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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

POLAR MOLECULAR CORPORATION,
Plaintiff,

vs.

File No. 1:07-cv-460

HON. ROBERT HOLMES BELL

AMWAY CORPORATION,
QUIXTAR INC., ALTICOR,
INC., ACCESS BUSINESS GROUP,
DRIVING FORCE TECHNOLOGIES,
LLC, J.B.R. SULLIVAN COMPANY,
D.N.S. MARKETING COMPANY,
TRANS TECH ONE, LLC; BILL NEWTON,
JEFF SELZER, ROBERT DISBERGER and
ISABELLE'S LIGHTING.
Defendants.

and

J.B.R. SULLIVAN COMPANY, D.N.S.
MARKETING COMPANY, BILL NEWTON,
JEFF SELZER and ROBERT DISBERGER,
Counter/Plaintiff

vs.

POLAR MOLECULAR CORPORATION,
Counter/Defendant.

DEPOSITION OF
STEPHEN LEHNARDT
CONFIDENTIAL - ATTORNEYS' EYES ONLY

January 10, 2008
12:45 p.m.
Law Offices of Gallagher & Kaiser, LLP
1044 Main Street
Suite 400
Kansas City, Missouri
Dana L. Burkdoll, Shorthand Reporter

1 that something --

2 A. This is something that he's telling Stuart.

3 Q. All right.

4 A. But he also noticed that the sample was out of
5 specification because they sent us -- "they" meaning
6 Lubrizol -- sent us the specifications. And he said it
7 was not it was not -- it was no good, the 400L-90 that
8 we got.

9 Q. Can you explain that a little more? What do you
10 mean, it wasn't 400L-90 or the specks didn't match?

11 A. Well, it was. The best way to describe it, it
12 had gone stale from a layman's perspective.

13 Q. Okay. So I can understand it better that way,
14 too. All right.

15 A. Me, too.

16 Q. So it's gone stale, what happens next?

17 A. We called Lubrizol and asked them if they gave us
18 a bad sample, and they told us that no, they only had a
19 few drums remaining and that one of the characteristics
20 of that chemical is that it's unstable and it goes
21 stale, has a shelf life or whatever.

22 And so, we said, "Well, that's no good." And
23 then Lubrizol asked us what we were wanting to do. So
24 we told them that we were wanting to make a fuel
25 additive.



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1 And they said, "Well, in that case, why don't you
2 try this other product, which is stable and will be
3 better for you. So we asked them if they would send us
4 a sample. They told us that they'd have to make some up
5 and they did.

6 Q. So they -- Lubrizol knew what you wanted to do.
7 Did you tell them --

8 A. We told them at the point that we told them that
9 was stale. We asked them if they could make us some
10 fresh, and they said they weren't gonna.

11 Q. When you say "we" --

12 A. Stuart and I. Excuse me.

13 Q. -- were you both talking to them on the phone at
14 that point?

15 A. No. Stuart was only talking.

16 Q. All right. And then, of course --

17 A. I've -- I've never spoken with Purnhagen.

18 Q. All right. When -- so what did they call what
19 they sent you?

20 A. That product they named --

21 MR. GALLAGHER: Excuse me. At what time?

22 MR. MASTROMARCO: Well --

23 MR. GALLAGHER: Because they send --

24 MR. MASTROMARCO: They sent them the

25 400L-90.



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1 MR. GALLAGHER: Okay.

2 MR. MASTROMARCO: And then they said, We'll
3 mix you up something different. And I'm wondering what
4 did they call that product that they fixed up.

