

# APPENDIX 2-10

# Pope, Barry 2015-10-07

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Pope, Barry 10-07-2015

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Apex/Sears 00:12:51

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Loggerhead 00:01:12

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Total Time 00:14:03



Page/Line	Source	ID
7:23 - 7:25	<b>Pope, Barry 10-07-2015 (00:00:04)</b> 7:23 Q. Could you please state your full name for 7:24 the record. 7:25 A. Barry William Pope.	V1.1
22:10 - 22:16	<b>Pope, Barry 10-07-2015 (00:00:22)</b> 22:10 Q. Do you remember approximately what year 22:11 you started with Sears? 22:12 A. I'm thinking it was 2010. 22:13 Q. And what was your initial position at 22:14 Sears? 22:15 A. Initial and only. I was the product 22:16 manager for Craftsman hand tools.	V1.2
24:10 - 24:13	<b>Pope, Barry 10-07-2015 (00:00:05)</b> 24:10 Q. Do you currently work for Sears? 24:11 A. I do not. 24:12 Q. When did you leave Sears? 24:13 A. In 2014.	V1.3
57:22 - 59:4	<b>Pope, Barry 10-07-2015 (00:01:46)</b> 57:22 Q. Is it your understanding that the locking 57:23 mechanism is the only difference between the tool 57:24 that Sears and Apex were developing versus what was 57:25 in the market? 58:1 A. Nope. 58:2 Q. What were the other differences that you 58:3 were aware of? 58:4 A. So when you do product development, of 58:5 course you have -- we'll say you do research on or 58:6 the engineers do, I should say, we'll go back and 58:7 look at patents. Whether it be patents for the 58:8 existing item that we're competing against or going 58:9 to compete against, which would come out, or for, 58:10 I'll call it, prior artwork, and so in this case, 58:11 obviously, that was done. 58:12 It was done by both Apex, and then our 58:13 group of engineers review that. And so the 58:14 mechanism or the way that we were conducting the 58:15 clamping and everything was done entirely 58:16 different. Engineers will say it's part of their 58:17 task, I guess, to do design-arounds. That's what 58:18 competition is, to look at something and figure out	V1.4

58:19 a different way to do it. We'll say create a  
 58:20 better mouse trap.  
 58:21 And so the locking feature, like I said,  
 58:22 was an add that we had. We knew that it brought it  
 58:23 benefit. Part of that, too, I mean I knew  
 58:24 firsthand of the benefit, having dealt with locking  
 58:25 wrenches, which has the synonymous name of vice  
 59:1 grip. They are called locking wrench pliers. And  
 59:2 then, you know, again, the way we were achieving  
 59:3 our mechanism was different, the gripping  
 59:4 mechanism.

59:5 - 60:3

**Pope, Barry 10-07-2015 (00:01:18)**

V1.15

59:5 Q. I believe a moment ago you mentioned  
 59:6 looking at patents to develop design-arounds; is  
 59:7 that correct?  
 59:8 A. Correct, reviewing patents.  
 59:9 Q. Do you know if the patents -- if  
 59:10 Loggerhead's patents were reviewed in connection  
 59:11 with any design-around or the designing of the Max  
 59:12 Axess Locking Wrench?  
 59:13 A. That would have been included in the  
 59:14 patents. So, again, as the project manager portion  
 59:15 of a product manager, my job is to make sure that  
 59:16 we are not infringing on patents, and by that  
 59:17 I don't personally look at that. I rely on the  
 59:18 resources and those much more talented than I,  
 59:19 which would be the engineers.  
 59:20 In this case, the engineers, the group was  
 59:21 from Apex that we had hired on to help design and  
 59:22 manufacture this, and then I also utilize my  
 59:23 engineering manager who acts more as a manager in  
 59:24 the sense may not necessarily have to do, I'll call  
 59:25 it, the ground work. That would be Iqbal Singh.  
 60:1 But I mean that's done on whether it be on the  
 60:2 LoggerHead project or any project. That's basic  
 60:3 product development.

