

UNITED STATES AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.)
and LULULEMON USA INC.,)

Petitioners,)

-vs-)

NIKE, INC.,)

Patent Owner.)

Case No.
IPR2023-00180

DEPOSITION OF:

DR. HENRY H. HOUH

The deposition of DR. HENRY H. HOUH, called
as a witness pursuant to notice and pursuant to the
provisions of the Patent Trial and Appeal Board and the
rules pertaining to the taking of depositions; taken
before ISIAIAH ROBERTS, CSR, RPR, a Certified Shorthand
Reporter in the State of Illinois, at 200 Clarendon
Street, Floor 21, Boston, Massachusetts on August 1st,
2023, commencing at 9:05 a.m.

lululemon athletica inc. et al. v. Nike, Inc.
IPR2023-00180
Patent No. 10,232,220
Ex. 2002

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Dan Lohaus, Videographer

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1 THE VIDEOGRAPHER: We are now on the record for
2 the video deposition of Dr. Henry Houh. Today's date is
3 August 1st, 2023, and the time on the video monitor is
4 9:05 a.m.

5 The caption of this case is Lululemon Athletica
6 Canada Incorporated and Lululemon U.S.A. Incorporated
7 vs. Nike, being held before the Patent -- the U.S.
8 Patent Trial and Appeal Board, case number IPR
9 202300180.

10 This deposition is being held at 200 Clarendon
11 Street in Boston, Massachusetts. My name is Dan Lohaus,
12 and I am a legal video specialist with Premier.

13 At this time counsel present will identify
14 themselves and who they represent beginning with the
15 taking attorney.

16 MR. SEBBA: Hi. My name is Michael Sebba with
17 Arnold & Porter, representing Nike, Inc. I'm joined by
18 my colleague Aaron Bowling.

19 MS. NGUYEN: And Jean Nguyen of Morrison &
20 Foerster representing Lululemon, Petitioner, along with
21 my colleague, Alex Yap, also from Morrison & Foerster.

22 THE VIDEOGRAPHER: The court reporter today is
23 Isaiah Roberts, and he will swear in the witness and
24 then we may proceed.

1 DR. HENRY H. HOUH, Ph.D.,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 EXAMINATION

5 BY MR. SEBBA:

6 Q. Dr. Houh, good morning.

7 A. Good morning.

8 Q. Thank you for being here today.

9 So I'm just going to start with some ground
10 rules if that's okay with you.

11 A. Sure.

12 Q. Can you please state your name for the record
13 actually to start.

14 A. It's Henry Houh, and that's spelled H-o-u-h.

15 Q. Thank you. And have you been deposed before?

16 A. Yes.

17 Q. Approximately how many times?

18 A. Probably about 100 times.

19 Q. Okay. So you might know some of these rules
20 that I'm going to go through with you.

21 So, first, as you can see, we have a court
22 reporter here, so -- and you were sworn in, so
23 everything you say today is under oath as though you
24 were at a trial before a judge. Do you understand that?

1 A. Yes.

2 Q. Okay. And also because we have the court
3 reporter, let's keep all answers verbal, yes, no, no
4 uh-huh, huh-uh, no head nods, no head shakes. Does that
5 make sense?

6 A. I'll do my best.

7 Q. Thank you. I'll try to remind you.

8 And -- okay. And is there any reason you
9 can't give honest testimony today?

10 A. No.

11 Q. Okay. All right. So what did you do to
12 prepare for your deposition today?

13 A. I reviewed a number of documents and I met
14 with the attorneys.

15 Q. When you say "the attorneys," who is that?

16 A. I met with Jean Nguyen and Alex Yap and -- at
17 the moment I forget his last name.

18 Q. And how many times did you meet with the
19 attorneys?

20 A. With various different ones of them, maybe
21 four or five times.

22 Q. And when were those meetings?

23 A. Yesterday, Sunday, sometime last week I think,
24 and sometime the previous week I think. There might

1 have been another. I can't remember.

2 Q. And were those meetings in person or over
3 Zoom, a call?

4 A. Some were Zoom, some were in person.

5 Q. And approximately how long were those
6 meetings?

7 A. I can't remember for sure. Probably around 12
8 to 15 hours' worth.

9 Q. All total?

10 A. All total. It could have been more.

11 Q. And what documents did you review to prepare
12 for today's deposition?

13 A. I reviewed the '220 patent. I reviewed the
14 file history. I reviewed my declaration. I reviewed
15 the institution decision. I reviewed the petition. I
16 reviewed the patent owner's preliminary response. I
17 reviewed the prior art references and all of the
18 exhibits to my declaration, including the prior art
19 references. That's all I can think of at the moment.

20 Q. Okay. Okay. I'm going to introduce as
21 Exhibit 1 your deposition notice.

22 (Discussion held off the record.)

23 (Exhibit Number 2001 marked.)

24 A. I just remembered one more document. I

1 reviewed a provisional to the -- to one of the
2 references.

3 Q. Provisional what?

4 A. Provisional application for the Johnson
5 reference.

6 Q. So just for clarity, you're saying you
7 reviewed a provisional application of the Johnson
8 reference, claims priority too?

9 A. One of them.

10 Q. Okay. In front of you is Exhibit 2001. Have
11 you seen this document before?

12 A. I don't think I have actually.

13 Q. Okay. So this is your -- this is a notice of
14 your deposition for today. So you -- just so we're
15 clear, you understand you're here to discuss the IPR
16 caption on the front page?

17 A. Yeah. That looks right.

18 Q. Okay. Did you discuss the prosecution history
19 of the -- let's step back a moment.

20 So we're here today. The IPR is addressing
21 U.S. Patent 10232220; correct?

22 A. Yeah. I think that's right.

23 Q. Okay. If I refer to that as the '220 patent,
24 will you understand what I'm referring to?

1 A. Sure.

2 Q. Okay. Did you review the prosecution history
3 for the '220 patent in preparation for today?

4 A. Portions of it, yes.

5 Q. You drafted a declaration in support of this
6 IPR petition; correct?

7 A. That's right.

8 Q. What was the process by which you drafted that
9 declaration?

10 A. I mean, first I reviewed all the patent and
11 the prior art, and then I met with attorneys and we had
12 some discussions and I provided some summaries. And
13 then -- then a draft was created and there was some back
14 and forth. Had its corrections and suggestions. And
15 then it was submitted.

16 Q. So you say that you reviewed the prior art.
17 Did you help identify that prior art?

18 A. I can't recall the exact process, but I -- I
19 don't think I did.

20 Q. Okay. And then you said a draft was created.
21 How was that draft created?

22 A. Well, I don't remember exactly on this case.
23 Sometimes I create a first draft; sometimes the
24 attorneys create a first draft. But I -- but,

1 regardless, you know, I -- if I create it, those are my
2 things. If the attorneys give me a draft, I review it
3 very carefully, and at the end there are my opinions and
4 I -- you know, and I would sign the draft -- or the
5 report -- or declaration.

6 Q. Okay. I'm going to introduce as Exhibit 2002
7 your declaration, or I suppose this is Exhibit 1003 of
8 the IPR.

9 A. Yeah.

10 THE STENOGRAPHER: Exhibit what? I'm sorry.

11 MR. SEBBA: 1003.

12 MR. YAP: To minimize confusion.

13 THE WITNESS: Yeah. I mean, there's still
14 confusion because isn't there -- aren't there Exhibits
15 2001, 2002 to the IPR and -- anyway. All right. Yeah.

16 Thank you. Oh, this is still Exhibit 2002.
17 It got labeled 2002.

18 MR. SEBBA: Oh. Let's stick with referring to
19 this as 1003.

20 THE STENOGRAPHER: Oh, okay.

21 (Exhibit Number 1003 marked.)

22 MR. SEBBA: Just so the record is clear, we've
23 introduced the declaration of Dr. Houh, and we're
24 referring to it as 1003.

1 BY MR. SEBBA:

2 Q. Dr. Houh, does this document look familiar?

3 A. Yes, it does.

4 Q. And what is this document?

5 A. This is -- this is a copy of the declaration I
6 submitted for this case.

7 Q. Okay. And at the back of this document, after
8 page 69, is your CV; correct?

9 A. Yes.

10 Q. Okay. So what experience do you have working
11 with fitness equipment?

12 MS. NGUYEN: Objection. Form.

13 THE WITNESS: I have some personal experience
14 using fitness equipment, and I have some -- a number of
15 cases I've worked on that involve fitness equipment and
16 gyms and whatnot.

17 BY MR. SEBBA:

18 Q. What are those cases?

19 A. I worked on a number of cases involving
20 Peloton -- for Peloton, both patent owner and
21 petitioner's IPRs for them. I worked on a case
22 involving F45 gyms.

23 Q. What was the technology in that F45 case?

24 A. The technology related to the software used to

1 operate the individual gym locations.

2 Q. Okay. Except for your work as an expert
3 witness, have you done any work with fitness equipment?

4 A. I mean, just personal. Like, I used to go to
5 a gym regularly.

6 Q. Have you done -- except for your work as an
7 expert witness, have you done any professional work
8 using fitness equipment -- or relating to fitness
9 equipment.

10 MS. NGUYEN: Objection. Form.

11 THE WITNESS: There's no professional experience
12 I've had that involved working at a company that, for
13 example, produced fitness equipment.

14 BY MR. SEBBA:

15 Q. Sticking with your CV, at the very back of --
16 this is labeled page 12 out of 12. The second-to-last
17 entry is that you have an Erdos-Bacon number of 7?

18 A. Yes.

19 Q. Can you explain what that is.

20 A. That's a number people use to indicate their
21 distance from the mathematician Erdos, how many papers
22 you coauthored with authors that coauthored papers with
23 Erdos. He was considered a very prolific mathematician,
24 and so maybe -- he's used as a benchmark for this

1 particular metric.

2 And then Bacon refers to Kevin Bacon. And
3 it's how many movies you've been in that actors in the
4 movie have acted with Kevin Bacon.

5 So the way I get 7 is that I have an Erdos
6 number of 5; that is, I'm 5 papers removed from Erdos,
7 and I'm -- I was in a movie, and I'm 2 -- with someone
8 who was in a movie with Kevin Bacon. So that gives me a
9 Kevin Bacon number of 2. And so if you add those
10 together, that's 7.

11 Q. Okay. And then the next one, an
12 Erdos-Bacon-Sabbath number of 11?

13 A. That's another metric that people add in,
14 music production. So Sabbath refers to Black Sabbath,
15 the band. And so I was on an album -- I played in an
16 album that, you know, I think was 4 hops removed with
17 artists on the album to Black Sabbath.

18 Like, if you follow the chain, you know, I
19 worked with that record producer. He was a guy that was
20 the -- I think he was the lead person in Blood, Sweat &
21 Tears, and then he worked on an album with someone else,
22 and he worked on album with someone else that -- and I
23 don't remember how many -- but it's 4 away from Black
24 Sabbath.

1 Q. And what was your involvement in that album?

2 A. I played viola on a number of tracks.

3 Q. So when you were preparing this declaration --
4 well, let's step back.

5 What's your understanding of what the '220
6 patent is directed to?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: Well, as I say in my declaration
9 on page 16, in broad terms the '220 patent describes
10 "recording and uploading exercise data to a page on a
11 social networking site." And then I summarize some but
12 not all of the embodiments in my declaration.

13 BY MR. SEBBA:

14 Q. And you said you read the institution
15 decision; correct?

16 A. Yes.

17 Q. All right. I'm going to introduce as Exhibit
18 2002 the institution decision.

19 (Exhibit Number 2002 marked.)

20 So you've seen this document before?

21 A. Yes, I have.

22 Q. Okay. And let me -- before we get into that,
23 I'll introduce as Exhibit 2003 an excerpt of the
24 Merriam-Webster Dictionary definition for the word

1 "record."

2 (Exhibit Number 2003 marked.)

3 Have you reviewed this document before?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: So I don't think I've seen this
6 particular page from wherever this came from, Exhibit
7 2003, but I did review the institution decision, which
8 appears to be referring to this -- it's referring to the
9 Merriam-Webster's online dictionary. And the
10 institution decision cites some of the definitions here
11 such as part of 1(a)1 and part of 3 on the Exhibit 2003.

12 BY MR. SEBBA:

13 Q. Okay. So you reviewed the institution
14 decision, and it makes mention of the Merriam-Webster's
15 online dictionary; correct?

16 A. That's correct.

17 Q. Okay. You didn't check that definition
18 yourself. You just reviewed what's mentioned in the
19 institution decision?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: I didn't go to Merriam-Webster. I
22 mean, it's the PTAB judges, so I -- I trusted that they
23 -- what they cited to they cited to properly.

24 BY MR. SEBBA:

1 Q. Okay. And it appears, as you were saying,
2 they referred to the definition of 1(a)1; correct?

3 A. A part of it, yes.

4 Q. And they refer to part of the definition --
5 definition 3 for Merriam-Webster; correct?

6 A. Yes.

7 Q. Okay. There's also a definition in Exhibit
8 2003 1(c)1; correct?

9 A. Yes.

10 Q. Okay. And that reads "to register permanently
11 by mechanical means"; correct?

12 A. Yes.

13 Q. And the example -- the example Exhibit 2003
14 provides there is "earthquake shocks provided by a
15 seismograph"; correct?

16 A. The example is that, yes.

17 Q. Okay. So let's pull up the '220 patent. This
18 is Exhibit 1001.

19 A. Thank you.

20 Q. You've reviewed this document; correct?

21 A. Yes, I have.

22 Q. Okay. Did you read it in total?

23 A. Yes, I did.

24 Q. Let's turn to the back page.

1 A. Okay.

2 Q. In Column 68 there's Claim 11; correct?

3 A. Yes.

4 Q. Okay. And there's a -- the fourth
5 limitation -- well, Claim 11 reads -- let's just get it
6 all on the record. Claim 11 reads "an apparatus
7 comprising a processor and a nontransitory
8 computer-readable medium storing computer-readable
9 instructions that when executed cause the apparatus to
10 record athletic activity performed by a user, receive a
11 sharing option selection configured to allow the
12 recorded athletic activity to be shared and in response
13 to receiving the sharing option selection transmitting
14 workout information associated with the recorded
15 athletic activity to a network page of a social
16 networking site viewable by one or more other users";
17 correct?

18 A. I believe you read that correctly, yes.

19 Q. Okay. In there is the limitation "record
20 athletic activity performed by a user"; correct?

21 A. Yes.

22 Q. Okay. What does -- in that limitation, what
23 does "record" mean to you?

24 A. Well, I -- you know, as I said in my

1 declaration, a person of ordinary skill would have
2 applied plain ordinary meaning to -- of the word in the
3 context of the specification at the time of the
4 invention to -- to these words. There's no -- there's
5 no claim construction of specific terms. It's all plain
6 and ordinary meaning. So that's -- you know, that's
7 what I would have understood a POSITA to have understood
8 that to be when reviewing these claims.

9 Q. And what is the plain and ordinary meaning of
10 "record"?

11 MS. NGUYEN: Objection. Form.

12 THE WITNESS: Well, I mean, I -- I think the
13 plain and ordinary meaning would include the things that
14 I've discussed in reference to the various references,
15 and it would include some of the examples that are given
16 in the specification.

17 BY MR. SEBBA:

18 Q. Okay. And what is that meaning?

19 A. Well, it would include these things like --
20 what I've -- just what I'm discussing in paragraph 89,
21 for example, of my declaration, which is after a user
22 manually enters their data -- and that data would be
23 data about an athletic activity, because if you look
24 back, it's about the date, the time, the distance run --

1 that data, the user-provided data, is stored in a
2 database. And that's a direct quote from Exhibit 1005,
3 I believe, at paragraph 61.

4 That's an example, I think, a person of
5 ordinary skill would have recognized. And there are
6 some examples from the specification as well of what
7 that phrase in the context of the specification would
8 have been understood by a person of ordinary skill in
9 the art at the time of the invention.

10 For example -- and I think this was actually
11 given in the patent on a preliminary response as a
12 citation supporting -- around the discussion of record,
13 but in Column 1 of the '220 patent around line 60, it
14 says, "By using both a GPS device and accelerometer, the
15 mobile device may record workout data for both indoor
16 (e.g., stationary) workouts, and outdoor workouts."

17 So this is discussing recording the workout
18 data. And, of course, that workout data represents
19 these workouts which are athletic activity. And that's
20 one example from the specification that would have
21 helped to inform the POSITA of the meaning of that
22 phrase.

23 If you look at Column 19 near the bottom,
24 starting around line 59, it says, "The inclusion of GPS

1 device 713 and accelerometer 715 in a single mobile
2 device 700 allows device 700 to record athletic activity
3 data in multiple workout settings."

4 So those are examples from the specification
5 that would -- you know, and that's the context for a
6 person of ordinary skill interpreting the phrase "record
7 athletic activity performed by a user."

8 Q. So when you prepared your declaration, you
9 reviewed Claim 11 along with the rest of the '220
10 patent; correct?

11 A. Yes.

12 Q. And when you reviewed Claim 11, what was your
13 understanding in the context of the patent of the
14 meaning of the word "record"? Not what would include,
15 what was the meaning?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: Well, I -- I looked at the phrase
18 "record athletic activity performed by a user." And the
19 plain and ordinary meaning would be informed by the --
20 would be in the context of the specification. So I
21 reviewed portions of the spec that focused on both
22 record and record athletic activity performed by the
23 user. I believe I reviewed every instance I could find
24 of -- that would help inform that understanding that a

1 POSITA would have had at the time of the invention.

2 And so there are a number of passages, such as
3 the ones that I said, which -- and I think there are
4 other phrases that didn't use the word "data" but use
5 "information." So, like, athletic -- I can't remember
6 where. I think it also talked about athletic activity
7 information or information about athletic activity. And
8 so that would have informed the plain and ordinary
9 meaning to a person of ordinary skill at the time of the
10 invention.

11 And then -- and then I found very similar
12 examples from the prior art, such as the -- what I just
13 read from my declaration. I think that was with respect
14 to the Sutton reference. And so those lined up with
15 examples that were -- very nicely with examples that
16 were given in the specification.

17 BY MR. SEBBA:

18 Q. So you still haven't quite answered the
19 question. As we sit here today, are you able to provide
20 me with the plain and ordinary meaning as you understand
21 it in the context of the '220 patent of the word
22 "record"?

23 MS. NGUYEN: Objection.

24 Dr. Houh, please give me an opportunity to

1 speak my objections.

2 Objection. Form.

3 THE WITNESS: So I looked at the -- what I
4 understood the plain and ordinary meaning based on
5 looking at the specification, looking at examples of --
6 they gave where they talk about recording athletic
7 activity performed by the user. And I found those very
8 similar examples in the prior art references.

9 So it's -- I think a person of ordinary skill
10 would have understood that this phrase would include the
11 -- you know, some of the disclosures of recording
12 athletic activity data from the specification. And I
13 found exactly those portions of the prior art that lined
14 up pretty much exactly with these examples given in the
15 specification.

16 So I think the meaning, as understood by a
17 person of ordinary skill in the art, would have
18 certainly included those examples given the
19 specification and very similar examples given in the
20 prior art. And so that's kind of the process, part of
21 the process there.

22 BY MR. SEBBA:

23 Q. So that's not quite what I'm asking. I'm not
24 asking your process. The question here is: What is the

1 plain and ordinary meaning of the word "record" in the
2 context of the '220 patent?

3 MS. NGUYEN: Objection. Form.

4 THE WITNESS: So the plain and ordinary meaning
5 includes the various examples given that I found that a
6 person of ordinary skill would have understood, is the
7 discussion of "record athletic activity performed by a
8 user." And so I took some of the examples of that that
9 I found in the specification, and the meaning would
10 include that. That's part of what the specification
11 says and is talking about, as a person of ordinary skill
12 would have understood.

13 And so I took the examples and I found parallel,
14 if not identical, examples in the prior art that
15 mirrored those examples of "record athletic activity
16 performed by a user" as would have been understood by a
17 person of ordinary skill in the art. So the meaning
18 includes that which I found, which is examples in the
19 spec and the very parallel, if not identical,
20 disclosures in the prior art references.

21 BY MR. SEBBA:

22 Q. So the meaning includes the examples in the
23 spec. That's part of what you're saying; correct?

24 A. Well, the spec examples would have informed

1 the person's plain and ordinary meaning and
2 understanding of the phrase "record athletic activity
3 performed by a user."

4 Q. Okay. As we sit here today, are you able to
5 articulate that meaning in the form of a definition?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: The meaning of "record athletic
8 activity performed by a user" as understood as the plain
9 and ordinary meaning to a person or ordinary skill of
10 the art at the time of an invention would have included
11 some of the examples. There are plenty more examples --
12 we could go look through the spec -- of what I just
13 pointed to you in the specification as an example.

14 So, for example, on page -- Column 19, line 60
15 is "record athletic activity data in multiple workout
16 settings," so that's athletic activity. It's using, you
17 know, "record," but it's talking about recording
18 athletic activity data.

19 And similarly what the patent owner cited to
20 support their discussion -- well, in their discussion of
21 the word "record" included Column 1 around line 60 to
22 61, that "The mobile device may record workout data for
23 both indoor workouts and outdoor workouts."

24 And so they're -- these discussions talk about

1 recording workout data. They talk about recording
2 athletic activity data. And so a person of ordinary
3 skill would under -- would have understood that those
4 examples of recording athletic activity data or
5 recording workout data -- and those were all related to
6 by user -- would be examples of what would be included
7 in the meaning of "record athletic activity performed by
8 a user" as used in Claim 11.

9 BY MR. SEBBA:

10 Q. What's your understanding of what a dictionary
11 definition is?

12 MS. NGUYEN: Objection. Form.

13 THE WITNESS: So if one doesn't know the meaning
14 of a word, then one can look at -- the word up in a
15 dictionary. And the definitions laid out may inform the
16 reader of the meaning of the words, but they're also in
17 different contexts, so they're in appropriate contexts
18 because some words mean different things in different
19 contexts. So if the -- that would help inform the user
20 of the meaning of a word generally.

21 BY MR. SEBBA:

22 Q. But a dictionary definition provides more than
23 examples of what a word means; correct?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: Well, I'm not sure that a
2 dictionary always provides examples, but I think they
3 sometimes do, as we see in Exhibit 2003 to this
4 definition.

5 BY MR. SEBBA:

6 Q. But they -- a dictionary would provide a
7 description of the meaning of the word that you're
8 looking up; correct?

9 MS. NGUYEN: Objection. Form.

10 THE WITNESS: I mean, the dictionaries that I've
11 seen generally try to do that without using the actual
12 word that's being defined, and that can be pretty hard
13 sometimes I think.

14 BY MR. SEBBA:

15 Q. So as we sit here, are you able to provide a
16 description of the meaning of the word "record" in the
17 context of the '220 patent?

18 MS. NGUYEN: Objection. Asked and answered.

19 THE WITNESS: So a person would look at the
20 phrase, for example, the one we're talking about,
21 "record athletic activity performed by a user," and to
22 understand the plain and ordinary meaning of that claim
23 phrase or claim element, they would -- they would look
24 at the specification. And in the context of the

1 specification and the prosecution history, they would
2 look to that to help inform that plain and ordinary
3 meaning.

4 And there's a couple passages that we've
5 already talked about, one cited by patent owner in the
6 patent owner preliminary response that talks about
7 recording workout data. Another one that I pointed you
8 to that talks about -- this is Column 19, line 60, about
9 the device -- "allows device to record athletic activity
10 data in multiple workout settings."

11 And that's -- a person of ordinary skill would
12 have understood that's -- that is related to a user and
13 performed by a user and that athletic activity is
14 performed by a user. And this passage is saying it's
15 recording the athletic activity data in multiple workout
16 settings.

17 I think there's a few others that I recall. Let
18 me see if I can find some of them now.

19 At the top of Column 9, around line 4 or 5, it
20 says, "Some aspects described herein allow a person to
21 measure and record athletic information using a special
22 purpose computing device."

23 And I think I said earlier that some passages
24 use data, some passages use information, but this is

1 talking about now record athletic information. And I
2 think that relates to how a person of ordinary skill
3 would have understood "record athletic activity informed
4 by a user," and that would help inform the plain and
5 ordinary meaning of that term.

6 There's multiple more discussions just like
7 that throughout the specification. If you want, I can
8 try to find some more, but those are the kinds of
9 examples from the specification that would help inform a
10 person of ordinary skill as to what "record athletic
11 activity performed by a user means." And it would
12 certainly include examples just like that as disclosed
13 in the prior art as well because those are the examples
14 given in the specification itself.

15 BY MR. SEBBA:

16 Q. Do any of these -- the examples you've
17 cited or the examples -- or other examples in the spec
18 describe the meaning of the word "record" in the manner
19 a dictionary would?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: Well, they certainly give the
22 context about what this "record athletic activity
23 performed by a user." They're part of the context. So
24 it does help inform the meaning.

1 I know that patent owners can either own
2 lexicographers and that sometimes I do see sections in
3 patents that lay out, you know, when we use these words
4 -- these words as used mean, and they give a list, and
5 it's usually all grouped together. But I didn't see
6 that in the '220 patent. So -- but it's still the --
7 the context of the specification gives the context and
8 gives to the person of ordinary skill in which the claim
9 terms are to be understood, and so -- by a person of
10 ordinary skill at the time of the invention.

11 And so the phrase "record athletic activity
12 performed by a user" actually didn't find -- I don't
13 recall finding a reference -- a discussion in the spec
14 about recording athletic activity when it's -- it was
15 often used with, you know, athletic information,
16 athletic activity data.

17 And so that helps inform what this whole
18 phrase would have been understood, how it would have
19 been understood to POSITA at the time of the invention.
20 And those examples in the spec about, you know,
21 recording athletic activity data, there were some direct
22 examples that were parallel or identical in the prior
23 art.

24 BY MR. SEBBA:

1 Q. So you looked for examples in the prior art
2 that were similar to descriptions in the specification;
3 is that right?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: Well, again, the -- in doing my
6 analysis, you know, I would look at this claim -- the
7 claim terms and how they would have been understood by a
8 POSITA at the time of the invention. And what helps
9 inform the POSITA is the context of the specification.
10 So that plain and ordinary meaning is in the context of
11 the specification.

12 So I did -- I looked through the specification
13 for the types of things that would inform a POSITA at
14 the time of the invention as to -- as to the meaning of
15 the phrase "record athletic activity performed by a
16 user." And when it talks about recording athletic data,
17 the examples that -- sorry, record athletic activity,
18 the examples given are -- like in 19, record athletic
19 activity data, and the examples cited by the patent
20 owner in their preliminary response refer to record
21 workout data.

22 And I think -- I think all those would have
23 understood -- been understood by a person of ordinary
24 skill to be examples of "recording athletic activity

1 performed by a user" as understood by POSITA at the time
2 of the invention.

3 Q. So when you authored your declaration, did you
4 have an understanding of the plain and ordinary meaning
5 of record?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: Again, when I authored my
8 declaration, what I -- what I do -- I review the
9 specification. I read the claims. I read the claim
10 terms at issue. I review the prior art. And what would
11 have informed a person of ordinary skill about the
12 meaning of the claimed element -- or phrase "record
13 athletic activity performed by a user," again, I found
14 no definitions as it were that -- or I saw nothing
15 that -- in the specification that said record activity,
16 athletic activity, performed by a user means -- and
17 giving some, you know, express definition there with
18 respect to that.

19 But what I saw throughout the specification was
20 recording athletic activity data, recording -- you know,
21 recording athletic information, recording workout data
22 as cited by the patent owner in their preliminary
23 response.

24 And so those are the kinds of examples from

1 the spec that a person of ordinary skill would have
2 understood are -- would be part of what this claim
3 element would inform the meaning of that claim phrase
4 "record athletic activity performed by a user."

5 And so to record -- you know, so if I'm -- then
6 when I review the prior art references, if there are --
7 are parallel or identical disclosures that match the
8 examples given in a specification that a person of
9 ordinary skill would have understood inform the meaning
10 of a claim phrase, that's the kind of thing -- and as we
11 laid out in my declaration and we looked at that example
12 I think from Sutton, that it's pretty much parallel or
13 almost identical to the examples that a person of
14 ordinary skill would have understood to be included in
15 "record athletic activity performed by a user."

16 BY MR. SEBBA:

17 Q. So let's look at Exhibit 2003.

18 A. Okay.

19 Q. Are any of the definitions here consistent
20 with the plain and ordinary meaning of the word "record"
21 in the context of the '220 patent?

