there a further delineation
24 of markets and segments where different
25 products or different services would be needed?

1 A. Yes. So an industrial water user might have a
2 number of different requirements, some of that
3 where they're treating incoming water flows to
4 particular requirements for their process, some
5 between process steps to change some aspect of
6 it, and there could be wastewater streams as
7 well. And a given building or factory could
8 have remediation services that are required for
9 contaminated soils or things.

10 So we're only focusing on the incoming
11 water to ultrapure water standards in our
12 current product.

13 Q. And similar with the drinking water for
14 households. Is there subsegments in that
15 category as well?

16 A. Yes. For instance, there's a recreational
17 market, where people are buying water for
18 remote use, drinking water use; camping,
19 hiking, fishing. And we have a retail product
20 that's aimed at that.

21 There's emergency preparedness markets
22 where you're not using the water purifier
23 unless there's a disaster or emergency.

24 And then there's -- we sell to developing
25 world markets where they have no municipal

1 supply or any treatment method, other than
2 maybe boiling the water. So our product is the
3 first water treatment solution that they've had
4 access to.

5 Q. Okay. Now, within your specific field, not
6 water industry generally but within the
7 specific field that your products are in, do
8 you have competitors?

9 A. Yes.

10 Q. And what do you consider or what kinds of
11 characteristics do you consider to be a
12 competitor?

13 A. If they're talking to the same customers to try
14 to solve the same problem at those customers, I
15 view them as a competitor.

16 Q. And what problem are you -- is Puralytics'
17 products trying to solve?

18 A. So we're -- we're looking at a particular
19 industrial process step, and we're removing the
20 contaminants that are important to the customer
21 in that process step.

22 Q. Okay. And what about with the SolarBag
23 product?

24 A. And with the SolarBag, you're trying to take
25 water that's of unknown drinking water safety

1 and make it safe to drink.

2 Q. And what types of customers for your Shield
3 product, from an industrial process step, do
4 you consider to be your customers or potential
5 customers?

6 A. So we primarily are selling the Shield product
7 to ultrapure laboratory-type customers. So
8 it's laboratories and companies that use
9 ultrapure water in the fabrication of their
10 products. So it could be pharmaceutical or
11 semiconductor, electronics, life sciences and
12 biotech.

13 And then the Shield 500, which is the
14 drinking water version of our product, is sold
15 for decentralized drinking water applications,
16 which could be a kiosk or embedded in a water
17 treatment system that's a vending machine for
18 water treatment, a bottled water plant, or
19 other -- or a facility, commercial or
20 residential enterprise for drinking water.

21 Q. Okay. And what about for your SolarBag
22 product? What are those customers or potential
23 customers?

24 A. So we're looking -- we sell -- the retail
25 product we sell through stores and online

1 through Amazon and Sportsman's Guide and other
2 venues. It's aimed at sporting goods,
3 recreational, camping use, emergency
4 preparedness kits, things like that.

5 The other SolarBag product is aimed at
6 government and nongovernment organizations and
7 aid groups, faith-based and nonfaith-based aid
8 groups that are working in the developing
9 world.

10 Q. Okay. So your customers for the Shield
11 products, would you consider those customers to
12 be sophisticated?

13 A. Very sophisticated.

14 MR. HAWKINS: Object. Leading.

15 THE DEPONENT: Huh?

16 MR. HAWKINS: I made an objection for the
17 record.

18 BY MS. LOESCH:

19 Q. You can answer.

20 A. Yeah. I mean, they're very sophisticated in
21 that they -- they know more about water and the
22 contaminants in the water than our company
23 does. They are able to assess how they have --
24 they have technical capabilities that exceed
25 ours or our local water testing facilities,

1 typically.

2 So they're looking for something very
3 specific to solve a particular problem that
4 they've detected when using competitors'
5 products to solve the problem, trying to
6 address that. So they're very sophisticated at
7 looking at the product.

8 Q. So are they knowledgeable about their own
9 needs?

10 A. They are.

11 MR. HAWKINS: Object. Leading.

12 A. Yeah, they are. They know what they need
13 and -- or at least they suspect that this
14 contaminant is causing this problem, for
15 instance, and so they want to remove that
16 contaminant as a means to fix process problems.

17 BY MS. LOESCH:

18 Q. And do they -- do they know the industry well
19 to know -- do they know the industry well?

20 MR. HAWKINS: Object. Speculation.

21 A. I'd say they know their portion of the industry
22 well. So, you know, a semiconductor company
23 would know the products and technologies that
24 are relevant to the semiconductor industry, but
25 they may not know anything about drinking water

1 or wastewater, environmental remediation, for
2 instance.

