

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 LULULEMON ATHLETICA CANADA INC.

4 and LULULEMON USA INC.

5 Petitioner,

6 v.

7 NIKE, INC.

8 Patent Owner.

9
10 Patent No. 10,232,220

11 Inter Partes Review No. IPR2023-00180

12
13
14 Videotaped Deposition of ROBERT T. STONE,
15 PH.D., taken at the law offices of Morrison
16 Foerster, LLP, 2100 L Street, NW, Suite 900,
17 Washington, DC, beginning at 9:12 a.m., Eastern
18 Standard Time, Tuesday, October 24, 2023, before
19 Ryan K. Black, Registered Professional Reporter,
20 Certified Livenote Reporter and Notary Public
21 in and for the District of Columbia.

22
23
24 JOB No. 6155139

25 PAGES 1 - 84

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I N D E X

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E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 2001	the expert declaration of Robert T. Stone, Ph.D.....	13
Exhibit 1001	U.S. Patent No. 10,232,220 B2.....	38
Exhibit 1005	U.S. Patent Application Publication No. 2009/0150178 A1.....	72

1 THE VIDEOGRAPHER: Good morning. 9:12
2 We're going on the record at 9:12 a.m. on October 9:12
3 24th, 2023. Please note that the microphones are 9:12
4 sensitive and may pick up whispering and private 9:12
5 conversations. Please mute your phones at this 9:12
6 time. Audio and video recording will continue to 9:12
7 take place unless all parties agree to go off the 9:12
8 record. 9:12
9 This is Media Unit 1 of the 9:12
10 video-recorded deposition of Dr. Robert T. Stone 9:13
11 in the matter of Lululemon Athletica Canada, 9:13
12 Inc., et al., versus Nike, Inc., filed in the 9:13
13 United States Patent and Trademark Office 9:13
14 before the Trial and Appeal Board, Case Number 9:13
15 IPR2023-00180. 9:13
16 My name is Orson Braithwaite, 9:13
17 representing Veritext Legal Solutions, and I'm 9:13
18 the videographer. The court reporter is Ryan 9:13
19 Black, from the firm Veritext Legal Solutions. 9:13
20 Counsel will now state their appearances 9:13
21 and affiliations for the record. 9:13
22 MS. NGUYEN: Jean Nguyen, with Morrison 9:13
23 & Foerster. And with me is my colleague Alex 9:13
24 Yap, on behalf of petitioner Lululemon. 9:13
25 MR. SEBBA: This is Michael Sebba, from 9:13

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1	Arnold & Porter. I'm joined by my colleague,	9:13
2	Dave McMullen, on behalf of the deponent and	9:13
3	Nike, Inc.	9:14
4	THE VIDEOGRAPHER: Thank you.	9:14
5	Will the court reporter please swear in	9:14
6	the witness?	9:14
7	* * *	9:14
8	Whereupon --	9:14
9	ROBERT THOMAS STONE, PH.D.,	9:14
10	called to testify, having been first duly sworn	9:14
11	or affirmed, was examined and testified as	9:14
12	follows:	9:14
13	* * *	9:14
14	EXAMINATION	9:14
15	BY MS. NGUYEN:	9:14
16	Q. Good morning, --	9:14
17	A. Good morning.	9:14
18	Q. -- Dr. Stone. Could you please state	9:14
19	and spell your full name for the record?	9:14
20	A. Robert Thomas Stone. R-o-b-e-r-t.	9:14
21	T-h-o-m-a-s. S-t-o-n-e.	9:14
22	Q. Great.	9:14
23	And do you identify yourself as Robert	9:14
24	Stone, Dr. Stone or another nickname? Maybe Rob?	9:14
25	A. I -- I have a joke that to my friends	9:14

