

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
(Electronically Filed)**

SIOUX STEEL COMPANY	)	
	)	
Plaintiff	)	
	)	Civil Action No. 1:16-cv-2212
v.	)	Judge: Mary M. Rowland
	)	
PRAIRIE LAND MILLWRIGHT SERVICES, INC., and	)	
	)	
DUANE CHAON	)	
	)	
Defendants	)	
	)	

**PROPOSED PRETRIAL ORDER**

**UNITED STATES DISTRICT COURT  
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Plaintiff	)	
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	)	
DUANE CHAON	)	
	)	
Defendants	)	
	)	

**JOINT PROPOSED FINAL PRETRIAL ORDER**

Pursuant to the Pretrial Schedule entered by the Court on May 12, 2022 (DN 389), Plaintiff Sioux Steel Company (“Sioux Steel”) and Defendants Prairie Land Millwright Services, Inc. (“Prairie Land”) and Mr. Duane Chaon (“Mr. Chaon”) (collectively, “Defendants”) hereby submit the following Joint Proposed Final Pretrial Order.

**I. STATEMENT OF JURISDICTION**

It is undisputed that this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332(a), and 1338(a).

**II. CONCISE JOINT CASE STATEMENT**

This is a civil action in which Sioux Steel seeks monetary damages and other relief from Defendants for patent infringement. Sioux Steel is a fourth generation, family-owned company located in Sioux Falls, South Dakota. For over 100 years, Sioux Steel has manufactured and sold a variety of agricultural, industrial, and farm products including bin paddle sweeps, throughout the United States and internationally. Sioux Steel is the owner of U.S. Patent No. 8,967,937 (“the

‘937 Patent”), entitled “Modular Storage Bin Sweep System,” which was issued by the United States Patent and Trademark Office on March 3, 2015. Sioux Steel manufactures, markets, offers for sale, and sells through itself and through its Koyker Manufacturing division, bin paddle sweep systems covered by the ‘937 Patent. As the owner of the ‘937 Patent, Sioux Steel has the right in the United States to exclude others from making, selling, offering to sell, using and/or importing bin sweeps covered by the ‘937 Patent. Sioux Steel contends that Prairie Land, a former Sioux Steel distributor,<sup>1</sup> directly infringed and continues to directly infringe Sioux Steel’s ‘937 Patent, pursuant to 35 U.S.C. § 271, by manufacturing, using, selling, and offering to sell bin paddle sweep systems covered by the ‘937 Patent without Sioux Steel’s permission. Sioux Steel also contends that Mr. Duane Chaon, the President and co-owner of Prairie Land, has and continues to infringe Sioux Steel’s ‘937 Patent, pursuant to 35 U.S.C. § 271, by inducing Prairie Land’s infringement. Sioux Steel further contends that Defendants’ infringement of the ‘937 Patent has been willful and with knowledge of the patent. Further, Sioux Steel contends that it has and continues to be damaged by Defendants’ infringement, including by losing sales and profits associated with Sioux Steel’s patented bin paddle sweep systems. Sioux Steel seeks an award of its profits and/or a reasonable royalty on Defendants’ sales of its products. Sioux Steel is represented by Robert Theuerkauf, Brian McGraw, Megan Gibson, and Matt Dearmond of the Middleton Reutlinger law firm, and Aron Carnahan and Philip Segrest, Jr. of the Husch Blackwell firm.

Defendant Prairie Land is a family-owned company located in Mendota, Illinois that offers custom turn-key commercial grain installations in the Midwest, and Mr. Chaon is an owner and President of Prairie Land. Prairie Land manufactures grain bin sweeps for use in commercial grain bins. Mr. Chaon filed for and obtained multiple patents on Prairie Land’s accused bin sweep. First,

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<sup>1</sup> Defendants object to the words “a former Sioux Steel distributor,” which they do not believe is an accurate statement.

