

UNITED STATES OF AMERICA

ARMED SERVICES BOARD OF CONTRACT APPEALS

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IN THE MATTER OF:

THE APPEAL OF

Wesleyan Company, Inc.

ASBCA Docket No.  
53896

Under Contract No.  
DAAK60-84-M-1116,

et al.

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VOLUME 1

Tuesday

April 15, 2008

Hearing Room B  
Seventh Floor  
Skyline Six  
5109 Leesburg Pike  
Arlington, Virginia

The above-entitled matter came  
on for hearing, pursuant to notice, at 1:00  
p.m.

BEFORE:

THE HONORABLE MONROE E. FREEMAN, JR.  
Administrative Law Judge

Neal R. Gross & Co., Inc.  
(202) 234-4433

1 Natick and there was a Larry Laberdini or  
2 something like that?

3 A Yes.

4 Q You didn't specify the time in your  
5 testimony.

6 A That was at the very outset of the  
7 presentations. That would have been July '83  
8 or right after maybe August '83. That would  
9 have been the second trip that I made there.

10 Q Okay. And then there was testimony,  
11 I couldn't tell if it was the same trip or a  
12 later trip when you were testifying that you  
13 were standing in an area where Mr. Snow's  
14 office was.

15 A That was in December of '85.

16 Q Oh, okay. And I think you said you  
17 saw a Fist Fountain at that time?

18 A No, I didn't say that. I said I  
19 brought the Fist Flex to show. While I was  
20 waiting for the engineers to assemble across  
21 the hallway, I stood there and saw parts  
22 disassembled on Mr. Snow's desk and also in a  
23 bag, both of which had no tags on them, only  
24 strings.

25 Q Okay. And you used the word that

1 they were on public display. That's not  
2 correct, is it?

3 A Well, I saw them and other  
4 contractors, including Mr. Miller, would have  
5 been in there on occasion. So there's any  
6 number of people that had business with the  
7 government would have seen those parts if they  
8 were out or I saw them.

9 Q So what's wrong with Mr. Snow maybe  
10 taking apart your prototype? You made the  
11 comment it was partially disassembled on a  
12 desk. What's wrong with that?

13 A That is not the intended use of the  
14 prototype, and my rights, I have full  
15 proprietary rights to my prototypes, and that  
16 disassembly is not one of those things the  
17 government can do to the part. They can test  
18 them and evaluate them. They cannot  
19 disassemble them.

20 Q Why do you think that they were  
21 still proprietary to you after your patent  
22 issued?

23 MR. MOORHOUSE: Objection. Calls  
24 for legal conclusion.

25 MR. CLARKE: No, it doesn't. I

1 asked what he thought.

2 JUDGE FREEMAN: Go ahead and answer.

3 THE WITNESS: Because the patent  
4 provides certain types of protections for  
5 unique elements that make or comprise the  
6 patented item, but the tags, if you will,  
7 provide blanket rights, reservations, for use  
8 of the product or misuse of the product.

9 JUDGE FREEMAN: Why wouldn't  
10 disassembly be a part of evaluation? I mean,  
11 you want to see what it's made of, how it's  
12 going to stand up.

13 THE WITNESS: That is not the  
14 intended use of the product, so I would  
15 consider that misuse.

16 JUDGE FREEMAN: Okay, go ahead.

17 BY MR. CLARKE:

18 Q Okay. So you consider that misuse.  
19 Did you pick up your pieces and go home? Why  
20 did you leave it right there?

21 A I explained to Mr. Snow at the time  
22 when I saw it that that was very problematic.  
23 I was trying to be very diplomatic to my  
24 potential client here. I immediately  
25 discussed the matter with my attorneys, and it

1 was a very difficult situation because I was  
2 introducing new technology at this time and I  
3 was in a quandary about all of it, and I kept  
4 my mouth shut at the Army. Later on, when I  
5 got the ILC Dover letter in December of '86,  
6 I went to the Undersecretary of the Army for  
7 Research Development and Acquisition in  
8 February of '87 and finally aired out my  
9 differences with how I believed the Army was  
10 misusing my technologies and releasing my  
11 proprietary information to third parties. The  
12 Undersecretary of the Army at that time, J.R.  
13 Sculley, he had a meeting at the Pentagon and  
14 assembled three uniformed officers. I believe  
15 one of them was from TRADOC, I believe one of  
16 them was from Natick, and I believe the other  
17 was from Edgewood. And the Undersecretary of  
18 the Army, Assistant Secretary of the Army  
19 rather, said, "I want a full and fair  
20 evaluation of the Fist Flex hydration system  
21 as it moves through the system." And with  
22 that, I thought that that was going to be it.  
23 That was in February of '87. Nothing  
24 happened.

25 Q Okay. Now, if I'm correct, this is