1 and family it's Bob. To opposing counsel it's 9:14
2 Dr. Stone. 9:14
3 Q. Got it. Got it. Okay. Okay. So 9:14
4 Dr. Stone is, kind of, the name that you identify 9:14
5 as? 9:14
6 A. That's correct. 9:14
7 Q. And do you understand that you have 9:14
8 taken an oath to tell the truth today? 9:14
9 A. I do. 9:14
10 Q. And is there any reason you cannot give 9:14
11 complete and accurate testimony today? 9:14
12 A. No. 9:14
13 Q. Okay. So just to kind of set of 9:14
14 foundation, we'll try to take breaks about every 9:14
15 hour. If you need a break before, please let 9:14
16 me know. I may ask that I finish my line of 9:14
17 questioning, but after that I will typically 9:15
18 agree to a break. Is that okay? 9:15
19 A. That's fine. 9:15
20 Q. Okay. And you are here to give 9:15
21 deposition testimony today, so I will be asking 9:15
22 a series of questions. Please make sure your 9:15
23 responses are verbal because the court reporter 9:15
24 cannot pick up nonverbal responses. So no 9:15
25 head-nodding. Do you understand? 9:15

Page 6

1	A. Yes.	9:15
2	Q. Great. And if you don't understand a	9:15
3	question that I ask, please let me know and I	9:15
4	can try to either repeat it or rephrase. If you	9:15
5	don't hear me, please also let me know. I will	9:15
6	say it again. I know this conference room is	9:15
7	quite large, so please do let me know. If you do	9:15
8	provide an answer, I'm going to assume that you	9:15
9	understand my question. Okay?	9:15
10	A. Understood.	9:15
11	Q. Great. And how many times have you	9:15
12	served as an expert before this case?	9:15
13	A. I don't have a total count, but	9:15
14	somewhere in the order of 20, 25 times.	9:15
15	Q. Okay. Okay. And can you recall the	9:15
16	different companies that you represented in those	9:15
17	20 to 25 cases?	9:15
18	A. It's a wide variety. Nellcor.	9:16
19	Mallinckrodt were the earliest ones. I've	9:16
20	done several other. Medtronic. I've done some	9:16
21	product liability cases, Becton Dickinson.	9:16
22	Don't recall all the rest. I'd have to	9:16
23	go looking at my notes.	9:16
24	Q. Okay. And has a court ever excluded an	9:16
25	opinion that you've offered?	9:16

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1 A. One phrase was excluded when I opined 9:16
2 that a physician would not perform a diagnosis 9:16
3 without reviewing the case history, and that was 9:16
4 stricken because I'm not a physician and not an 9:16
5 expert in that area. 9:16
6 Q. I see. I see. Okay. 9:16
7 And then in these 20 to 25 prior cases 9:16
8 that you served as an expert, would you say that 9:17
9 you've represented more plaintiffs than 9:17
10 defendants? 9:17
11 A. I don't think so. It -- it could be, 9:17
12 but it's -- it's been a mix. 9:17
13 Q. Okay. So maybe 50/50? 50 -- 9:17
14 A. I wouldn't hazard a number without going 9:17
15 and counting. 9:17
16 Q. Okay. Got it. And you were hired as an 9:17
17 expert by Nike; is that right? 9:17
18 A. That's correct. 9:17
19 Q. About how many times have you 9:17
20 represented Nike? 9:17
21 A. This is the first time. 9:17
22 Q. Okay. And how many other IPRs are you 9:17
23 working on for Nike? 9:17
24 A. One other. 9:17
25 Q. Do you remember the patent of the other 9:17

1	IPR that you're working on for Nike?	9:17
2	A. No. I don't keep the patent number	9:17
3	memorized.	9:17
4	Q. Oh, sorry. Do you -- are you familiar	9:17
5	with the subject matter for that other?	9:17
6	A. Not off the top of my head.	9:17
7	Q. Okay. And how many times have you	9:17
8	worked for the law firm Arnold & Porter before	9:17
9	this IPR?	9:17
10	A. I don't recall doing so before.	9:17
11	Q. So this is the first time you've worked	9:17
12	with Arnold & Porter?	9:18
13	A. As I said, I don't recall.	9:18
14	Q. So looking at your CV, it looks	9:18
15	like you're a professor in the Department of	9:18
16	Biomedical Engineering and Mechanics; is that	9:18
17	right?	9:18
18	A. That's correct.	9:18
19	Q. And that is a professor at Virginia	9:18
20	Tech, correct.	9:18
21	A. That's correct.	9:18
22	Q. Okay. And how long have you been a	9:18
23	professor?	9:18
24	A. I was first a perfect -- professor there	9:18
25	from '70 -- sorry, from '81 to '83, --	9:18