Mr. Chaon obtained U.S. Patent 8770388B1 (the “388 Patent”) titled Sweep Conveyor for Removal of Grain and Other Materials from Bins, which issued on July 8, 2014, over 19 months before Plaintiff filed this lawsuit. In addition, Mr. Chaon obtained U.S. Patent 9,256,622 (the “622 Patent”) titled Sweep Conveyor for Removal of Grain and other Materials from Bins, which was issued on October 13, 2015 and U.S. Patent 10,227,188 (the “188 Patent”) titled Bin Sweep Pivots, which was issued on March 12, 2019. Defendants began manufacturing their bin sweep believing it was protected by at least the ‘388 Patent, and they continued manufacturing their bin sweep believing it was protected by the ‘188, ‘622 and ‘388 Patents.<sup>2</sup>

Defendants Prairie Land and Mr. Chaon deny that they infringe the ‘937 Patent in any manner. Specifically, Defendants contend that Prairie Land’s bin paddle sweeps do not infringe, because the sweeps’ drive and pivot units were not “made for the purpose of carrying the weight” of the sweeps’ paddles, as is required to prove infringement of the ‘937 Patent. [Dkt. 395, p. 17].<sup>3</sup> Defendants deny that Plaintiff has been damaged in any way. Specifically, Defendants deny that Plaintiff has lost any sales or profits due to Prairie Land’s bin sweeps. Defendants contend that customers who have purchased Prairie Land’s bin sweeps would not have purchased Sioux Steel’s bin sweep due to quality and performance issues, among other reasons.<sup>4</sup>

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<sup>2</sup> Sioux Steel states that Defendants’ references to its patents, including the alleged belief that Defendants were protected by such patents, is improper and should not be read to the jury. Sioux Steel objects to the introduction of any evidence or testimony related to Defendants’ patents or in defense of the asserted infringement claims during trial in that it is irrelevant to any claims or defenses and, thus, misleading and prejudicial. *See* Plaintiff’s Motions in *Limine* (DN 408).

<sup>3</sup> Sioux Steel states that such a construction of “configured to” is in error and objects to such a construction being presented to the jury. *See* Plaintiff’s Motion for Leave to Submit a Pre-Trial Brief (DN 403), Ex. A, pp. 3-9. Sioux Steel also expressly reserves its rights to appeal the Court’s claim constructions.

<sup>4</sup> Plaintiff states that a comparison of the accused products and Plaintiff’s patented sweeps is improper and should not be read to the jury. Sioux Steel objects to the introduction of any such evidence or testimony as misleading and prejudicial. *See* Plaintiff’s Motions in *Limine* (DN 408).

Defendants will be represented at trial by Attorneys Harry E. Van Camp, Elijah B. Van Camp, and Laura M. Davis of DeWitt LLP.

### **III. RELIEF SOUGHT**

Sioux Steel seeks damages adequate to compensate Sioux Steel for the infringement by Defendants, but in no event less than a reasonable royalty, together with interest and costs as fixed by the Court. 35 U.S.C. § 284. Sioux Steel seeks its lost profits, and a reasonable royalty on a portion of Defendants' sales, in excess of \$3,921,956. Alternatively, Sioux Steel contends that it is entitled to a reasonable royalty for all of Defendants' infringing sales in excess of \$1,836,663, at a running royalty rate of 13%.<sup>5</sup> Sioux Steel contends that it should also recover and that the Court should award, pursuant to 35 U.S.C. § 284, prejudgment interest and costs.

Following trial, Sioux Steel will seek an accounting of all infringing sales and an award of additional damages for infringing sales not previously accounted for. Sioux Steel will also seek injunctive relief, pursuant to 35 U.S.C. § 283, such that the Defendants, and those acting in conjunction with Defendants, will be permanently enjoined from manufacturing, using, selling, offering to sell, or importing the infringing products or any product which would infringe the '937 Patent. To the extent an injunction is not ordered, Sioux Steel seeks an order from the Court awarding Sioux Steel an ongoing (compulsory) royalty to compensate Sioux Steel for prospective infringement.