3 BY MS. LOESCH:

4 Q. So when a company contacts you or when you
5 solicit -- you market to a company, when they
6 are interested in purchasing one of your
7 products, do you feel like they've done their
8 research or done their homework?

9 MR. HAWKINS: Object. Speculation.

10 A. Yes. They're basically looking at what
11 technologies, products could solve the problem.
12 They're doing some checking. We usually have
13 had several face-to-face conversations that are
14 technical. We may have done actual testing to
15 demonstrate that the product performed and did
16 remove the contaminants of interest before we
17 sell anything to them.

18 BY MS. LOESCH:

19 Q. Okay. So I just want to kind of understand the
20 interactions between you and these customers
21 and why you get the sense that they know the
22 products that they're looking for.

23 So if you can kind of describe that, you
24 know, whether it starts from you guys
25 contacting them or them contacting you, if you

1 can explain, that, please.

2 A. Yeah. So typically, we would look at markets
3 where we think our product would fit
4 applications, and we would write a technical
5 paper or draft a brochure or something that
6 would describe how we would fit into that
7 market and put it out there in a marketing
8 sense so that someone might find us.

9 We would also go to trade shows and other
10 venues that might be relevant to looking at new
11 technologies or at those specific applications.

12 And then in the course of that, we would
13 meet people who think that it might be
14 relevant. Then there would usually be on-site
15 visits from somebody in our sales or technical
16 team to those customers, making technical
17 presentations about the nature of the product
18 and what it could or couldn't do relevant to
19 their progress (sic).

20 Often, there's half a dozen or more
21 technical people in the room listening to the
22 presentation and -- before they move forward to
23 the next step and -- and eventually purchasing
24 the product.

25 Q. And in this exchange, do they ask you

1 questions? Is it -- how does the information
2 get exchanged between you and your potential
3 customers?

4 A. Some of it's face to face during that meeting,
5 and some of it will be after they've met
6 following the meeting. You know, technical
7 questions will be exchanged by e-mail or
8 follow-up conference calls with the teams
9 following the initial discussions.

10 Q. And how do they first learn about you?

11 A. So they might have read one of the articles
12 about us or heard about us from one of our
13 marketing activities, trade show or press
14 release or something, a web search, something.
15 And then contact us or we met face to face at
16 one of those kind of events.

17 Q. And when they contact you or if you meet face
18 to face, do they know about you because of your
19 name?

20 MR. HAWKINS: Object. Speculation.

21 A. Not usually. I mean, I think we've won some
22 awards and so people get interested in
23 companies that have won awards and find out
24 what they do in their sector that they've never
25 heard of.

1 But mostly, they're looking at the product
2 specifically and -- and find us through the
3 products in solving the problem that they're
4 looking at.

5 BY MS. LOESCH:

6 Q. And so do they know what they are looking for
7 generally, based on your experience?

8 MR. HAWKINS: Object. Speculation.

9 A. Yeah. Usually they've done a, you know, web
10 search or have contacted us specifically to
11 solve a specific problem that either we
12 mentioned on our website or in our marketing
13 before they've contacted us.

14 BY MS. LOESCH:

15 Q. And when you are in contact with them or when
16 you're about to sell a product to them, do they
17 know exactly what product they are purchasing?

18 MR. HAWKINS: Object. Speculation.

19 A. Yes. So they are -- you know, in the process
20 of talking about their process and what problem
21 they're solving, we eventually get to a
22 configuration that's specific to their
23 requirement and that's where the product is
24 quoted to them, yeah.

25 BY MS. LOESCH:

1 Q. And do you explain to them how the product
2 fulfills their needs or solves their problems?

3 A. Yes.

4 Q. Okay. And do they -- does it appear to you
5 that they've done their homework and understand
6 differences between different products?

7 A. Absolutely.

8 MR. HAWKINS: Object. Speculation.

9 BY MS. LOESCH:

10 Q. And how do you go about selling to these
11 customers? Do you sell directly or through a
12 third party?

13 A. Mostly, to the technical customers, we sell
14 directly. There are a few of our distributors
15 or channel partners who find applications and
16 bring them to us. But most of our technical
17 industrial sales are direct.

18 Q. And most of your industrial sales or industrial
19 clients, would they be confused by your name
20 Puralytics compared to Purifics or compared to
21 any other Pur name?