1 Q. Mm-hmm. 9:18

2 A. -- went into industry for 39 years. And 9:18

3 I've been back for, now, a year-and-a-quarter. 9:18

4 Q. And when you went to industry for 9:18

5 39 years, it looks like you've been working at 9:18

6 various medical device companies; is that right? 9:18

7 A. That's correct. 9:18

8 Q. What's the name of the last medical 9:18

9 device company you worked at? 9:18

10 A. Medical Design Solutions, Incorporated. 9:18

11 Q. And it seems like there you worked with 9:18

12 sensors like EKGs and accelerometers; is that 9:18

13 right? 9:18

14 A. That's some of the things we worked 9:18

15 with, yes. 9:18

16 Q. What are some of the other things that 9:18

17 you worked with? 9:18

18 A. We worked in sensors that would be in a 9:18

19 cardiac catheter. We worked with sensors that 9:19

20 would go into an abdominal cavity. We worked 9:19

21 with sensors that would go inside of a catheter 9:19

22 and detect the type of tissue that the catheter 9:19

23 was being inserted into. Thermometry. Pressure. 9:19

24 MS. NGUYEN: Sorry. We're having 9:19

25 problems with this realtime feed. Can you 9:19

1 -- it's not updating. 9:19
2 (Brief pause in proceedings.) 9:19
3 THE WITNESS: Oh, ultrasound. 9:19
4 BY MS. NGUYEN: 9:19
5 Q. Okay. So, sorry. EKG, accelerometers, 9:19
6 cardiac catheters, ultrasound. I believe you 9:20
7 mentioned another one related to pressure; is 9:20
8 that correct? 9:20
9 A. Yeah. Pressure sensors. 9:20
10 Q. Pressure sensors. Okay. Okay. 9:20
11 So what exactly is it a sensor? 9:20
12 A. A sensor is a device which transforms 9:20
13 one type of energy into another type of energy, 9:20
14 which can be monitored, recorded or displayed. 9:20
15 Q. Okay. Okay. What's an example -- 9:20
16 when you say "transforms one type of energy into 9:20
17 another type of energy," can you give an example 9:20
18 of the two different types of energy? 9:20
19 A. Well, for example, a photocell 9:20
20 transforms light energy into electrical energy. 9:20
21 Q. Okay. And then what about an EKG? What 9:20
22 kind of energy is being transformed there? 9:20
23 A. The EKG sensor actually is detecting the 9:21
24 electrical activity of the heart and transpond -- 9:21
25 conducting it now to a site where it can be 9:21