Sioux Steel also contends that Defendants' infringement of the '937 Patent is willful within the meaning of 35 U.S.C. § 284, and, thus, seeks an order from the Court enhancing the damages

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<sup>5</sup> The above damages amounts are as of November 10, 2020. The parties are exchanging updated financial information and the amount of damages, both as lost profits and/or a reasonable royalty, will be supplemented in order to account for sales of the accused products since November 10, 2020.

up to three times the amount found or assessed. Additionally, Sioux Steel contends that this case has been exceptional and, thus, further seeks an order from the Court awarding Sioux Steel its reasonable attorneys' fees for this case pursuant to 35 U.S.C. § 285. Sioux Steel further contends that Defendants are jointly and severally liable for all amounts awarded to Sioux Steel.

Sioux Steel also seeks any other relief that this Court deems just and proper, or that Sioux Steel may be entitled to under the law.

Defendants are seeking a declaration of non-infringement. Additionally, Defendants contend that this case has been exceptional and, thus, further seek an order from the Court awarding Defendants their reasonable attorneys' fees for this case pursuant to 35 U.S.C. § 285. Defendants have also sought a declaration of invalidity but understand the Court has granted summary judgment against Defendants on such claims in the Court's Memorandum and Order on Summary Judgment. [Dkt. 395]. Thus, Defendants reserve the right to raise their invalidity claims for purposes of appeal.

#### **IV. TRIAL ATTORNEYS**

##### **A. Sioux Steel**

- Robert Theuerkauf, Middleton Reutlinger, 401 S. Fourth St., Suite 2600, Louisville, KY 40202; phone: 502-625-2747;
- Brian McGraw, Middleton Reutlinger, 401 S. Fourth St., Suite 2600, Louisville, KY 40202; phone: 502-625-2713;
- Megan Gibson, Middleton Reutlinger, 401 S. Fourth St., Suite 2600, Louisville, KY 40202; phone: 502-625-2808; and
- Matt Dearmond, Middleton Reutlinger, 401 S. Fourth St., Suite 2600, Louisville, KY 40202; phone: 502-625-2846.

**B. Defendants**

- Harry E. Van Camp, DeWitt LLP, 2 E. Mifflin St., Suite 600, Madison, WI 53703; phone: 608-252-9336.
- Elijah B. Van Camp, DeWitt LLP, 2 E. Mifflin St., Suite 600, Madison, WI 53703; phone: 608-252-9275.
- Laura M. Davis, DeWitt LLP, 2 E. Mifflin St., Suite 600, Madison, WI 53703; phone: 608-252-9337.

**V. ESTIMATE OF TRIAL TIME**

The parties state that this will be a jury trial and recommend a selection of twelve (12) jurors. The parties estimate that the trial will be approximately 5-6 days.

**VI. STIPULATIONS**

The parties have reached the following stipulations:

1. The parties agree that documents and electronic files produced during discovery by Sioux Steel, Prairie Land, or Harvest Engineering and disclosed on the parties' exhibit lists are authentic and their authenticity need not be established at trial, subject to the parties' stated objections. However, the parties do not waive any objections as to the foundation or admissibility of such documents and electronic files.
2. The parties agree that Sioux Steel is the owner of the '937 Patent.
3. The parties are still working on a stipulation in an effort to limit the issues for trial related to the disputed claim limitations of the '937 Patent.

**VII. WITNESS LISTS**

**A. Sioux Steel's Witness List**

<b>Name</b>	<b>Address</b>	<b>Will Call</b>	<b>May Call</b>	<b>Video Deposition To Be Used at Trial</b>
Scott Rysdon	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202	X		
Peter Shaw	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202		X	X
Brian Schuelke	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202	X		
Larry Stubbe	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202	X		
Jeffrey Decker (expert witness)	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202	X		
Krista Holt (expert witness)	c/o Middleton Reutlinger 401 S. Fourth Street, Suite 2600 Louisville, Kentucky 40202	X		
Duane Chaon (in his individual and/or corporate designee capacity)	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Curtis Chaon	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Joe McKenna	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Patrick Hughes	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Carol Moss (in her individual and/or corporate designee capacity)	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Randy Kleckner (in his individual and/or corporate designee capacity)	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X
Bruce Meyer	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	X



Sioux Steel's deposition designations, along with Defendants' objections, counter-designations, and additional designations, are attached hereto as Exhibit A. Sioux Steel reserves its right to present less than all of Sioux Steel's designations in Sioux Steel's case-in-chief. Sioux Steel further reserves its right to present additional rebuttal or impeachment witnesses and testimony (live or by video deposition) as may be necessary.