22 A. It's never come up.

23 MR. HAWKINS: Object. Speculation.

24 A. Yeah. It's never come up that they were
25 confused, so I wouldn't think so.

1 BY MS. LOESCH:

2 Q. Okay. Do these customers or potential
3 customers also seek environmental remediation
4 services, or may these customers also seek
5 environmental remediation services?

6 A. They could. We certainly sell to multibillion
7 dollar corporations, and they might have a
8 portion of their needs that are in the area of
9 environmental remediation services.

10 Q. And would that solve the same problem that your
11 products would solve?

12 A. No.

13 Q. Would these environmental remediation services
14 needs at all overlap with the problems or needs
15 that your products would sell?

16 A. No.

17 Q. So would an environmental remediation service
18 company be in direct competition with your
19 company to solve the problems that your
20 products solve?

21 MR. HAWKINS: Object. Speculation.

22 A. No.

23 BY MS. LOESCH:

24 Q. Okay. What type of technology does Puralytics
25 use to purify water?

1 A. So we use a light-activated, what we say a
2 photochemical process, which involves several
3 different light-activated process steps.

4 So they include photolysis, disinfection,
5 both light-activated. Also photocatalytic
6 oxidation, photocatalytic reduction, and
7 photoabsorption.

8 So those five processes are used, all
9 light-activated, to do our water purification
10 system.

11 Q. Are there other companies that use the same
12 technology?

13 A. None that use all five of them that I
14 mentioned. There are certainly some that use
15 one or more of them.

16 Q. And do you consider a company a competitor
17 because they use similar technology?

18 A. Not unless they're in -- competing at the same
19 customer, the same markets.

20 Q. So would you agree that to the extent that a
21 company uses the same technology that you do,
22 so if they are not solving the same problem
23 with that technology, then you would not
24 consider them to be a competitor?

25 MR. HAWKINS: Object. Leading.

1 A. No. I would not consider someone a competitor
2 if they weren't competing for the customer's
3 business that I was trying to get. So they --
4 they're only a competitor if we're both talking
5 to the same customer, trying to sell them the
6 same -- solve the same problem.

7 BY MS. LOESCH:

8 Q. And to your knowledge, the companies that you
9 consider to be competitors, do they use the
10 similar technology as you do?

11 A. Not for the markets that we're in. So we have
12 no competitors in the markets we're in that use
13 similar technology.

14 Q. Are you aware of the technology Purifics uses?

15 A. I am partially aware of it, yeah. I don't know
16 all of it, but some of it.

17 Q. And how does their technology compare to your
18 technology?

19 A. They use some filtration methods that they've
20 developed, and they use nanoparticle slurries
21 of -- that are photocatalytic oxidation. They
22 do photocatalytic oxidation. So that is one of
23 the technologies that are within -- a
24 photocatalytic oxidation is one technology
25 that's in our five process steps.

1 So they -- but they do it technically
2 quite a bit different way from the way we do
3 it.

4 Q. And do you consider Purifics to be a
5 competitor?

6 A. I didn't ever before. Now that they're
7 challenging my trademark, I'm wondering if I
8 should reconsider that. But, no, I don't think
9 of them competing in the markets that we're
10 actually in.

11 Q. And why do you not consider them a competitor?

12 A. The best I can tell, we've never been at the
13 same trade shows. We've never been talking to
14 the same customer. We don't have different
15 similar-scale products, and we aren't focused
16 on the same markets.

17 Q. And based on the Exhibits 119 and 120, based on
18 your application and their registration, does
19 it appear that you would be competitors?

20 A. No. From their application, it appears that
21 they are involved in services aimed at
22 remediating, you know, polluted waste streams.
23 And that's not what we do.

24 Q. And to the extent you have any knowledge on
25 this, companies that use water -- environmental

1 remediation services, are they sophisticated,
2 knowledgeable companies?

3 A. Yes.

4 Q. That would presumably do similar research as
5 your customers do?

6 A. Yeah. They would do similar research, yeah.

7 Q. Okay. I want to now turn to how you selected
8 the Puralytics mark.

9 A. Okay.

10 Q. Okay. If you can just explain how you came up
11 with Puralytics.

12 A. So first, in -- in developing the name of the
13 company and the -- we're doing business as
14 Puralytics, we -- we looked at coming up with
15 something that was unique. And one of our
16 first criteria for our unique was that when you
17 did a Google search, the only thing that came
18 up was -- or either nothing came up, or the
19 only thing that came up was our name.