60:4 - 60:9

**Pope, Barry 10-07-2015 (00:00:15)**

V1.19

60:4 Q. Does Mr. Singh have legal training?  
 60:5 A. Legal training, he does not.  
 60:6 Q. Do you know if any of the Apex engineers

Page/Line	Source	ID
61:2 - 61:4	<p>60:7 that you referred to a moment ago have legal 60:8 training? 60:9 A. I would not know that.</p> <p><b>Pope, Barry 10-07-2015 (00:00:10)</b></p> <p>61:2 Q. Was it the general practice when any tool, 61:3 if being designed around to get around a particular 61:4 patent, to take that to Sears's in-house counsel?</p>	V1.5
61:9 - 61:14	<p><b>Pope, Barry 10-07-2015 (00:00:28)</b></p> <p>61:9 THE WITNESS: Typically, on issues like that, 61:10 it would be the responsibility of the vendor's team 61:11 to present that, and then we would look at it from 61:12 an engineering standpoint. My legal contact within 61:13 Sears was primarily contracts with vendors. Not 61:14 primary, that was my contact.</p>	V1.18
62:7 - 62:10	<p><b>Pope, Barry 10-07-2015 (00:00:11)</b></p> <p>62:7 Q. Do you know if anybody at Apex took the 62:8 potential design-around from the Max Axess Locking 62:9 Wrench and the LoggerHead patents to legal counsel? 62:10 A. I do not know.</p>	V1.20
106:2 - 106:9	<p><b>Pope, Barry 10-07-2015 (00:00:17)</b></p> <p>106:2 Q. The very last sentence of that paragraph, 106:3 under Item 5, says "The differentiation of the CM 106:4 tool versus the Bionic Wrench was the locking 106:5 feature and that became the product acceptance"; do 106:6 you see that? 106:7 A. Yes. 106:8 Q. What does that sentence means, especially 106:9 in terms of the "product acceptance"?</p>	V1.6
106:13 - 106:19	<p><b>Pope, Barry 10-07-2015 (00:00:24)</b></p> <p>106:13 THE WITNESS: Again, as we said, when we 106:14 develop products, we develop them in such a manner 106:15 that we do not infringe on patents. We do that 106:16 check, and then we also add features to make the 106:17 Craftsman unit better than the national brand, and 106:18 that locking feature was one of the key features 106:19 that we added.</p>	V1.7
121:19 - 122:9	<p><b>Pope, Barry 10-07-2015 (00:00:59)</b></p> <p>121:19 Q. Mr. Pope, I just handed you Exhibit 22. 121:20 It's a document Bates labeled LH-00001223 to 1240. 121:21 This is a United States Patent No. 6,889,579.</p>	V1.8
		P1.1
		P1.1.1

Page/Line	Source	ID
	121:22 Have you ever seen this document before?	
	121:23 A. Specifically, no. I'm aware that it	
	121:24 exists.	
	121:25 Q. How are you aware that it exists?	P1.1
	122:1 A. Again, in product development, one of the	
	122:2 things is that the engineers do patent searches and	
	122:3 look on, you know, pull everything together,	
	122:4 whether it be existing or past artwork, and they'll	
	122:5 pull it out together.	
	122:6 My job, I guess, as a product manager, is	
	122:7 not necessarily to know everything but to know the	
	122:8 experts who do know everything or who are they,	
	122:9 much better off at analyzing things than I.	
122:10 - 122:11	<b>Pope, Barry 10-07-2015 (00:00:06)</b>	V1.16
	122:10 Q. Who informed you of the existence of	
	122:11 U.S. Patent No. 6,889,579?	
122:16 - 122:24	<b>Pope, Barry 10-07-2015 (00:00:22)</b>	V1.9
	122:16 THE WITNESS: Again, my information, when it	
	122:17 would come to matters like this, would be	
	122:18 engineers.	
	122:19 BY MR. HARTSELL:	
	122:20 Q. Do you recall if a particular engineer --	
	122:21 A. I don't recall a particular one, no.	
	122:22 Q. Do you know approximately when you became	
	122:23 aware of the existence of the '579 patent?	
	122:24 A. Specifically, no.	
122:25 - 123:11	<b>Pope, Barry 10-07-2015 (00:00:45)</b>	V1.21
	122:25 Q. Do you know if you were aware of the '579	
	123:1 patent before design work began on the Max Axess	
	123:2 Locking Wrench?	
	123:3 A. I want to say yes, but here is why,	
	123:4 because it should be on a package. So if I was at	
	123:5 a store, I would know that there was patents to it.	
	123:6 That's common knowledge.	
	123:7 Q. Was that standard operating procedure to	
	123:8 look on packages of competitor's products for	
	123:9 patent numbers?	
	123:10 A. That's part of the due diligence, sure.	
	123:11 It makes looking them up easier.	
124:25 - 125:10	<b>Pope, Barry 10-07-2015 (00:00:43)</b>	V1.10