1 analyzed to detect that energy. 9:21

2 Q. Okay. And what about an accelerometer? 9:21

3 What kind of energy is being transformed for an 9:21

4 accelerometer? 9:21

5 A. Acceleration, specifically. Force. 9:21

6 Energy -- 9:21

7 Q. Mm-hmm. 9:21

8 A. -- has being transformed into an 9:21

9 electrical signal. 9:21

10 Q. Okay. Have you ever worked with GPS 9:21

11 devices? 9:21

12 A. Yes. 9:21

13 Q. And what do you know about GPS devices? 9:21

14 A. I have worked with GPS devices which 9:21

15 are standalone GPS. 9:21

16 As a pilot, I have had two different 9:21

17 ones on my airplane which can communicate with my 9:21

18 iPad. 9:21

19 Q. Mm-hmm. 9:21

20 A. I've worked with GPS sensors that 9:21

21 are in phones in order to monitor motion of a 9:21

22 subject -- a patient, to analyze their gait, to 9:22

23 determine whether -- their body position, things 9:22

24 of that nature. 9:22

25 Q. Okay. So we talked about EKGs and 9:22

1 accelerometers, along with GPS devices. I think 9:22
2 the common theme there is they all monitor or 9:22
3 measure; is that right? 9:22
4 A. When coupled to a device -- well, they 9:22
5 -- when coupled to a device that can analyze the 9:22
6 signal, they can be used to monitor or measure. 9:22
7 (Exhibit No. 2001, the expert 9:22
8 declaration of Robert T. Stone, Ph.D., was 9:22
9 introduced.) 9:22
10 BY MS. NGUYEN: 9:22
11 Q. Got it. Okay. 9:22
12 So, Dr. Stone, let me have you take a 9:22
13 look at your declaration, Exhibit 2001. 9:22
14 So when I refer to the word "IPR" or 9:23
15 "IPR proceeding," I just want to make sure that 9:23
16 we're on the same page that I'll be referring to 9:23
17 IPR2023-00180. 9:23
18 A. That seems to be correct. 9:23
19 Q. Okay. And then when I say "your 9:23
20 declaration," I'll be referring to Exhibit 9:23
21 2001. Is that okay? 9:23
22 A. Yes. 9:23
23 Q. Okay. What did you do to prepare for 9:23
24 your deposition today? 9:23
25 A. I reviewed my declaration, and I 9:23

1 reviewed the -- the deck that went along with it. 9:23

2 Q. When you say you "reviewed the deck that 9:23

3 went along with it," are you referring to the 9:23

4 patent owner response? 9:23

5 A. I'm referring to the items that are 9:23

6 referred to in here. 9:23

7 Q. I see. 9:23

8 When you say "the items that are 9:23

9 referred to," do you mean the exhibits? 9:23

10 A. Yes. 9:23

11 Q. Okay. Got it. 9:23

12 And who did you meet with in preparation 9:23

13 for your deposition today? 9:23

14 A. I met -- met with these two gentlemen 9:24

15 right here. 9:24

16 Q. I'm sorry. Can you say their names on 9:24

17 the record? 9:24

18 A. Michael and -- 9:24

19 MR. MCMULLEN: David. 9:24

20 THE WITNESS: David, yes. 9:24

21 BY MS. NGUYEN: 9:24

22 Q. And do you know about how many times you 9:24

23 met with Michael and David in preparation for 9:24

24 today's deposition? 9:24

25 A. Yes. I think so. 9:24

1 Q. Can you tell me how many times you met 9:24
2 with David and Michael? 9:24
3 A. Two or three times by -- remotely, and 9:24
4 one time face-to-face. 9:24
5 Q. Okay. And in total, about how much time 9:24
6 did you meet with David and Michael remotely and 9:24
7 face-to-face? 9:24
8 A. About somewhere between six and eight 9:24
9 hours. 9:24
10 Q. So earlier you said you reviewed your 9:25
11 declaration and the exhibits cited in your 9:25
12 declaration. Do you remember which exact 9:25
13 exhibits you reviewed recently? 9:25
14 A. To list them, no. 9:25
15 Q. Okay. Maybe we can go through them one 9:25
16 by one. Did you review the '220 patent recently? 9:25
17 A. Yes. 9:25
18 Q. Okay. Did you review Dr. Houh's 9:25
19 declaration? 9:25
20 A Yes. 9:25
21 Q. Did you review Dr. Houh's transcript? 9:25
22 A. Yes. 9:25
23 Q. What about the patent owner response? 9:25
24 Did you review that one? 9:25
25 A. Yes. 9:25