20 So our initial criteria was it had to be a
21 unique word that would not have any confusion
22 in a word search.

23 So we went through -- we looked at
24 combinations of words, at, you know, other
25 Greek Gods' names, you know, colors and a

1 variety of other things and combined them
2 together to create something that seemed like
3 an image and a new word that could be useful
4 for this market.

5 Q. And so then you came up with Puralytics based
6 on --

7 A. Puralytics won that first-stage review.

8 And -- and then we went to sort of the
9 next stage where we looked at its, you know,
10 protectability as a trademark.

11 So we went through a process of searching
12 trademark registrations and doing searches for
13 products online that had similar product names
14 or company names that would be relevant to it.

15 Specifically, we took the words p-u-r, or
16 the letters p-u-r, and the letters
17 a-l-y-t-i-c-s, and we looked for things in the
18 water space that had either of those in them.
19 And we just looked for pur and water. So --
20 and water in the good and service description
21 and got -- looked -- then looked through those,
22 sorted them alphabetically, and then looked at
23 the ones that were nearest to -- alphabetically
24 were nearest to Puralytics.

25 And then looked more specifically at

1 whether it was a live or a dead registration,
2 and then if their goods and services were at
3 all confusing or similar to what Puralytics
4 would be offering.

5 Q. And then what did you do at that point?

6 A. We didn't find any that we felt were close
7 enough to be a confusion, in our opinion.

8 Q. Okay.

9 MS. LOESCH: I'm going to introduce a
10 number of exhibits, Exhibit 121 through 126.
11 I'm just going to do them all at once, if you
12 don't mind.

13 (Exhibits 121 through 126 were marked.)

14 BY MS. LOESCH:

15 Q. So if you could take a minute, I just want to
16 know if these are documents that look familiar
17 to you at all?

18 A. Yes.

19 Q. And what are these documents?

20 A. So these look like summaries that we provided
21 to you of some of those searches that we did,
22 looking at the trademark -- the trademark words
23 and comparing them to -- so there's both some
24 for p-u-r and water, and alytics and water.

25 Q. Okay. And if you look at Exhibit 121, which

1 the bottom number -- the PUR00.

2 A. Uh-huh.

3 Q. So if you can turn to page PUR000202, about a
4 third of the way down.

5 A. Uh-huh.

6 Q. Do you see that Purifics came up in one of your
7 searches?

8 A. That's correct.

9 Q. When it did come up, do you remember looking at
10 it twice or doing anything else, any further
11 searching on it?

12 A. We looked at all the ones -- this is where it's
13 sorted alphabetically. So we looked at the
14 ones that were closest to Puralytics,
15 specifically, and started kind of going and
16 looking at their products in depth.

17 I remember looking at Purifics and looking
18 at if they had environmental services and that
19 they were in a different class, and I didn't
20 consider it something that was confusing.

21 Q. And do you think Purifics is confusing with
22 Puralytics at all?

23 A. No.

24 MR. HAWKINS: Object. Leading.

25 BY MS. LOESCH:

1 Q. And you didn't then. It didn't raise any red
2 flags when you guys were going through it
3 initially, either?

4 A. It didn't, no.

5 Q. Okay. And so what's marked as Exhibit 121 and
6 122, 123, 124, 125, and 126, these are all
7 documents that were a result of your searches?

8 A. That's correct.

9 Q. And do you know approximately the time frame
10 during which you conducted these searches which
11 resulted in these documents?

12 A. I don't really. But I think it was early --
13 late 2008 or early 2009.

14 Q. So you had first come up with the idea -- the
15 name Puralytics, and this was step two?

16 A. This was step two.

17 Q. Okay. And so when did you first become aware
18 of a potential conflict with Purifics?

19 A. I think when you notified me.

20 Q. Of the --

21 A. Yes.

22 Q. -- opposition?

23 A. So that there was a challenge between -- when I
24 was notified of this trademark challenge was
25 the first time I knew that there was a

1 perceived conflict.

2 Q. Okay.

3 MS. LOESCH: I have nothing further.

4 EXAMINATION

5 BY MR. HAWKINS:

6 Q. Mr. Owen, prior to giving your deposition here
7 today, do you recall you gave a deposition
8 back, I believe it was in September of last
9 year?

10 A. (Deponent nodded head up and down.)

11 Q. Is that a yes?

12 A. Yes.

13 Q. All right. Did you have a chance to review
14 that deposition prior to coming here today?

15 A. I didn't really review it in depth. I just
16 scanned it.

17 Q. Okay. Is there anything upon your scanning of
18 that particular document that you recall right
19 now was absolutely incorrect or information or
20 testimony that we received from you that we
21 can't rely on?