22 MS. NGUYEN: Objection. Form.

23 THE WITNESS: So certainly I think that what's
24 cited by the Board in their institution decision I think

1 it appears they thought what was relevant were, you
2 know, 1(a)1, "to set down in writing," and they wrote
3 that into their institution decision; and (c) [sic], "to
4 cause (sound, visual, images, data, et cetera) to be
5 registered on something (such as a disc or magnetic
6 tape) in reproducible form."

7 BY MR. SEBBA:

8 Q. What do you think the plain and ordinary -- do
9 you think any of these definitions in Exhibit 2003 are
10 consistent with the plain and ordinary meaning of
11 "record" in the context of the '220 patent?

12 MS. NGUYEN: Objection. Asked and answered.

13 THE WITNESS: Well, I think I agree with the
14 Board in that at least those two things would be
15 consistent with the plain and ordinary meaning in the
16 context of the specification. You know, the examples in
17 the specification talk about recording athletic activity
18 data, recording workout data. And in the specification
19 it would have been recognized that that's, you know, to
20 something such as disc or magnetic tape.

21 And I found those parallel, if not identical,
22 examples in the prior art that I analyzed. And I wrote
23 about that in my declaration as we saw one example for
24 earlier.

1 BY MR. SEBBA:

2 Q. So you said "at least" those definitions.

3 MS. NGUYEN: Objection. Form.

4 BY MR. SEBBA:

5 Q. Correct?

6 A. Sure.

7 Q. Okay.

8 MS. NGUYEN: Counsel, we've been going for about
9 an hour. Can we take a break?

10 MR. SEBBA: Sure. That's fine.

11 THE VIDEOGRAPHER: Excuse me. We are now going
12 off the record. The time is now 10:01 a.m.

13 (Off the record, 10:01 a.m.)

14 (On the record, 10:13 a.m.)

15 THE VIDEOGRAPHER: We are now going back on the
16 record. The time is 10:13 a.m.

17 BY MR. SEBBA:

18 Q. Welcome back, Dr. Houh.

19 A. Thank you.

20 Q. So before we went on break, you were saying
21 that at least the definitions that the Board cited in
22 its institution decision were applicable; is that right?

23 MS. NGUYEN: Objection. Form.

24 THE WITNESS: I believe I might have said that.

1 BY MR. SEBBA:

2 Q. So if it's "at least," what other definitions
3 might -- or what other definitions would be relevant
4 here?

5 MS. NGUYEN: Objection. Form.

6 THE WITNESS: Well, I mean, I understand that
7 the patent owner is making an argument -- or it appears
8 to me to be making an argument that actually 1(c)2 is --
9 should be -- or the definition they're arguing may
10 appear to be limited to 1(c)2, but that's incorrect for
11 a number of reasons.

12 For example, if you look at the '220 patent at
13 Column 20, it talks about this -- around line 5, that --
14 it says -- oh, I'll start earlier. "If on the other
15 hand the individual is running outdoors such that the
16 individual moves from one location to another, the GPS
17 device 713 or a recording of data therefrom (e.g., GPS
18 device is always active, but recording is turned on and
19 off) may be activated and used instead."

20 And so this is saying that even though the GPS
21 device is always active and indicating the position,
22 that it still may not be recording because recording is
23 turned on or off. And so -- so if the GPS device is
24 always active but recording is turned on and off, I

1 think that that's -- that's an example from the spec
2 that -- that I think limiting and even perhaps the use
3 of 1(c)2 from the dictionary in this situation is
4 incorrect, because in this case the GPS device is always
5 active, you know, indicating or reading the GPS
6 coordinates, but recording may not be on.

7 And so I think this is an example that says that
8 recording is more the sense of 1(a)1 and 3 in the sense
9 that it is causing the data to be registered on
10 something such as a disk in reproducible form.

11 So -- and, furthermore, the other -- the other
12 passages that we've looked at earlier, including the one
13 patent owner cited in Column 1 and I think what we
14 looked at in columns 9 and 19, talk about, you know,
15 recording workout data, recording athletic activity
16 data. And so -- so I understand that 1(c)2 may be an
17 issue in this case, but I think it's incorrect certainly
18 to be limited to only that dictionary definition as --
19 as it appears the patent owners may be arguing.

20 And certainly in the context of the
21 specification, with respect to what it says in Column 20
22 where the GPS device is always active but really not
23 always recorded, recording the data therefrom because
24 you can turn recording on and off, that seems to -- I

1 think that that's part of the reason why the patent
2 owner is incorrect in what I've seen them arguing.

3 BY MR. SEBBA:

4 Q. So here in Column 20, line 5, it says, for
5 example, or "(e.g., GPS device is always active, but
6 recording is turned on and off)"; correct?

7 A. Yes, I think you read that correctly.

8 Q. Okay. But -- so couldn't that just mean that
9 the device is active but the GPS data is not being
10 captured?

11 MS. NGUYEN: Objection. Form.

12 THE WITNESS: Well, I think this is saying that
13 the GPS device is always active, and in that sense I
14 think what the person of ordinary skill would have
15 understood is it's indicating, you know, the position.

16 But the recording is turned on and off, that
17 is, it's not recording the data from the GPS device
18 because just -- the line just before, "the GPS device or
19 recording of the data therefrom," and then it gives an
20 example of recording of the data therefrom, which is
21 recording the data therefrom can be turned on or off but
22 that the GPS device is always active.

23 So I think that's an example where the GPS
24 device is active indicating the coordinates, but it's

1 simply not -- the recording of that data is not turned
2 on and could be off. And so that's an example that I
3 think is -- is part of why as I understand -- as I
4 understand patent owner to be arguing. It's really
5 about -- the examples given in the preliminary response
6 are more like, as I understand, arguing for definition
7 1(c)2 here.

8 But I think this is why that reading --
9 certainly to limit it to that is incorrect because the
10 specification gives a context. And here the context is
11 that these devices, such as the GPS device -- other
12 devices are like an accelerometer, they're always
13 active, where in this case the GPS device is always
14 active. But recording is not always occurring, even
15 when the GPS device is active.

16 So I think that helps inform the person of
17 ordinary skill of -- of the, you know -- of, you know,
18 what record athletic activity performed by a user, how
19 it -- and understood by a person of ordinary skill, the
20 plain and ordinary meaning in the context of the
21 specification at the time of the invention.

22 BY MR. SEBBA:

23 Q. So what does "active" mean?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: I think it means what it says.

2 BY MR. SEBBA:

3 Q. So what is the GPS device here?

4 A. At Column 1, line 55, right at the beginning
5 of the brief summary, it says, "According to one or more
6 aspects, a user may record and track athletic activity
7 using a mobile device having multiple types of location
8 determination systems, such as global positioning
9 system, GPS, and an accelerometer or other types of
10 devices, e.g., pedometer, not dependent on remote
11 systems."

12 And so GPS device here, an example is this
13 thing the summary is talking about. It's referring to
14 the global positioning system. And that kind of
15 gives -- that gives coordinates of where you are.

16 Q. So could the GPS be a phone? Could it be a
17 watch? What is the device?

18 MS. NGUYEN: Objection. Form.

19 THE WITNESS: So one example in the
20 specification, if you look at Figure 7, it's a box, 700.
21 And within box 700 is GPS labeled 713. And if you look
22 at the description of Figure 7 in the specification --
23 actually, that's in the portion we were just looking at.
24 It starts at Column 19, line 37, and goes down

1 throughout -- it appears to go through the next two
2 columns, but it -- it says that Figure 7 is a block
3 diagram of an exemplary mobile device that may be used
4 to track athletic activity information -- and there we
5 go again; it's tracking the athletic activity
6 information -- and provide various types of feedback to
7 an individual.

8 And if you go down to line 59, it's still
9 talking about this 700, this mobile -- what do they call
10 it? Mobile device. Line 59, Column 19 reads, "The
11 inclusion of GPS device 713 and accelerometer 715 in a
12 single mobile device, 700, allows device 700 to record
13 athletic activity data in multiple workout settings."

14 And then it goes on, this same paragraph
15 includes that example, of where the GPS device is always
16 active but recording is turned on and off. So that GPS
17 device can be part of mobile device 700 which has a
18 number of other components as discussed here and shown
19 in Figure 7.

20 BY MR. SEBBA:

21 Q. Okay. So after the sentence you cited before
22 discussing that the GPS device is always active, the
23 following sentence starting on Column 20, line 6 is "In
24 one or more arrangements mobile device 700 may

1 automatically detect whether GPS device 713 should be
2 used or accelerometer 715 should be used or whether data
3 should be recorded from GPS device 713 or accelerometer
4 715"; correct?

5 A. Sorry. I wasn't looking at the line when you
6 started, so I don't know if what you were reading was --
7 I think I -- you were at the top of 20?

8 Q. Sure. Let's go back. Column 20, line 6.

9 A. Okay.

10 Q. This is -- and this is immediately after the
11 sentence you discussed before where that says the GPS
12 device is always active; correct?

13 MS. NGUYEN: Objection. Form.

14 THE WITNESS: Yes. That was line 5 to 6.

15 BY MR. SEBBA:

16 Q. Okay. So then if we start at 6, towards the
17 end, "In one or more arrangements, mobile device 700 may
18 automatically detect whether GPS device 713 should be
19 used or accelerometer 715 should be used or whether data
20 should be recorded from GPS device 713 or accelerometer
21 715"; correct?

22 A. I think you read that correctly.

23 Q. Okay. So doesn't that mean that even though
24 the GPS device is always active, it's not always being

1 used?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: I mean, I think this is an example
4 of the -- well, the GPS device as we just -- this is in
5 the context. It's always active, but recording is
6 turned on and off. So this is an example where if the
7 system -- if you're standing still, for example, that's
8 the -- for example, starting at line 10, "If device 700"
9 -- that's the overall device, including GPS and
10 accelerometer and whatnot -- "determines that the
11 individual's locations is not changing, accelerometer
12 715 or recording data therefrom may be activated and
13 used."

14 Again, the device might always be active, but
15 recording data from the device is turned on and off. So
16 this is I think in reference to the accelerometer. So I
17 think this is understood to be -- well, the GPS device
18 is active -- can -- is always active, and then the
19 accelerometer device is also -- an example here is --
20 it's always active as well.

21 But the data that you're recording might be
22 either from the GPS device or the accelerometer, but you
23 couldn't tell if the GPS device indicated you were
24 standing still unless the GPS device was indicating that

1 you were standing still by providing readings that --
2 you know, regular readings that were -- that were the
3 same or, you know, essentially the same.

4 And in that sense, device 700 could then
5 understand that we're actually in the same location.
6 Maybe the user's walking on a treadmill, so they might
7 switch to the accelerometer to record the athletic
8 activity data. And then -- and, again, it talks here
9 about recording data from the device.

10 And so that all informs the meaning of the
11 claim element that we're looking at in Claim 11 because
12 this is the context of the specification -- this is the
13 specification that provides the context in which to
14 understand the plain and ordinary meaning of the claim
15 terms.

16 BY MR. SEBBA:

17 Q. So if it's active but not being used, it's not
18 necessarily capturing data; is that correct?

19 MS. NGUYEN: Objection. Form.

20 THE WITNESS: Well, I mean, this section here is
21 saying that both the GPS device and accelerometer are
22 active and they're examples. When they're activate --
23 they are always active, certainly the GPS device. I
24 think it says the accelerometer might be always active,

1 but that's teaching that it can be always active and is
2 always active in one, you know -- so they're both
3 active.

4 But the device 700 may choose to record only
5 one or the other in terms of what the athletic activity
6 data is. So if you're talking on a treadmill, the GPS
7 being the same for 30 minutes, they're saying here that,
8 oh, you should actually use the accelerometer to record
9 the athletic activity data from instead of perhaps the
10 global positioning system because that's not really
11 informative of the actual athletic activity, that the
12 accelerometer in this case -- when the GPS coordinates
13 indicate you're not moving, that the accelerometer would
14 be more indicative of the actual athletic activity data,
15 and it's -- of the athletic activity, and it's the data
16 from the accelerometer that should be used when you
17 record the athletic activity data therefrom. That's
18 what this is teaching a person of ordinary skill.

19 BY MR. SEBBA:

20 Q. So what makes you think that the GPS device
21 being active means that the GPS device is capturing GPS
22 data?

23 MS. NGUYEN: Objection. Form.

24 THE WITNESS: Well, I mean, the GPS device's

1 purpose is to capture the GPS -- to calculate the GPS
2 positioning and provide that information. And if it's
3 active, a person of ordinary skill would understand
4 that's what it's doing.

5 If it's in active, I would say -- well, you
6 wouldn't be providing any indication of the GPS
7 position. I mean, that seems -- I mean, if that's what
8 a person of ordinary skill would understand, if -- if
9 GPS is inactive, then I'm not getting any coordinates
10 because that's its purpose, is to provide its data about
11 the coordinates.

12 And -- and when it's active, it would be doing
13 what it's designed to do, which is provide the
14 coordinates. So I don't see why -- I don't see why a
15 person of ordinary skill -- I mean, that's what a person
16 of ordinary skill would understand, when a GPS is always
17 active -- that's what it says here, it's always active.
18 Line 5, "GPS is always active, but recording is turned
19 on and off," meaning that the data that it's indicating
20 can either be recorded or not recorded. And that's --
21 if you actually read it with the previous sentence, "The
22 GPS device or recording of data therefrom." And so this
23 is talking about the recording of data therefrom being
24 turned on and off.

1 So you'll be getting data from the GPS device,
2 but you would either be recording it or not be recording
3 it, so the GPS device is indicating -- or if you're --
4 you know, is indicating the position. But whether you
5 record that data that is provided by the GPS device or
6 not, it can be turned on and off.

7 BY MR. SEBBA:

8 Q. Okay. So as used here, Column 20, line 5,
9 what does "recording" mean?

10 MS. NGUYEN: Objection. Asked and answered.

11 THE WITNESS: Well, so recording -- it's
12 recording of the data therefrom from the GPS devices, so
13 that's what it's recording. And it's -- that's
14 informing what record athletic activity performed by the
15 user would include. This is an example of recording
16 data from the GPS device when you're running outdoors.
17 That's the example given.

18 The individual -- line 2, "The individual is
19 running outdoors such that the individual moves from one
20 location to another and that the GPS device, 13, or
21 recording of data therefrom." So now this is talking
22 about recording data from the GPS device.

23 And then it's saying, for example, "GPS device
24 is always active, but recording is turned on and off."

1 So this is recording the data -- the GPS device is
2 providing data, but you're either recording that data or
3 you're not recording that data.

4 And this is an example that's informing the
5 meaning of -- of "record athletic activity performed by
6 a user" because that's the plain and ordinary meaning as
7 would have been understood by a person of ordinary skill
8 at the time of the invention in the context of the
9 specification. And this is the specification that
10 provides the context for that -- meaning of that phrase.
11 BY MR. SEBBA:

12 Q. So you're saying that this -- you said earlier
13 that this example limits the plain and ordinary meaning
14 of the word "record" in the context of the '220 patent.

15 Why would that be?

16 MS. NGUYEN: Objection. Mischaracterizes
17 testimony.

18 THE WITNESS: I'm not sure if I said exactly
19 those words, but what I'm saying here is that my
20 understanding of what patent owner is arguing is more
21 akin to the definition in Merriam-Webster 1(c)(2), which
22 is simply to indicate or read.

23 But what this is saying, this example here --
24 and -- and I think that's -- if that's -- if I

1 understand correctly the argument, this is providing a
2 reason why that argument -- certainly, to be limited
3 only to that situation in 1(c)(2) and not these other
4 definitions is wrong because the spec itself gives an
5 example where the GPS device is providing data, but it
6 doesn't necessarily have to record it.

7 And under -- under the definition of the
8 argument where recording is simply the indicating or
9 providing or reading the data, this -- this is --
10 this -- this shows why that is wrong, because in this
11 example given right here in the spec, Column 20, in this
12 discussion about device 700, which includes GPS, a very
13 extensive discussion here goes two columns.

14 It's talking about -- it gives an example here
15 that is -- is informing the POSITA of the context of
16 the -- and this is a spec -- that the GPS is always
17 active and -- but recording is turned on and off.

18 So I think that's -- it's incorrect that -- that
19 "record" means just providing the data or the GPS device
20 being active providing the data because here it says now
21 you can turn on recording or you can turn off recording
22 even though the GPS device is always active.

23 So I think that's why -- at least one reason
24 here that -- that, if the argument is limiting the

1 definition of "record" to be only like 1(c)(2) in
2 Exhibit 2003 to this declaration -- deposition,
3 that's -- the spec gives an example that -- that at
4 least shows why it should not be limited only to that,
5 because this is saying -- and why, for example, I agree
6 with the PTAB when they cited some of these other
7 definitions about cause -- to cause data as part of 3 to
8 be registered on something such as a disc or magnetic
9 tape in reproducible form.

10 Right here, it's saying the GPS device is always
11 active -- that is, providing its coordinates, providing
12 the data -- but recording is turned on and off. So here
13 it is. "Record" is not just about providing the data or
14 indicating the data. It's -- it's a step that occurs
15 after the device gives you the data. Then you can
16 either record it or not.

17 BY MR. SEBBA:

18 Q. So you're not saying that this example in
19 Column 20 limits the definition of "record"?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: What I'm saying is that, you know,
22 a person -- the plain and ordinary meaning of -- of
23 claim terms is informed by the specification because
24 it's what would have been understood to be the plain and

1 ordinary meaning in the context of the specification in
2 prosecution history.

3 And so this is the specification. It's this
4 two-column section. And -- and GPS, I believe, is
5 surely -- I believe it is mentioned other places. Like,
6 I see it on Column 22 outside of the discussion of -- of
7 Figure 7.

8 But this is about this device 700, how it has a
9 GPS device, and it's talking about the GPS device being
10 always active, but recording is turned on and off. And
11 this is what's the context of this, which is the GPS
12 device is always active. You're getting the data from
13 it, but you can choose to record that data or not to
14 record the data.

15 BY MR. SEBBA:

16 Q. But are you saying that the use here in
17 Column 20 -- Columns 19 and 20 is the only example that
18 would provide the definition of the word "record"?

19 MS. NGUYEN: Objection. Mischaracterizes
20 testimony.

21 THE WITNESS: I'm not saying this is the
22 definition -- this doesn't say "'record' means." This
23 is -- and, again, what I -- as we discussed earlier, I
24 didn't see a section -- you know, and I've seen this in

1 some patents that I've reviewed where it says, "When we
2 use these terms" -- I forget what the intro is,
3 but usually it will have a word and then give -- give a
4 definition.

5 And sometimes it's in a section called
6 "Definitions." I forget how, sometimes, they introduce
7 that. But, you know, when we use these words, here's --
8 here's what, you know, we're -- we're talking about, and
9 we'll give a list.

10 But this is not saying "'record' means," and
11 that's not what I'm saying. This is an example of --
12 of -- that would -- this is part of the specification.
13 This is the context of -- of how -- in which a person of
14 ordinary skill would -- they would consider this context
15 in -- in determining the plain and ordinary meaning of
16 the claim terms.

17 And so when I'm saying that this -- this informs
18 the plain and ordinary meaning of the claim terms
19 because it's -- it's the context of how this is used
20 in -- in this case. There's a GPS device. It's
21 providing data. It's active. Its purpose is to provide
22 the positioning data.

23 And -- and you're either recording the data or
24 you're not recording the data. So limiting the

1 definition of "record," as I understand is being argued
2 by the -- the patent owner, if I understood their
3 arguments correctly, to only a 1(c)(2) definition in the
4 Exhibit 2003 is incorrect because -- because this -- the
5 GPS device is always active.

6 So let me give you another example. The -- in
7 the patent owner preliminary response, I think the
8 patent owner gives an analogy, all right, that --
9 something about you're not recording a video if -- well,
10 it's -- the video is sensing what's on the other side of
11 the lens, and I think that's the argument, that
12 that's -- that's recording in the context of the
13 specification.

14 That example is not in the spec. There's
15 nothing about video and lenses or anything like that.
16 But this is an analogy. And they say, I think, if you
17 got the video in email and saved it, that's not
18 recording the video because it's -- the recording is
19 sensing what's on the other side of the lens.

20 So, if I were a POSITA and my -- you know, my
21 wife couldn't make it to our kid's play, and she said,
22 "Please record a video of the play," and I held up my
23 camera and turned on my video and I watched the play
24 through the lens -- it's being imaged -- I don't hit

1 "record," and I -- and -- and I get home and she says,
2 "Did you make a -- make a recording of the video?" I
3 say, "Yes." She asks, "Where is it?" "Oh, I didn't hit
4 record. I just held up my camera and imaged what's on
5 the other side of the lens," I think she'd look at me
6 like I was an alien.

7 So I think that's a bad analogy. I think it's
8 incorrect because the plain and ordinary meaning isn't
9 limited somehow just because I'm a POSITA and I have
10 that level of skill to be this imaging and only the
11 imaging step of what's on the other side of the lens or
12 simply providing data from the GPS without actually
13 recording the data.

14 So when you record the data from a GPS, I think
15 what it's saying here, this is informing -- this is the
16 example given; right? There's no video example here.
17 The example given in the specification is the GPS device
18 being active, always being active, but the data from it
19 may be recorded when recording is turned on and may not
20 be recorded when you're not -- you know, the recording
21 is turned off.

22 So those are separate things as given in this
23 example in the specification, which is the context in
24 which a person of ordinary skill would understand the

1 meaning of the claim terms.

2 BY MR. SEBBA:

3 Q. So in the example you gave where you held your
4 phone up and imaged the performance but didn't save it,
5 was the camera or video camera or phone -- was it
6 active?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: Well, I mean, on my -- on my
9 phone, when I -- when I turn on the camera and I go to
10 video mode, there's a record button where, if I press
11 it, I know I'm recording. If I don't press it, I'm not
12 recording it, but I can still see the live video on my
13 camera, you know.

14 So, in that sense, that example, the -- whatever
15 is on the other side of the lens is being imaged and
16 being shown on my display, but this isn't -- very
17 similar, the recording can be turned on or off. It's
18 still sensing the information.

19 But -- but the -- but, again, it's -- it's --
20 the level of skill of the person just going up to --
21 being whatever -- whatever that is, doesn't magically
22 transform the -- the -- you know, to limit in the
23 context of the specification -- especially in the
24 context of the specification, somehow limit the meaning

1 of "record" to only -- in some sense, if I understand
2 the argument of the patent owner in their preliminary
3 response, to only the sense of -- on Exhibit 2003 of
4 1(c)(2).

5 BY MR. SEBBA:

6 Q. So, again, in that example that you gave where
7 you, as you said, imaged the performance without saving
8 it, was the performance captured by the phone?

9 A. I -- if I didn't --

10 MS. NGUYEN: Objection. Asked and answered.

11 Dr. Houh, please give me a moment to lodge my
12 objections. Thank you.

13 THE WITNESS: So, in that example, the -- the
14 user, you know, didn't press record. And in that sense,
15 you know, my wife having asked me to make a recording of
16 the video -- of, you know, our kid's performance, I
17 didn't hit record.

18 But patent owner's argument in the preliminary
19 response appears to be that's -- that's what's actually
20 recording. That's -- that's what recording -- I
21 think -- I think they're arguing that that's what it
22 should be limited to.

23 And I think that's incorrect for many reasons,
24 including specification in Column 20, that portion we're

1 talking about, is talking about that separately, that
2 the GPS device is active, that is, providing data,
3 because -- because then you can record that data or not
4 record that data.

5 And it's the recording step that informs me,
6 that whole phrase, the recording the data. Remember,
7 this -- the claim phrase is "record athletic activity
8 performed by a user," and other portions that inform
9 that are -- are the spec where it talks about the
10 workout data, the athletic activity data, the athletic
11 activity information.

12 And so -- and -- and this portion of the spec at
13 the top of 20 talks about the GPS device being always
14 active, but recording is turned on and off.

15 And I think I agree with the PTAB. I mean, they
16 cite these definitions. I see no reason why this
17 specification somehow narrows the meaning of the word
18 "record" to exclude, you know, 1(a)(1) and 1-3 [sic] in
19 Exhibit 2003 to this declaration. I don't -- in that
20 sense, I'd agree with the PTAB on that.

21 BY MR. SEBBA:

22 Q. So back to your example of this performance of
23 your child. The action you took in that hypothetical
24 where you imaged the performance without saving it, did

1 you register permanently, by mechanical means, the
2 performance?

3 MS. NGUYEN: Objection. Form.

4 THE WITNESS: Well, I think my understanding of
5 patent owner's preliminary response is they're arguing
6 that the record step -- if I understood their argument
7 correctly, it really is -- is talking about the -- the
8 sensing or monitoring of the data or the sens- --
9 certainly, the...

10 I mean, it's difficult to use analogies in these
11 situations because, you know, we have an example from
12 the spec itself where the GPS device is providing the
13 data it's providing; right? It's active, and -- but
14 recording is turned on and off. So that's the example
15 from the specification.

16 This is a hypothetical that's used in the patent
17 owner preliminary response about the video. That's why
18 I gave you that example, because the patent owner first
19 provided this example of making a video in the patent
20 owner preliminary response. But, really, the speci- --
21 that example is hypothetical is that that's not in the
22 specification. It's not talking about making a video.
23 It's not talking about a lens and imaging.

24 It does talk in the specification about a GPS

1 device and how the GPS device is always active and that
2 recording of the data from the GPS device -- that's how
3 a person of ordinary skill would understand this -- can
4 be turned on and off.

5 And so that -- that -- I think that's the reason
6 why, if I understand correctly, the patent owner is
7 trying to limit the meaning of the word "record" to
8 something narrower, to something that really is, as I
9 understand it, if I understand correctly, just something
10 more akin to 1(c)(2), and I think that's -- that's
11 incorrect for the various reasons I've -- we've already
12 been discussing.

13 BY MR. SEBBA:

14 Q. So you haven't answered my question.

15 In your analogy that you provided, that you
16 created, in which you go to a performance, image the
17 performance but don't save it, is that performance
18 registered permanently by mechanical means?

19 MS. NGUYEN: Objection. Mischaracterizes
20 testimony and form.

21 THE WITNESS: Well, the example is, you know, I
22 came home and my wife asked me to watch the recording.
23 And I said, "Oh, well, I didn't hit record, but I
24 recorded it just like you asked." I -- in that example,

1 I think she would look at me like I was an alien because
2 that's not what a person of ordinary -- this is an
3 example -- it's difficult because, like, you know, even
4 in the example that's given, it's the context of the
5 specification that informs the -- the plain and ordinary
6 meaning.

7 But it really -- I -- I saw nothing in the
8 specification that somehow contorts the meaning, the
9 plain and ordinary meaning, to -- in a way that limits
10 it very narrowly to -- to this imaging argument raised
11 by patent owner.

12 I can't remember exactly the words they used,
13 but -- but my point is just look at the spec. The spec
14 is the context for how to understand the claim terms,
15 and the spec says, here's a GPS device, it's always
16 active, but you can turn recording of it on and off.

17 And the person of ordinary skill would
18 understand the GPS device is providing data, and you can
19 record the data -- that's when recording is on -- or you
20 don't have to record the data. But it's still always
21 active. And so that's when recording is off.

22 So that helps inform, and that's example that --
23 that "record" should not be narrowed to -- in such a way
24 as patent owner is arguing. So -- so that's my point

1 here.

2 MR. SEBBA: Okay. You still haven't answered
3 the question.

4 Would you mind reading back the question.

5 (Record read back.)

6 MS. NGUYEN: Same objections.

7 THE WITNESS: Well, when I get home and my wife
8 asks to see the recording, I -- if I didn't hit record,
9 then, on my phone, I wouldn't have an explicitly saved,
10 you know, video in my gallery of -- of, you know, when I
11 held my camera up, had the -- had it on and, you know,
12 selected video, and was watching the video being
13 reproduced on my screen, or maybe I'm not always looking
14 at the screen. And so I have nothing to show my wife in
15 that example.

16 MR. SEBBA: That still -- you still have not
17 answered the question.

18 Can we get one more read-back.

19 (Record read back.)

20 MS. NGUYEN: Same objections.

21 THE WITNESS: I mean, this is a hypothetical.
22 So, you know, I -- I mean, I certainly don't have a
23 video from my gallery which I can show my wife because I
24 didn't hit the record button.

1 And in that sense, if we look at what the spec
2 says, the GPS device is always active, but recording is
3 turned on and off. So I didn't turn recording on in
4 my -- I didn't hit the record button on my video. The
5 GPS device is always active, but recording is turned on
6 and off.