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1	Q.	Okay. And what about the institution	9:25
2		decision?	9:25
3	A.	Yes.	9:25
4	Q.	Did you review the petition?	9:25
5	A.	I think so, yes.	9:25
6	Q.	Okay. And then also what about Johnson?	9:25
7		Did you review Johnson?	9:25
8	A.	Yes.	9:25
9	Q.	And did you review Sutton?	9:25
10	A.	Yes.	9:25
11	Q.	Any other documents that you remember	9:26
12		reviewing?	9:26
13	A.	I don't recall.	9:26
14	Q.	Okay. Do you remember if you reviewed	9:26
15		any materials that you did not identify in your	9:26
16		declaration?	9:26
17	A.	I do not recall any such materials.	9:26
18	Q.	And then outside of meeting with	9:26
19		counsel, roughly, how much time did you spend	9:26
20		preparing for this deposition?	9:26
21	A.	I haven't tallied it up yet. I don't	9:26
22		recall.	9:26
23	Q.	Do you have an approximate range,	9:26
24		about how much time you spent reviewing your	9:26
25		-- preparing for this deposition, without	9:26

1	counsel?	9:26
2	A. No. I've had a very busy schedule.	9:26
3	I note the times, but I have not totaled it up.	9:26
4	Q. So would you say 10 hours? 20 hours?	9:26
5	A. I wouldn't say anything 'til I totaled	9:26
6	it up.	9:26
7	Q. Would you say it was under a hundred?	9:27
8	A. Oh, yes.	9:27
9	Q. Okay. And over 10 hours?	9:27
10	A. I can't give you a range without	9:27
11	totaling it up.	9:27
12	Q. Do you remember about when you started	9:27
13	working on this IPR proceeding?	9:27
14	A. No.	9:27
15	Q. Okay. And then do you remember about	9:27
16	when you signed your declaration?	9:27
17	A. Well, I believe it's dated in here when	9:27
18	I signed it. I wouldn't -- I wouldn't take note	9:27
19	of such -- it says August 7th, --	9:27
20	Q. Okay.	9:27
21	A. -- so that's the date that I signed it.	9:27
22	Q. So you agree you signed your	9:27
23	declaration?	9:27
24	A. Yes, I did.	9:27
25	Q. Okay. And is there anything sitting	9:27

1 here today that you would like to change in your 9:27
2 declaration? 9:27
3 A. I don't believe -- I don't recall 9:27
4 anything. 9:28
5 Q. Dr. Stone, what is your understanding of 9:28
6 the word anticipation? 9:28
7 A. My understanding, and, again, I'd have 9:28
8 to go to an attorney for a full -- but for a 9:28
9 patent to be antic -- the word anticipation, or 9:28
10 are we talking about it with respect to a patent? 9:28
11 Q. Yes. What is your understanding of the 9:28
12 word anticipation with respect to a patent? 9:28
13 A. It's my understanding that anticipation 9:28
14 when each and every element of the claim can be 9:28
15 demonstrated to have been previously disclosed or 9:28
16 exist in another patent. 9:28
17 Q. Okay. When you say "each and every 9:28
18 element of the claim can be demonstrated," what 9:28
19 do you mean by "demonstrated"? 9:28
20 A. Well, -- 9:28
21 MR. SEBBA: Objection. Mischaracterizes 9:28
22 testimony. 9:28
23 THE WITNESS: Well, let me read what I 9:28
24 actually wrote down -- 9:29
25 BY MS. NGUYEN: 9:29

1	Q. Okay.	9:29
2	A. -- instead of trying to go by memory.	9:29
3	Q. Can you please let me know what	9:29
4	paragraph?	9:29
5	A. Okay.	9:29
6	(Reviews document.)	9:29
7	Okay. Paragraph 22.	9:30
8	Q. Okay.	9:30
9	A. "I understand from counsel that a patent	9:30
10	claim may be unpatentable as anticipated if each	9:30
11	element of that claim is present either expressly	9:30
12	or inherently in a single prior art reference."	9:30
13	Q. Okay. And earlier you said that	9:30
14	"each and every element of the claim can be	9:30
15	demonstrated." Do you recall that?	9:31
16	MR. SEBBA: Objection. Mischaracterizes	9:31
17	testimony.	9:31
18	THE WITNESS: My intention was to convey	9:31
19	that if each and every element was present or you	9:31
20	could demonstrate that it's present in a	9:31
21	single element.	9:31
22	BY MS. NGUYEN:	9:31
23	Q. I see.	9:31
24	And then is there anything else that's	9:31
25	required by anticipation in the patent world?	9:31