22 A. There was one thing that I noticed, and I said
23 that the company started in 2006. It actually
24 started in 2007.

25 Q. Okay.

1 A. That's the only thing I noticed.

2 Q. When you were going about the business of
3 trying to pick a name which ultimately we now
4 know to be Puralytics, my understanding was is
5 that you were trying to come up with some name
6 that was distinctive. But the second criteria
7 was that you wanted something that was
8 associated with purifying water, and that would
9 be analytics or photocatalytics, but nothing
10 that was too specific.

11 A. Right.

12 Q. Okay. So there are two components; one, you
13 wanted something that you couldn't easily find
14 in Google, but you also wanted something that
15 would be sounding something similar to what
16 you're doing or something that would get
17 people's attention?

18 A. Yeah. I think you want something that sounds
19 technical, and you want something that -- we
20 didn't want anything that was too clear what it
21 was. We wanted to avoid -- a lot of the things
22 state exactly what the company does, but we
23 felt like the strongest marks are things like
24 Nike where you have no idea what it is the
25 company does from it. So we felt like we

1 wanted something that told you technical and,
2 you know, but not too specific.

3 Q. Is one of the processes that you used, at least
4 for the Shield 500, is it photocatalytics or
5 photocatalysis?

6 A. Photocatalysis is one of the processes that's
7 used, yes.

8 Q. And you're saying that's also a process that
9 Purifics uses?

10 A. Yeah. They use it in a different way, but they
11 also have the same physics, yeah.

12 Q. Okay. As far as the application you've got,
13 and I think that was marked as 119.

14 A. Yeah.

15 Q. Is there any limitation on there as far as your
16 water purification, where it simply says
17 wastewater purification?

18 MS. LOESCH: Object. Vague.

19 A. I'm not sure what you're asking.

20 BY MR. HAWKINS:

21 Q. Was there any limitation as far as wastewater?
22 I mean, on the -- it says -- did I read it
23 correctly? It says wastewater purification
24 units.

25 A. I mean, we're selling equipment, wastewater

1 purification units.

2 Q. Right. And so it's purifying wastewater.
3 Would that be correct?

4 A. Yes.

5 Q. Okay. And I think one of the things you
6 described was one of the -- one of the
7 applications for your Shield 500 is it can be
8 used during a process by a company where they
9 want to purify water or they want to get rid of
10 some component or constituent that's having an
11 effect down the product line.

12 A. Uh-huh.

13 Q. Is that correct?

14 A. That's correct.

15 Q. All right. But wastewater purification, is
16 that pertaining to an end product where there
17 is something that's coming off of a process or
18 some other type of -- of manufacturing method
19 where it's producing something that -- somebody
20 wants to get rid of something?

21 A. It could be between process steps. So, you
22 know, one -- one process's output is waste from
23 that output, but it might be input to the next
24 process step, so not necessarily a waste
25 product by itself.

1 Q. But it's something somebody wants to get rid of
2 and wants to purify that.

3 A. Right.

4 Q. Ultimately to get to water that can be
5 introduced back into our ecosystem?

6 A. It can be reused, or it could be poured down
7 the sewer safely, or it could be -- yeah
8 somehow getting back into our --

9 Q. As far as -- I'm looking at for Number 119,
10 your application, is this the only application
11 you've got for all of the products that are
12 sold by Puralytics?

13 A. No.

14 Q. Do you have a separate one for your SolarBag?

15 A. That's correct.

16 Q. And this one is only for the Shield 500?

17 A. No. This one predates the one for the
18 SolarBag. But we envisioned water purification
19 and the SolarBag in this one as well.

20 Q. That's what I'm trying to find out. This
21 particular application encompasses many
22 different products?

23 A. Right.

24 Q. It could either be the one that we were talking
25 about, the Shield 500, which can be utilized

1 more for municipal or industrial settings all
2 the way down to basically the water purifying
3 bag?