7 So the example in the spec, which is the context
8 in which a person is to understand the meaning of the
9 claim terms, the plain and ordinary meaning of the claim
10 terms at the time of the invention, has this example --
11 and it's talking about this -- where these devices --
12 the accelerometer is also always active, and data from
13 that may be turned on or off as well.

14 So, you know, here, we have two types of
15 components that can provide athletic activity data,
16 and -- and either -- and it's providing the data. Both
17 these devices are -- are being taught as being always
18 on. I mean, certainly there's the option to not have
19 the accelerometer, but, again, that is teaching that
20 it's always on in one situation.

21 And -- and on both of those devices that are
22 providing the data being -- by being active, the
23 recording of that data can be turned on or off, and
24 those are direct examples from the specification.

1 BY MR. SEBBA:

2 Q. Okay. So when -- in the specification example
3 that you're discussing, if the -- if recording of the
4 GPS device is turned off, is the GPS data registered
5 permanently by mechanical means?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: Yeah. I mean, I'm not sure why
8 you're focused on -- on 1(c)(1) there, to register
9 permanent -- the example is recorded by a seismograph,
10 and this isn't talking about a seismograph. So it's not
11 a -- it's...

12 But, you know, the P- -- the PTAB is
13 discussing -- what they've noted at this stage in the
14 proceeding is that there are definitions of "record"
15 such as "to set down in writing," and that's 1(a)(1).

16 And "to cause (sound, visual images, data,
17 et cetera) to be registered on something (such as a disc
18 or magnetic tape) in reproducible form," and that's --
19 that's 1-3. Sorry. That's 3, not 1-3. I may have been
20 saying "1-3" earlier, but I mean just 3.

21 And -- and they've -- they've noted this, and I
22 think it's appropriate that they noted it because the
23 examples given are to -- with respect to, you know,
24 they're recording the data.

1 So, you know, the GPS device is providing
2 data -- that's how a person of ordinary skill would
3 understand this disclosure -- and that you can record
4 that data or not, and that's -- you know, that's what --
5 that's what 25 is teaching at -- yeah, in the
6 specification.

7 And so that's -- it seems appropriate --
8 appropriate that the PTAB noted, you know, 1(a)(1) and 3
9 because, you know, certainly when you're recording this
10 GPS data, you're causing the data to be stored on -- on
11 some sort of, you know, disc or memory or, you know, RAM
12 disc of some sort or solid -- solid-state drive.
13 There -- there's many things.

14 I think we can look -- we can look through here
15 to see what -- what forms of memory the '220 is
16 disclosing, but that's certainly -- the point is the GPS
17 device is active, it's providing data, but you can --
18 the '220 spec is teaching that that data can be recorded
19 or not. I'm not -- yeah. And I think it's pretty clear
20 to a person of ordinary skill in the art.

21 MR. SEBBA: You didn't answer the question.
22 Can we get a read-back.

23 (Record read back.)

24 MS. NGUYEN: Same objections and relevance.

1 THE WITNESS: I mean, I'd have to take some time
2 to think about what mechanical means would be, but
3 certainly in the context of the spec and given what the
4 PTAB has -- has directed their attention to and noted
5 about the definition of "record," it -- the example
6 given of recording data therefrom -- I mean, literally,
7 that's what line 5 of Column 20 says, "recording of data
8 therefrom," referring to the GPS device -- and that that
9 recording of the data therefrom can be turned off or it
10 can be turned on.

11 And that's what is being recorded, and I think
12 that's very relevant to the Board's citing of
13 Definition 3.

14 BY MR. SEBBA:

15 Q. So I'm not asking about the institution
16 decision. I'm asking you about your opinions as an
17 expert in this case.

18 So, in the example on Column 20, line 5, where
19 a GPS device is always active but recording is turned
20 off, is that GPS data registered permanently by
21 mechanical means in your opinion as an expert?

22 MS. NGUYEN: Objection. Form.

23 THE WITNESS: So, I mean, I -- I don't -- I
24 don't have anything in my declaration with respect to

1 that definition, so it's something I wouldn't want to do
2 on the fly right now to think about.

3 But I think it's noteworthy that the PTAB did
4 cite 1(a)(1) and 3, and -- and certainly the disclosures
5 in the '220 specification where it talks about recording
6 of data from the GPS device, it appears they -- the PTAB
7 had good reason to -- to highlight Definition 3, at
8 least, and 1 as well.

9 BY MR. SEBBA:

10 Q. So, as we sit here today, you are not willing
11 to say whether, in the example in Column 20, line 5,
12 when the GPS device is always active but recording is
13 turned off, that that recording is not registered
14 permanently by mechanical means?

15 MS. NGUYEN: Objection. Mischaracterizes
16 testimony.

17 THE WITNESS: So what you're asking about is
18 something -- as I said, I don't -- I hadn't believed I'd
19 seen Exhibit 2003 to this declaration before, but I had
20 seen references to what appear to be that document that
21 the PTAB made. And they didn't reference that, and I
22 don't have any opinion -- written opinions.

23 So if I -- if -- if I am asked to render opinion
24 about that question, I'd take some time to analyze that

1 and perhaps include it in a supplemental report.

2 But it's not something I've discussed yet. It's
3 the first time I'm seeing those words in a -- in a
4 definition. So I would want to take time to consider it
5 because I would want to consider it as it applies to the
6 context -- and you know this is a very lengthy --
7 lengthy patent -- and how it would apply. So I -- I
8 would need some time to consider that.

9 MS. NGUYEN: Counsel, can we take a break? It's
10 been about an hour.

11 MR. SEBBA: It hasn't been quite an hour. Let's
12 finish this line of questioning. It won't be much.
13 Just a few more minutes.

14 BY MR. SEBBA:

15 Q. By your -- by the -- are you a person of
16 skill -- excuse me.

17 Are you a POSITA -- are you a person of skill
18 in the art for the '220 patent?

19 MS. NGUYEN: Objection. Form.

20 THE WITNESS: Well, based on the -- what I've
21 laid out, I certainly would have been at least that
22 pers- -- that level of skill at the time of this
23 invention.

24 BY MR. SEBBA:

1 Q. Okay. Is there something in the example at
2 the top of Column 20 in which the GPS is always active
3 but recording is turned off that you don't understand?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: I mean, I -- I wouldn't say so. I
6 think I did -- I understood this -- this specification.

7 BY MR. SEBBA:

8 Q. Okay. So, in your understanding, when the GPS
9 device is active but recording is turned off, you
10 understand what that means.

11 A. Well, I generally understand what's -- what's
12 discussed here, but the analysis that I did was really
13 with respect to the claim elements.

14 Q. So you understand this part -- portion of the
15 specification, and yet you're unable to state
16 definitively whether in this -- in this example at
17 Column 20, line 5, whether the data is registered
18 permanently by mechanical means.

19 MS. NGUYEN: Objection. Form. Relevance.
20 Asked and answered.

21 THE WITNESS: I think that's a
22 mischaracterization.

23 What I said is -- you're asking now about this
24 definition that's provided on this exhibit that I told

1 you I don't believe I'd seen before. And -- and what
2 you're asking about with respect to this definition was
3 not explicitly called out by the PTAB, so I hadn't taken
4 the time to consider that -- that definition.

5 And it's the kind of opinion I wouldn't want to
6 render on the fly. If I -- given the appropriate time
7 to consider that, especially with the context of the
8 specification, which is very lengthy, I could -- I would
9 be able to consider it, but -- I'll do so if I'm asked
10 about this, but I have no opinions in my original
11 declaration about the Merriam-Webster Dictionary, or I
12 didn't cite to it, so -- but I did see the reference
13 when I reviewed the institution decision, which is -- of
14 course, is -- came out after I submitted my initial
15 declaration.

16 So it's a thing I could -- I would -- if I
17 wanted -- were I asked to analyze it, I wouldn't -- I
18 wouldn't just do it on the fly. I would need to do it
19 in the overall context of the specification, and I would
20 take some time to consider.

21 BY MR. SEBBA:

22 Q. How much time would it take you to consider?

23 MS. NGUYEN: Objection. Form.

24 THE WITNESS: I would have to get into it before

1 I could really figure that out, but -- so I couldn't
2 really say. I mean, the patent itself is pretty
3 lengthy, so I'd want to -- I'd look at -- it's got
4 probably over 100 references to "record." I'd want to
5 look at the context with respect to any particular
6 definition that's being set forth.

7 But certainly what I did in the analysis was
8 look at the claim terms, looked at the specification,
9 looked at how a person of ordinary skill would have
10 understood the claim terms as -- in their plain and
11 ordinary meaning in the context of the specification.

12 And -- and as we talked about, I gave some
13 examples, and I found that the examples of what a person
14 of ordinary skill -- skill would have understood was
15 within the scope of the claim elements, I found direct
16 parallels or identical disclosures in the prior art
17 references.

18 And that's kind of the analysis that I did with
19 respect to the prior art and -- and, in the
20 understanding of a person of ordinary skill, what the
21 plain and ordinary meaning of the claim terms would have
22 been at the time of the invention.

23 Q. So you've never considered other ordinary
24 meanings of "record" other than those quoted in the

1 Board's institution decision?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: Well, at the time I submitted my
4 declaration, I didn't have the institution decision in
5 front of me, so -- but what I did for that was looked
6 at -- looked at the claim terms. I reviewed the patent
7 cover to cover.

8 I -- I looked at what would a person of
9 ordinary skill understood would have been covered based
10 on the context of the specification by -- by the
11 claim -- by the claim elements, and I found examples
12 which are examples of things that would be -- that the
13 claim elements are -- are -- would be included within
14 the scope of the claim elements, things like the bottom
15 of Column 19, "record athletic activity data in multiple
16 workout settings."

17 I think that's an example of what a person of
18 ordinary skill would understand to be within the scope
19 of -- of "record athletic activity performed by a user."

20 And then what I did was I found, you know,
21 parallels or -- or identical disclosures in the prior
22 art, and those -- I wrote about those in my declaration.

23 So, at the time I submitted my declaration, I
24 wouldn't have had the PTAB's citation to this

1 Merriam-Webster Exhibit 2003.

2 BY MR. SEBBA:

3 Q. So as we sit here today -- as you sit here
4 today, you don't have any opinions about other ordinary
5 meanings of "record" other than those quoted in the
6 Board's institution decision.

7 MS. NGUYEN: Objection. Mischaracterizes
8 testimony.

9 THE WITNESS: You know, my written opinions in
10 my declaration were really about the plain and ordinary
11 meaning of the claim terms, examples of those things
12 that would be included as examples of some of what's
13 covered by the claim terms. And -- and, you know, for
14 example, the -- you know, at the bottom of Column 19,
15 "record athletic activity data in multiple workout
16 settings."

17 And, frankly, the -- what's cited by the patent
18 owner themselves in their preliminary response about --
19 in the discussion of -- of record, I believe Column 1,
20 line 60, about how the mobile device may record workout
21 data for both indoor workouts and outdoor workouts, and
22 that's about recording the data that's provided by
23 either -- and that's in -- it's in Column 1 too.

24 "By using both a GPS device and an

1 accelerometer, the mobile device may record workout data
2 for both indoor (e.g., stationary) workouts and outdoor
3 workouts."

4 And I think that's in the summary, but it's
5 broken out in more detail in Columns 19 and 20. That's
6 what it's talking about. It's talking about the GPS
7 device always being active, but the recording can be
8 turned on and off.

9 So that -- and that it's recording of data
10 therefrom and that, you know, if the user is stationary,
11 like they're on a treadmill -- it doesn't give that
12 example, but -- here at least -- that, instead, you
13 could use and -- and turn on recording for the
14 accelerometer and turn off recording for the -- for the
15 GPS device of the data therefrom.

16 And -- and that's an example from the spec I
17 think a person of ordinary skill would have understood
18 would be within the scope of "record athletic activity
19 performed by a user."

20 And I don't think these are the only examples.
21 There's -- there's other ones. These are just the ones,
22 you know, we're discussing now that -- that I can point
23 to.

24 And so, for the preparation of the declaration,

1 there were very similar parallel or identical
2 disclosures within the prior art about recording
3 athletic activity data, and -- and so those are what I
4 pointed to in my analysis and wrote up in my written
5 opinions.

6 BY MR. SEBBA:

7 Q. So are you saying that -- well, let's go back.
8 Exhibit 2003 shows a number of dictionary
9 definitions for the word "record"; correct?

10 A. Yes. By the way, I said earlier that they
11 cited -- I'm not sure that they -- they cited to the
12 Merriam-Webster online dictionary. I'm not sure if
13 they -- if this was the actual page they saw, but it's
14 consistent with that.

15 Q. Are you saying that the -- any of the
16 definitions listed in Exhibit 2003 are not plain and
17 ordinary meanings of "record"?

18 MS. NGUYEN: Objection. Mischaracterizes
19 testimony.

20 THE WITNESS: I mean, what I'm saying is the
21 plain and ordinary meaning as understood by a person of
22 ordinary skill in the art, at the time of the invention,
23 some of these disclosures would -- and this is why I
24 disagree with the patent owner's arguments in the

1 preliminary response with respect to some of their
2 arguments, which is it's incorrect to limit the meaning
3 of "record" to only, for example, 1 -- something like
4 1(c)(2), which is "Indicate, Read: Thermometer recorded
5 90 degrees," which doesn't -- which is -- what I -- what
6 I understand when I read the preliminary response is
7 that I think that's the argument that's being put forth,
8 which is the -- "record" is limited to really the
9 sensing or the -- I don't have the preliminary response,
10 but just from my -- what I remember, it's -- it's more
11 about the detection or the -- the sensing of the data as
12 opposed to the writing of the data to memory.

13 And -- and this example is -- is -- what I'm
14 saying is really showing that the -- that's an incorrect
15 argument, certainly to limit to that. And I think
16 even -- even to -- right? -- to limit it to the reading,
17 because this is the context of the specification. The
18 specification says that "the recording of data
19 therefrom" -- this is line 4 of Column 20 -- "(e.g., GPS
20 device is always active, but recording is turned on and
21 off)."

22 So you look at that -- a person of ordinary
23 skill at the time of the invention looks at that, and
24 they say, "Oh, well, the GPS is -- is active -- it's

1 always active." And in that sense, the data from that
2 can either be on a recording -- sorry -- the data from
3 that GPS device can either be recorded when it's turned
4 on or not recorded when it's turned off.

5 And in that sense, that's -- that's -- this
6 context is -- is why I'm saying I think -- is a reason
7 that, you know, limiting it to just the sensing of the
8 meaning of the word "record" to just the -- I forget how
9 the patent owner is arguing it, but just the sensing of
10 the data or the -- because the GPS device is active.
11 It's -- it's generating the data, but you're either
12 recording the data or not.

13 So I think this is -- this is the context of
14 the -- of the '220 patent at issue, and this is how a
15 person of ordinary skill -- they would have looked to
16 the specification to inform their understanding of the
17 meaning of the claim phrases and the claim terms.

18 And this is saying that, oh, the GPS device can
19 generate the data and be generating the data by being
20 active, but you're either recording the data or you're
21 not.

22 So limiting the definition of "record" in the
23 claim term to only the generation of the data actively
24 is incorrect because this is the context, which is

1 saying now, in this case, GPS device is -- is always
2 active, but recording is -- is a separate part of the
3 device generating the data, and recording is turned on
4 and off.

5 And like the analogy that -- that the patent
6 owner provided in the preliminary response about the
7 video, that recording the video is really just the --
8 imaging what's on the other side of the lens -- I'm --
9 I'm just giving you from my memory. If we -- if I had
10 it, I could -- I could point you to what they said.
11 And -- and that's -- that's recording.

12 I think that, even in that analogy, that's not
13 supported by what the specification says because the
14 specification says the GPS device is always active. So
15 if the image -- imaging of the camera -- in the camera
16 sense is -- is providing an imaging of the camera and
17 that's recording and you don't -- recording can be
18 turned on and off just like, you know, you press the
19 record button or you don't, even though the -- the video
20 example, you're always -- you're -- like, in -- you're
21 seeing the image on the screen, but you're not -- you
22 can choose to record or not, just like the GPS device is
23 generating data but you can choose -- but -- but in the
24 context of the '220, it can be -- the recording of that

1 data can be turned on and off.

2 I think that's an example of why that's an
3 incorrect reading of the definition of the word "record"
4 to limit it to only kind of the -- the step of
5 generating the data.

6 MS. NGUYEN: Counsel, we've been going for over
7 an hour. Can we take a break?

8 MR. SEBBA: Yeah, that's fine.

9 THE VIDEOGRAPHER: Standby.

10 We are now going off the record.

11 The time is 11:21 a.m.

12 (11:21 a.m., off the record.)

13 (11:33 a.m., on the record.)

14 THE VIDEOGRAPHER: We are now going back on the
15 record. The time is 11:33 a.m.

16 BY MR. SEBBA:

17 Q. Welcome back, Dr. Houh.

18 A. Thank you.

19 Q. So, in your declaration, Exhibit 1003, you
20 said that you considered the plain and ordinary meaning
21 of all the terms in the patent; correct?

22 MS. NGUYEN: Objection. Form.

23 BY MR. SEBBA:

24 Q. You know what? We can strike that.

1 Dr. Houh, in preparing your declaration, did
2 you consider the plain and ordinary meaning of all the
3 terms in the '220 patent?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: Well, in 51, you know, I say, "I
6 have been instructed to perform my analysis with the
7 understanding that the terms of the challenged claims
8 should be afforded their plain and ordinary meaning."

9 And -- and that's how I performed my analysis,
10 as I was instructed to.

11 BY MR. SEBBA:

12 Q. So did you consider what the plain and
13 ordinary meaning of each claim term would be when
14 conducting your analysis?

15 A. I mean, that's how I conduct my analysis is
16 considering the plain and ordinary meaning of the claim
17 terms.

18 Q. Okay.

19 A. To a person of ordinary skill in the art at
20 the time of the invention.

21 Q. But you did not consider whether the plain and
22 ordinary meaning could include to register permanently
23 by mechanical means.

24 MS. NGUYEN: Objection.

1 MR. SEBBA: Excuse me. Yeah. Let me start --
2 let me say that again.

3 BY MR. SEBBA:

4 Q. You did not consider whether the plain and
5 ordinary meaning of the word "record" in the context of
6 Claim 11 of the '220 patent could mean to register
7 permanently by mechanical means.

8 MS. NGUYEN: Objection. Mischaracterizes
9 testimony.

10 THE WITNESS: You know, so what I did was I
11 reviewed the specification from the perspective of a
12 person of ordinary skill in the art at the time of the
13 invention. And -- and I looked for examples of what a
14 person of ordinary skill would have understood --
15 examples that some of the claim term -- part of this --
16 some of the claim elements were -- would have included.

17 And so for the phrase "record athletic activity
18 performed by a user," what informed a person of ordinary
19 skill of what that plain and ordinary meaning was, was
20 the context of the specification.

21 And so I looked in the specification for
22 examples just like -- that would inform the person of
23 ordinary skill at the time of the invention what would
24 be covered by that. And some of the examples we --

1 we've been reviewing, which are -- it talks about
2 recording athletic activity data, it talks about
3 athletic activity information, it talks about recording
4 workout data, which is something the patent owner cited
5 to in their patent owner preliminary response. And --
6 and that -- that informs my view of what a person of
7 ordinary skill would have understood the claim terms to
8 cover.

9 And so then what I did was I looked for similar
10 examples in the prior art, and I found them. And they
11 were parallel, if not really identical, to the
12 disclosures that -- that a person of ordinary skill
13 would have understood would have been covered --
14 examples from the spec itself that would have been
15 within the scope of certain claim elements.

16 And that's what I wrote up in -- in the various
17 sections in my declaration as to -- to what those
18 examples were that were highly parallel or pretty much
19 identical to that which was provided in the examples
20 from the specification.

21 And so I -- I didn't rely on this
22 Merriam-Webster Dictionary, so I hadn't seen this
23 particular page, I don't think, until -- until today,
24 best of my recollection.

1 BY MR. SEBBA:

2 Q. Did you identify any of the examples of the
3 term "record" in your declaration?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: Well, I think I have a discussion
6 of things that are very parallel to the specific
7 citations we've been talking about today.

8 For example, in paragraph 41, at the bottom, I'm
9 talking here about -- there's -- the spec -- spec talks
10 about measuring: "measures athletic information
11 corresponding to a user's athletic activity." And,
12 again, that's information about athletic activity or
13 athletic activity information.

14 And then it transmits the measured data to
15 device 501. And so that's saying that it's -- it's the
16 data now being transmitted to this other device, which
17 then transmits it to device 601.

18 And then device 601 includes an athletic display
19 data configuration module 603 that may store the
20 athletic data in the athletic data storage. So I think
21 that's just like this passage at the top of paragraph --
22 Column 20 that we've been talking about, which is
23 talking about the GPS device is always active.

24 So it's -- it's, you know, measuring -- in that

1 sense, measuring the data about the position. And that
2 data is then transmitted, and it can either be recorded
3 or not recorded.

4 In this case, the example is being recorded,
5 but -- but I think that's certainly the background that
6 is consistent with what I've been talking about with
7 respect to the meaning of "record athletic activity
8 performed by a user," and that's just another example
9 from the spec about that.

10 BY MR. SEBBA:

11 Q. But nowhere in your declaration -- strike
12 that.

13 Anywhere in the dec- -- do you describe your
14 understanding of any of the claim terms anywhere in your
15 declaration?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: I do discuss that I've been asked
18 to perform my analysis with the understanding that the
19 terms of the challenged claims should be afforded their
20 plain and ordinary meaning.

21 So that's -- that's how I did my discussion.
22 That's how I did my analysis.

23 BY MR. SEBBA:

24 Q. Okay. If we turn to Exhibit 2003, one of the

1 definitions provided by Merriam-Webster for the word
2 "record" is "to register permanently by mechanical
3 means." That's Definition 1(c); correct -- 1(c)(1);
4 correct?

5 MS. NGUYEN: Objection. Form.

6 THE WITNESS: I mean, that's what it says on
7 Exhibit 2003 to this declaration -- deposition.

8 BY MR. SEBBA:

9 Q. Do you consider that definition, 1(c)(1),
10 provided by Merriam-Webster in Exhibit 2003, to be a
11 plain and ordinary meaning of the word "record"?

12 MS. NGUYEN: Objection. Form. Asked and
13 answered.

14 THE WITNESS: I hadn't seen that -- those exact
15 words, I don't believe, until you handed me this today.
16 I didn't rely -- I didn't -- I don't have this page as
17 part of my materials considered doc.

18 I mean, it doesn't seem to me like "record"
19 should have been this -- this "record athletic activity
20 by a user" should have been that controversial;
21 although, patent owner, in their preliminary response,
22 raised this issue, which I disagree with their --
23 their -- what I understand their -- their attempt to
24 limit the plain and ordinary meaning to be.

1 But, I mean, that's -- I was not aware of any
2 dispute over the plain and ordinary meaning until I
3 reviewed the patent owner preliminary response.

4 So what I did was -- and I -- I looked at -- you
5 know, I reviewed the '220 patent. I looked at the claim
6 terms. I considered what a person of ordinary skill in
7 the art at the time of the invention would have
8 considered those to mean, and part of that would be in
9 the context of the spec.

10 And I found examples from the specification,
11 which -- which -- a person of ordinary skill would have
12 understood our examples of what would be covered by the
13 scope of certain claim terms. And I found parallel, if
14 not identical, disclosures in the prior art, and so
15 those are examples.

16 And -- and a person of ordinary skill in the art
17 would have understood that those examples that are
18 parallel or identical to that as disclosed as examples
19 in the specification itself as -- as examples of what
20 would be within the scope of some of the claim terms
21 would also similarly be in the scope of the claim terms
22 when -- when a person of ordinary skill in the art looks
23 at these prior art references and finds the parallel or
24 identical disclosures as to -- as to what the '220 spec

1 itself is making.

2 BY MR. SEBBA:

3 Q. Okay. So that wasn't my question. And I
4 think -- I mean, I assume you don't want to be here all
5 day. This will go faster if you answer the question
6 instead of just rehashing material we've been through a
7 few times.

8 So, as you sit here, do you consider this
9 definition in Exhibit 2003, 1(c)(1), "to register
10 permanently by mechanical means," to be a plain and
11 ordinary meaning of the word "record" in the
12 '220 patent?

13 MS. NGUYEN: Objection. Form.

14 THE WITNESS: I mean, I -- it sounds to me like
15 you're asking me to do some more express claim
16 construction. But the analysis that I did and the way I
17 looked at it at the time I submitted the declaration,
18 when I didn't actually have the words you're asking me
19 about in front of me, was -- you know, I -- I considered
20 the -- you know, what does a person of ordinary skill
21 think of the word "record." Let's look at the spec to
22 see if -- you know, what -- what the spec says about
23 recording athletic activity performed -- or record
24 athletic activity performed by the user.

1 And I found examples and -- you know, for
2 example, it talks at the bottom of Column 19 about -- it
3 allows device 7- -- allows device 700 to record athletic
4 activity data in multiple workout settings.

5 And, you know, even what's cited by the patent
6 owner themselves -- in their preliminary response, they
7 cited about "The mobile device may record workout data
8 for both indoor workouts and outdoor workouts" and then
9 this whole detailed description about how the device is
10 active.

11 I mean, I considered the spec. These are
12 examples from the spec about -- that would inform the
13 person of ordinary skill as to what's in the scope of
14 the claim phrase "record athletic activity performed by
15 a user." That's what I considered.

16 You're asking me now about the plain and
17 ordinary meaning? From my analysis, it wasn't -- wasn't
18 necessary to -- to have considered something that I
19 hadn't yet -- well, I mean, I hadn't yet seen it.

20 So you're asking me now, and what I've said is,
21 you know, I'd have to think about that within the
22 context of the spec, whether that applies, but
23 certainly -- and -- and to analyze it in more detail
24 with respect to the context of the specification.

1 But certainly what's -- what is already in the
2 specification as an example that the -- a person of
3 ordinary skill in the art at the time of the invention
4 would have seen from the specification are these
5 examples of "record athletic activity in multiple
6 workout settings" and -- and, you know, recording
7 workout data and whatnot.

8 And -- and there's -- there -- identical
9 disclosures are highly parallel to disclosures from the
10 prior art, and that's -- so certainly what's -- within
11 the scope of the claim element as an example from the
12 spec, they're highly parallel, similar disclosures that
13 a person of ordinary skill would have recognized would
14 also be within the scope of the claim element in the
15 prior art.

16 And, you know, I didn't have that -- that
17 definition. I wasn't even aware that there would be a
18 dispute. It doesn't really seem like -- well, I
19 wouldn't have expected a dispute about -- about this,
20 but -- but here we are.

21 BY MR. SEBBA:

22 Q. So that was at the time that you prepared the
23 declaration. You were unaware of this definition --
24 of -- excuse me.

1 At the time you prepared your declaration, you
2 were unaware of the Merriam-Webster definition.

3 Now, as we sit here today, are you able to
4 determine today if Definition 1(c)(1) in Exhibit 2003,
5 "to register permanently by mechanical means," is a
6 plain and ordinary meaning of "record" in the context of
7 the '220 patent?

8 MS. NGUYEN: Objection. Asked and answered.

9 THE WITNESS: No, I hadn't considered that
10 express definition because I didn't have that at the
11 time of my declaration.

12 But -- but now, I mean, regardless of whether
13 that -- you know, how -- how that issue would resolve,
14 it doesn't change my opinions about the fact that there
15 are examples from the spec that a person of ordinary
16 skill would recognize are covered by some of the claim
17 elements such as "record athletic activity performed by
18 a user."

19 It's -- you know, everywhere, it refers to, I
20 believe -- or the places I've looked at -- and certainly
21 most, if not all, when it's talking about recording
22 athletic activity, it's -- it's really using the phrase
23 "information or data" along with that. And -- and that
24 helps inform and it shows what the examples are from the

1 spec.

2 So the spec doesn't say -- I don't think it uses
3 the word "mechanical." It's a long spec. I don't have
4 every word memorized. But I don't think it uses the
5 word "mechanical." I mean, you know, on a Zoom dep,
6 it's so much easier to check that, but, here, if you
7 wanted me to check that, it would take me some time.