1 A. I would have to check with my attorneys. 9:31
2 I'm not an -- an attorney on that. 9:31
3 Q. Okay. Dr. Stone, what is your 9:31
4 understanding of the word embodiment when it 9:31
5 comes to a patent? 9:31
6 A. An embodiment is a -- where the -- the 9:31
7 elements of the claim are actually put together, 9:31
8 and it can be seen that there is a coherent, 9:31
9 existing thing. I -- I'd want to, again, check 9:31
10 with counsel for what the full definition of 9:31
11 embodiment is with respect to patent law. 9:31
12 Q. Do you recall if you used the word 9:32
13 embodiment in your declaration? 9:32
14 A. I'd have to search. Embodiment -- I 9:32
15 know that, as I'm reading through a patent, in 9:32
16 one embodiment, I mean, one example is a way of 9:32
17 putting it; one description. So I've -- reading 9:32
18 several patents, there would be different 9:32
19 embodiments of what would be disclosed in a -- in 9:32
20 the disclosure. 9:32
21 Q. Okay. So let me make sure I understand 9:32
22 this. In your opinion, an embodiment is an 9:32
23 example; is that right? 9:32
24 MR. SEBBA: Objection. Mischaracterizes 9:32
25 testimony. 9:32

1 THE WITNESS: I believe that an 9:32
2 embodiment lists an example. There's more than 9:32
3 just an example. It is enough of a description 9:32
4 that a person of ordinary skill in the art would 9:32
5 understand how to practice the patent with that 9:32
6 particular listing of a description and the 9:33
7 elements that are there. 9:33
8 BY MS. NGUYEN: 9:33
9 Q. Okay. So then, Dr. Stone, how do you 9:33
10 determine when reviewing a patent whether 9:33
11 something is an embodiment? 9:33
12 A. Much of the time if I see a listing in 9:33
13 one embodiment and then in a further embodiment, 9:33
14 that's at least one way that I would determine 9:33
15 what an embodiment is in a patent. 9:33
16 Q. So, in other words, if you see a patent 9:33
17 that says "one embodiment" and then "in a further 9:33
18 embodiment," that's how you determine that there 9:33
19 are two different embodiments? 9:33
20 MR. SEBBA: Objection. Mischaracterizes 9:33
21 testimony. 9:33
22 THE WITNESS: If I see "one embodiment" 9:34
23 and then "in a further embodiment," I would 9:34
24 recognize that there are at least two embodiments 9:34
25 that are described in the patent. 9:34

1	BY MS. NGUYEN:	9:34
2	Q. Okay. Dr. Stone, can you please turn to	9:34
3	Paragraphs 34 to 36 of your declaration?	9:34
4	Dr. Stone, would you agree that you	9:36
5	summarized your understanding of the law in	9:36
6	Paragraphs 34 to 36 of your declaration?	9:36
7	A. I'm sorry. What law?	9:36
8	Q. Claim construction law.	9:36
9	A. That's my understanding, yes.	9:36
10	Q. Okay. And what is your understanding of	9:36
11	how to construe patent claims in the United	9:36
12	States?	9:36
13	A. Well, as I've stated here, the first	9:36
14	thing I do is look at the claim language itself,	9:36
15	how it's used and its context with regard to the	9:36
16	particular claim, as well as other claims that	9:36
17	are listed in that patent; and that the -- unless	9:36
18	there is a further description of what that term	9:36
19	might mean, that they -- the Patent and Trademark	9:36
20	Board would defer to the ordinary and customary	9:36
21	-- customary meaning of the terms that a person	9:36
22	of ordinary skill in the art would have at that	9:36
23	time. So that's one part.	9:36
24	If it's not clear from that, then they	9:36
25	would look at the intrinsic evidence; that is,	9:37