Page/Line	Source	ID
	124:25 Q. In the designing of the Max Axess Locking 125:1 Wrench, did the issue of infringing either the '470 125:2 patent or '579 patent ever come up? 125:3 A. Again, as I said, one of the key 125:4 objectives of any product design is to make sure 125:5 that we do not infringe on patents, to respect and 125:6 honor patents that exist. The engineers do the 125:7 research, the due diligence. They dig into the 125:8 technical. My job is just to make sure that they 125:9 have done that technical work and that they have, 125:10 you know, designed properly.	clear
127:14 - 127:19	<b>Pope, Barry 10-07-2015 (00:00:17)</b> 127:14 Q. Mr. Pope, I've just handed you Exhibit 24. 127:15 It's Bates numbered SEARS_005539 TO 5541. Take a 127:16 moment, if you'd like, to review the document. 127:17 I think all the questions are going to be on the 127:18 first page. 127:19 A. Okay.	V1.11 P470.1
127:20 - 130:11	<b>Pope, Barry 10-07-2015 (00:03:24)</b> 127:20 Q. If you'd look at the second e-mail in the 127:21 string on page 5539, it's from Mark Good to Barry 127:22 Pope. It's dated March 15, 2012, at 9:30 a.m.; do 127:23 you see that? 127:24 A. Yes. 127:25 Q. It says "Mark Good is an industrial 128:1 designer"; is that correct? 128:2 A. That's correct. 128:3 Q. Do you know who Mark Good worked for? 128:4 A. Mark worked for Colin Knight. 128:5 Q. If you look at the third sentence, he says 128:6 "Apparently, there is also a 'bionic wrench' that 128:7 needs a handle as well"; do you see that? 128:8 A. Yes. 128:9 Q. What did you understand that sentence to 128:10 mean? 128:11 A. Again, noted that it's in quotes, that 128:12 that is in regards to the project. I think we 128:13 talked about how a lot of times we'll just use, you 128:14 know, a name for a project. He's responsible for 128:15 VBL.	V1.17 P470.1.1 P470.1.2 P470.1.3