8 So, because of that, you know, I would want to
9 look at how -- you know, it's an -- it's an issue which
10 I think -- because my -- the way I did my analysis and
11 what's already in the specification as examples are
12 already found in the prior art, and that's the -- that's
13 the analysis -- part of the analysis that I did. Right?

14 Finding out where other boundaries of the plain
15 and ordinary meaning is, you know, wouldn't really
16 impact my opinion that what's in the prior art is
17 disclosed by the references I've analyzed fall within
18 the scope of "record athletic activity performed by the
19 user" because they're taking athletic activity data
20 and -- and -- and, you know, you could -- I'll refer you
21 to the -- my declaration for the exact words, but
22 storing that and saving it.

23 And so -- and that's what I've discussed
24 about -- with respect to "record," but, you know,

1 I'll -- I'll let the declaration speak for that if you
2 just refer to it and look at what I've said there.

3 So -- so figuring out, you know, other
4 boundaries of the plain and ordinary meaning doesn't
5 change that. Those are ex- -- you know, parallel or
6 identical disclosures in the prior art I analyzed to
7 examples given in the '220 of what a person of ordinary
8 skill would understand are covered by the claim terms
9 such as "record athletic activity performed by a user."

10 BY MR. SEBBA:

11 Q. Okay. Just so we're clear, because you still
12 haven't answered my question, I'm not asking you -- I
13 have asked you, but I'm not asking you if this
14 definition, 1(c)(1) from Exhibit 2003, is a plain and
15 ordinary meaning under the '220 patent of the word
16 "record."

17 The question here is, as we sit here, are you
18 able to determine whether or not Definition 1(c)(1), "to
19 register permanently by mechanical means," in
20 Exhibit 2003 is a plain and ordinary meaning of the word
21 "record"?

22 MS. NGUYEN: Objection. Form. Asked and
23 answered.

24 THE WITNESS: It would take me some time to

1 consider with respect to a particular boundary such as
2 whether that is inside or outside the plain and ordinary
3 meaning to -- to review the context.

4 Now, does it say on the Merriam-Webster online
5 page that's Exhibit 2003 to this deposition to give that
6 definition as 1(c)(1)? I'm not arguing -- I'm not
7 disagreeing with that. That's what it says. 1(c)(1) is
8 "to register permanently by mechanical means."

9 I would want to consider the spec in more -- and
10 take some more time. That's some analysis that I would
11 typically do as part of what I -- what goes into writing
12 a declaration, and it takes some time to do that.

13 So would I be able to? I think I would be able
14 to, but I wouldn't want to do it on the fly, and I would
15 need to take time to consider it. And the spec is --
16 the patent is very long, so I need to take the time
17 needed to consider it, how it applies.

18 But I don't think it would impact my opinions
19 about, you know, that the prior art already discloses
20 those, "record athletic activity performed by a user,"
21 because the examples from the prior art that I believe I
22 wrote up in the declaration are actually highly parallel
23 to the disclosures in the -- in the -- in the
24 '220 patent itself, if not identical, because they talk

1 about saving athletic activity data, and -- and -- and
2 that's -- that's what a person of ordinary skill -- you
3 know, looking at the -- the spec where we -- you know,
4 it says here, bottom of 19, "record athletic activity
5 data in multiple workout settings," you know, in
6 Column 1, line 60-ish, "record workout data."

7 You know, and that -- that summary in Column 1
8 is -- more detail is provided in Columns 19, 20, and 21,
9 where it talks about the GPS device always being active
10 but recording can be turned on or off, where it talks
11 about recording athletic activity data.

12 And so this is all what goes into what a person
13 of ordinary skill would understand are examples of what
14 would be in the scope of "record athletic activity
15 performed by a user." And so -- and -- and those
16 examples are -- are parallel or identical to the prior
17 art citations I discuss in my declaration with respect
18 to the prior art.

19 BY MR. SEBBA:

20 Q. So if you would need more time to determine
21 if -- how much time would you need to determine if
22 Definition 1(c)(1) in Exhibit 2003 is a plain and
23 ordinary meaning of the word "record" in the context of
24 the '220 patent?

1 MS. NGUYEN: Objection. Asked and answered.

2 THE WITNESS: I mean, I couldn't tell you until
3 I got into it exactly how much time it will take because
4 I hadn't done -- haven't done it yet, but I would want
5 to review the spec. The spec is very lengthy.

6 I don't recall that it uses the word
7 "mechanical." So I'd -- I'd want to look at what --
8 what might relate, but I can't tell you until I do it.
9 And it's hard to provide an estimate because I might
10 find it quickly or I might look through the whole thing
11 and not find, you know, what I'm looking for and have to
12 keep considering, you know, whether that applied,
13 whether that was part of it, whether -- whether there's
14 something that indicated the way -- like -- like, at the
15 top of paragraph 20, you know, "The GPS device is always
16 active, but recording is turned on and off," indicates a
17 way from patent owner's argument about -- about just
18 indicating or sensing -- again, I don't remember the
19 exact words, but -- but at the high level, that was my
20 understanding of what their argument was.

21 And that -- that top of paragraph 20 certainly
22 indicates that 1(c)(2) should not -- it should not --
23 the meaning of "record" is not -- should not be limited
24 to 1(c)(2) because that's the context of the

1 specification.

2 And I'd have to consider all the teachings to
3 figure out if there's something similar about 1(c)(1)
4 or -- but -- but, again, it wouldn't impact my opinions
5 about the prior art disclosing the claim element "record
6 athletic activity performed by a user" because, to do
7 that, I looked for examples that a person of ordinary
8 skill would have understood from the spec itself.

9 That's the context of the spec about what would be
10 included in that. And that would be included in the
11 meaning of "record athletic activity performed by a
12 user," and it includes all the various passages we've
13 talked about, which is about recording athletic activity
14 data.

15 And -- and then, you know, I found parallel, if
16 not identical, disclosures in the prior art references
17 that record athletic activity data and it's performed by
18 a user.

19 BY MR. SEBBA:

20 Q. And so instead of referring to an example in
21 the spec, are you able to articulate a plain and
22 ordinary meaning of the word "record" in the context of
23 the '220 patent?

24 MS. NGUYEN: Objection. Asked and answered.

1 THE WITNESS: If there's a dispute about a
2 particular area which is in dispute -- and what I
3 understand is in dispute is this argument about --
4 about, from the patent owner, how the meaning of
5 "record" should -- I believe this is their argument --
6 should be limited to the -- the sense of 1(c)(2) in this
7 definition and should exclude everything else.

8 So my point there is that -- so I have looked at
9 that issue. I have taken the time to look at that
10 issue. And I think one of the disclosures in the spec
11 that -- that are directed to why that's incorrect is
12 because, you know, in the top of Column 20, it talks
13 about "GPS device is always active, but recording is
14 turned on and off."

15 So that -- that says to me that just the
16 indication is not "record" because it's using -- in the
17 context of the spec, it's -- the GPS device is producing
18 data. It's indicating -- the reading of the GPS device,
19 if you read it, it would tell you what the positions
20 are.

21 But it says right here, "recording is turned on
22 and off." So that really kind of separates, and it's an
23 argument that -- that patent owner's attempt to limit
24 the meaning of "record" to 1(c)(2) as provided by

1 Exhibit 2003 to this deposition is incorrect because the
2 context of the spec kind of points to -- to this, which
3 is saying, you know, you -- the GPS device is
4 providing -- is always active, and a person of ordinary
5 skill would understand you can read it, you can -- it
6 can provide data to you about the position, but -- but
7 recording is turned on and off.

8 And that's a separate thing from the fact that
9 the GPS device is -- is providing data. And so you can
10 then turn recording on and off. So that's -- that's an
11 argument, I think, against, you know, what I understand
12 patent owner's argument to be, to limit "record" to only
13 1(c)(2).

14 And -- and now -- again, I hadn't seen this
15 before, but, you know, to register permanently by
16 mechanical means, I would have to consider what it says
17 in the spec and to see if there's anything similar to
18 what is disclosed in -- at the top of 20 about -- about
19 patent owner's attempt to limit the meaning of "record"
20 to only something like 1(c)(2) in Exhibit 2003 to this
21 deposition.

22 I'm not aware that there's a dispute about
23 "mechanical" or not because what -- examples that I
24 found, I'm not talking about -- it's not talking about

1 mechanical means. It's talking about recording -- it's
2 "recording athletic activity data."

3 And that's -- again, I have found parallel, if
4 not identical, disclosures in the spec as to these
5 examples given in the '220. And -- and PTAB highlighted
6 Number 3, which is to cause data to be registered on
7 something such as a disc or magnetic tape in
8 reproducible form.

9 And I -- I believe that's applicable. I believe
10 that's why they would cite to something like that, to
11 this issue. And -- and I don't think, like, figuring
12 out this mechanical means issue would -- it wouldn't
13 impact my opinions because my opinions are based on
14 examples which are consistent with -- with some of the
15 definitions and certainly the definitions that the PTAB
16 highlighted from the spec -- from the '220 spec about
17 recording athletic activity data and that the GPS device
18 is -- is always active, but recording can be turned on
19 and off.

20 Q. Okay. You still haven't answered the question
21 and -- your understanding of the plain and ordinary
22 meaning should -- I would imagine is independent of
23 patent owner's arguments. So it's a simple question.

24 As we sit here, are you able to articulate a

1 plain and ordinary meaning of the term "record" in the
2 context of the '220 patent?

3 MS. NGUYEN: Objection. Asked and answered.

4 THE WITNESS: So my understanding is the claim
5 construction is about resolving disputes about what's
6 within and what -- what falls outside the scope.

7 And, you know, we're not talking about something
8 crazy that I'm citing to from the spec which is on the
9 edge of -- of, you know, what might be in or outside of
10 the claim construction here.

11 And -- and my understanding of the claim
12 construction, it's not to define the boundary for all
13 time of exactly what the meaning of the claim term is.
14 My understanding is there's some dispute about whether
15 this situation falls inside or outside.

16 And patent owner is arguing that some of the
17 prior art I cited falls outside the scope because
18 they're attempting to narrow, in my understanding, the
19 def- -- the definition of "record" to only -- I believe
20 that's what they're trying to do -- only a sense of --
21 of 1(c)(2) in Exhibit 2003 to this deposition.

22 What I found in the prior art was not at the
23 edges of what could be, you know, within the scope or
24 maybe -- you know, maybe not. It's clearly in the scope

1 of the -- of the claim terms. So it's not necessary to
2 define all the boundaries because the examples given in
3 the spec as to what a person of ordinary skill would
4 understand are clearly examples that are covered by
5 the -- by the claim scope.

6 And I found exactly those same situations. If
7 you're sitting in your living room and you have a
8 property -- and you know your house is in the middle of
9 a property and there's a dispute about the fence, it
10 doesn't matter. The kitchen is still on the property.

11 You're argu- -- if you're arguing about the
12 fence, maybe you can argue about the fence; whether
13 it's, you know, one foot on this side, one foot on that
14 side, where the boundary is. But this is not that
15 situation.

16 There are examples from the spec that are
17 clearly within the claim scope -- well, sorry. There
18 are examples in the spec that help understand what's
19 covered by the claim scope in the '220. Person of
20 ordinary skill would understand. You know, they're
21 looking at the claims. They're reading the spec.
22 They're considering the claim terms in the context of
23 the spec.

24 And the context of the spec talks about

1 recording athletic activity data, how it does that,
2 that -- that the GPS device is always active, that it's
3 generating data or can be read, but recording is turned
4 on and off, which separates the meaning of, you know,
5 the -- it's providing a distinction between the ability
6 to read or providing data all the time and -- and
7 recording that data.

8 And it's consistent with other examples where
9 the -- the spec -- the spec is talking about "record
10 athletic activity data." It's -- it's talking about
11 recording workout data. It's talking about athletic --
12 "record athletic information." We looked at some of
13 those citations earlier.

14 And those are examples that are pretty clearly
15 within -- within the boundary of the spec, and I think
16 patent owner is trying to exclude those examples from --
17 from the meaning of the -- of the claim term by focusing
18 on just the indicating or reading portion of -- of the
19 definition here.

20 I don't know -- I don't recall if they cited to
21 this or not, but -- but the PTAB certainly didn't cite
22 to 1(c)(2) or call it out expressly because they focused
23 on these -- these other parts, 1(a)(1) and -- and 3.

24 Oh, and by the way, I just want to clarify

1 something I said earlier with respect to -- I might have
2 said something about the -- the '220 doesn't talk about
3 video recording, but what I meant is -- is in the sense
4 that video recording is -- is just capturing what's on
5 the other side of the lens. There are some passages
6 that talk about recording messages to -- to send to
7 other people to play back, so I just want to clarify
8 that.

9 But -- but the spec provides the context, and a
10 person of ordinary skill would recognize some of these
11 examples. You are recording the athletic activity data.
12 That would be covered by "record athletic activity
13 performed a user." And the prior art provides parallel
14 or -- if not identical, disclosures of recording
15 athletic activity data.

16 And so I -- I don't see why it -- you know, my
17 analysis already that I've done in the declaration would
18 be impacted by trying to figure out where the boundary
19 is. Is the fence, you know -- you know, 300 feet away
20 from my house within or with- -- or not within the
21 boundary of my property.

22 MR. SEBBA: Okay. Let the record reflect that
23 Dr. Houh has declined to provide a plain and ordinary
24 meaning of the term "record."

1 BY MR. SEBBA:

2 Q. Did you --

3 MR. YAP: Counsel, the record speaks for itself,
4 so...

5 BY MR. SEBBA:

6 Q. Okay. Did you consider whether the prior art
7 you cited teaches capturing athletic information?

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: So I think that's -- your
10 statement was a misrepresentation. I -- I -- I'm -- I
11 could -- I could do the analysis, but I told you it
12 would take time. But -- so it's -- it's not something
13 I'm ready to offer right here live at my deposition.

14 But -- but with respect to -- sorry. What was
15 the question again, please?

16 BY MR. SEBBA:

17 Q. Did you consider whether the prior art teaches
18 capturing athletic information?

19 MS. NGUYEN: Same objection.

20 THE WITNESS: I mean, you know, to the extent --
21 you know, I discuss -- I discuss some of those in my --
22 in -- so let me take a look at my declaration, please.

23 So, if you look at my declaration with respect
24 to Johnson, paragraph 55, I talk here about how Johnson

1 discloses three devices. There's an athletic
2 information monitoring device, athletic information
3 collection and display device, and athletic data display
4 configuration device.

5 I'm skipping some of the numbers.

6 And that the device 201 measures athletic
7 information corresponding to a user's athletic activity.
8 It transmits the measured data to device 501, which then
9 transmits it to device 601, and then device 601 includes
10 an athletic data display configuration module that may
11 store the athletic data in the athletic data storage.

12 So I am talking about here about athletic
13 information and athletic data being stored, and I
14 believe that this paragraph that I've cited to in
15 Johnson -- I think Johnson is the one that is -- is --
16 has very similar disclosures in different paragraphs to
17 the '220 patent.

18 And -- and -- like, for example, I think
19 Figures 1 through 6 are substantially -- if not
20 identical, they're substantially identical. And the
21 descriptions of certain parts, I think -- I believe
22 including these paragraphs here, are also present almost
23 word-for-word in the '220 patent.

24 So what I'm citing to here from Johnson is

1 talking about athletic information and measuring the
2 data and then sending the data to be stored in athletic
3 data storage. So -- so that's -- that's how I'm
4 discussing it here in Johnson.

5 And I -- again, I think these examples are
6 also present in the '220 patent because there are very
7 similar, if not identical, paragraphs between the
8 '220 patent and -- and the Johnson.

9 And if you want to show me Johnson, I could
10 compare it, but I believe this cite -- cited portion of
11 Johnson is also in the '220.

12 BY MR. SEBBA:

13 Q. So in paragraph 55 are you saying that device
14 201 is what captures the athletic information?

15 MS. NGUYEN: Objection. Form. Mischaracterizes
16 testimony.

17 MR. SEBBA: I didn't characterize testimony at
18 all.

19 THE WITNESS: Do you have a copy of Johnson I
20 could look at?

21 BY MR. SEBBA:

22 Q. Are you saying that, based on what's in your
23 declaration, you're not sure what you're alleging
24 measured the athletic information?

1 MS. NGUYEN: Objection. Form. Mischaracterizes
2 testimony.

3 THE WITNESS: I'm just asking for a copy of
4 Johnson because I've cited to Johnson and I don't have
5 Johnson memorized.

6 MR. SEBBA: Sure. I'll introduce -- well, hold
7 on.

8 Here. As Exhibit 1- -- I'm introducing as
9 Exhibit 1004 U.S. Patent Publication US 2010/0273610 to
10 Omar A. Johnson.

11 (Reporter clarification.)

12 MR. YAP: So this has already been entered as
13 Exhibit 1004 to the current proceeding.

14 THE WITNESS: Sorry. What was your question
15 again, please?

16 BY MR. SEBBA:

17 Q. In your analysis in your declaration, is it
18 device 201 that captures the athletic information?

19 MS. NGUYEN: Objection. Form.

20 THE WITNESS: I mean, what I say in my
21 declaration and what -- what Johnson and what the
22 '220 patent say is that device 201 may be employed
23 according to various examples of the invention to
24 measure athletic information corresponding -- and it's

1 missing the word "to," which is -- I think I inserted
2 "to" in my reading, but "to a user's" -- in my
3 definition, "to a user's athletic activity." And that's
4 what I've cited to in paragraph 68.

5 So it's -- I mean, the word that -- that both
6 Johnson and the '220 patent use with respect to this is
7 to measure. And I verified that at least this citation
8 is identically present in both Johnson and the
9 '220 patent.

10 BY MR. SEBBA:

11 Q. Is it your position that the citation is the
12 written description support -- provides written
13 description support for the -- any of the claim terms in
14 the '220 patent?

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: I think it provides -- again, it
17 provides the context for -- for this.

18 And it goes on, by the way, you know. In my
19 dec- -- my declaration, I'm talking about this measured
20 athletic information, how -- where it's sent. It
21 transmits the measured data to device 501, and that's in
22 paragraph 82 to Johnson, which then transmits to
23 device 601.

24 And then -- and then device 601 includes an

1 athletic data display configuration module that may
2 store the athletic data in athletic data storage 607,
3 and that's -- that's paragraph 88 of Johnson.

4 I think that may -- part of that may be present
5 in -- in '220, but I haven't verified that right now. I
6 did look at this issue before, though.

7 So what I'm saying is that Johnson, again, is
8 providing a very similar, if not identical, disclosure
9 to -- to examples given in the '220. You know, it's
10 storing the athletic data in the athletic data storage.
11 That's -- that's a direct quote from -- from Johnson in
12 paragraph 88.

13 And so I think that kind of thing is, you
14 know -- you know, when it talks about recording -- when
15 the '220 talks about recording athletic activity data,
16 that's the data.

17 This is the data from Johnson. It's -- it's
18 disclosed. It's athletic data or it's ath- -- measured
19 athletic information. That's data in that example
20 that's transmitted and then stored.

21 BY MR. SEBBA:

22 Q. So is it your view that device 601 stores the
23 athletic data in Johnson?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: Well, I mean, the data is
2 stored -- what Johnson says, it's -- the data is stored
3 in athletic data storage 607, and 607, if you look at
4 Figure 6 of Johnson, is -- is 601 -- is within 601.
5 It's part of this athletic data display configuration
6 device 601.

7 And so in the sense that if you're asking is the
8 athletic data storage part of -- in this example figure,
9 is it part of 601, yeah, in this example it is part of
10 601, the storage.

11 And I believe that's the case in the '220 patent
12 as well, which I believe has this identical figure and
13 similar, if not identical, disclosures. I can -- I can
14 go verify that if you'd like, but it would take me some
15 time to do that.

16 BY MR. SEBBA:

17 Q. Does device 601 measure any athletic
18 information?

19 MS. NGUYEN: Objection. Form.

20 THE WITNESS: So what I'm saying here in my
21 declaration, device 201 measures athletic information
22 corresponding to a user's athletic activity. And
23 Figure 3 is a depiction of this -- this 201.

24 I cite to Figure 3 and also paragraphs 68 and 69

1 of Johnson.

2 BY MR. SEBBA:

3 Q. So in your declaration you say device 201
4 performs the measuring and device 601 saves the data; is
5 that accurate?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: Well, in this example that I give
8 in my declaration, I do talk about how device 601
9 includes athletic display -- athletic data display
10 configuration module 603 that may store the athletic
11 data in the athletic data storage 607. And as we saw
12 from Figure 6, in that example, that storage was -- was
13 part of 601. So that's the example I give here.

14 BY MR. SEBBA:

15 Q. So, in this example you provide, what is
16 recording the athletic activity performed by the user?

17 MS. NGUYEN: Objection. Form.

18 THE WITNESS: So at least one of the things
19 that's recording here is the storage of the athletic
20 data within the memory -- or within athletic data
21 storage 607, and that's -- that's causing data to be
22 registered on something such as -- such as a -- in -- on
23 something in reproducible form.

24 And it -- and it's reproduced later in the sense

1 that sometimes these, as I discussed, are called up for
2 other purposes that data is displayed for.

3 So that's at least one example.

4 BY MR. SEBBA:

5 Q. So, in the example here, what is the apparatus
6 that is recording the athletic -- athletic activity?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: Well, in this -- in this case, the
9 apparatus is, for example, 6- -- 601.

10 MR. SEBBA: Now is probably a good time for a
11 break.

12 MS. NGUYEN: Okay. Counsel, before we break, I
13 just wanted to note that what was presented to Dr. Houh
14 as Exhibit 1004, as allegedly filed by petitioner,
15 appears to have markings on it as just one example. I
16 just wanted to make note of that.

17 MR. SEBBA: Okay. Can we take those back then,
18 just to see what they are.

19 MR. YAP: It's on page 84.

20 MS. NGUYEN: 84.

21 MR. SEBBA: Okay.

22 THE WITNESS: I won't look.

23 MR. SEBBA: I appreciate that.

24 THE WITNESS: I don't remember seeing anything.

1 I may not have flipped to that page.

2 THE VIDEOGRAPHER: Okay to go off the record?

3 MR. SEBBA: Yeah.

4 THE VIDEOGRAPHER: We are now going off the
5 record. The time is 12:32 p.m.

6 (12:32 p.m., off the record.)

7 (1:29 p.m., on the record.)

8 THE VIDEOGRAPHER: We are now going back on the
9 record. The time is 1:29 p.m.

10 BY MR. SEBBA:

11 Q. Welcome back, Dr. Houh.

12 A. Thank you.

13 Q. So let's go back to the '220 patent.

14 If we look at -- let's look at Column 11 --
15 well, let's actually go back to Column 19.

16 A. Okay.

17 Q. All right. And if we look at line -- it's
18 the -- line 59.

19 It says, "The inclusion of GPS device 713 and
20 accelerometer 715 in a single mobile device 700 allows
21 device 700 to record athletic activity data in multiple
22 workout settings"; correct?

23 A. Yeah, you read that correctly.

24 Q. Okay. And so here what do you understand

1 "record" to mean?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: I mean, it -- it means what it's
4 saying here, which is what you're recording is athletic
5 activity data.

6 BY MR. SEBBA:

7 Q. Okay. So let's go back to Exhibit 2003.

8 This is the Merriam-Webster Dictionary with a
9 number of definitions for "record"; right?

10 A. Yes.

11 Q. Okay. Would any of these definitions fit
12 in -- in Column 19, lines 59 to 61 -- or I guess -- you
13 know what? I'm sorry. Let me ask that again.

14 Would any of the definitions shown on
15 Exhibit 2003 fit the meaning -- "record" as it's used in
16 Column 19, line 60?

17 A. So, if you look at the whole context of the
18 '220, first of all, you're starting at -- you're looking
19 at 19, which is talking about recording athletic
20 activity data in multiple workout settings.

21 And if you -- if you -- if you look at what
22 the '220 is talking about, if you look back to
23 Column 17, it's talking about this device 601
24 includes -- I'm going to kind of skip through quickly --

1 starting at line 44 down to 46, it includes an athletic
2 data storage, and when it receives -- when the interface
3 603 receives athletic data from the athletic information
4 collection and display device 501 -- and that's athletic
5 data -- it then -- the athletic data display information
6 configuration module 603 may then store the athletic
7 data in the athletic data storage 607 for future use.

8 And so that's what the '220 says about, first
9 of all, athletic data which is collected by 501.

10 And then -- with that in mind, then, we're
11 looking at recording athletic activity data in multiple
12 workout settings, and one of the examples of how that's
13 being done in the specification in 17 is how this
14 athletic data is stored in this athletic data storage
15 607 for future use.

16 Now, again, I -- I have seen what the PTAB has
17 said, and they did -- they did -- they did talk about 1
18 and 3, and I think this is an example of how it's --
19 it's causing data to be stored in reproducible form in
20 this athletic data storage because then it's -- it's
21 going to be used in the future as that's how it's being
22 discussed in Column 17.

23 Q. Okay. My question was about Column 19.
24 Lines 59 to 61 has the sentence that we read into the

1 record earlier, and the word "record" is used on
2 line 60.

3 So, with respect to that use of the word
4 "record," the use on line 60 of Column 19, do any of the
5 definitions in Exhibit 2003 fit in there?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: I mean, what I was talking about
8 is the examples of recording athletic activity data.
9 And so that's why I was talking about 17, because that's
10 an example right from the spec about athletic data,
11 which is then being stored in the athletic data storage
12 607 for future use.

13 And so that's an example that shows, you know,
14 in the context of that specification as a whole, you
15 know, what it's talking about here, an example of record
16 athletic activity data in multiple workout settings.
17 And an example of that is what they're talking about in
18 17 where they're storing athletic data in the athletic
19 data storage 607.

20 BY MR. SEBBA:

21 Q. Okay. So you still haven't quite answered my
22 question.

23 Do any of the definitions from Exhibit 2003 --
24 would any of them fit the use of the word "record" on

1 line 60? Specifically the -- not -- not the description
2 on Column 17. I'm asking about the definitions in the
3 Merriam-Webster Dictionary shown in Exhibit 2003.

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: Well, I said this example given is
6 similar to -- is -- is about causing data to be stored
7 on -- in reproducible form because it's going to be used
8 later, and that's what it's talking about.

9 And so I think -- I think the PTAB had cited,
10 you know, 1(a)(1) and 3, and I think -- I think some of
11 that does apply to this example because the -- the --
12 the athletic display -- sorry, on Column 17, line 50, as
13 an example of Column 19, line 61, of "record athletic
14 activity data," is talking about this in a little more
15 detail here on 17 where it's talking about the activ- --
16 athletic data received -- being received from the
17 athletic information collection and display device 501.

18 And then -- and then it's provided to the
19 athletic display -- athletic data display configuration
20 module 605, and the athletic data display configuration
21 module 603 may then store the athletic data in the
22 athletic storage data 607 for future use.

23 And so that is causing the data that's received
24 to be stored in a reproducible form because it's going

1 to be used later, for example.

2 BY MR. SEBBA:

3 Q. Okay. So what in Column 17 leads you to
4 understand -- or what's in -- let me take that back.
5 I'll start over.

6 What leads you to believe that the description
7 in Column 17 is describing "record" in Column 19,
8 line 60?

9 MS. NGUYEN: Objection. Form.

10 THE WITNESS: Well, 19 is talking about
11 recording athletic activity data in multiple workout
12 settings, and this is an example of -- there's plenty of
13 other examples I can dig up, but this is talking about
14 getting athletic data and being stored in -- in athletic
15 data storage 607.

16 And that's what I pointed to in my declaration
17 with respect to Johnson, which actually contains some of
18 these exact same passages as in the '220 patent about --
19 you know, if you look in paragraph 55 of my declaration,
20 it cites Johnson, which actually is -- is some of the
21 exact same text as we're looking at right here.

22 But with respect to why -- I mean, because --
23 you have to consider the '220 patent as -- as to what
24 it's teaching as a whole. And, you know, this

1 section's talk- -- in 19 is talking about recording
2 athletic activity data, and 17 is talking about how
3 athletic data can be stored in a athletic data storage.

4 So I think that -- that helps a person of
5 ordinary skill understand, you know, you -- you can't
6 include all detail in every passage of your
7 specification; otherwise, they would be 50 times longer.
8 So they talk about certain aspects in one place, other
9 aspects in a different place.

10 And I -- I think a person of ordinary skill
11 would understand that when it's talking about recording
12 athletic activity data in 19, that's talking about
13 storing the data, the athletic activity data, somewhere.
14 And -- and there's examples given, for example, in 17,
15 that a place to store athletic data is in the athletic
16 data storage 607.