1 how that term is used in the -- at the time of 9:37
2 the invention, that they -- and if that -- if 9:37
3 the meaning was not apparent at the time of the 9:37
4 invention, that they would then look at the 9:37
5 intrinsic evidence to see how it was used 9:37
6 in the -- in the patent itself and in the 9:37
7 specification. And if it's clear from that, 9:37
8 they have to stop and not go beyond that for 9:37
9 interpreting what the claim means -- claim term 9:37
10 means. 9:37
11 Q. Okay. So you're required to consider 9:37
12 the claims of the patent; is that correct? 9:37
13 A. I'm sorry? 9:37
14 Q. I'll repeat that. 9:37
15 So you are required to consider the 9:37
16 claims of the patent; is that correct? 9:37
17 MR. SEBBA: Objection; form. 9:37
18 THE WITNESS: I believe I have said 9:37
19 that you construe the meaning within the claim 9:37
20 it -- itself, as well as other claims, in order 9:37
21 to fully understand the context. 9:38
22 BY MS. NGUYEN: 9:38
23 Q. Okay. Are you required to consider the 9:38
24 specification of the patent? 9:38
25 MR. SEBBA: Objection; form. 9:38

1 THE WITNESS: If it's not clear from the 9:38
2 claim terms, you may consider the specification 9:38
3 to clarify. 9:38
4 BY MS. NGUYEN: 9:38
5 Q. And if it is clear, do you still 9:38
6 consider the specification of the patent? 9:38
7 MR. SEBBA: Objection; form. 9:38
8 THE WITNESS: It's my understanding that 9:38
9 you go to intrinsic evidence if it's not clear, 9:38
10 or, perhaps, there's a difference of opinion as 9:38
11 to what it might mean, then one might go to other 9:38
12 evidence, as in the intrinsic evidence, such as 9:38
13 the specification. 9:38
14 BY MS. NGUYEN: 9:38
15 Q. What -- what exactly is the intrinsic 9:38
16 evidence? 9:38
17 A. Well, the intrinsic evidence includes 9:39
18 the context of the works in the claim, the 9:39
19 specification of the patent and the prosecution 9:39
20 history of the patent; that the specification is 9:39
21 considered the best guide -- sorry. Should have 9:39
22 finished there. 9:39
23 Q. Okay. So are you required to consider 9:39
24 the specification of the patent? 9:39
25 A. Well, I understand there's a -- a 9:39

1 difference of opinion in a -- a word. So when 9:39
2 there is a difference of opinion, it must not be 9:39
3 something that is truly clear to a person of 9:39
4 ordinary skill in the art. So at that point 9:39
5 I would be required to go and look at the 9:39
6 intrinsic evidence to determine what it means. 9:39
7 Q. Okay. When you say "difference of 9:39
8 opinion," whose opinion are you referring to? 9:40
9 A. The opposing sides on this particular -- 9:40
10 Q. Okay. 9:40
11 A. -- IPR. 9:40
12 Q. So when the opposing sides have 9:40
13 difference of opinion, you then look to the 9:40
14 specification; is that right? 9:40
15 MR. SEBBA: Objection; form. 9:40
16 THE WITNESS: One can look to the 9:40
17 specification. One can look to other terms, 9:40
18 where -- that are used there. They may use the 9:40
19 same term -- other claims, rather. Or one may 9:40
20 be required to go all the way to the patent 9:40
21 prosecution history. 9:40
22 BY MS. NGUYEN: 9:40
23 Q. Okay. And then if the opposing sides do 9:40
24 not have a difference of opinion, do you still 9:40
25 look to the specification? 9:40