4 A. Right.

5 Q. Okay. Are you aware at all pertaining to the
6 range of products that Purifics makes?

7 A. Only peripherally aware.

8 Q. Are you aware that they make small handheld
9 products as well?

10 A. I have never seen any of their handheld
11 products.

12 Q. Are you aware that they make a product that
13 runs on solar as well?

14 A. Solar energy --

15 Q. Yes.

16 A. -- or solar --

17 Q. Solar energy.

18 A. Okay. We don't make any solar energy. Ours
19 are direct sunlight.

20 Q. You use the solar for purification process,
21 correct?

22 A. Right. Yeah. So, no, we're not doing any
23 solar-powered products. We use sunlight.

24 Q. Correct. Your Shield 500 could be used for a
25 campsite?

1 A. Yeah.

2 Q. It could be used for --

3 A. Or a campground.

4 Q. -- a campground, home user and such?

5 A. Yeah. We don't typically sell them for that.

6 Q. You could.

7 A. Theoretically, yeah.

8 Q. I mean, if somebody had a checkbook and said, I
9 want this for my home use, they could put it in
10 their home?

11 A. Absolutely.

12 Q. And my understanding is correct in that
13 Puralytics sells to labs, like research
14 centers?

15 A. That is correct.

16 Q. Do you understand Purifics does the same?

17 A. I did not know that.

18 Q. Is my understanding, as far as the Shield
19 units, are they scalable in the sense that you
20 have systems that will -- will handle a higher
21 capacity amount of water?

22 A. That's certainly the vision of the company that
23 you can use multiple of them together, or you
24 can -- or we'll build products that are a
25 larger capacity at some future date. We don't

1 have those today.

2 Q. But it's certainly on the drawing board?

3 A. Sure.

4 Q. And are you aware that Purifics, as well, has
5 scalable units, depending on what the user's
6 need is? It can be a small unit or a big unit?

7 A. I don't know how big they go or how small they
8 go. I think of all their pictures that I've
9 seen on their website as being quite large
10 compared to ours.

11 Q. But you weren't aware that they had them down
12 to the point where they were able to be
13 handheld?

14 A. No. I've never seen that. When did they make
15 that?

16 Q. They've had that for years.

17 As far as the documents we've looked at
18 here which are marked 121 through 126, are
19 there any summary documents that summarizes
20 this what I would call source documents?

21 A. No.

22 Q. I mean, any of them that might -- what I'm
23 saying is that we have a listing here, they say
24 serial number and registration number and
25 another couple of documents that have the same

1 type of information.

2 But is there anything else where you have
3 described that this is close, this is not
4 close, this describes kind of what we do but
5 it's not a close enough name?

6 A. Yeah. We didn't -- we didn't do it that way.
7 I mean, we kind of scanned through it. We
8 looked at it -- we looked at what their class
9 was and we looked at how close they were in
10 spelling. So it wasn't -- we didn't do a
11 summary document where we detailed everything
12 we looked at.

13 Q. Right. And by that, I would mean any document
14 that would have captured your mental processes
15 or your -- or your thoughts as you're going
16 through the various source documents we've
17 marked as 121 through 126?

18 A. No. I mean, other than that we sorted them
19 different ways to look at them, and specific
20 ways. But no summary.

21 Q. At one point in time, do you recall Purifics
22 being at the same trade show where venture
23 capitalists were present, as Puralytics, that
24 you were both presenters?

25 A. We were both presenters at one show together --

1 Q. Okay.

2 A. -- last year, maybe. After this started.

3 Q. And do you recall you sat -- you sat in
4 Mr. Potter's presentation, but he wasn't able
5 to sit in on your presentation?

6 A. I don't know that. But I remember sitting in
7 on his, yes.

8 Q. Okay. And were you there as a officer of
9 Puralytics, trying to garner some interest from
10 investment folks?

11 A. It was -- as I recall, and I'm not sure which
12 conference it was, but I think it was an
13 emerging technologies conference. We were
14 talking about new technologies, that there was
15 both investors and possible customers, partners
16 in there. So I was looking for all of those;
17 investors, partners, customers.

18 Q. One of the questions that was asked to you
19 during your first deposition was the percentage
20 of sales of the Shield that was domestic sales
21 versus foreign sales.