17 BY MR. SEBBA:

18 Q. So why is the passage you're citing in
19 Column 17 more informative about the word "record" than
20 the passage on 19, 59 to 61, that uses the word
21 "record"?

22 MS. NGUYEN: Objection. Form.

23 THE WITNESS: I didn't say that it was more
24 informative. I'm just saying that this is the part that

1 uses "record." It does use "record."

2 And then this other passage in 17 kind of
3 supports that when you're recording something, it's --
4 it's done, for example, and it -- given here, storing
5 the athletic data in the athletic data storage 607 for
6 future use.

7 So that's just an example. It all informs the
8 meaning of "record" -- "record athletic activity
9 performed by a user" because the way -- the way to
10 interpret that is not to hyperfocus on one sentence and
11 say, "Well, that's the meaning. That informs the
12 meaning, and nothing else informs the meaning."

13 The way to -- that a person of ordinary skill
14 looks at the context is they look at the whole of the
15 '220 patent, and the whole of the '220 patent provides
16 the context. It's not just hyperfocused on, "Well, it
17 says this one thing right here, so that's all I'm going
18 to consider."

19 Because I -- I think a person of ordinary skill,
20 as I understand it, would be looking at the context of
21 the specification and the prosecution history, and
22 they -- in that context, they -- they -- that would
23 inform them of the meaning of -- the plain and ordinary
24 meaning of claim phrases.

1 BY MR. SEBBA:

2 Q. So Column 7 -- the portion of Column 17 you're
3 discussing is referring to Figure 6; correct?

4 A. I believe up -- starting around line 28, it
5 starts talking about Figure 6. And -- and the passage
6 is talking about, you know, Item 601, 603, 605, 607,
7 which are, if you look at Figure 6, the labels in
8 Figure 6.

9 Q. Okay. And then, in Column 19, starting on
10 line 59, we're talking about Figure 7; correct?

11 MS. NGUYEN: Objection. Form.

12 THE WITNESS: I mean, starting around line 37 of
13 Column 19, it does start talking about Figure 7, but
14 it -- again, figure -- the figures -- you know, it's the
15 overall context of the specification.

16 They do relate to each other in terms of the
17 different contexts; but, yeah, I'm not going to say
18 that, you know, that section is talking about something
19 else and not Figure 7. It's -- it's -- one of the
20 things it's discussing is in the context of Figure 7 in
21 the context of the specification.

22 BY MR. SEBBA:

23 Q. So why do you turn to a description of
24 Figure 6 to understand what "record" means in the

1 context of Figure 7?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: Yeah. In the context of the whole
4 specification, it's talking about "record athletic
5 activity data in multiple workout settings."

6 So this is not -- when you're talking about
7 different parts of the specification, if you already
8 talked about something in detail, you're not going to
9 rehash everything you've talked about previously in your
10 further descriptions of figures, which can leverage
11 other parts of the specification.

12 So when a person of ordinary skill looks at this
13 as a whole, they'd understand looking at this part of
14 the spec meaning -- means that, you know, it's in the
15 context of the whole specification, and other examples
16 within the spec can further provide details.

17 Just as we looked at in the summary, Column 1,
18 it talked about sometimes using GPS accelerometer data,
19 but the details are provided later in Column -- in
20 this -- this section we're looking at, Columns 19
21 through 21.

22 You know, it doesn't need to say all the details
23 everywhere where you're going to discuss this -- these
24 concepts; again, otherwise, these patent specifications

1 could be 10 to 50 times, or who knows how long, but
2 definitely longer if you're going to -- you know, every
3 time you use a word, have multiple sentences or
4 paragraphs to describe what you're talking about.

5 So, in the context of the whole specification,
6 people of ordinary skill are looking at it as a whole,
7 and they're able to look back at examples that they'd
8 understand would relate -- you know, that would provide
9 more detail that would understand to relate to later
10 concepts that are discussed.

11 And this is an example where I think a person of
12 ordinary skill would at least consider other portions to
13 provide more detailed information because -- because, by
14 the time we get to 19, we've already talked -- the spec
15 has already talked about how athletic data can be stored
16 and it's passed from one device to another, that that --
17 you know, and that -- what part of the subpart causes
18 the data to be stored.

19 It's already talked about that. So it doesn't
20 need to rehash all the details. And it's in the context
21 of the whole spec.

22 So I think there are other -- I don't think
23 that's the only example in 17 that I could find. It's
24 just one I found now for this, but I -- I'm pretty sure

1 there are other examples where it does talk a little bit
2 about that.

3 But -- but here you're now allowing a device to
4 record athletic activity data. And it's disclosing
5 that, you know, 601 receives data from the athletic
6 information collection display device 501, and I think
7 we can go look and see other parts of the spec.

8 And it doesn't -- it doesn't say here -- what
9 information right here. It's -- it's just saying it's
10 receiving data. But if you look at other parts of it
11 that talk about device 501, for example, 16 is -- is --
12 device 501, line 5, includes an interface 503 for
13 receiving data from the athletic information monitoring
14 device 201.

15 And then, if you go back to look at 201, it
16 talks about, Column 11, line 24, that "one example of an
17 athletic information monitoring device 201 that may be
18 employed according to various examples of the invention
19 to measure athletic information corresponding to a
20 user's athletic activity."

21 And that -- that -- now, if you look at
22 Figure 2, you know, it has a number of different devices
23 described as 201, including 207. And if you look down
24 at -- at 207 -- 2 -- it's describing Figure 3, 201 here

1 as -- as including in the box 207 on Figure 3, you know,
2 some sensors. You know, it talks about sensors for
3 measuring -- sorry, I'm at 11/61 -- measuring an
4 athletic parameter associated with a person wearing or
5 otherwise using the athletic parameter measurement
6 device 207. And it does talk about kind -- the kind of
7 information later in the section.

8 But my point is, if you had to repeat all of
9 that for -- whenever you say, "Oh, I'm going to record
10 something," you would -- it would -- you know, that --
11 that doesn't make any sense.

12 The POSITA is looking at the overall context of
13 '220 and what it's teaching. And, you know, it's going
14 to say more detail. You know, once it's provided the
15 foundation, it's going to be talking about these at a
16 higher level.

17 So now when we're saying -- you know, without
18 having to rehash, the details have been laid out early
19 in the spec. And, I mean, I think this is not an
20 unusual way to -- to write a -- to spec by layering
21 things like that.

22 But -- but in this example, it's talking about
23 record athletic activity data. So what are the examples
24 given earlier about more detail? And one of the

1 examples, as a POSITA would see, is Column 17.

2 And if you go back, it comes -- it goes down to
3 the athletic data coming from these devices from these
4 sensors, including -- including -- I'm not sure how it
5 says it, but something in a shoe which is collecting
6 information, which -- which, you know, I'm not sure if
7 it says it's an accelerometer, but -- I mean, I'd have
8 to take time to dig that out. But it's collecting the
9 athletic data, and then it's -- it's being stored in
10 this athletic data storage.

11 So, again, it's the overall context of the
12 specification that a POSITA is going to be looking at to
13 understand everything it's saying, and -- and, you know,
14 I think it's -- you know, when we're saying "record
15 athletic activity data," well, there are some details
16 provided about generally how that's done in the system.

17 BY MR. SEBBA:

18 Q. So you just discussed that the specification
19 mentions collecting athletic activity data; correct?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: I'm not sure exactly the words I
22 used, but I think, yeah, it is -- there's -- there was
23 some -- there was some discussion about Figure 5 at
24 Column 16 about athletic information collection and

1 display device 501 and -- and where it collects data
2 from.

3 BY MR. SEBBA:

4 Q. Okay. And then you've also pointed to at
5 least Column 17 where this specification describes
6 storing data.

7 A. That was one example where it discusses
8 storing data. I could probably find some others if you
9 wanted me to.

10 Q. Okay. So -- and my initial question was about
11 claim -- excuse me -- Column 19 where it discusses
12 recording data.

13 And what I'd like to know is why you turn to
14 the discussion of storing data to inform your
15 understanding of recording and not the discussion of
16 collecting data.

17 MS. NGUYEN: Objection. Form.

18 THE WITNESS: So, again, if you look at the top
19 of 20, there's a notion of this generating data and
20 recording data, and I think those are separate notions,
21 right, because the GPS device is always active but
22 recording is turned on.

23 And so, even if you collect data from this GPS
24 device but you're not recording it, you're not recording

1 it. There's an explicit -- here, it's -- it's saying
2 that the GPS device can be active, but recording is not
3 always turned on. It can be turned on and off.

4 And so the active recording data, I think
5 this -- this definition -- this -- what the PTAB pointed
6 to as supporting -- or I think they just pointed to it
7 as -- as they noted, that this is what the dictionary
8 says.

9 But, you know, if you're -- if you're storing
10 the data in a athletic data storage, I think that's
11 consistent -- and that's, by the way, what -- what I
12 said in my declaration with respect to Johnson in
13 paragraph 55. And it's the same -- the same disclosure
14 in '220 with the identical language, and that is
15 consistent with what the Board pointed to as causing
16 data to be registered on something in reproducible form.

17 And when you put it in athletic data storage and
18 when you later retrieve the data for -- for future use
19 or to display, it's -- it's in reproducible form as it's
20 stored.

21 BY MR. SEBBA:

22 Q. So you still haven't quite answered the
23 question.

24 So why, when you see the word "record" in

1 Column 19, line 60, do you look to a discussion of
2 storing data to clarify the meaning?

3 MS. NGUYEN: Objection. Form.

4 THE WITNESS: It's not that I'm clarifying the
5 meaning -- have to have a meaning clarified. There are
6 other exam- -- there are examples that a person of
7 ordinary skill would recognize as -- as examples of
8 recording -- what was the language? -- recording
9 athletic activity data.

10 And in the context of the '220 specification,
11 they can understand -- the POSITA can understand that,
12 oh, this is an example of recording athletic activity
13 data, where they take the data received, and if you
14 trace it back, it can come from the footwear sensor --
15 that -- I think that's one example given; I think there
16 are other examples -- transmitted through various
17 devices, received by a device. And then -- and then 601
18 has a athletic display -- athletic data display
19 configuration module that may store the athletic data in
20 the athletic data storage.

21 And I think they recognized that as providing
22 more detail about an example of -- of recording athletic
23 activity data.

24 BY MR. SEBBA:

1 Q. So the data is collected, tran- -- withdrawn.
2 Why is data collection not part of "record" as
3 it's used in Column 19, line 60?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: You know, if you're using it in
6 the sense that it's -- it's, you know, just to indicate
7 or read or collect data to -- to provide, if you look at
8 the top of 20, it's saying here that the GPS device is
9 always active, but recording is turned on and off.

10 So, if the GPS is providing data and it's --
11 it's -- you know, it does so by gathering information
12 from satellites and processing information it's received
13 to provide, you know, GPS coordinates that can just --
14 it can just be providing them when it's active, that --
15 that recording may be turned on and off.

16 So what -- what the spec is teaching by that,
17 that example of just collecting or just, you know, in
18 the sense of reading or indicating as -- as in this
19 definition in Exhibit 2003 to this deposition in
20 1(c)(2), that's -- that's incorrect because it's not
21 only limited to that -- that aspect because, if it were,
22 then it wouldn't make sense to then record it.

23 You could turn the recording on or off, because
24 if -- if it's always active, it's always providing the

1 data available to be read, then it doesn't make sense
2 that "record" should be limited to, you know, a
3 definition in -- in the sense that just being --
4 indicating or being able to read the values is
5 recording.

6 BY MR. SEBBA:

7 Q. So back to Column 19.

8 The sentence starting at 19/59 through 19/61
9 discusses that the -- or states that "The inclusion of
10 GPS device 713 and accelerometer 715 in a single mobile
11 device 700 allows device 700 to record athletic activity
12 in multiple workout settings"; right?

13 MS. NGUYEN: Objection. Form.

14 THE WITNESS: I think it says that. I wasn't
15 looking at it when you read the first part of it, but...

16 BY MR. SEBBA:

17 Q. Okay. So, here, we've got that -- let's stick
18 with just the GPS device 713 as an example.

19 The GPS device 713 collects data; correct?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: I mean, it doesn't use the word
22 "collect," so I'm not sure what you're asking about.

23 BY MR. SEBBA:

24 Q. In the context of the '220 patent, GPS device

1 713 -- withdrawn.

2 In the context of the '220 patent, does GPS
3 device 713 collect or capture athletic activity data?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: I mean, it doesn't know what it's
6 capturing. It's just providing the data that it's
7 designed to provide.

8 If this device is in a car and you're driving, I
9 don't think it knows the difference between -- and
10 you're driving slowly, perhaps -- it doesn't have
11 knowledge of -- of the type of data that it's -- or the
12 purpose for which its data is going to be used. It's
13 just going to produce data.

14 So -- so I don't think the GPS device knows that
15 it's capturing or outputting data that is to be used,
16 for example, to track a run that someone -- someone is
17 making.

18 BY MR. SEBBA:

19 Q. I didn't ask about the knowledge. I asked,
20 does it collect the data?

21 A. Collect -- I think you said, does it collect
22 athletic activity data?

23 Q. Okay.

24 A. But it doesn't know what it's generating, and

1 the data that it gets from satellites to calculate the
2 data isn't about athletic activity at all. It's about
3 just the information that's transmitting -- been
4 transmitted from satellites, which I understand may
5 include at the time -- the time -- exact time that it's
6 being sent from the satellite, for example. I believe
7 that's part of the information that a GPS receiver would
8 receive when it's locked into a satellite.

9 Q. Okay. So, at the top of Column 20, line 5,
10 where it refers to a GPS device that is always active,
11 you referred to that passage a couple dozen times today.

12 Is it your position that that device is not
13 relevant to the claim language here because it's not
14 collecting athletic activity; it's just collecting
15 satellite data?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: Well, the GPS device is producing
18 GPS coordinates that's being used to -- for example, to
19 track runs and whatnot. The GPS device doesn't know
20 what the purpose of the data it's producing is going to
21 be used for. So I don't think that's what I'm saying.
22 I think you're misunderstanding what I'm saying.

23 But my -- the point here about this passage I've
24 cited multiple times in response to your questions is

1 that it's saying here the GPS device is always active in
2 the sense that it's -- it's -- it is getting data from
3 the satellites, it's calculating GPS coordinates, it's
4 outputting those coordinates.

5 And that's -- that's what a person of ordinary
6 skill would understand for the GPS device to be active
7 because that's -- that's what they do when they're
8 active.

9 But the point here is that it says that the
10 recording is turned on and off. So that -- that helps
11 understand -- the POSITA understand in the context of
12 this specification and this passage that -- that
13 "record" is not to be limited to the process of the GPS
14 data getting satellite information, generating the data,
15 and outputting the data.

16 It should not be limited to only that because it
17 makes a distinction between that process, which is
18 always active, and then the recording of the data
19 therefrom.

20 And that's what it says in line 4, "recording of
21 the data" -- "of data therefrom," preceded by "the GPS
22 device."

23 So the recording is referring to the recording
24 of the data from the output of the GPS device, and --

1 and that's what I'm saying the person of ordinary skill
2 is looking at to understand that it's improper to limit
3 the definition of "record" to simply the GPS device
4 outputting the data that is based on the -- the
5 calculations from the -- from the satellite information
6 because it's making a distinction between that process
7 when the GPS device is active to the actual recording of
8 the data therefrom.

9 And it says that right there in lines 4 through
10 6, and -- and that's why it's -- that's why a person of
11 ordinary skill would not understand that the definition
12 of "record" is to be limited only to the process of the
13 GPS device generating its data and providing it, because
14 it still needs to be recorded. That data generated
15 therefrom the GPS device, the spec is saying that can be
16 recorded or it might not be recorded.

17 BY MR. SEBBA:

18 Q. Is the GPS device capturing and recording the
19 data -- excuse me -- capturing and saving the data?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: I mean, what -- what 20 is saying
22 here is that there's a separate recording of the data
23 there from the GPS device, and it's -- it's not
24 necessarily saying that the GP- -- it's not -- it's

1 not -- there's nothing here precluding maybe the device
2 itself from -- from recording, but certainly...

3 Well, it kind of is. I mean, my -- what I mean
4 is so the GPS device is -- is always active, but
5 recording is turned on or off. So, if you turn
6 recording off, you're turning recording off. It's not
7 saying that, oh, there's also recording in the GPS which
8 is always on, but -- because the GPS device itself -- I
9 mean, you can -- and I've purchased GPS devices where,
10 you know, you plug them into your computer, and it can
11 just, you know, dump out coordinates on a regular basis,
12 or you can, you know, read it at certain points. You
13 can configure it to do either one.

14 But -- and then I can -- I can record the data
15 that it's producing on my option, and I think this is
16 teaching something similar, which is the GPS device is
17 always active; that is, it always has -- is -- is
18 receiving the -- the information from satellites. And I
19 believe it needs at least three satellites to get
20 accurate data.

21 And then, you know, it will output the data or
22 have the data available. That's what it means to be
23 active, that it can now be producing readings of the GPS
24 coordinates.

1 And then the specification is saying, well, when
2 the GPS -- while the GPS device is always active, the
3 recording can -- may not be active; that is, the
4 recording might be off, the recording might be on, the
5 recording of the data therefrom.

6 And so what that's saying is that -- to a person
7 of ordinary skill, that's saying, okay, there's a GPS
8 device that can be active; it's -- it's constantly, you
9 know, getting this data from the satellites and
10 producing sets of coordinates that it can output, but
11 that, then, the recording of that data from the GPS
12 device can be turned on and can be turned off.

13 And so they'd understand from that -- this
14 disclosure that -- that limiting the definition of
15 "record" to be something in the sense of -- of 1(c)(2)
16 in Exhibit 2003 to this deposition wouldn't make sense.
17 It -- it's incorrect to limit it in such a manner
18 because there's a distinction between the -- the reading
19 of the -- the GPS device being always active, producing
20 data, and actually the recording of the data therefrom.

21 BY MR. SEBBA:

22 Q. Okay. Let's turn to Column 26, line 7.

23 It reads -- this -- this sentence reads,
24 "Interface 1045 may further display option 1054 for

1 displaying a route that the user run if the run was
2 recorded using a GPS device"; correct?

3 A. That's what it says.

4 Q. Okay. So, here, in this example, the GPS
5 device is performing the recording; right?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: It says, "recorded using." So
8 in -- in the sense that, you know, the GPS is part of
9 the recording, it doesn't say that there's nothing else
10 that can -- can be part of the recording process.

11 And if you look at 20 -- I mean, even if you're
12 arguing that that -- that's saying that GPS is
13 recording, the recording is -- there's this other
14 description here, which is saying that the GPS is always
15 active but recording is turned on and off.

16 So, even if the GPS is the device actually doing
17 the recording, it's still saying here that the recording
18 can be turned on and off.

19 BY MR. SEBBA:

20 Q. Are you an expert in GPS?

21 MS. NGUYEN: Objection. Form.

22 THE WITNESS: I've not worked at a GPS company,
23 but I have -- I mean, I know something about it. I
24 don't know what level of expertise I'd characterize it

1 as. And I think, if it was with respect to a patent or
2 something, I'd have to consider the spec to understand
3 what the level of ordinary skill is.

4 BY MR. SEBBA:

5 Q. Did you consult any materials regarding GPS in
6 preparing your declaration?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: I didn't -- I didn't rely on
9 anything else -- a document about GPS, but I -- I have
10 knowledge, kind of high-level working knowledge at
11 least, of GPS as I've read about it and used and
12 purchased separate GPS devices previously.

13 BY MR. SEBBA:

14 Q. Does it say anywhere in the spec that GPS
15 being active means it's receiving data from three
16 satelllites?

17 MS. NGUYEN: Objection. Form.

18 THE WITNESS: Yeah. I don't recall that
19 exact -- I don't recall any details about -- about
20 GPS --

21 BY MR. SEBBA:

22 Q. Okay.

23 A. -- to that level in the spec, but I -- I don't
24 have it memorized. It's very long.

1 Q. So back to the example in 20 -- in Column 26.
2 This describes a run being recorded using a
3 GPS device; correct?

4 A. Sure. It does say that.

5 Q. And that means that the GPS device is part of
6 the recording. I believe that -- or is that correct?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: I think -- I think what I was
9 saying is that it certainly is being described as -- as
10 part of -- of the process -- as being used as part of
11 the process for recording --

12 BY MR. SEBBA:

13 Q. Okay. But --

14 A. -- but it isn't necessarily the only thing
15 that's used. It doesn't preclude other -- other things.
16 I mean, it could have easily said "was recorded using a
17 memory."

18 Q. But it doesn't; correct?

19 A. It doesn't, but it doesn't preclude the fact
20 that -- that other components are part of the
21 recording -- that can be part of the recording.

22 Q. Okay. But it does indicate that the GPS
23 device is part -- is part of the process of recording?

24 MS. NGUYEN: Okay. Form.

1 BY MR. SEBBA:

2 Q. Correct?

3 A. I mean, it certainly -- you know, in the
4 context it certainly can generate data that's -- that's
5 recorded. In -- in -- you know, earlier in 20, it does
6 talk about the GPS device, the -- or recording of data
7 therefrom.

8 Q. But here it talks about the GPS device being
9 part of the recording. And so if the GPS device is part
10 of the recording and the GPS device is what is
11 generating or collecting data, then that is part of the
12 recording.

13 A. I mean, you're using the word "part of the
14 recording," but it says, "recorded using a GPS device."

15 Q. When I asked earlier if the GPS device was
16 conducting the recording, you responded the GPS is part
17 of the recording.

18 A. Well, it's part of the process of recording
19 the data, certainly, because one way it can be part of
20 the process is it -- it can generate the processes of
21 data that's being reported, for example.

22 But this is just saying -- it's saying what
23 it's saying, if the run was recorded using a GPS device.
24 And in the context of the spec, it's using the GPS

1 device to generate data that is athletic activity --
2 data about the athletic activity is about a run, and
3 there are portions that -- that say, well, you could
4 turn the recording of that data off. Even -- even if
5 the data is still being generated by the GPS device, the
6 recording can be turned on and off.

7 Q. So, when the data is generated by the GPS
8 device and then saved, is that recorded using the GPS
9 device?

10 MS. NGUYEN: Objection. Form.

11 THE WITNESS: I mean, it's -- it's -- of the
12 overall process, it's -- it may be part of that in the
13 sense that the GPS device may be producing the data that
14 is to be recorded.

15 BY MR. SEBBA:

16 Q. And so you're saying that when a GPS device is
17 producing the data that is to be recorded, that is -- in
18 that scenario, is something being recorded using the GPS
19 device?

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: What I'm saying is that an example
22 of -- of -- a person's looking at this. Yes, it says
23 recorded using a GPS device.

24 An example given, which, you know, is the GPS

1 device being active and a recording made of the data
2 therefrom -- and recording the data therefrom. And so
3 that's an example of the GPS device producing some data.
4 And then, in this sense, the recording is actually on
5 because now it's recorded using a GPS device.

6 So I think an example of that is -- is the GPS
7 device being active, being on, and recording is turned
8 on.

9 BY MR. SEBBA:

10 Q. So your entire opinion that "record" in the
11 '220 patent means to save data is based on the portion
12 of the specification at the top of Column 20, which says
13 that recording can be turned on and off?

14 MS. NGUYEN: Objection. Mischaracterizes
15 testimony.

16 THE WITNESS: Yeah. That's not what I'm saying.
17 I'm sorry. I shouldn't have said "yeah." That's --
18 that is -- that is not what I'm saying.

19 My -- my point here is that patent owner is
20 arguing, as I understand it, if I understand correctly,
21 that the meaning of the word "record" should be limited
22 to a very narrow definition, which in some sense, as I
23 see now, this Exhibit 2003 to this deposition is -- is
24 kind of limited to the sense of 1(c)(2), which is that a

1 thermometer recorded 90 degrees, indicating that that's
2 the reading, to indicate or read.

3 And my point is that that's incorrect, and the
4 reason it's incorrect is because the specification gives
5 an example of the GPS device always being active, but
6 recording can be turned on or off.

7 So my point here is that this is why that's an
8 incorrect narrowing of the definition of "record" as
9 provided by the patent owner in their patent owner
10 preliminary response.

11 It's incorrect because the specification makes
12 this distinction between when a device is active, that
13 is, providing data, and the recording of the data
14 therefrom by -- by having the recording be able to be
15 turned on or off.

16 The examples I gave of -- of record athletic
17 activity by a use- -- performed by a user are examples
18 that -- that, from the specification, a person of
19 ordinary skill would understand they are within the
20 scope of that claim element.

21 And providing parallel disclosures in the -- in
22 the prior art in both Johnson -- which the disclosures
23 that I cite for supporting that read -- mirror exactly
24 the passages in the '220 patent with respect to what I

1 discuss in paragraph 55 and the citations from
2 paragraphs 68, 69, 82, 86, and 88 of Johnson. I believe
3 those passages are identical to passages in the '220
4 patent and in Sutton when I provided to -- citations to
5 similar examples that are parallel or identical to the
6 examples that a person of ordinary skill.

7 The reason I've been focusing on -- on
8 paragraph 20 -- or, sorry, Column 20 or -- this is --
9 it's a different issue. The issue there is with respect
10 to patent owner's proposed construction of the word
11 "record" in which it appears to me that the -- that the
12 patent owner wants to limit it to -- I'm going to
13 paraphrase here, but I'll -- this might not quite
14 exactly be right, but the generation or collection --
15 the mirror, generation, or collection or indication of
16 providing the data and only that.

17 And -- and that's improper, and it's wrong. And
18 the reasons it's wrong isn't because this, you know,
19 "record" -- you know, this citation or whatever we were
20 just looking at in not -- in not Column 20, it's because
21 in Column 20 it's giving the example of the GPS device
22 always being active but recording is turned on an off.

23 So, in that example given in the spec, the GPS
24 device is, you might say, generating data, collecting --

1 collecting data that it's processing to generate the
2 data.

3 And -- and then, separately, the spec says that
4 that data from the GPS device -- the recording of that
5 data can be turned on or off. So that's why -- that's
6 why -- the point there is that that's why the narrowing
7 of the definition or the -- the plain and ordinary
8 meaning of the term "record" by a person of ordinary
9 skill at the time of the invention in the context of the
10 specification is improper because the specification -- a
11 person of ordinary skill looking at it -- and they'd
12 look at this passage, and they'd say, "Oh, it's making a
13 distinction between the GPS always being active and
14 the -- and the recording being turned on or off."

15 And so I think that's -- that's an example of
16 why narrowing it to only that as -- as proposed by the
17 patent owner is -- is wrong.

18 BY MR. SEBBA:

19 Q. Okay. None of that answered the question.

20 The question is not what is your take on
21 patent owner's view.

22 The question is, what support is there for
23 your opinion that "record" cannot include enca- --
24 cannot include capturing data except for the one passage

1 at the top of Column 20 that you've cited a number of
2 times?

3 MS. NGUYEN: Objection. Form.

4 THE WITNESS: That's the support for why the --
5 the -- the meaning of "record" should not be limited to
6 only a sense of indicating capturing and producing data
7 without actually recording it when the recording is
8 turned off.

9 So the GPS device is active, yet it still has
10 GPS coordinates. It's computing them. It can be still
11 outputting them, and --

12 BY MR. SEBBA:

13 Q. So you're still -- this isn't --

14 A. -- data therefrom -- therefrom --

15 Q. This isn't the question.

16 A. The data therefrom the GPS device can be --
17 the recording of that data can be turned on or off.

18 Q. Okay. That's still not answering the
19 question.

20 Is there -- except for the passage that you've
21 cited at the top of Column 20, can you point me to any
22 examples in the specification that show that recording
23 cannot include capturing data as well as saving data?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: My opinions about whether it
2 should be limited only to that, which is what I
3 understand the patent owner is arguing, to only the
4 collection or --

5 BY MR. SEBBA:

6 Q. No. My question is not about whether it's
7 limited to only that. My question is about whether it
8 can include capturing and saving together.

9 MS. NGUYEN: Same objection.

10 THE WITNESS: I mean, so the analysis that I did
11 with respect to the prior art was with respect to
12 examples that would be understood by a person of
13 ordinary skill to be -- record athletic activity
14 performed by the user.

15 And because they're exactly parallel discussions
16 in the prior art as -- parallel or identical, that's why
17 the prior art discloses that claim element. That's the
18 analysis I did for one.