128:16 Q. Do you have any additional recollection of  
 128:17 what he meant when he says that "It needs a handle  
 128:18 as well"?  
 128:19 A. That he'll design the handle, the VBL of  
 128:20 the handle.  
 128:21 Q. So the look and feel to make it --  
 128:22 A. Craftsman.  
 128:23 Q. -- Craftsman. Okay.  
 128:24 Now, if we could, the first e-mail on the  
 128:25 string on that same page, it's from you March 15 at  
 129:1 2:41 p.m. It's to Mark, and it says "Coming soon  
 129:2 but they are currently attempting to design  
 129:3 function around patent. Will advise when we get to  
 129:4 this point."  
 129:5 Do you see that sentence?  
 129:6 A. Yes.  
 129:7 Q. The first question is who is "they"?  
 129:8 A. The engineers.  
 129:9 Q. The engineers for Sears or the engineers  
 129:10 for Apex?  
 129:11 A. Well, again, remember, the design is  
 129:12 coming from Apex, and our engineer Iqbal Singh is  
 129:13 acting as a project manager in regards to that.  
 129:14 Q. So when you -- so just so I am clear, you  
 129:15 believe "they" refers to the --  
 129:16 A. Engineers collectively.  
 129:17 Q. Okay. Both Apex and Sears?  
 129:18 A. Yes.  
 129:19 Q. And what did you mean when you said "They  
 129:20 are currently attempting to design function around  
 129:21 the patent"?  
 129:22 A. Again, that's the basis as we honor the  
 129:23 existing patents, and the new product development  
 129:24 are designing a different way. In other words,  
 129:25 coming up with a new mouse trap, per se, a new way  
 130:1 around that to perform a function that does not  
 130:2 infringe on the patent.  
 130:3 Q. So it would be fair to characterize this  
 130:4 as an attempt to design around the patents that  
 130:5 Sears was aware of from LoggerHead?

P470.1.4

P470.1.5

P470.1.6



Page/Line	Source	ID
	130:6 A. Well, so that we wouldn't be sitting here.	
	130:7 Q. Is that a fair characterization?	
	130:8 A. Well, we're designing it in such a way	
	130:9 that, again, we don't hurt or infringe on it, and	
	130:10 yet we can still accomplish the objectives that we	
	130:11 want.	
130:15 - 130:16	<b>Pope, Barry 10-07-2015 (00:00:10)</b>	<b>V1.12</b>
	130:15 Q. Mr. Pope, I've just handed you Exhibit 25.	P467.1
	130:16 It's Bates numbered SEARS_00005505 through 5507.	
130:21 - 132:4	<b>Pope, Barry 10-07-2015 (00:01:37)</b>	<b>V1.13</b>
	130:21 Q. If you could turn to the second page,	P467.2
	130:22 5506, there is an e-mail from Eric Broadaway of	P467.2.3 -
	130:23 Apex, dated March 15, 2012, at 1:38 a.m. to several	P467.2.4
	130:24 people, Matthew McDonnell, Mark Good, and you were	
	130:25 cc'd along with several other people; do you see	
	131:1 that?	
	131:2 A. Yes, I do.	
	131:3 Q. And the first paragraph says "Hello Matt,	P467.2.5
	131:4 We have made some good progress on the plier-style	
	131:5 wrench for Craftsman. Attached is a model of the	
	131:6 design that should not infringe upon the Brown	
	131:7 patents for the LoggerHead Tools"; do you see that?	
	131:8 A. Yes.	
	131:9 Q. When he says "plier-style wrench," do you	
	131:10 understand this is what became -- ultimately became	
	131:11 the Max Axess Locking Wrench?	
	131:12 A. Yes, I do.	
	131:13 Q. And is it your understanding at this time	
	131:14 they believe they have found a design that would	
	131:15 purportedly not infringe Loggerhead's patents?	
	131:16 A. They found an alternative that would not	
	131:17 infringe, yes.	
	131:18 Q. And the paragraph goes on to say "The jaws	P467.2.6
	131:19 or plungers are not the u-shape design of Brown.	
	131:20 With our design, the radial slots that actuate the	
	131:21 plungers are visible on the outer plates of the	
	131:22 tool as you can see from the picture."	
	131:23 Do you see that sentence or sentences?	
	131:24 A. I'm sorry.	
	131:25 Q. Do you see those two sentences?	

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132:1 A. Yes, I do.

132:2 Q. Is it your understanding that the

132:3 purported design-around had to do with the shape of

132:4 the jaws or the plungers?

132:7 - 132:9

**Pope, Barry 10-07-2015 (00:00:07)**

V1.14

132:7 THE WITNESS: Again, I would leave that to the

132:8 engineers for the technical. My concern is that

132:9 they are saying they are around it.

Apex/Sears = 00:12:51

Loggerhead = 00:01:12

**Total Time = 00:14:03**

#### Documents Shown

P1

P467

P470