22 And am I correct that 70 percent of your
23 sales of the Shield are outside of the United
24 States?

25 A. The majority of our sales are outside. I don't

1 have a particular number that I would say
2 today. But --

3 Q. And i'm not going to hold you to your number.
4 But would it be more than half?

5 A. Yeah.

6 Q. And what about the SolarBag?

7 A. It's hard to know. I mean, when you sell
8 through Amazon and things, you don't know where
9 they go.

10 Q. Well, no. But is Amazon, from your
11 understanding, is it mostly individual
12 purchases as opposed to NGOs or Red Cross or --

13 A. I would say most of it's outside. The SolarBag
14 is mostly outside of the United States.

15 Q. And would most of your sales for the SolarBag
16 be to, like, organizations as opposed to the
17 individual users?

18 A. Yes.

19 Q. Because I think one of the things you described
20 was, if I buy -- if I buy a SolarBag through
21 Amazon, there's additional things that I may
22 have with that, whereas the NGO is kind of a
23 stripped-down unit. It doesn't have all of
24 the --

25 A. Right.

1 Q. -- bells and whistles or the -- maybe it's
2 the --

3 A. It's the box.

4 Q. -- marketing material?

5 A. Yeah. A box and a test kit and things like
6 that are all in the retail version.

7 Q. Is -- is -- Puralytics, is it still a dba of
8 UVCleaning Systems?

9 A. That's correct.

10 Q. I mean, there is no Puralytics, Inc. or
11 Puralytics, Ltd., correct?

12 A. That's correct.

13 Q. And just to -- to identify the different end
14 users for the Shield 500, it can be used for
15 laboratory use?

16 A. That's correct.

17 Q. Restaurants?

18 A. We haven't sold any for that, but it could be
19 used for that.

20 Q. People, even down to coffee pots, prefiltering
21 for coffee?

22 A. Yeah. We're not focused on that market.

23 Q. But could be?

24 A. Yeah, could be.

25 Q. Drinking soda?

1 A. It's possible.

2 Q. Anything to do with restaurants where
3 restaurants need water filtered prior to using
4 it for different uses?

5 A. Yeah. I mean, any drinking water purification.
6 I mean, I think those are all drinking water
7 purification applications. So it's possible
8 we'll get into those at some point.

9 Q. Since we had a chance to take your deposition
10 last September, has there been any change at
11 all in the way you market as far as channel
12 partners or sales agents?

13 A. Sure. Yeah.

14 Q. What has -- what changes have you --

15 A. I mean, we've added and subtracted channel
16 partners and expanded into some regions that we
17 weren't in before.

18 Q. Okay. In regions, are you talking about
19 geographic regions? Are you talking about
20 marketing regions? Or end users?

21 A. Both. You know, for instance, in -- in
22 December, we -- I did a press release on
23 emergency preparedness markets and added two
24 companies that were specifically working in
25 those -- in that market segment for the

1 SolarBag, would be an example.

2 Q. Anywhere else, though, that you've added --
3 where you've added other channel partners or
4 other sales consultants or increased other
5 marketing efforts for the Shield, for instance?

6 A. I guess this is getting into some specific
7 competitive information. I'm not sure why
8 you're asking.

9 Q. Well, one of the things that we're obviously
10 concerned about is -- and the lawsuit is based
11 on is your channels of trade. So I'm trying to
12 figure out is that -- without telling me a
13 specific person or -- I'm looking at -- is
14 there anything that is different from September
15 to now where you now are enlarging the scope of
16 your channels of trade?

17 A. No. I mean, we're just adding -- we're looking
18 for better and stronger channel partners and
19 regional sales distributors and, you know, it's
20 ongoing normal business activity.

21 Q. But throughout the United States?

22 A. Throughout the world.

23 Q. One of the discussions we had last September
24 was talking about grant money that had been
25 awarded to your company, UVCleaning Systems.

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes.

4 Q. All right. Is there any grant money that's
5 been obtained by Puralytics, in Puralytics'
6 name?

7 MR. HAWKINS: Objection. Vague as to
8 time.

9 BY MR. HAWKINS:

10 Q. And I'm talking about from the date you filed
11 your application to the present.

12 A. The Puralytics name. Let me think about that.
13 Yes. I'd say the Oregon Nanomaterial Institute
14 grant was specifically in the name of
15 Puralytics.

16 Q. And when was that?

17 A. 2009, '10. Maybe 2010.

18 Q. And has there been any other grants
19 specifically given to Puralytics in its name?

20 A. No, I don't think so. No.

21 Q. And when there's a sales invoice that's done as
22 between -- for someone buying a Shield 500,
23 what is the seller of that Shield 500?

24 A. We usually put UVCleaning Systems, dba
25 Puralytics. Sometimes we just say Puralytics.

1 Q. Would it be fair to say that Puralytics is a
2 fairly young company?

3 A. I don't know. It's kind of a weird question.
4 Relative to? I mean, yeah.

5 Q. Well, I mean, you would not call it -- it's not
6 a mature company --

7 A. No. We're an early-stage company, yes.

8 Q. Certainly, it would be fair to say that you
9 have not totally defined where all Puralytics
10 is going to ultimately go?