19 What you're asking about is a separate question
20 that -- that I didn't understand was the patent owner
21 argument. And I haven't made that presentation in my --
22 in my declaration.

23 So if that comes up as a new proposed
24 construction or patent owner argument of what claim

1 owner meaning would be, then I -- I think I probably
2 would take some time to respond to that.

3 But that's not the analysis that I did in the
4 declaration. It's not there with respect to exactly
5 what you're asking.

6 And with respect to the patent owner's reply,
7 that's not what I -- what I understand the patent
8 owner's position to be. So that's a new question I
9 haven't considered as of right now.

10 MS. NGUYEN: Counsel, we've been going for an
11 hour. Can we take a break?

12 MR. SEBBA: Just a couple more questions.

13 BY MR. SEBBA:

14 Q. Does the term "record" in the '220 patent
15 include capturing data?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: I mean, my point here is that it
18 shouldn't be limited only to that -- that --

19 BY MR. SEBBA:

20 Q. That's fine, but that's not the question.

21 Can -- does it include capturing data as well
22 as potentially other elements?

23 MS. NGUYEN: Objection. Form.

24 THE WITNESS: Again, if -- if that is proposed

1 as -- as some new claim construction by the patent
2 owner, then I would -- I would probably take some time
3 to consider that and perhaps respond in a supplemental
4 declaration.

5 BY MR. SEBBA:

6 Q. So, as we sit here today, do you have an
7 opinion as to whether "record" in the '220 patent can --
8 includes capturing data as well as potentially other
9 elements?

10 MS. NGUYEN: Objection. Form.

11 THE WITNESS: Well, I didn't write about that in
12 my original declaration, so I don't have a written
13 opinion.

14 And because it's slightly different from my
15 point about the -- whether it's limited only to that
16 type of step, as I understand it from the patent owner's
17 preliminary response, I hadn't considered the separate
18 new proposed construction, if it's actually going to be
19 proposed at all, by -- by patent owner.

20 MR. SEBBA: Okay. We can take a break.

21 THE VIDEOGRAPHER: Stand by.

22 We are now going off the record. The time is
23 2:32 p.m.

24 (2:32 p.m., off the record.)

1 (2:43 p.m., on the record.)

2 THE VIDEOGRAPHER: We are now going back on the
3 record. The time is 2:43 p.m.

4 BY MR. SEBBA:

5 Q. Welcome back.

6 A. Thank you.

7 Q. So I believe you stated -- withdrawn.

8 So let's look at the top of Column 41.

9 Starting on line 3, we've got "Figures 35A to
10 35C illustrate example route summary interfaces in which
11 a map may be displayed if the run was recorded using a
12 GPS or other location determination system while non-GPS
13 recorded runs may not" -- "might not include a map";
14 correct?

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: Sure. I think you read that
17 correctly.

18 BY MR. SEBBA:

19 Q. Okay. So, again, here, it -- the '220 patent
20 discusses "recorded using a GPS"; correct?

21 A. That's what it says here in 41. Those are the
22 words it uses.

23 Q. Okay. And then it also says "non-GPS
24 recorded."

1 MS. NGUYEN: Objection. Form.

2 THE WITNESS: It does say that later.

3 BY MR. SEBBA:

4 Q. So do you see anything here that would prevent
5 recording from including -- withdrawn.

6 Do you see anything here that suggests
7 "recorded," as used in Column 41, does not include
8 capturing data?

9 MS. NGUYEN: Objection. Form.

10 THE WITNESS: That's not -- that wasn't my point
11 over this previous discussion.

12 My point is -- of what we're talking about, was
13 that patent owner's attempt to, as I understand it,
14 limit the meaning of "record" in a way that would just
15 be the -- the generation or the production of data
16 from -- from, say, a GPS device and limit it to only
17 that is improper for the reasons I've already given.

18 I haven't considered other proposed
19 constructions or meanings of the plain and ordinary
20 meaning because that's not how I understood the patent
21 owner's preliminary response.

22 So I haven't had a chance to consider that yet.
23 And in doing so, would -- would -- I'd still want to
24 look at the whole context of the specification and

1 the -- the meaning of -- of, you know, the various claim
2 terms in that context.

3 But based on what we've already discussed and
4 what I've pointed to, it shouldn't only be limited to
5 the step of generating or maybe what you're saying,
6 collecting. I'm not even sure what data you -- where --
7 what is doing the collecting and what you're asking
8 about.

9 But if it's laid out in a concise manner in a --
10 in a -- in patent owner's response, I may be asked to
11 respond to some construction that you may propose.

12 BY MR. SEBBA:

13 Q. So you haven't considered that "record" could
14 include capturing data?

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: So the analysis that I did with
17 respect to the initial dec- -- my initial written
18 declaration, which is all that is in the written record
19 of the case now, as I understand it, from me, is that
20 the way I -- I looked at the phrase -- claim element
21 "record athletic activity performed by a user" was I
22 reviewed it in the context of the specification.

23 And I -- I saw examples of what a person of
24 ordinary skill would have understood to be within that

1 claim scope, and I found parallel, if not identical,
2 disclosures in the prior art, in particular Johnson,
3 which -- which I used the exact same language that also
4 appears in the '220 patent that I cited to in Johnson to
5 talk about the storing of data. We looked at that
6 earlier.

7 And -- and because they're parallel disclosures
8 and because these are the examples given in the
9 specification of example -- as a person of ordinary
10 skill would have understood it as "record athletic
11 activity performed by the user," that's how I -- that's
12 how I looked at what the prior art disclosed with
13 respect to that -- that phrase or that claim element.

14 And with respect to the patent owner preliminary
15 response, which I did review and took some time to look
16 at, the phrases that we're talking about with respect to
17 the passages, for example, in 20, Column 20, are why the
18 spec is say- -- why -- why the proposed construction or
19 proposed plain and ordinary meaning of "record" should
20 not be limited to only, in some sense, what I'm seeing
21 in Exhibit 2003 to this deposition to the "Indicate,
22 Read" definition.

23 But it's how I generally understand the patent
24 owner's preliminary response to read and be arguing

1 right now, because -- because I didn't see that -- that
2 the -- the patent owner was arguing that collection is
3 only part of recording stuff. That could also include
4 storing. I haven't taken much -- I haven't had the
5 chance to consider whether that would be -- what the
6 ramifications of that proposed construction would be to
7 the -- to the -- to the case.

8 And so should the patent owner propose that --
9 that plain and ordinary meaning or construction, then I
10 may be asked to respond about it in a supplemental
11 declaration, but I haven't seen that proposed yet.

12 I haven't ex- -- I haven't -- you know, I've
13 told you the things I've considered and why and then
14 some of the reasons I think that the patent owner's
15 current proposed meaning of "record" -- that it should
16 be limited in a sense that, in the way that the patent
17 owner preliminary response reads, as I understand it, is
18 wrong, and I've provided those reasons.

19 But now you're asking about something different,
20 which I haven't seen proposed yet. So if I see a new
21 proposed meaning of the -- meaning of -- of -- plain and
22 ordinary meaning of "record," I may be asked to respond
23 to it, and I will take my time to do that. I believe
24 the proper place might be a supplemental declaration.

1 BY MR. SEBBA:

2 Q. Okay. Let's, for the rest of the day, set
3 aside your understanding of -- or what you think the
4 patent owner's argument is. Okay? We're asking you
5 about your understanding when you were developing your
6 declaration or now. We want to know what you think
7 about the '220 patent.

8 So, when you compared the '220 patent to the
9 prior art, your analysis of the prior art -- withdrawn.

10 When you compared the '220 patent to the prior
11 art when you were preparing your declaration, you did
12 not analyze the prior art with the understanding that
13 recording athletic information could include measuring
14 data; correct?

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: I mean, I discussed the
17 measurement of -- of athletic information corresponding
18 to user's athletic activity, but the rea- -- part of the
19 reason why is that those were part of the disclosures in
20 Johnson that led up to that athletic data that's
21 measured and being transmitted and received, and then
22 that data is the data that's stored in the athletic data
23 storage 607.

24 And so I believe -- and I -- I verified some of

1 these. I believe that all of them for Johnson -- the
2 citations in Johnson, as I discussed in paragraph 55,
3 are exactly the same words as used in the '220 patent.

4 And -- and I did consider the context and
5 specification of the '220 patent, that, yes, there is
6 some measurement of -- of athletic information.

7 That data is passed to various devices,
8 transmitted to devices, received by devices, and then
9 stored -- as described by the '220 patent and Johnson --
10 as athletic data that's stored in the athletic data
11 storage 607.

12 And that mirrors -- the Johnson one is the one
13 that's identical to the disclosure of what a person of
14 ordinary skill would understand would be an example
15 of -- of "record athletic activity performed by a user"
16 as claimed in -- as one of the elements of Claim 11.

17 And so -- so this is a description of this
18 overall -- you know, there's measurement, there's --
19 there's transmitted, there's receiving, and there's
20 storing, and there's causing to be stored, because part
21 of that athletic display configuration module -- or part
22 of device 601 causes that data to be stored.

23 And -- and so, with respect to Johnson, those --
24 those passages as -- are identical disclosures to what's

1 disclosed in the '220 patent, I mean, down to the
2 identification labels of -- of devices. And I believe
3 Figures 1 through 6 are identical, if -- pretty much
4 identical between Johnson and the '220 patent.

5 And so, because of that, that's the analysis,
6 which is, all right, here's the claim term. Record
7 athletic activity performed by a user. That's the claim
8 term.

9 In the context of a specification, what -- what
10 is that -- what does that mean and what informs it?
11 Well, here's an example. And I found an example in the
12 '220. And lo and behold, there's identical examples in
13 the Johnson. And there's very similar, if not
14 identical, disclosures in Sutton as well.

15 And so, because those are examples of what's --
16 what a person of ordinary skill would have understood
17 reading the spec to be what that claim covers -- an
18 example of one of the things the claim covers, the
19 analysis I did was finding similar examples that
20 mirrored or were identical to the disclosures in the
21 '220 patent.

22 And so what I considered was the overall phrase,
23 the context of the specification, and the examples that
24 a person of ordinary skill would have understood are --

1 are within the scope of the claim elements and finding
2 similar or parallel or identical disclosures in the
3 prior art.

4 BY MR. SEBBA:

5 Q. Okay. So you didn't really answer the
6 question there.

7 You've said that if you wanted to do an
8 analysis of whether "record" included capturing, you
9 would probably need to do a supplemental declaration.
10 So this seems like an -- a simple question.

11 When you were preparing your declaration, did
12 you consider whether the prior art -- or withdrawn.

13 When you were preparing your declaration and
14 reviewing the prior art, did you consider that the term
15 "record" could include measuring?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: So when I was instructed with
18 respect to the claim terms about -- I was instructed to
19 basically apply the plain and ordinary meaning of a
20 person of ordinary skill at the time of the invention in
21 the context of the specification, and -- and that's what
22 I did.

23 And so one way a person of ordinary skill would
24 look at what's included in the claim scope is -- is --

1 to understand what the claim elements mean is to look at
2 the specification and what does it say about "record
3 athletic activity performed by a user."

4 And so there are a lot of places where it talks
5 about recording athletic activity. And in many of those
6 places, it talks about recording athletic activity data
7 or athletic information or athletic data or athletic --
8 there's variations of this used throughout the spec.

9 We can go look for all those. And I reviewed
10 the totality of -- of those references and then -- to
11 understand that.

12 And in that review there were actually some good
13 examples of -- of what would be understood by a POSITA
14 to be within the scope of that claim element, and so I
15 cited to some of them -- or -- well, I cited to parallel
16 or identical disclosures in the prior art, some of which
17 are literally identical to the disclosures in the '220
18 patent, to support the understanding of what a POSITA
19 would have understood were part of the claim scope of
20 "record athletic activity performed by a user."

21 And so because I found -- so that's the
22 declaration. So at that point the -- you know, I was
23 looking at plain and ordinary meaning of the terms in
24 the context of the specification at -- by a POSITA at

1 the time of the invention.

2 So it wasn't until the patent owner preliminary
3 response -- until I reviewed that, that I saw that
4 patent owner is now proposing a very -- a different -- a
5 very narrow reading of what "record" should mean to --
6 to a person of ordinary skill as to plain and ordinary
7 meaning.

8 It's kind of an implicit construction, I think,
9 but it's -- it's trying -- the patent owner is very much
10 trying to narrow the meaning of -- the plain and
11 ordinary meaning of "record."

12 And I looked -- I had -- because that came out a
13 while ago, I did have a chance to kind of consider that
14 construction or proposed plain and ordinary meaning.
15 And -- and there are -- there are -- there are reasons
16 why, in the spec as disclosed, I think that's incorrect.

17 And the fact that it talks about the GPS
18 being -- is always active, but recording can be turned
19 on and off is -- is part of my reasoning why that's
20 incorrect because it's -- because the meaning of the
21 word "record" here isn't to just generate the data at
22 the GPS device but is to actually record the data there
23 from the GPS device. And so that's why I think
24 narrowing it to that is improper.

1 Now -- now you're suggesting that -- that there
2 might be another construction, and I haven't seen that
3 proposed yet in writing anywhere. It's not something
4 that I -- I -- it's not a construction that I've had the
5 time to consider.

6 So in order to consider yet another different
7 proposed plain and ordinary meaning of "record" or
8 construction of -- of the phrase at issue, that's
9 something that would take some time. So -- but -- but
10 because I didn't understand that that was even a
11 proposed meaning, it's -- it didn't factor into my
12 analysis.

13 And -- and I'd have to see what the actual
14 proposed meaning would be to really consider how that
15 affects my analysis. It may not affect it at all,
16 but -- but I still think it's improper for the kind of
17 narrowing that I understand the patent owner to be
18 proposing for "record" in the preliminary response.

19 And I'm not sure that I said -- my point is I
20 think that's incorrect partly for the reasons I've given
21 here today.

22 BY MR. SEBBA:

23 Q. So you're saying that until today you didn't
24 understand that it was proposed -- withdrawn.

1 Until today you didn't consider whether
2 "record" could include measuring in the context of the
3 '220 patent; is that right?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: Well, I did discuss measuring the
6 data, measuring athletic information. I pointed to some
7 citations, but I didn't understand that the focus of the
8 patent owner would be on -- more on the measuring as
9 recording as opposed to the recording as recording.

10 And so -- so I had some discussion in my
11 declaration about measurement of athletic information,
12 citing to, in this particular case, Johnson, but I was
13 describing an overall series of steps that Johnson
14 discloses that includes taking that information,
15 trans- -- you know, transmitting the measured data to a
16 device which then transmits it to another device which
17 then receives the data which then stores the athletic
18 data in the athletic data storage.

19 And -- and so if now the focus really on
20 recording is measuring and not recording, I haven't seen
21 that proposed anywhere yet other than in the preliminary
22 response where it appears that recording isn't actually
23 recording but it's really just indicating or reading or
24 imagings on the other side of the lens. And that's --

1 that's recording and should be limited to that
2 understanding.

3 And -- and because that's what I understood from
4 the preliminary response, I did take the time to -- to
5 review portions of the '220. And this -- and some of
6 the passages I found, I think, are reasons why I think
7 that limiting of the plain and ordinary meaning is
8 improper.

9 BY MR. SEBBA:

10 Q. Okay. So let's step back to when you were
11 preparing your declaration.

12 When you were preparing your declaration, you
13 had not seen any of patent owner's arguments.

14 A. They hadn't -- they hadn't been available yet.

15 Q. Exactly.

16 And you conducted your analysis based on your
17 understanding of -- of the plain and ordinary meaning of
18 "record" in the context of the '220 patent.

19 A. Yeah. And I did that partially by looking for
20 examples given in the '220 patent of what I under- --
21 what a person of ordinary skill would have understood
22 "record athletic activity performed by a user" would
23 include.

24 And -- and there's -- there's numerous

1 examples, and -- and I did look for some of those
2 examples in the prior art. And some -- some of the
3 disclosures in the prior art were identical to those --
4 those examples of having some data measured,
5 transmitting it to various places, receiving it, and
6 then -- and causing it to be stored and -- in both
7 Johnson and Sutton.

8 Q. Great. So you considered the examples, but
9 you did not consider whether "record" could include
10 measuring or capturing; correct?

11 MS. NGUYEN: Objection. Form.

12 THE WITNESS: The point there is that, you know,
13 I didn't understand that there was a dispute about
14 "record" is not record but "record" is measure or
15 "record" is not record but "record" is collect.

16 So now that that -- that that has been
17 proposed -- I didn't think the word -- there was --
18 well, I was instructed just to apply plain and ordinary
19 meaning, and -- and I did.

20 And I did so in the way that I've described many
21 times here today. I looked at -- you know, looked at
22 the specification. That's the context in which the
23 plain and ordinary meaning would be understood by a
24 person of ordinary skill at the time of the invention.

1 I found examples of -- of what a person of
2 ordinary skill would have understood to be "record
3 athletic activity performed by a user."

4 And, you know, if the prior art discloses those
5 same examples, I don't need to consider whether "record"
6 is -- is measuring, "record" is collecting, or "record"
7 is recording, or "record" is only measuring, "record" is
8 only collecting, because the examples that a person of
9 ordinary skill would have understood to be within the
10 claim scope of "record athletic activity performed by a
11 user," are recognized by a person of ordinary skill in
12 the art through some of these examples given.

13 And I found similar or identical -- parallel or
14 identical disclosures in the prior art. That's the kind
15 of -- part of this analysis that I did. I had no -- I
16 didn't have an idea that the patent owner would come
17 say -- would come back and say, "Well, 'record' isn't
18 record. It's really only measure."

19 And -- now, I may be a little flip about that
20 description, but that's what I understand, is that
21 "record" -- the patent owner position now is "record"
22 should be limited to kind of the -- the -- I'm not sure
23 what's -- again, I don't have the patent owner
24 preliminary response in front of me, but my

1 understanding of it and my reading of it is that
2 "record" is really just the data-generation step or
3 collection or -- I mean, I'm not sure what words to use.

4 But -- but not that it includes it, that is
5 limited to it. So that -- that's -- and, obviously, I
6 didn't have that at the time of my declaration, so I
7 didn't -- I wouldn't have considered it at the time I
8 wrote the declaration.

9 BY MR. SEBBA:

10 Q. So, just to be clear, you did not consider
11 whether "record" could include measuring at the time you
12 wrote the declaration?

13 MS. NGUYEN: Objection. Form.

14 THE WITNESS: That's not exactly what I'm
15 saying. What -- I told you my analysis isn't really --
16 it was with respect to what the patent -- what the
17 POSITA reading the -- the declaration -- sorry, the
18 patent -- reviewing the specification would have
19 understood "record athletic activity performed by a
20 user" to mean.

21 And I did -- I -- I did that analysis with
22 respect to examples that I found in the specification as
23 to what -- just that. And a discussion about
24 athletic -- you know, recording athletic activity data,

1 recording athletic information, it -- the references
2 about recording with respect to the athletic -- athletic
3 activity also, you know, talked about the data --
4 athletic activity data and the information.

5 And that's consistent with, you know, if you're
6 doing a run and you're getting GPS data, well, that data
7 in that case would -- would be considered athletic
8 activity data because it's about your run.

9 So it's the whole of the '220 patent I looked
10 at, and they're examples that a person of ordinary skill
11 would understand would fall in the scope of "record
12 athletic activity performed by a user."

13 And then I found parallel identical disclosures
14 in, you know, Johnson and Sutton. And that's what I
15 wrote up. And so --

16 BY MR. SEBBA:

17 Q. Did --

18 A. -- it -- you know, with respect to what you're
19 asking about, it -- it wasn't exactly an analysis, but
20 it's not that I didn't consider what the specification
21 wrote.

22 I'm not sure that the specification talks
23 about "collect." I don't recall. It's very long, so it
24 may well.

1 If you want to point me to some -- somewhere
2 in the spec that talks about collecting data, I'll be
3 happy to take a look, but if you're now asking me about
4 a new construction that you're proposing, I think the
5 appropriate place to understand is the patent owner
6 response, at which point, you know, I'll have some time
7 to consider the ramifications of and whether that's
8 correct or not.

9 Q. And the reason the appropriate place would be
10 the patent owner's response is because you didn't
11 consider it when you were preparing your declaration.

12 MS. NGUYEN: Objection. Form.

13 THE WITNESS: Well, I -- I don't know what -- I
14 mean, can you point me somewhere where the word
15 "collect" is used in the specification?

16 BY MR. SEBBA:

17 Q. I'm asking --

18 A. I mean, if the word "collect" was used in the
19 specification, I may have -- with respect to athletic
20 data, I may have considered that.

21 But I don't remember everything I looked at.
22 I don't remember the specification word-for-word. But I
23 don't -- I don't remember looking specifically or seeing
24 the word "collect" because I'm not sure -- I mean, the

1 analysis I did with -- was respect to -- was with
2 respect to "record athletic activity performed by a
3 user" and -- and what would be in that claim scope.

4 And examples given in the spec that a person
5 would understand would fall under that, that's kind of
6 what I looked for. And then there were very similar or
7 identical disclosures in the prior art.

8 Q. Did you review the claims of the patent other
9 than those that you analyzed here?

10 MS. NGUYEN: Objection. Form.

11 THE WITNESS: I looked -- I read all of the
12 claims.

13 BY MR. SEBBA:

14 Q. Did you consider how the word "record" or
15 "recording athletic activity" was used in other claims?

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: I mean, I -- I looked at them.
18 Are you referring to a specific claim you would like to
19 point me to that's not challenged?

20 BY MR. SEBBA:

21 Q. Sure. Let's look at Claim 1.

22 Claim 1 of the '220 patent reads "A method
23 comprising," and then there's a first limitation after
24 that; correct?

1 A. Yes.

2 Q. Okay. And that first limitation reads
3 "receiving, from an athletic activity monitoring system,
4 athletic activity data recorded during athletic activity
5 performed by a first user, the athletic activity data
6 including route information."

7 Did you consider this claim term?

8 A. Yeah. I mean, I probably looked at this claim
9 many times actually, because I was trying to
10 understand -- this is part of the overall specification,
11 so I -- I did look at this.

12 Q. And here -- how do you -- does "recorded"
13 include capturing or collecting data here?

14 MS. NGUYEN: Objection. Form.

15 THE WITNESS: Well, I mean, the wording in
16 Claim 1 is slightly different because this is -- is
17 talking about data which has already been recorded;
18 whereas, Claim 11 is -- is talking about "record
19 athletic activity performed by the user," which is kind
20 of more of a "now" sense.

21 So, I mean, I looked at Claim 1. I know I
22 looked at it numerous times. And I did -- I did look at
23 and consider what this said, but Claim 11, the wording
24 is -- is not the same.

1 BY MR. SEBBA:

2 Q. So because the wording in Claim 11 is
3 different than the wording in Claim 1, you did not
4 determine what "recorded" means in Claim 1; is that
5 right?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: I wasn't analyzing Claim 1, so
8 there wasn't -- I'm not looking for -- I mean, Claim 11
9 is chall- -- is one of the challenged claims, and
10 Claim 1 is not.

11 So I looked at Claim 1, but in order -- it's
12 really the plain and ordinary meaning of Claim 11 that
13 is -- is what is important here because that's the --
14 that's the claim that's being challenged as to its
15 patentability.

16 I mean, I considered Claim 1, but -- but the
17 language is different in -- the language that I
18 performed my analysis with respect to is -- with respect
19 to the language in Claim 11.

20 BY MR. SEBBA:

21 Q. So you did not form an opinion as to the
22 meaning of "recorded" in Claim 1 when preparing your
23 declaration; is that correct?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: I mean, when I'm doing my
2 analysis, I look at other claims. The claims actually
3 can inform things that may or may not be part of the
4 claim scope, for example.

5 Like, you know, if -- if there was a dependent
6 claim that later said "where recording includes" blah,
7 then I would say, "Well, the -- the independent claim
8 recording is broader than" blah because the dependent
9 claim says -- I mean, that's part of the reason I look
10 for -- look at all the rest of the claims, even the ones
11 that are not asserted -- or challenged, rather.

12 And so, I mean, I looked at the language of
13 Claim 11. I looked -- I did look at all of the claims.
14 I looked at all of the dependent claims of Claim 11,
15 including the ones not challenged. That's part of the
16 way I do my analysis.

17 And -- and it's -- it's -- the exact language of
18 Claim 11 is what's important in terms of the challenged
19 claims, and I consider the whole specification because
20 the context of the specification is what's important as
21 to -- as -- as what informs the person of ordinary skill
22 at the time of the invention what the plain and ordinary
23 meaning of -- of claim terms is.

24 BY MR. SEBBA:

1 Q. Okay. You still haven't answered the
2 question.

3 When you were preparing your declaration, did
4 you form an opinion as to what the plain and ordinary
5 meaning of "recorded" as used in Claim 1 in the
6 '220 patent was?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: I mean, the -- the -- I consider
9 all of the language of the specification and -- and the
10 claims. That's -- it's part of what I consider to help
11 me inform the meaning of the challenged claim elements.

12 And the Claim 11 -- I mean, it's already in a
13 different sense that Claim 1 is talking about data --
14 athletic activity data that has been recorded, and
15 Claim 11 is talking about "record athletic activity
16 performed by the user." And -- and that's something
17 that the apparatus is caused to do by executing the
18 instructions in a computer-readable memory.

19 And so -- so the -- the claim term analysis that
20 I do is with respect to the challenged claims, but other
21 claims may inform the meaning. Claim 1 is not
22 challenged, and I wasn't asked to analyze the references
23 with respect to Claim 1, I don't think. I mean, I don't
24 know why I'd do that. I don't think I've done that

1 before to -- unless -- unless some claims are dropped
2 and then I had already done that, you know.

3 BY MR. SEBBA:

4 Q. So still haven't answered my question.

5 Did you form an opinion as to the meaning of
6 "recorded" in Claim 1 of the '220 patent when you were
7 preparing your declaration?

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: So, with respect to the challenged
10 claims, Claim 1 is not being challenged. It's different
11 language.

12 I formed -- I did consider in my analysis the
13 language of Claim 11 in the context of the whole
14 specification, which includes the language of Claim 1
15 and -- as well as the rest of the specification and all
16 of the other dependent claims, because sometimes they
17 inform -- inform me, sometimes explicitly, what is and
18 is not include -- included in certain claim terms.

19 Because, you know, I'm sure you may have seen
20 patents that now have dependent claims that say wherein
21 something previously cited in independent claim includes
22 A, B, and C, and -- and under the principles of claim
23 differentiation that I understand, Claim 1, whatever
24 something that's cited is broader than A, B, and C.

1 So it must have the possibility to include other
2 things, and I do look for that when I'm reviewing a
3 patent and its claims.

4 BY MR. SEBBA:

5 Q. Okay. So you looked for claim
6 differentiation. You read Claim 1.

7 Did you consider that "recorded" in Claim 1
8 may have the same meaning as "record" in Claim 11?

9 MS. NGUYEN: Objection. Form.

10 THE WITNESS: Well, I mean, I'm not a lawyer. I
11 don't remember the exact law on this, but I considered
12 all the language -- I considered the spec as a whole. I
13 looked at the figures. I reviewed all the claims in
14 doing my analysis.

15 BY MR. SEBBA:

16 Q. That wasn't the question.

17 The question was, did you consider if
18 "recorded" -- excuse me.

19 Did you consider if "recorded" in Claim 1 may
20 have the same meaning as "record" in Claim 11?

21 A. Yeah. So I'm not a lawyer. There may be
22 some -- I don't know if there are legal precedents
23 about, you know, you use a phrase in claim -- one
24 independent claim in the same patent, it must have the

1 meaning -- same meaning in a different -- I don't know
2 the law on that. I -- I may have been informed at one
3 point with respect to another case.

4 But, I mean, what I did -- I'll tell you what
5 I did, was I looked at the challenged claims. I
6 considered what a person of ordinary skill would have
7 understood was instructed do it this way, that to
8 interpret all the language as plain and ordinary
9 meaning.

10 I reviewed the spec. I considered what a
11 person of ordinary skill would have -- would have
12 considered, you know, fell within the scope of the plain
13 and ordinary meaning as examples in the spec.

14 That's part of the analysis that I did.

15 Q. Okay. I'm not asking about the law, and I'm
16 not asking you to tell me -- to describe what you did.

17 I'm asking if you did a specific thing.

18 Did you specifically consider if "recorded" in
19 Claim 1 may have the same meaning as "record" in
20 Claim 11?

21 A. Again, I'm not a lawyer. I don't know what
22 the law is with respect to --

23 Q. No. That's not -- that's not the question.

24 A. I don't know what the law is with respect to

1 the use of -- of certain words or even word roots or
2 different forms of a word.

