

APPENDIX 3  
PTX 175

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**From:** Broadaway, Eric  
**Sent:** Monday, February 27, 2012 10:06 PM  
**To:** 'John R. Owen'  
**Cc:** Li, Peng  
**Subject:** RE: Bionic Wrench Patent Analysis (4499-000)  
**Attachments:** image001.jpg; image002.jpg

Considering that – I would like you to start the ~\$5k investigation into understanding the Brown patents. Could you send me a formal quote or a more detail explanation of the patent analysis that will be conducted on the Brown patents. If you require a PO I can forward one. This will not be paid from our Apex, NC office. Upon completion this would be invoiced and paid from our Sparks, MD office.

Thanks, Eric

Eric Broadaway • 443.791.3570  
[eric.broadaway@apextoolgroup.com](mailto:eric.broadaway@apextoolgroup.com)

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**From:** John R. Owen [mailto:jowen@coatsandbennett.com]  
**Sent:** Monday, February 27, 2012 4:46 PM  
**To:** Broadaway, Eric  
**Subject:** RE: Bionic Wrench Patent Analysis (4499-000)

Eric:

Basically yes, but it might be easier (and therefore less) once I understand the Brown patents. Particularly if the entire rest of the tool (other than color/plastic, and tip shape) is like Buchanan.

I look forward to hearing from you when you are ready to go.

John.

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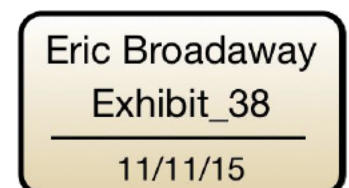
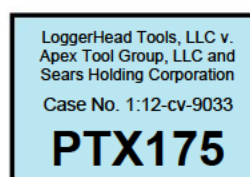
**From:** Broadaway, Eric [mailto:Eric.Broadaway@apextoolgroup.com]  
**Sent:** Monday, February 27, 2012 3:07 PM  
**To:** John R. Owen  
**Cc:** Li, Peng; Fu, Zhihong  
**Subject:** RE: Bionic Wrench Patent Analysis (4499-000)

**John** – our initial plan is to copy very closely the circa 1957 Buchanan design. The opening and displacement of the three jaws will need to be larger in order to engage more fasteners and the handles will have color and polymer coatings. Also we are considering making the tips rounded or not flat to engage a few non-hex shape fasteners (red tip sketch represents this concept).

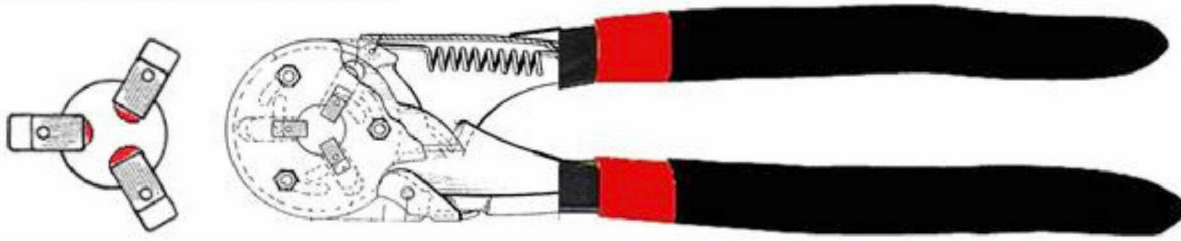
As we firm our concept(s) over the next week I will come back to you with a formal request. From your preliminary estimates below I assume a review of this concept would first require about \$5k for you to understand the Brown patents, then approximately another \$5k to understand if our concept infringes upon the Brown patents? Do I understand your estimates correctly?

Thanks, Eric

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Eric Broadaway • 443.791.3570  
[eric.broadaway@apextoolgroup.com](mailto:eric.broadaway@apextoolgroup.com)



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**From:** Broadaway, Eric  
**Sent:** Wednesday, February 22, 2012 2:30 PM  
**To:** 'John R. Owen'  
**Cc:** Momola, Mark; Anderson, Alan  
**Subject:** RE: Bionic Wrench Patent Analysis (4499-000)

This is great feedback – thanks for the quick response! I will review this together with the team and we will advise what next steps we want to take. I am traveling this evening for a few customer meetings so it might take me a day or so to get back to you.

Eric Broadaway • 443.791.3570  
[eric.broadaway@apextoolgroup.com](mailto:eric.broadaway@apextoolgroup.com)

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**From:** John R. Owen [mailto:[jowen@coatsandbennett.com](mailto:jowen@coatsandbennett.com)]  
**Sent:** Wednesday, February 22, 2012 2:06 PM  
**To:** Broadaway, Eric  
**Cc:** Momola, Mark  
**Subject:** Bionic Wrench Patent Analysis (4499-000)

Eric:

Please note that are actually at least 3 issued patents and one pending patent application. I have attached copies for your reference.

First pass through the first Brown patent (6889579) finds that the claims appear to be fairly *broadly* written, which is not a good sign.

For avoiding a patent, there are two basic ways. The first way is to "not infringe" -- essentially have something missing in your product that is required to be there by any one claim. If the claims are broadly written, and there are numerous claims (here, there are at least  $9+2+1 = 12$  independent claims), finding a workable non-infringement path is usually a challenge. The second way is to "invalidate" the claims -- essentially show that what is being claimed by each claim was already known in the art. Invalidating claims is usually quite difficult and expensive, and at best merely lessens the risk of being liable for patent infringement. Sometimes, one has to take both paths - non-infringement for some claims, invalidity for others, etc.

Just as a first pass estimate, it would likely take about \$5k for me to just understand the Brown patents. I would need to do this before I could determine if there are any candidate non-infringement and/or invalidity paths. Analyzing a non-infringement path is probably about \$5k each. An invalidity analysis, would start with an invalidity search (usually about \$5k), then an analysis. The costs for invalidity analysis typically start at about \$25k, but may be significantly more depending on circumstances.

One possible option is to copy a tool that was available more than one year before the filing date of the earliest patent (here, that means available before January 23, 2003), with a strong preference for being available more than 20 years ago. Along those lines, would you be able to use a tool almost exactly like shown in Buchanan (2757925, circa 1957), but maybe with differently shaped clamping surfaces? If so, I could explore that option to see if it would infringe.

I trust this provides some insight into the process, but please contact me if you have questions.

Regards,  
John.

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**From:** Broadaway, Eric [mailto:Eric.Broadaway@apextoolgroup.com]  
**Sent:** Wednesday, February 22, 2012 11:23 AM  
**To:** John R. Owen  
**Subject:** voicemail from Eric Broadaway

Eric Broadaway • Director Product Development (Private Label)  
Apex Tool Group, LLC, 14600 York Rd.  
Suite A, Sparks, MD 21152 • 443.791.3570  
[eric.broadaway@apextoolgroup.com](mailto:eric.broadaway@apextoolgroup.com)