Further, Sioux Steel objects to Defendants calling its designated experts, Bruce Meyer and Paul Rodrigues, for the reasons set forth in Sioux Steel's *Daubert* motions and *Motions in Limine* (DN 408, 409, and 412).

#### **B. Defendants' Witness List**

<b>Name</b>	<b>Address</b>	<b>Will Call</b>	<b>May Call</b>	<b>Video Deposition To Be Used at Trial</b>
Duane Chaon	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703	X		
Carol Moss	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703	X		
Paul Rodrigues (expert witness)	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703	X		
Bruce Meyer (expert witness)	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703	X		
Curtis Chaon	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	
Joe McKenna	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	
Patrick Hughes	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	

Name	Address	Will Call	May Call	Video Deposition To Be Used at Trial
Randy Kleckner	c/o Dewitt LLP 2 East Mifflin St., Suite 600 Madison, WI 53703		X	

Defendants reserve the right to present any counter-designations to Plaintiff’s deposition designations or additional deposition designations set forth in Exhibit A. Defendants reserve their right to present less than all of Defendants’ designations. Defendants are not providing any deposition designations for the witnesses Plaintiff has indicated it “will call” based on Plaintiff’s representation. If for some reason Plaintiff’s “will call” witnesses do not appear at trial, then Defendants reserve the right to designate deposition testimony for such witnesses. In addition, Defendants are not designating any rebuttal to Plaintiff’s deposition designations for any witnesses on their “will call” list above. Defendants reserve their right to present additional rebuttal or impeachment witnesses and testimony (live or by video deposition) as may be necessary. *See* Final Pretrial Order for Civil Cases Before Judge Rowland, II.7.

Further, Defendants objects to Sioux Steel calling its designated experts, Jeffrey Decker and Krista Holt, for the reasons set forth in Defendants’ *Daubert* motions and *Motions in Limine* (DN 418, 420, 414 and 415).

**VIII. EXHIBIT LISTS**

**A. Joint Exhibits**

The parties joint exhibit list is attached hereto as Exhibit B.

**B. Sioux Steel’s Exhibit List**

Sioux Steel’s exhibit list is attached hereto as Exhibit C. Sioux Steel reserves its right to introduce additional exhibits in accordance with the Final Pretrial Order for Civil Cases Before

Judge Rowland, II.8.b. Sioux Steel further reserves its right to present additional rebuttal or impeachment exhibits as may be necessary. Sioux Steel also reserves its right to present demonstrative exhibits, including, for example, demonstrative exhibits in its opening statement presentation, liability expert testimony, damages expert testimony, fact witness testimony, and closing argument presentation. The parties have discussed and agreed to exchange demonstrative exhibits at a mutually agreeable time.

**C. Defendants' Exhibit List**

Defendants' exhibit list is attached hereto as Exhibit D. Defendants reserve their right to introduce additional exhibits in accordance with the Final Pretrial Order for Civil Cases Before Judge Rowland, II.8.b. Defendants further reserve their right to present additional exhibits for rebuttal or impeachment as may be necessary. Defendants also reserve their right to present demonstrative exhibits, including, for example, demonstrative exhibits in their opening statement presentation, liability expert testimony, damages expert testimony, fact witness testimony, and closing argument presentation. The parties have discussed and agreed to exchange demonstrative exhibits at a mutually agreeable time.