11 A. I don't know. Has anybody defined where
12 they're going to go? Has Apple defined -- I
13 would say no, we haven't defined all of the
14 markets we might ever be in. That's correct.

15 MR. HAWKINS: Pass you as a witness.
16 Thank you.

17 EXAMINATION

18 BY MS. LOESCH:

19 Q. I just wanted to go back to one point that we
20 discussed and that came up when you were
21 talking to Myall.

22 You -- so to the extent that you and -- to
23 the extent that Puralytics and some other
24 companies are selling some -- a product to a
25 customer, an industry customer, the same

1 customer could -- my understanding of your
2 testimony is the same customer could have water
3 purification needs or water needs in different
4 stages of its processes or for different
5 purposes; is that an accurate understanding?

6 A. Yes. And there likely would be, yes.

7 Q. And so because a company purchases a product or
8 service from multiple -- or could potentially
9 purchase a product from both Puralytics and
10 Purifics, does that mean that they're
11 purchasing that product or getting in
12 Purifics -- getting a service for the same --

13 A. No.

14 Q. -- end goal?

15 A. So, for example, the question was earlier about
16 were you aware that Purifics sold to
17 laboratories. It's like, well, I don't know.
18 They could be selling them environmental
19 remediation services at a laboratory, you know,
20 and still not be competitive with what we're
21 selling at a laboratory. So -- did I answer
22 the question?

23 Q. So as far as what you sell to laboratories, as
24 an example, or other industrial users, are
25 there hundreds of companies that sell that same

1 type of product or that would fulfill that same
2 purpose?

3 A. No. There's typically a handful -- for each
4 application process step, there's a handful of
5 companies that sell for that process step where
6 we would be competing against them in those
7 market applications.

8 Q. And generally, are you aware of other companies
9 that you're competing with in certain
10 applications or certain scenarios?

11 A. Usually, you're aware. But you're not always
12 aware. Customers don't necessarily tell you
13 what you're competing against.

14 Q. And so far, have you ever run into Purifics in
15 that situation as a competitor?

16 A. No. I've never come up with Purifics as a
17 competitor in any customer situation.

18 MS. LOESCH: Okay. I have no more
19 questions.

20 EXAMINATION

21 BY MR. HAWKINS:

22 Q. Just one last one. Would you know at each and
23 every instance where you're a direct competitor
24 to Purifics -- and by that, are there certain
25 situations where a customer comes to you but

1 not telling you everybody they're speaking to?

2 A. Yeah. They don't always tell you everyone
3 they're speaking to, yes.

4 Q. You're -- you're offering them a solution, but
5 Purifics could be offering them a solution, and
6 maybe even another -- any other company?

7 A. Yeah, it's possible.

8 MR. HAWKINS: Thank you.

9 MS. LOESCH: That's it.

10 (Whereupon, the deposition of MARK OWEN
11 was concluded at approximately 3:13 p.m.)

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1
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3 CERTIFICATE

4 I, Marcel N. Johnson, Certified Shorthand
5 Reporter for Oregon and Washington, and a Registered
6 Professional Reporter, do hereby certify that MARK
7 OWEN personally appeared before me at the time and
8 place set forth herein; that at said time and place
9 I reported in stenotype all testimony adduced and
10 other oral proceedings had in the foregoing matter;
11 that thereafter my notes were transcribed using
12 computer-aided transcription under my direction; and
13 the foregoing transcript constitutes a full, true
14 and accurate record of such testimony adduced and
15 oral proceedings had and of the whole thereof.

16 Witness my hand and stamp at Portland, Oregon,
17 this 10th day of January, 2013.

18
19 
20 _____
21 Marcel N. Johnson

22 Oregon Certified Shorthand

23 Reporter No. 02-0380

24 Washington Certified Shorthand

25 Reporter No. 0002947

1 I, _____, do hereby
 2 certify under the penalty of perjury that I have
 3 read the above and foregoing deposition and that the
 4 same is a true and accurate transcription of my
 5 testimony, except for attached amendments, if any.

6
 7 Amendments attached () Yes () No
 8

9 _____
 10 MARK OWEN
 11
 12

13 The signature above of MARK OWEN was subscribed
 14 and sworn to before me in the county of
 15 _____, state of _____, this
 16 ____ day of _____, 2013.
 17
 18

19 _____
 20 Notary Public
 21 My commission expires _____
 22
 23
 24
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