3 But I know that Claim 1 and Claim 11 are
4 different. If they weren't different, they wouldn't
5 have been able to be issued because that would be --
6 you're not allowed to get duplicate claims is my
7 understanding.

8 So Claim 1 is different than Claim 11. My
9 analysis with -- with respect to the claim language was
10 really focused on the -- the challenged claims. Claim 1
11 not being challenged, Claim 11 being challenged.

12 The language is different in Claim -- Claim 1.
13 I considered -- I was asked to consider the plain and
14 ordinary meaning of the claim terms that applied to
15 Claim 11. I did look at Claim 1 as part of my review of
16 the '220 patent, informing the overall context, and I
17 didn't provide an analysis with respect to the language
18 used in Claim 1 in my declaration.

19 Q. So yes or no. This is a straightforward,
20 simple question. I'm -- I'm not concerned whether or
21 not you know the law. I'm not concerned whether or not
22 you read the whole patent.

23 Did you consider -- just -- just this one
24 narrow, narrow, narrow point. Did you consider, when

1 you were preparing your declaration, whether "recorded"
2 in Claim 1 would have the same meaning as "record" in
3 Claim 11?

4 MS. NGUYEN: Objection. Form.

5 THE WITNESS: I don't think anything in my
6 declaration talks about the -- the language of Claim 1
7 with respect to "recorded" and not "record," so
8 there's -- I wouldn't -- I didn't have anything, written
9 opinions, about -- about "recorded" as used in Claim 1.

10 What I have written opinions about and the main
11 analysis that I did was with respect to the claim terms
12 in Claim 11, which is -- I understood is a challenged
13 claim, with respect to "record athletic activity
14 performed by the user."

15 BY MR. SEBBA:

16 Q. So you did not specifically consider the
17 meaning of the term "recorded" in Claim 1.

18 MS. NGUYEN: Objection. Form.

19 THE WITNESS: To the extent the language
20 different -- is different in Claim 1 versus Claim 11, I
21 didn't -- I don't have written opinions. And really my
22 analysis wasn't focused on the words that were different
23 from Claim 11.

24 My -- my analysis was with respect to the

1 language that actually was in Claim 11 in the context of
2 the whole specification, having reviewed all of the --
3 all the claims, including Claim 1.

4 BY MR. SEBBA:

5 Q. Are you saying that you didn't determine the
6 meaning of "recorded" in Claim 1 because "recorded" is a
7 different word than "record" in Claim 11?

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: I'm saying that in an analysis I
10 did for Claim 1, which is "record athletic activity
11 performed by the user," I was focused on the plain and
12 ordinary meaning of that phrase in the overall context
13 of the specification, having considered the language
14 that was also in Claim 1 and -- and the specification as
15 a whole.

16 BY MR. SEBBA:

17 Q. So you still haven't answered the initial
18 question.

19 Did you consider whether "recorded" in Claim 1
20 has the same meaning as "record" in Claim 11?

21 MS. NGUYEN: Same objection.

22 THE WITNESS: I don't believe I have, to the
23 extent the words -- the claim terms are different, I
24 have any written opinions in my initial declaration with

1 respect to claim language that I analyzed for claims
2 that were not challenged.

3 To the extent the language is different, I -- I
4 don't think I've -- yeah. I mean, my declaration is
5 with respect to supporting the petition and the
6 challenged claims of the petition, which are Claim 11
7 and some of the dependent claims therefrom, but not
8 Claim 1.

9 In the Claim 1 -- there's some different
10 language in Claim 1, but my analysis with respect to the
11 actual language of Claim 11, not the language different
12 than what's actually in Claim 11.

13 BY MR. SEBBA:

14 Q. I understand you don't have any written
15 opinion on the meaning of "recorded" in Claim 1. That's
16 still not the question.

17 It's a yes-or-no question. We're going to sit
18 here until you answer it.

19 Did you consider whether "recorded" in Claim 1
20 has the same meaning as "record" in Claim 11?

21 MS. NGUYEN: Same objection.

22 THE WITNESS: I considered Claim 1 in my overall
23 analysis of the '220 patent. The language of the claim
24 is -- is different.

1 I didn't consider claim language different from
2 Claim 11 because Claim -- to the extent it's different,
3 the analysis that I did with respect to the actual claim
4 language in the challenged claim, considering in the
5 context of the whole specification and also in reviewing
6 the other claims.

7 MR. SEBBA: Can you read back the question,
8 please.

9 (Record read back.)

10 MS. NGUYEN: Same objection.

11 THE WITNESS: The analysis that I did with
12 respect to the language of Claim 11 -- the language of
13 Claim 1, being a different verb tense is -- you know, is
14 a different meaning that -- than that's -- what's used
15 in Claim 11, and what I analyzed was the actual language
16 in Claim 11, which has a different verb tense than in
17 Claim 1.

18 And so the analysis that I did was with respect
19 to the actual language in Claim 11 and not the -- not
20 the different claim tense for the word "record" and --
21 and other words that are slightly different as well in
22 Claim 1.

23 The analysis I did was with respect to Claim 11,
24 and the verb tense -- or the -- yeah, the tense is

1 certainly different between Claim 1 and Claim 11. The
2 language I analyzed with -- was with respect to
3 Claim 11.

4 BY MR. SEBBA:

5 Q. So the reason you did not analyze the meaning
6 of the word "recorded" in Claim 1 is because it has a
7 different verb tense than "record" in Claim 11; is that
8 right?

9 MS. NGUYEN: Objection. Form.

10 THE WITNESS: I'm not sure that's exactly -- I
11 don't know what you're trying to ask me, but I'm just
12 stating right now that the verb tense is different,
13 and -- and the challenged claims are -- include "record
14 athletic activity performed by a user."

15 That's the analysis that I did with -- with
16 respect to that term in the context of the
17 specification, including what other claims say. And
18 that's the analysis I did.

19 Did I do a full analysis of nonchallenged
20 claims? No. I -- I wouldn't have done a full analysis
21 of -- of claims that were not challenged. The language
22 I used to do the analysis was with respect to Claim 11
23 and the dependent claims, considering the whole
24 specification and considering the language in other

1 claims.

2 BY MR. SEBBA:

3 Q. Now, when you say "full analysis," do you mean
4 that you did not determine the plain and ordinary
5 meaning of the claim terms in nonchallenged claims?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: It means that I didn't go through
8 every step in other claims, to the extent they're
9 actually different than -- than the claims I did
10 analyze, and provide kind of an analysis of all the
11 claim language as a whole with respect to how those
12 claim terms might be understood by a person of ordinary
13 skill.

14 That's the analysis I did with respect to the
15 challenged claims. I do consider the language of the
16 other claims in -- in my analysis, though.

17 BY MR. SEBBA:

18 Q. So you considered the language of Claim 1, but
19 you did not determine the plain and ordinary meaning of
20 the claim terms in Claim 1; is that accurate?

21 MS. NGUYEN: Objection. Form.

22 THE WITNESS: I mean, maybe if you look at all
23 the elements, you know, of Claim 1. I didn't -- I
24 didn't -- I'm looking at the elements, the entire

1 phrases there, the, you know, 11A, B, C, D, that kind of
2 thing.

3 That's the analysis that I did with respect to
4 those elements, and it's -- it's looking at the plain
5 and ordinary meaning of those -- those elements -- of
6 the elements using the plain and ordinary meaning of the
7 words in those elements as would be understood by a
8 person of ordinary skill at the time of the invention.
9 And so that's the analysis that I did for those overall
10 elements.

11 Now, to the extent the language in some other
12 claims might be the same, that may apply as well. I
13 mean, sometimes I've seen elements the claim --
14 dependent claims that are literally the same, just based
15 on a different independent claim. And while there might
16 be some differences introduced, oftentimes the analysis
17 is often the same in those situations.

18 So I'm not going to say none of my analysis
19 applies, but the words that I actually analyzed were the
20 words used in Claim 11, and that's what I've applied
21 plain and ordinary meaning to.

22 BY MR. SEBBA:

23 Q. But you did not review the word -- the terms
24 in Claim 1 and, in the context of Claim 1, form an

1 opinion as to their plain and ordinary meaning.

2 MS. NGUYEN: Objection.

3 BY MR. SEBBA:

4 Q. You only did that for challenged claims.

5 A. I did review Claim 1, as -- as I -- as you --
6 as I said earlier. I did review Claim 1, and I
7 considered the plain and ordinary meaning in the context
8 of the overall specification and including the claims,
9 which -- which I do because there are many situations
10 where dependent claims that may not be challenged often
11 inform the -- the claim scope such as the example of --
12 of, you know, wherein the recording step includes the
13 measurement and, you know, generation of data. That
14 claim is not here.

15 So -- so, you know, that -- that would have
16 informed me of recording, you know, if it were -- if it
17 were a method. This is an apparatus. So I see that,
18 for example -- I think a step is a step of a method.

19 But -- but, you know, that's the kind of thing
20 that would inform me of -- of claim scope.

21 I don't recall seeing that here with respect to
22 "record athletic activity performed by a user." And --
23 and what I did was I analyzed that phrase. That phrase
24 is different than Claim 1, but it uses some -- there's a

1 lot of shared words between Claim 11 and Claim 1. But I
2 haven't considered mapping or -- you know, or doing a
3 challenge to Claim 1 because Claim 1 is not challenged.

4 Q. Okay. I'm not asking if you considered
5 challenging Claim 1.

6 I'm asking if you determined -- if you formed
7 an opinion as to the meaning of the word "recorded" in
8 Claim 1.

9 MS. NGUYEN: Same objection.

10 THE WITNESS: The word "recorded" is not in the
11 challenged claims. The word in the challenged claim
12 is -- the phrase is "record athletic activity performed
13 by the user."

14 So the focus is on a different tense of the word
15 in Claim 11 as opposed to some other tense used in
16 different unchallenged claims, which I did review in --
17 in trying to determine the scope of the -- of the
18 challenged claim elements that would have been
19 understood by a person of ordinary skill in the art to
20 include.

21 BY MR. SEBBA:

22 Q. It's a yes-or-no question.

23 I understand why you sometimes read dependent
24 claims. I understand why you sometimes read

1 unchallenged claims. I'm not asking you on a high
2 level. I'm not asking you to give me a general
3 description of how you formed your opinion.

4 I'm asking the very specific question -- yes
5 or no -- did you form an opinion as to the meaning of
6 "recorded" in Claim 1 when you were preparing your
7 declaration?

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: I certainly considered how --
10 how --

11 BY MR. SEBBA:

12 Q. No, no --

13 A. -- words were used in Claim 1 --

14 Q. -- not considered.

15 Did you form an opinion as to the meaning of
16 "recorded" in Claim 1?

17 MS. NGUYEN: Same objection.

18 THE WITNESS: As I was instructed, all of the
19 claim language would have -- I was asked to use the
20 plain and ordinary meaning. So I don't -- that's what I
21 would have done, and I don't think there's any --
22 anything that I recall in Claim 1 that somehow contorts
23 the meaning of "recorded" to not be recorded but to only
24 be measured or -- or collected and exclude part as

1 absolute recorded data.

2 So -- but I don't have any written opinions
3 about claim construction with respect to -- in my
4 declaration because, you know, I applied plain and
5 ordinary meaning to them. And I -- I'm not sure why
6 there's a dispute about the meaning of the word "record"
7 to narrow it so much, other than this position being
8 taken by patent owner in the preliminary response, as I
9 understand it.

10 BY MR. SEBBA:

11 Q. Okay. So it's your view that nothing in
12 Claim 1 affects your position on what the meaning of
13 "recorded" would mean.

14 MS. NGUYEN: Objection. Form.

15 THE WITNESS: So I'm -- I'm not sure you're --
16 well, I'll just say the answer, which is I was asked to
17 consider the plain and ordinary meaning of the -- of the
18 claim terms for preparation of my declaration.

19 I did review the patent -- the patent -- other
20 claims and -- and the whole patent as a whole, but
21 nothing stuck out to me as to what would really contort
22 the plain and ordinary meaning of words used in Claim 1
23 or Claim 11 to somehow narrow the word -- the meaning of
24 certain words very much away from what I -- my opinion

1 about what the plain and ordinary meaning would include,
2 that somehow it excludes embodiments or the invention
3 itself and that -- that somehow are very narrowed.

4 I didn't see that in reviewing the spec, and --
5 and I pointed out portions of the specifications that I
6 directly kind of -- are reasons why that -- that very
7 much narrowed claim interpretation set forth by patent
8 owner of "record" are incorrect.

9 MR. SEBBA: All right. Let's go on a break.

10 THE VIDEOGRAPHER: We are going off the record.
11 The time is 3:41 p.m.

12 (3:41 p.m., off the record.)

13 (3:53 p.m., on the record.)

14 THE VIDEOGRAPHER: We are now going back on the
15 record. The time is 3:53 p.m.

16 BY MR. SEBBA:

17 Q. Welcome back, Dr. Houh.

18 A. Thank you.

19 Q. Let's turn to the bottom of Column 46 --
20 excuse me, middle -- top third of Column 46, starting at
21 line 20.

22 Okay. This -- this is the paragraph
23 discussing Figures 55A and 55B. Do you see that?

24 A. Yes.

1 Q. Okay. Great.

2 So I guess -- why don't you take a second and
3 just read the whole paragraph from line 20 to line 30
4 and tell me when you're done.

5 Have you completed that?

6 A. I'm still looking.

7 Q. Okay.

8 A. Okay.

9 Q. Okay. So 55A and 55B are talking about
10 sharing information to a social networking site;
11 correct?

12 MS. NGUYEN: Objection. Form.

13 THE WITNESS: I mean, they do talk -- it does
14 talk about that they're interfaces for sharing workout
15 and run information and that -- that the sites are for
16 social networking sites or other information outlet.

17 BY MR. SEBBA:

18 Q. Okay.

19 A. And when I say "sites," I mean sites with an
20 S, not a C.

21 Q. Thank you for clarifying.

22 And in here, the sentence starting at the end
23 of line 23 reads, "The login information may be stored
24 and used in association with a fitness monitoring

1 service provider to synchronize and publish data
2 automatically to the information outlet"; correct?

3 A. Yes. I see that.

4 Q. Okay. It continues, "Once the user is logged
5 in, the system may automatically share new run
6 information through the information outlet"; correct?

7 A. That's what it says.

8 Q. Okay.

9 A. Although we'll note, on Figure 55A, there's a
10 check box for "Automatically check in for every run."

11 Q. Perfect.

12 So that check box for "Automatically check in
13 after every run," that seems to be discu- -- actually,
14 you know what? I'm sorry. We'll -- we'll -- I'm
15 skipping ahead. Let's just go through the final
16 sentence of the paragraph also.

17 "In some arrangements, the information might
18 only be shared in response to receiving a user command
19 or confirmation"; correct?

20 A. Yes.

21 Q. Okay. So is it fair to say that the -- this
22 paragraph is discussing two different ways in which
23 information may be shared, one automatic and one that
24 requires a user command or confirmation?

1 MS. NGUYEN: Objection. Form.

2 THE WITNESS: I mean, I think this paragraph is
3 talking about automatically sharing, but I think it's in
4 the sense where the user may -- may opt into the
5 automatic sharing to automatically check in for every
6 run, for example, and that there -- there is another
7 arrangement where information may only be shared in
8 response to receiving a user command or confirmation.

9 BY MR. SEBBA:

10 Q. Okay. So it's -- it is describing that the
11 automatic sharing, while -- while -- which requires an
12 opting in -- or requires opting in, is different than
13 the -- when the information is shared in response to the
14 user command or confirmation.

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: I mean, I'm not sure they're
17 disjoint in the sense that maybe there's a confirm after
18 you connect with -- you know, there could be a confirm
19 just to make sure you -- you meant to check it or --
20 but -- but, I mean, here, it -- it's just saying simply
21 there's an automatic sharing and a -- a sharing in
22 response to receiving a user command or confirmation.

23 I don't think that's limiting to only those
24 situations described here, though, but it certainly

1 discloses the automatic sharing and the check box, and
2 it describes receiving a user command or confirmation.
3 It doesn't describe -- it doesn't describe further
4 details other than just saying what -- what it says, at
5 least in this paragraph.

6 BY MR. SEBBA:

7 Q. So the -- the automatic sharing seems to be
8 something different than the sharing in response to
9 receiving a user response or confirmation; is that fair?

10 MS. NGUYEN: Objection. Form.

11 THE WITNESS: I mean, it really might not be so
12 disjoint in the sense that, you know, the user command
13 may be -- there's an information -- there's an
14 automatically share. In that sentence, it doesn't
15 actually talk about any opt in. It just says it may
16 automatically share.

17 Now, I mean, if you look at Figure 55A, there's
18 an automatically check in, and that -- that -- you might
19 call that a user command of sorts. So, again, they're
20 not necessarily a disjoint.

21 BY MR. SEBBA:

22 Q. What language is there -- what do you see in
23 Column 46 that suggests they're not disjoint?

24 A. Well, information might be shared in response

1 to a user command. The user command might be
2 automatically share for every run.

3 It just says "user command," at least in this
4 section. I mean, we can look to see elsewhere if
5 there's further clarification, but it says what it says.
6 I'm not arguing that. But it doesn't say -- which is
7 not automatically sharing at the end of user command or
8 confirmation, you know, for example. Then it would be
9 more clear.

10 Q. And what -- in that last sentence, it does
11 say, "In some arrangements, the information might only
12 be shared in response to receiving a user command or
13 confirmation."

14 What does that "only" suggest to you?

15 MS. NGUYEN: Objection. Form.

16 THE WITNESS: So it might only be shared if
17 you've got a command to share or automatically share for
18 every run. That might be a user -- considered a user
19 command. I mean -- you know, if I checked always do
20 something, I -- that could be a form of command.

21 BY MR. SEBBA:

22 Q. Okay. Let's turn to Exhibit 1004, which I
23 think I took from you, so let me give you clean copies.

24 And then let's also look at your declaration,

1 and your declaration on page 30 -- declaration, which is
2 Exhibit 1003, let's do page -- you have two sets of page
3 numbers on the declaration, so page 35 on the bottom
4 right.

5 A. Okay.

6 Q. Okay. This is discussing inter- -- interface
7 4300 in Figure 43 of Johnson; right?

8 A. The beginning of paragraph 70 says that I'm
9 talking about Figure 43 in Johnson.

10 Q. Yeah. Okay.

11 And then on -- in that paragraph on the
12 following page, there's a copy of Figure 43, correct?

13 A. Yes.

14 Q. Okay. And then, if we look at the bottom left
15 of that -- of Figure 43 at 4325, there's a button that
16 says, "Blog Promotion"; correct?

17 A. Yes.

18 Q. Okay. Now let's look at paragraph 72 of your
19 declaration.

20 A. Okay.

21 Q. Which reads -- it starts by noting that
22 Johnson depicts interface 2900 in Figure 29 and then
23 shows Figure 29; correct?

24 A. Yes, that's right.

1 Q. Okay. And what does Figure 29 depict?

2 A. So, in Johnson, there's a high-level, quick
3 description of Figure 29 saying it illustrates an
4 example of a user interface that may be included as part
5 of an individual athlete's Web page, and that refers to
6 paragraph 40.

7 And -- and the -- the 2900 figure -- in
8 Figure 29 points to a window that's titled "A Runner's
9 Blog."

10 Q. Okay. So Figure 29 is a -- shows a runner's
11 blog of some sort; correct?

12 MS. NGUYEN: Objection. Form.

13 THE WITNESS: It's an example of a user
14 interface that may -- may be included as a part of an
15 individual athlete's Web page, and this example is
16 titled "A Runner's Blog."

17 BY MR. SEBBA:

18 Q. Okay. If we go back to Figure 43, we noted
19 that 43- -- or, you know, we don't need to go back.

20 If we look at your paragraph 72, it says,
21 "Johnson discloses in paragraph 183 of its
22 specification: 'The user may further be provided
23 options 4320 and 4325 to program a workout (e.g., a new
24 workout) or to post comments or a report about the

1 completed workout, respectively"; correct?

2 A. I think you read that correctly.

3 Q. Okay. Is -- what is there in Johnson that
4 tells you that the option in 4320 or 4325 lead to the
5 website depicted in Figure 29?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: So those buttons are described
8 here as saying that, as -- as you read, I think, "The
9 user may be further provided options 4320 and 4325 to
10 program a workout (e.g., a new workout)."

11 So "program a workout" relates to the Figure
12 43- -- 4320 where it literally says "Program Your
13 Workout." And so that's -- that's -- it's a little
14 backwards in the sense that, usually, if I wrote two
15 options and then said what they lead to, I'd put them in
16 the same order.

17 But, here, it's easily recognizable that 4320
18 and 43 is -- is the option to program a workout, for
19 example, a new workout, and that 4325 is discussing here
20 about "to post comments or report about the completed
21 workout, respectively," and the words used for that are
22 "Blog Promotion."

23 So, if you look in Johnson, the example of -- of
24 runner's interface, which in the figure is labeled a

1 "blog," I think that's -- that's -- that's what leads me
2 to say that.

3 And, again, you know, it's this building on
4 each -- Figure 29 is -- is first, and it's an example of
5 a user interface page that's a blog.

6 And then now we're discussing 43, and you're
7 talking about blog promotion, 4325, which is described
8 as "to post comments or a report about the completed
9 workout."

10 And if you look at, you know, 43 -- sorry -- 29
11 now, this shows a blog entry available to people who are
12 not signed in. You'd -- you'd see that. A person of
13 ordinary skill would see that, and it talks about -- you
14 know, it says, "I loaded the marathon pictures taken by
15 the race photographers who" -- "who charge an arm and a
16 leg if you want to buy them. You can find the pictures
17 here. I'm hoping to collect the pictures for my brother
18 and parents soon. They took much better photos."

19 So that's an example of a comment or report
20 about the completed workout, which is this workout
21 that's posted by Sean Lloyd in Figure 29 of a Sunday
22 afternoon jog.

23 So -- and so, when it's talking about blog entry
24 in the later one, it's -- doesn't have to describe it in

1 detail because it's already described blog entry here in
2 Figure 29. I mean, we can go look at the description
3 here, but certainly, from the figure, that's -- that's
4 what a POSITA would see from the figure.

5 BY MR. SEBBA:

6 Q. So the only -- so -- so the reason that you --
7 that your opinion is that clicking "Blog Promotion" on
8 Figure 43 leads to a runner's blog in Figure 29 is
9 because of the word "blog."

10 MS. NGUYEN: Objection. Form.

11 BY MR. SEBBA:

12 Q. Is that right?

13 A. Also, this personal Web page is further
14 described in more detail in paragraph 167, and I
15 reference that in paragraph 74 of my declaration.

16 This is really with respect to a different
17 issue, which is -- is why I cite it, is -- is that --
18 that people can comment on the blog.

19 But it is where the specification is talking
20 about a blog that Figure 29 illustrates -- well,
21 actually, the top of page 18. There are no line
22 numbers. It makes it a little harder.

23 "For example, a user, athlete, or runner may
24 include a blog 2900 in their Web page or social

1 networking page. Blog 2900 may include the user's
2 location or hometown, details of their most recent run,
3 comments, pictures, videos, and the ability for
4 Blog 2900 viewers to post feedback."

5 So, I mean, that is -- I mean, looking at the
6 overall context and, you know, the specification as laid
7 out, that's where it's -- it's talking about the blog.
8 That's -- that's the user's interface. That's a
9 particular user's -- a particular runner's; in this
10 case, in 2900, Sean Lloyd.

11 And, you know, he does -- you know, the figure
12 does say, you know, information about him on the right
13 and then has a blog entry on the left about -- about
14 this particular run. And then -- you know. And so
15 that's what it shows.

16 And I think when you then refer to things that
17 have already been discussed in a specification,
18 that's -- that's what a person of ordinary skill would
19 see, and that's why -- that's what the reference is
20 teaching, that you -- the blog promotion is -- it's
21 described in Figure 43 as "to post comments or report
22 about the completed workout," using the words "blog
23 promotion" in the figure of which the blog is described
24 earlier as -- as the blog, "A Runner's Blog."

1 Q. Okay. So, at the bottom of paragraph 71 -- or
2 the last sentence of paragraph 71, you write, "A POSITA
3 also would understand [sic] from the text of 'SHARE THIS
4 RUN' and 'Blog Promotion' that, by clicking on either
5 button, device 601 would transmit the user's data from
6 memory to a public page of the social networking site";
7 correct?

8 A. Oh, I was looking at the wrong page. I don't
9 know if you read that correctly or not.

10 Q. Okay. Well -- all right. We'll do it one
11 more time.

12 Bottom of 71, "A POSITA also would have
13 understood from the text of 'SHARE THIS RUN' and 'Blog
14 Promotion' that, by clicking on either button,
15 device 601 would transmit the user's data from memory to
16 a public page of the social networking site."

17 A. I think you read that correctly.

18 Q. Okay. Do you see anything in Johnson that
19 identifies that clicking "Blog Promotion" would lead to
20 the specific public page of the social networking site
21 shown in Figure 29?

22 MS. NGUYEN: Objection. Form.

23 THE WITNESS: I mean, what I'm saying at 71
24 is -- is really about this, by clicking the button,

1 device 601 would transmit the user's data from memory to
2 a public page of the social networking site.

3 But with respect to the particular page, it
4 would be with -- really with respect to, you know, this
5 is where it's hard -- hard in not being able to search,
6 but I believe that the discussion of blog is really only
7 in that paragraph here, in 167.

8 I take a quick look through. I didn't see it
9 anywhere else, but -- and I don't have it memorized, so
10 I don't -- I don't -- I'm not -- you know, it could be
11 mentioned elsewhere.

12 But this is where there's a paragraph talking
13 about user's personal Web page and that it includes a
14 blog. And so I'm not sure why that's confusing to a
15 POSITA, but a POSITA would look at that and say, "Well,
16 that's -- that's blog promotion." Here's a page that
17 describes a blog, but, you know -- and on this page may
18 be a way to also post and -- you know, an automatic --
19 and -- yeah.

20 And -- and what I'm saying is that, by clicking
21 either of those buttons, the run is shared and that
22 there's -- the -- for "Share This Run" and that there's
23 a blog promotion in this context by clicking on
24 appropriate buttons there and that the -- that, by

1 clicking on either button, device 601 would transmit the
2 user's data from memory to a public page of the social
3 networking site.

4 BY MR. SEBBA:

5 Q. Okay. So nothing -- there's nothing in
6 Johnson that specifically identifies that clicking on
7 4325 leads to the specific blog shown in Figure 29.

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: I mean, I think Johnson is
10 disclosing, you know, that there's a blog promotion.
11 It's describing the text as "to post comments or report
12 about the completed workout," but the actual text
13 attached to 4325 is "Blog Promotion."

14 And so, when the user clicks on 4325, it's about
15 a blog, promoting the run on the blog. And -- and,
16 really, the only figure, I believe, that -- that
17 taught -- that shows the blog interface is Figure 29.

18 And the only discussion, I believe, just taking
19 a quick look through here now -- or the main discussion,
20 certainly -- would be with respect to the personal Web
21 page of the user, which may include a blog. So it
22 includes the blog in their Web page or social networking
23 page.

24 And it's describing other information that's

1 available in the blog, which is consistent with
2 Figure 29 as well.

3 BY MR. SEBBA:

4 Q. Okay. Let's go back to your -- the paragraph
5 with -- excuse me.

6 Let's go back to your declaration,
7 paragraph 64.

8 A. Okay.

9 Q. Okay. Paragraph 64 depicts Johnson
10 Figure 14A; correct?

11 A. Yes. That's what I say at the beginning of
12 64, and it's 14A from Johnson.

13 Q. Okay. So 14A shows -- as you point -- say in
14 paragraph 65, "Figure 14A shows the 'Leaderboard' tab
15 of interface 1401"; correct?

16 A. I mean, if you're asking me if that's what it
17 says at the beginning of 65, I think you said
18 approximately what it -- what it says there.

19 Q. Okay. And then you go on to say, on the
20 following page, that "Figure 14A depicts interface 1401
21 as it would appear to user Rauchholz."

22 Please excuse my pronunciation.

23 A. Yeah. I see that.

24 Q. Okay. So what is -- so -- and Figure 14A

1 shows a list of various people's mileage; correct?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: I think, if you look at the left,
4 it's -- it's saying "distance," and the week is
5 highlighted. So this is -- and I think there's a
6 consistent description in the -- in the Johnson -- at
7 the bottom of page [sic] 14 on the left and at the top
8 on the right.