**IX. MOTIONS IN LIMINE**

**A. Plaintiff's Motions in Limine/*Daubert* Motions**

1. Motion to exclude testimony from Defendants' technical expert, Bruce Meyer, as unqualified to provide the opinions proffered, and/or relating to (1) legal conclusions and/or applying the wrong legal standard, (2) unreliable, conclusory, and unsupported opinions regarding non-infringement, including opinions lacking factual foundation, (3) opinions relating to claim construction and/or opinions inconsistent with the Court's claim construction, (4) applying improper legal standards, including comparing Prairie Land's

patents to the '937 Patent for infringement purposes, (5) applying improper legal standards, including relating to his doctrine of equivalents analysis, and/or (5) unreliable, conclusory, unsupported, and irrelevant opinions regarding the subjective intent of third-parties. *See* DN 409.

2. Motion to exclude testimony from Defendants' damages expert, Paul Rodrigues, as unqualified to provide the opinions proffered, and/or relating to (1) legal conclusions and/or applying the wrong legal standard, (2) unreliable, conclusory, and unsupported opinions regarding an alleged royalty rate, including an alleged established royalty rate, (3) unreliable, conclusory, and unsupported opinions regarding an alleged royalty base, (4) unreliable, conclusory, and unsupported lost profits opinions based on a single component of the entire infringing product, and using Prairie Land's profits to represent Sioux Steel's lost profits, (5) unreliable, conclusory, and unsupported opinions regarding a damages period ending in November 2020, (6) unreliable, conclusory, and unsupported opinions regarding the Entire Market Value Rule and an alleged "smallest salable unit", (7) unreliable, conclusory, and unsupported opinions regarding demand under the *Panduit* factors, (8) unreliable, conclusory, and unsupported opinions regarding the *Georgia Pacific* factors to determine a reasonable royalty, including opinions regarding "convoyed sales" and their impact on a reasonable royalty under *Georgia Pacific*, and/or (9) unreliable, conclusory, and unsupported opinions regarding a hypothetical negotiation for determining a reasonable royalty. *See* DN 412.
3. Motion to exclude testimony, evidence, or argument that the '937 Patent is invalid, or that suggests that the '937 Patent is invalid. *See* DN 408.

4. Motion to exclude testimony, evidence, or argument regarding any design changes made to accused products that are sold or offered for sale, other than those changes identified in Prairie Land's answers to Sioux Steel's interrogatories. See DN 408.
5. Motion to exclude testimony, evidence, or argument comparing Sioux Steel's products to Prairie Land's products. *See* DN 408.
6. Motion to exclude testimony, evidence, or argument regarding Sioux Steel's lawsuit against Sukup Manufacturing Co. *See* DN 408.
7. Motion to exclude testimony, evidence, or argument regarding Prairie Land's patents or other patent filings. *See* DN 408.
8. Motion to exclude testimony, evidence, or argument contradicting claim construction of the Court or providing claim construction opinions to the jury. *See* DN 408.
9. Motion to exclude testimony, evidence, or argument that the Defendants relied on opinions of counsel, including in defense of Sioux Steel's claim of willful patent infringement. *See* DN 408.

**B. Defendants' Motions in Limine/Daubert Motions**

1. Motion to exclude opinions and testimony from Plaintiff's technical expert, Jeffrey Decker, because they are unreliable, conclusory, ignore critical facts, lack evidentiary foundation, are based on improper methodologies, and conflict with legal standards, including Decker's infringement opinion, opinions that are inconsistent with the Court's claim construction or his prior testimony, opinions relied upon to support Sioux's damages theory, and knowledge of basis for consumer demand and non-infringing alternatives, among other things. *See* DN 415.

2. Motion to exclude opinions and testimony from Plaintiff's damages expert, Krista Holt, because they are unreliable, conclusory, ignore critical facts, and are based on methodologies that conflict with legal authority, including Holt's proposed royalty rate, proposed royalty base, and lost profits analysis, among other things. *See* DN 420.
3. Motion to exclude evidence and argument about claims that were brought by Plaintiff against Defendants but never pursued by Plaintiff. *See* DN 407.

**AGREED TO BY:**

/s/ **Robert J. Theuerkauf**

James R. Higgins, Jr. (Admitted, N.D. Ill.)

Robert J. Theuerkauf (Admitted, N.D. Ill.)

Brian P. McGraw (Admitted, N.D. Ill.)

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AND

/s/ Harry E. Van Camp

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