5 MR. GALLAGHER: The product, the different
6 one?

7 MR. MASTROMARCO: Yes.

8 THE WITNESS: That was a product called
9 ALOX884.

10 BY MR. MASTROMARCO:

11 Q. Okay. What did they tell you about 884?

12 A. That it had similar characteristics of 400L-90,
13 but instead of -- they explained it -- we got it -- I
14 think they explained it in an e-mail to us, but that
15 they explained that the 884 is a pure oxygenated
16 hydrocarbon that is stable as opposed to 400L-90, which
17 is a hydro -- oxygenated hydrocarbon where they've added
18 an alcohol, which interacts with the hydrocarbon and
19 makes it go stale. So they said that the 884 would be
20 more stable, would give us similar characteristics in
21 terms of chemical performance, whatever, and it would
22 probably work better for us in terms of what we were
23 doing.

24 Q. Did -- did you send them or did Frizzell send
25 them any information as to what you were trying to do?



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1 Q. All right. Now, what's the e-mail with the
2 attachment that's beginning at 2-146?

3 A. Uh-huh. This is an e-mail from Robert Disberger
4 forwarding a letter to me. The e-mail is 146 and the
5 attachment goes just to the next page, 147. And this is
6 a letter where we had asked for a review of our product
7 with respect to the patent of Polar Molecular, the 661
8 patent. The complete patent number is 4,753,661.

9 Q. Why did you want to make sure that it was meeting
10 the substantially similar requirements of the EPA?

11 A. Substantially similar requirements of EPA, as I
12 understand them, means that the product, itself, it's
13 components are substantially similar to gasoline so that
14 when you add the product to gasoline, you do not change
15 the chemical composition of the fuel and you don't --
16 that's -- that's what it is.

17 "Substantially similar" means you add our product
18 into fuel, it doesn't change the chemical composition of
19 the fuel such that it would be not in accordance with
20 the EPA regulations for fuel, I guess.

21 Q. The -- and Mr. Taylor comes to the conclusion
22 that, apparently, "both products" -- what is he talking
23 about both products?

24 A. We had a lesser concentrate and higher
25 concentrate.



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1 A. I don't understand the question.

2 Q. What is -- what is Lubrizol supplying you today?
3 What are they called?

4 A. ALOX 884.

5 Q. All right. Now, I just had a couple more
6 questions about, um, this Exhibit No. 4 at Page 1-24, I
7 think it is. Yeah. That's it. Where it says, "Quixtar
8 accidentally sent the recipe to Bill."

9 A. Got it.

10 Q. All right.

11 A. Uh-huh.

12 Q. And that's dated April 18th, 2006?

13 A. Yep.

14 Q. Well, we know that after that date, you're still
15 trying to determine whether or not the products fall
16 within the range of the patents, aren't you? For
17 example, look at Page 2-148, the April 28th, 2006,
18 letter from Brian Taylor to Robert Disberger.

19 MR. GALLAGHER: Form. Foundation.
20 Compound.

21 THE WITNESS: What are you asking?

22 BY MR. MASTROMARCO:

23 Q. You're still trying to determine at that point in
24 time after this note that you took about receiving the
25 recipes on 4/18. You're still sending in things to have

1 than -- done --

2 Q. Right. And we talked about that -- that 400L
3 being the -- what was being used by Polar Molecular?

4 A. In their expired patent, correct.

5 Q. The date on this document is April 25th, 2006,
6 correct?

7 MR. GALLAGHER: Again, for the record,
8 that's Exhibit 5, what page?

9 MR. MASTROMARCO: Page 157.

10 BY MR. MASTROMARCO:

11 Q. And that, again, is after the document marked
12 Exhibit No. 2 about the inadvertent forwarding of the
13 recipe, correct?

14 MR. GALLAGHER: It's Exhibit 4.

15 MR. MASTROMARCO: I'm sorry, Exhibit 4 at
16 1-24.

17 MR. CLELAND: Object to form.

18 MR. MASTROMARCO: Why would you object to
19 that?

20 MR. CLELAND: Because you mischaracterize
21 one of the documents.

22 MR. MASTROMARCO: Okay. Fine. Go ahead?

23 THE WITNESS: Yes, the date is after the
24 date of my notes.

25 MR. MASTROMARCO: No further questions.