9 Because the control 1409A is associated with a
10 distance sorting criteria and the week time -- week time
11 criteria, the athletic data display configuration module
12 605 will sort the aggregated distance data for the
13 participating users that was measured during the
14 preceding week.

15 It then lists the names of the participating
16 users having the ten highest aggregated distance data
17 values in the filter region, 1405.

18 So, in addition, the athletic data display
19 module 605 will display in the aggregated distance data
20 values measured during the preceding week for each of
21 the identified participating users.

22 Still further, the athletic data display
23 configuration module will display the users'
24 corresponding aggregated distance measured for the

1 preceding week.

2 So that's why I say this is the Rauchholz page.
3 It's listing the users' aggregated distance and then the
4 top ten people, who are clearly showing their aggregated
5 distance to other people as -- as their names -- user
6 names are also listed and their mileage is also listed.

7 BY MR. SEBBA:

8 Q. Okay. Is there anything in Johnson that
9 indicates Rauchholz is sharing his data with other
10 users?

11 MS. NGUYEN: Objection. Form.

12 THE WITNESS: Well, I mean, clearly what this is
13 depicting, that there are participating users. It says,
14 on 66, "The participating users may be only those users
15 who agree in advance to have their data shared with
16 other users," and that's from paragraph 135.

17 And certainly what you're seeing is that
18 Hayabusa Kaz -- all the list of people that are
19 displayed in the top ten, you're seeing their
20 information -- their aggregated run information sorted
21 by distance over the last week.

22 So it's clear that somebody's sharing
23 information. If no one was sharing information, you
24 wouldn't -- you'd just see Rauchholz. But you clearly

1 see other people in this top ten list.

2 And so that's -- and if you look at 135, it does
3 talk about "The participating users may be a subset of
4 all the users who provide athletic data to the data
5 storage," and then it goes on to say that "The
6 participating users may be only those users who agree in
7 advance to have their data shared with other users."

8 So -- and it goes on to give another option, but
9 certainly it's -- it's provide -- it's -- Johnson is
10 saying that users can agree in advance to have their
11 data shared, and -- and so we see users who are sharing
12 their data because they are on the list above Rauchholz.

13 So the point here is that there's clearly people
14 sharing their data.

15 BY MR. SEBBA:

16 Q. Okay. So you -- you've explained why it's
17 your opinion that Users 1 through 10 are sharing their
18 data.

19 Is there any evidence that Rauchholz, user
20 Rauchholz, is sharing his data with other users?

21 MS. NGUYEN: Objection. Form.

22 THE WITNESS: I mean, the point here is -- is
23 that there are people sharing their data; otherwise, the
24 top would be empty. So I don't know -- Rauchholz can

1 see their own data. There may be another screen
2 depicted about Rauchholz -- or some users' privacy
3 settings, but it's clearly being described in 135 that
4 users can share their data optionally.

5 This is just an example of a particular user;
6 but, certainly, this is depicting that some users have
7 opted to share their data.

8 BY MR. SEBBA:

9 Q. Okay. Now, we'll have to turn to Figure 23 of
10 Johnson.

11 A. Okay.

12 Q. Figure 23 shows the mile club; correct? In
13 the middle of the page? At the bottom of display 2300.

14 A. You mean this thing that says "Mile Club
15 Forum" on the lower right -- oh, sorry, Mike -- sorry.
16 That says "Mike Club."

17 Q. Yeah. A little bit to the left of that in
18 larger font.

19 A. Oh, oh. Yeah. Okay.

20 MS. NGUYEN: Objection. Form.

21 THE WITNESS: I see some text here in Figure 23
22 that says "The Mile Club."

23 BY MR. SEBBA:

24 Q. Do you have an objection as to what the mile

1 club is?

2 MS. NGUYEN: Objection. Form.

3 THE WITNESS: Well, Figure 23 is described in
4 paragraph 34 of Johnson as -- it's describing two -- two
5 paragraphs, really, the Figure 22 and 23, as "an example
6 of a user interface including a club of multiple
7 athletes who have achieved a goal or milestone."

8 And then Figure 22 talks about the mile club,
9 and the text underneath it says, "Check out the Members
10 wall or participate in the exclusive challenges!"

11 Okay. That's -- but, certainly, I've -- I've --
12 I've had the discussion here of 21, which depicts a
13 screen saying that "Congratulations! You're in the 500
14 Mile Club!"

15 And then in the description of Figure 23 -- or
16 in the context of Figures 21 through 25, if you look at
17 the bottom of paragraph 160, it talks about different
18 mile clubs of which people are -- of which they are
19 members, the users are members; for example, 100 mile,
20 200 miles, 500 miles, 1,000 miles, and the like. And
21 the date they became mile club...

22 And so, for example, Figure 21 is showing that
23 "Congratulations! You're in the 500 Mile Club!" So
24 that's an example of a mile club.

1 BY MR. SEBBA:

2 Q. Okay. So let's go back to Figure 23.

3 In that display, 2300 -- I'll wait until
4 you're there.

5 In that display, 2300, there's two rows of
6 what I'll refer to as tiles. Do you know what I'm
7 referring to when I say "tiles"?

8 A. In the middle?

9 MS. NGUYEN: Objection. Form.

10 BY MR. SEBBA:

11 Q. Yes, in the middle.

12 And then each tile shows a user name, a date,
13 and which mile club they're in; is that correct?

14 A. I mean, that -- if you're referring to the
15 number at the top, which is consistent -- but some of
16 the mile clubs explicitly listed out 100, 500 -- did it
17 list 1,000 in here?

18 Q. In 160?

19 A. Yeah. I'm looking for that. I was just
20 saying -- yeah, a thous- -- 200, also. I mean, there's
21 a 2,000, which explicitly listed, but that seems pretty
22 impressive to me.

23 But those numbers, consistent with that --
24 that interpretation as well as the date, and it

1 describes the date of which they became a member of that
2 particular club and the user name. Some of them are --
3 just say "User Name."

4 Q. Okay. So let's -- let's pick one as an
5 example.

6 On the bottom left, there's one referring to
7 daDwag. Do you see that?

8 MS. NGUYEN: Objection. Form.

9 THE WITNESS: Yeah, I see that.

10 BY MR. SEBBA:

11 Q. Okay. So what information do you see in the
12 tile that refers to daDwag?

13 There -- there's a user name listed; correct?

14 A. Yes.

15 Q. There's an indication that this person is in
16 the 500 mile club; is that correct?

17 A. That's reasonable.

18 Q. And that this per- -- this user joined the 500
19 mile club on March 24th, 2007.

20 A. I'm -- given the specification of what it
21 says, that's a reasonable intermission.

22 Q. Do you see any mention of any other users in
23 that tile?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: Well, within the boundaries of
2 that one, I don't see -- I mean, other users are -- have
3 their own tiles, if that's what you're asking.

4 BY MR. SEBBA:

5 Q. Okay. So each tile appears to refer to one
6 user.

7 A. In this example interface, that appears to be
8 how it's laid out in this -- in the section in the
9 middle.

10 MR. SEBBA: Okay. Let's take a break.

11 THE VIDEOGRAPHER: Stand by.

12 We are now going off the record.

13 The time is 4:42 p.m.

14 (4:42 p.m., off the record.)

15 (4:52 p.m., on the record.)

16 THE VIDEOGRAPHER: We are now going back on the
17 record. The time is 4:52, p.m.

18 BY MR. SEBBA:

19 Q. Now we're going to show you what has already
20 been introduced in this proceeding as Exhibit 1005.

21 So this is the Sutton reference; correct?

22 A. Yes.

23 Q. Okay. Let's look at your declaration,
24 paragraph 87.

1 Okay. So paragraph 87 shows Sutton Figure 9;
2 correct?

3 A. Yes.

4 Q. Okay. And then paragraph 88 of your
5 declaration depicts Figure 5; correct?

6 A. Yes, that's right.

7 Q. Okay. And you, in paragraph 88, say, at the
8 very bottom, "A POSITA would have understood that a user
9 entered the metrics shown next to Figure 5's map via
10 Figure 9's exemplary form"; correct?

11 A. I think you read that right.

12 Q. Okay. So that means -- let's -- for example,
13 on Figure 5, 501 shows a time stamp; correct?

14 A. You're saying Figure 5, did you say?

15 Q. Yeah. 501 is a time stamp.

16 MS. NGUYEN: Objection. Form.

17 THE WITNESS: So Figure 5 being a trace map of
18 user activity according to embodiment, it does -- it
19 does show that the data therein displayed on a map,
20 including, but not limited to, time stamp 501.

21 And if you look at 501, that was paragraph 63 of
22 Sutton -- in paragraph 501, it shows time stamp --
23 sorry, label 501 points to time stamp.

24 BY MR. SEBBA:

1 Q. Okay. Great.

2 And so it's your view, based on paragraph 88
3 of your declaration, that that would have been entered
4 in the "Start Date/Time" section of Figure 9; is that
5 right?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: So what I'm saying is that Sutton
8 is -- also discloses that users can enter metrics on a
9 trace map during a manual transfer, and it actually
10 describes this in paragraph -- I just had it -- oh, 63,
11 where the user enters -- illustrates -- Figure 5
12 illustrates the trace map.

13 And in paragraph 60, it talks about the
14 user-provided -- user-provided data has a trace map.
15 The user can enter metrics on a trace map, 308, 309, and
16 that refers to Figure 3, which is the flowchart that
17 talks about tracing the map and then entering metrics
18 309.

19 And -- and based on the overlap between
20 Figures 5 and 9 and what's talked about in -- with -- in
21 the flowchart of 3, including the activity name, sport,
22 description, time, time stamp, total distance, time --
23 sorry -- total time and distance fields, a POSITA would
24 have understood that a user entered the metrics shown

1 next to Figure 5's map via Figure 9's exemplary form.

2 Q. So is it -- is it your view that the time
3 stamp from Item 501 on Figure 5 would have been entered
4 in the "Start Date/Time" section of Figure 9?

5 MS. NGUYEN: Objection. Form.

6 THE WITNESS: In the case that a user manually
7 entered this data, that -- that what appears on Figure 5
8 would have included the trace map, which -- which is
9 depicted in 5, as well as the time stamp, and then other
10 metrics that also appear in Figure 9 too, such as the
11 total time, the total distance or distance in -- in
12 Figure 5, and -- and total distance in Figure 9, for
13 example.

14 And so that's what a POSITA would have
15 understood, that a user entered the metrics shown next
16 to Figure 5's map using Figure 5's example form.

17 BY MR. SEBBA:

18 Q. Okay. And then -- so does that also apply to
19 the description field, the description field in
20 Figure 9 -- a user would enter something in the
21 description field in Figure 9, and that would appear as
22 the description in 504 in Figure 5.

23 Is that -- is that your view?

24 A. Again, that's -- that's consistent with what's

1 shown in Figure 9 --

2 Q. Okay.

3 A. -- and Figure 5.

4 Q. Okay. So, Then, let's look at Figure 5.

5 The description lists a number of people's
6 names; correct?

7 A. Yes.

8 Q. It lists Stacy, Dirk, Digel, and Jeff.

9 A. Yes.

10 Q. Okay. And those names would have been entered
11 manually into Figure 5's description box; is that
12 correct?

13 MS. NGUYEN: Objection. Form.

14 THE WITNESS: In the case that the user does the
15 manual entry, that is a place that the user can type the
16 description that would have shown up, you know, after
17 submitting -- saving the activity on -- on Figure 5.

18 BY MR. SEBBA:

19 Q. Okay. And are you aware of any information in
20 the specification about the -- the four names listed
21 here, Stacey, Dirk -- withdrawn.

22 Are you familiar with any information within
23 Sutton about the names listed here, Stacy, Dirk, Digel,
24 and Jeff?

1 MS. NGUYEN: Objection. Form.

2 THE WITNESS: Sorry. What was the question
3 again, please?

4 BY MR. SEBBA:

5 Q. Are you familiar with any information within
6 Sutton that describe -- provides any information about
7 who those four listed people are, Stacy, Dirk, Digel,
8 and Jeff?

9 MS. NGUYEN: Same objection.

10 THE WITNESS: I didn't think -- I didn't see
11 anything directed to your question in the description of
12 Figure 5 and paragraph 63, but there are other portions
13 of the system that talk about, you know, the
14 leaderboard, which -- which have names within the
15 system.

16 BY MR. SEBBA:

17 Q. Okay. All right. Let's look at Figure 3,
18 which is also in paragraph 85 of your declaration.

19 A. Okay.

20 Q. Okay. What is Figure 3 showing?

21 A. Figure 3 is -- if you look at Figure 12,
22 illustrates a block diagram for exemplary data transfer
23 methods according to one embodiment.

24 And that's the high-level description at the

1 front, and I'm sure there's a detail -- a more detailed
2 description I do remember seeing starting at
3 paragraph 60.

4 Q. Okay. And Step 303 refers to a hand-traced
5 map; correct?

6 MS. NGUYEN: Objection. Form.

7 THE WITNESS: Well, in the box, it says "Add
8 Hand Traced Map" -- "Map," question mark, in the box
9 labeled 303 on Figure 3.

10 BY MR. SEBBA:

11 Q. Okay. What's your understanding of what a
12 hand-traced map is in the context of Sutton?

13 A. So, if you look at paragraph 60, it talks
14 about user-provided data and that it's -- user's
15 activities entered, and then the user-provided data --
16 if the user-provided data is manually entered by a user,
17 101, the data -- well, that's -- "If the user" -- sorry.
18 Going down to the middle. It's hard without line
19 numbers.

20 "If the user-provided data that has a trace
21 map" -- "a traced map, user 101 enters metrics on a
22 traced map, 308, 309, to complete the map data along
23 with the associated metrics."

24 So this is referring to a -- some of the

1 example data transfer methods, and this is -- if the
2 user is adding the -- the route, for example, on a map
3 to trace out the route that the user -- if the user
4 provides that data, if there's a step whether to -- to
5 add a hand-traced map, if the user does provide the
6 hand-traced map, then they would also provide the
7 metrics.

8 And that metrics -- those metrics are -- are
9 data about -- about the user's athletic activity, and,
10 you know, this particular one in example -- in Figure 9
11 is about the user's morning run containing data such as
12 the time they started, the total time, the total
13 distance. And that's -- that's data about the user's
14 athletic activity and information about the user's
15 athletic activity.

16 If you look at Figure 5, what's depicted is
17 also showing that it displays the data about a user's
18 athletic activity. In this case, it's submitted by Joe,
19 who happens to be on the leaderboard at Number 2 in
20 Figure 6, which I think is a leaderboard within a group.

21 And it contains information about the athletic
22 activity. That was road biking. It has data such as
23 the total time, distance. And that's the -- that, for
24 example, is what I talk about being provided in the

1 form, Figure 9.

2 So -- but the tracing would be done on a map.
3 I don't know that there's a figure that shows explicitly
4 that, but that's -- that's what a person of ordinary
5 skill would -- would see in this patent.

6 Q. So a person of ordinary skill would understand
7 that a hand-traced map is created by a user tracing a
8 path on a map with their hand.

9 MS. NGUYEN: Objection. Form.

10 BY MR. SEBBA:

11 Q. Is that correct?

12 A. Well, it would be data about that -- that bike
13 ride or run or whatever athletic activity it is, but if
14 a user traced it, it's presumably to be for that
15 activity, not just to trace anything on the map, but
16 they would want to provide that route they did, and it
17 would -- in this case, it would be manually entered by
18 the user as data associated with that -- that user's
19 athletic activity.

20 Q. Okay. Okay. Let's go back to Figure 3.

21 So, in paragraph 90, you say, "A POSITA would
22 have understood from Sutton that server 111 uploads the
23 entered user data to a page of a social networking
24 site"; correct?

1 MS. NGUYEN: Objection. Form.

2 THE WITNESS: That's what I say, yes.

3 BY MR. SEBBA:

4 Q. Okay. Is that step of uploading the data --
5 the entered user data to a social networking site
6 depicted on Figure 3?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: So, if you look at the description
9 on Figure 3, kind of, like, two thirds of the way
10 down -- and there's a step labeled 305.

11 It says, you know, the user enters sports --
12 sport category and other required or optional fields to
13 complete the data entry, so now the data entry is
14 complete.

15 And it says that "The user-provided data is
16 stored in database 115, and server 111 applies various
17 data conversion and processing algorithms as well as
18 supplies other system metrics."

19 So now we know the data is saved, and that's
20 really what happens after you -- and with -- in the
21 Figure 9 example, there's a "save activity" button. So
22 that -- when the data is saved like that, it -- it is
23 stored in this database.

24 And if you look at the description of Figure 5,

1 paragraph 63, it says -- it's showing a trace map of
2 user activity according to one embodiment, and it says,
3 "User 101 may edit the traced map when entering the data
4 or at a later opportunity if a correction for the
5 previous [sic] entered data is required."

6 So that's save -- that's -- that's teaching the
7 POSITA that -- that I save the data, but now I can
8 recall the data from the database, show it on the
9 interface, and allow the user to edit the data.

10 So, in that -- in that sense, the user -- the
11 data is being loaded onto the page of a social network
12 through the database. So it's uploaded to the database
13 and then appears on a page, particularly in the example
14 that the user later decides they want to edit that
15 information.

16 So it would load the information, and the user
17 says, "Oh, well, the time wasn't quite right. I'm going
18 to change it. It was actually" -- you know, whatever
19 time. And so it's showing that the user has the
20 opportunity to edit the data that was previously saved
21 to make a correction.

22 Q. Okay. So in what step in Figure 3 is the
23 entered user data uploaded to a social networking site?

24 MS. NGUYEN: Objection. Form.

1 THE WITNESS: So, if you look at paragraph 90, I
2 talk about how a person of ordinary skill would have
3 understood from Sutton that the server 111 uploads the
4 data entered -- entered user data to a page of a social
5 networking site, to the www.plus3network.com. It's
6 really spelled plus3networks in the patent, which -- but
7 that's how it describes that in -- that that's a social
8 networking site.

9 And even setting aside Exhibit 6 as
10 disclosure -- I think Exhibit 6 is a description of
11 the -- we can look at that, but it's about the
12 plus3network. A POSITA would have understood that
13 www.plus3networks.com refers to a social networking
14 site.

15 For example, Sutton states, "The present system
16 and method provides tools for interactive connections
17 with other users, sharing activities, comparing
18 activities, posting virtual competitions and results,
19 and other leaderboards."

20 And that's in Sutton at paragraph 85. And
21 there's some other paragraphs that have -- that I cite
22 to as well.

23 And "It discloses that users of that social
24 networking site would 'create a personal profile and

1 upload his/her GPS-tracked exercise efforts.' It states
2 that users of the site 'can be dynamically tracked and
3 connected if they desire.' In view of these
4 disclosures, a POSITA would have understood that system
5 110 publicizes a user's workout information on their
6 profile page of the social networking site in response
7 to a user selecting the 'Public' sharing option
8 selection shown in Sutton's Figure 9."

9 So my point here is that that's disclosing that
10 www.plus3networks.com, as -- as discussed in Sutton, is
11 a social networking site, and this information that the
12 user enters then appears to the various pages, it's
13 uploaded to the server 110, and then that's how it gets
14 uploaded to pages of the social networking site.

15 BY MR. SEBBA:

16 Q. Okay. So is that step where it's uploaded to
17 the pages of the social networking site shown in
18 Figure 3?

19 MS. NGUYEN: Objection. Form.

20 THE WITNESS: So, if you look at Figure 3, it
21 talks about the step 305, as we were already discussing
22 previously, as the data is stored in a database 115, and
23 server 111 applies various data conversion, and it goes
24 on.

1 And then -- and it says, "Optionally server 111
2 communicates with user 101 to ask for the confirmation
3 of data uploaded and transfers" -- "transfer and
4 notifies user 101 of the amount rewarded for their
5 activity associated with the user-provided data."

6 So what that's saying is, you know, if you look
7 at Figure, I think, 1, Figure 1 shows the user and the
8 devices they use, and when they enter the data on these
9 devices, going over the network to the database really
10 is -- is really uploading, and that paragraph we were
11 looking at does refer to an uploading activity.

12 And this is the server that's described in
13 paragraph 28 that server 111 herein represents a
14 collection of servers, for example, a Web server, a file
15 server, a data aggregation server. And -- and, you
16 know, that's, for example, the Web server, you know.

17 And in this context we talked about the
18 www.plus3networks.com site, and you would be uploading
19 it to the server that then creates the Web pages that
20 people view. So, in that sense, that data, that
21 athletic activity data, has been uploaded to the server
22 and the database, and the server is using that
23 information to create the Web pages on the social
24 networking site.

1 And I think I discuss this in various parts my
2 declaration.

3 BY MS. NGUYEN:

4 Q. Okay. Now, specifically, is there a step in
5 Figure 3 that encompasses uploading the user data to a
6 page of a social networking site?

7 MS. NGUYEN: Objection. Form.

8 THE WITNESS: Well, as I said, Figure 3 does
9 show this -- I think -- is it 305? -- save, which saves
10 it in this database 111, "Save Data."

11 And 111 is -- is part of this collection of
12 server -- well, it's explicitly called out on 1- -- in
13 110 on Figure 1A. And the server 111, an example of
14 that is a Web server.

15 So this is consistent with how Web servers work,
16 which is you can upload data to a server, it puts it in
17 a database, and when a Web server is creating a dynamic
18 page, it can pull the data out of the database and
19 create a page based on the data uploaded to it.

20 And so, in that sense, the data is being
21 uploaded to the various pages the data is being used on.
22 BY MR. SEBBA:

23 Q. Okay. So that -- then, that stuff you just
24 mentioned where the data is pulled from the database 111

1 and used to generate a social networking site, is that
2 step shown in Figure 3?

3 MS. NGUYEN: Objection. Form.

4 THE WITNESS: I mean, it's -- it's what's Sutton
5 is really disclosing to a person of ordinary skill
6 because, you know, that -- Step 3 is -- does -- sorry.

7 Step 305 is talking about storing the -- the
8 data. The user-provided data about the athletic
9 activity is stored in database 115, and server 111
10 applies various algorithms. And then -- and then the
11 server 111 can communicate with the user 101 to ask for
12 the confirmation of data uploaded and transfers and
13 notifies user 101.

14 So the way the server would provide confirmation
15 of that is it would have to present that data back to
16 the user and say, "Is this the right data?" And then --
17 and then the user can confirm the data.

18 So right there in that sense it's being -- the
19 data is uploaded to the page. And this is in the
20 discussion of Figure 3, right in this paragraph. So
21 it's being uploaded to the server and then presented
22 back to the user by server 111, which one example is
23 it's a Web server, so it's now uploaded to that page for
24 confirmation. And that's just one example here.

1 BY MR. SEBBA:

2 Q. So would that step of showing it back to the
3 user -- is that the creation of the social networking
4 page?

5 MS. NGUYEN: Objection. Form.

6 THE WITNESS: Well, it wouldn't be the only
7 page. It's one example of a page on this Web server 111
8 that asks the user for confirmation of the data
9 uploaded.

10 BY MR. SEBBA:

11 Q. Okay. Is there a page -- looking at the
12 flowchart in Figure 3, is there a flowchart created
13 before Step 307?

14 MS. NGUYEN: Objection. Form.

15 THE WITNESS: I mean, you know, other users that
16 had previously uploaded their data to their -- to their
17 pages, there would be that data.

18 But, I mean, for the first time that a user, you
19 know, enters this data, traces the map -- well, this
20 flow doesn't necessarily always go through the hand
21 tracing, but in the example where it does go through the
22 hand-traced map, this particular example is the user
23 entering this particular set of data anew.

24 And -- and, again, this optional stuff at the

1 end about presenting the user back to the -- the data
2 back to the user, the data that was uploaded, it gets
3 uploaded to that page to present back to the user, and
4 that's a page on Web server 111, which -- which, you
5 know, is -- the example of the Web server is
6 www.plus3networks.com.

7 And -- and it's certainly at that point. But,
8 you know, unless the user is, you know, repeating their
9 data to try to get extra credit for the same run, which
10 it says the system may be able to detect, that page
11 wouldn't have previously been -- that particular page
12 for that particular run for that particular entry
13 wouldn't have been previously generated. It's now
14 confirming the data that was just entered by the user.

15 But in that sense, that's how the data that the
16 user's inputting about their athletic activity is
17 uploaded to not only that page of the social network
18 website but other pages that users can view as well.

19 MR. SEBBA: Okay. No further questions.

20 THE VIDEOGRAPHER: Anything else to add?

21 MR. YAP: Can we go off the record?

22 THE VIDEOGRAPHER: Would you like to go off the
23 record?

24 THE VIDEOGRAPHER: We are now going off the

1 record. The time is 5:29 p.m.

2 (5:29 p.m., off the record.)

3 (5:43 p.m., on the record.)

4 THE VIDEOGRAPHER: We are now going back on the
5 record. The time is 5:43 p.m.

6 MS. NGUYEN: Okay. And we just wanted to make
7 it clear for the record that, during the earlier
8 portions of Dr. Houh's testimony today, he was provided
9 with Exhibits 1001 and Exhibit 1004 that had attorney
10 markers on them, but he was given clean copies of these
11 exhibits after the lunch break.

12 We reserve the right for the witness to review
13 the transcript, and we have no further questions.

14 THE VIDEOGRAPHER: Anything else?

15 MR. SEBBA: No.

16 THE VIDEOGRAPHER: Stand by. One moment.

17 This marks the end of today's deposition of
18 Dr. Henry Houh. We are now going off the record.

19 The time is 5:44 p.m.

20 (5:44 p.m., deposition concluded.)
21
22
23
24

UNITED STATES AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.)
and LULULEMON USA INC.,)

Petitioners,)

-vs-)

NIKE, INC.,)

Patent Owner.)

Case No.
IPR2023-00180

I, DR. HENRY H. HOUH, state that I have read
the foregoing transcript of the testimony given by me at
my deposition on August 1st, 2023, and that said
transcript constitutes a true and correct record of the
testimony given by me at said deposition except as I
have so indicated on the errata sheets provided herein.

DR. HENRY H. HOUH

No corrections (Please initial) _____
Number of errata sheets submitted _____ (pgs.)

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4 CERTIFICATE OF REPORTER

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8 the State of Illinois, do hereby certify that the
9 witness whose testimony appears in the foregoing
10 deposition was duly sworn by me; that the testimony of
11 said witness was taken by me to the best of my ability
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14 nor employed by any of the parties to the action in
15 which this deposition was taken, and further that I am
16 not a relative or employee of any attorney or counsel
17 employed by the parties thereto, nor financially or
18 otherwise interested in the outcome of the action.

19 
20 _____

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22 Illinois CSR #084-004890

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 Chicago, Illinois 60601
 (312) 236-6936

1 Errata Sheet

2

3 NAME OF CASE: Lululemon vs Nike

4 DATE OF DEPOSITION: 08/01/2023

5 NAME OF WITNESS: Dr. Henry H. Houh

6

7 Page _____ Line _____ Reason _____

8 From _____ to _____

9 Page _____ Line _____ Reason _____

10 From _____ to _____

11 Page _____ Line _____ Reason _____

12 From _____ to _____

13 Page _____ Line _____ Reason _____

14 From _____ to _____

15 Page _____ Line _____ Reason _____

16 From _____ to _____

17 Page _____ Line _____ Reason _____

18 From _____ to _____

19 Page _____ Line _____ Reason _____

20 From _____ to _____

21 Page _____ Line _____ Reason _____

22 From _____ to _____

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29 194:22,23 195:1,3,8,10 196:5 197:4,10,21 198:2, 8,20 200:21 202:7, 17 203:2	133:9	51 78:5	155:11	86 143:2
2900 194:22 195:7 198:24 199:1,4,10	40 195:6	55 39:4 102:24 104:13 116:19 126:13 143:1 155:2	61 19:3 24:22 112:12 113:24 115:13 117:20	87 211:24 212:1
2:32 148:23,24	41 81:8 149:8,21 150:7	55A 188:23 189:9 190:9 192:17	63 212:21 213:10 216:12 221:1	88 107:3,12 143:2 212:4,7 213:2
2:43 149:1,3	43 194:7,9,12,15 195:18 196:18 197:6,10 198:8 199:21	55B 188:23 189:9	64 203:7,9,12	89 18:20
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