1 MR. SEBBA: Objection; form. 9:40

2 THE WITNESS: As an expert, I would 9:40

3 still look to see what I believe the term means, 9:40

4 as opposed to simply looking at what the opposing 9:41

5 sides think that it means. 9:41

6 BY MS. NGUYEN: 9:41

7 Q. So if the opposing sides do not have a 9:41

8 difference of opinion, you still look to the 9:41

9 specification; is that right? 9:41

10 MR. SEBBA: Objection; form. 9:41

11 THE WITNESS: What I said was if I have 9:41

12 an opinion with regard to what a term means, I 9:41

13 would look to that to -- the other evidences to 9:41

14 support what my opinion is and inform both sides 9:41

15 of what my opinion was. 9:41

16 BY MS. NGUYEN: 9:41

17 Q. And by "other evidences," are you 9:41

18 referring to the intrinsic evidence? 9:41

19 A. I would look at other claim terms first 9:41

20 to see how the term is used. Then I would go 9:41

21 -- if -- if I thought that there was a 9:41

22 difference, I would look to this intrinsic 9:41

23 evidence next. 9:41

24 Q. Okay. So let me just make sure I 9:42

25 understand this. 9:42

1 You would look to the claim terms first, 9:42
2 correct? 9:42
3 A. Your question, I believe, is predicated 9:42
4 on if I have a difference of opinion from what 9:42
5 other people believe the claim term means. 9:42
6 Then I would look to the other claim terms first. 9:42
7 Then I would look to the intrinsic evidence to 9:42
8 support my opinion. 9:42
9 Q. Okay. Sorry. When you say "when I have 9:42
10 a difference of opinion," you're referring to 9:42
11 your opinion being different from opposing 9:42
12 counsel's; is that right? 9:42
13 MR. SEBBA: Objection; form. 9:42
14 THE WITNESS: I did not say that. 9:42
15 BY MS. NGUYEN: 9:42
16 Q. Okay. What do you mean by "difference 9:42
17 of opinion"? 9:42
18 A. I sometimes correct the opinion of the 9:42
19 counsel that I'm working for. 9:42
20 Q. I see. 9:42
21 A. If I have a difference of opinion from 9:42
22 what is generally accepted or what someone has 9:42
23 put forward, I will look to the evidence to 9:43
24 determine what I think the word act -- the claim 9:43
25 term ought to actually mean. 9:43

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1 Q. I see. Okay. So how are you forming 9:43
2 your opinion before realizing there's a 9:43
3 difference in opinion? 9:43
4 A. Your question is predicated on my belief 9:43
5 that there's a difference of opinion between 9:43
6 counsel. I look at the claim term myself and 9:43
7 what either counsel -- both counsels say and 9:43
8 determine what my opinion is with regard to the 9:43
9 claim term and would have a discussion based on 9:43
10 that. 9:43
11 Q. Okay. So if your opinion is the 9:43
12 same as counsel's, do you still consider the 9:43
13 specification? 9:43
14 MR. SEBBA: Objection; form. 9:43
15 THE WITNESS: I would make sure that 9:43
16 it's coherent with the specification. 9:43
17 BY MS. NGUYEN: 9:43
18 Q. Okay. And how do you make sure it's 9:44
19 coherent with the specification? 9:44
20 A. I read the specification. I look at the 9:44
21 claim term. I determine if it's used correctly 9:44
22 in that format. 9:44
23 Q. Okay. And this is before going into the 9:44
24 specification, right? 9:44
25 MR. SEBBA: Objection; form. 9:44

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1 THE WITNESS: I generally read the 9:44
2 specification before I read a claim term -- the 9:44
3 claims. 9:44
4 BY MS. NGUYEN: 9:44
5 Q. Okay. So you read the specification 9:44
6 first, correct? 9:44
7 A. That's correct. 9:44
8 Q. And then you read the claims, correct? 9:44
9 A. That's correct. 9:44
10 Q. And then what? 9:44
11 A. I see if that claim term really makes 9:44
12 sense with regard to what's in the specification. 9:44
13 Q. Okay. So what happens if a claim term 9:44
14 makes sense? 9:44
15 A. I leave it there. 9:44
16 Q. Okay. And if the claim term doesn't 9:44
17 make sense, then what? 9:44
18 MR. SEBBA: Objection; form. 9:44
19 THE WITNESS: I look at definitions to 9:44
20 make sure that I have not overlooked something. 9:44
21 BY MS. NGUYEN: 9:44
22 Q. Mm-hmm. 9:44
23 A. I look at definitions preferably at 9:45
24 the time of the patent issue. I read the 9:45
25 specification to find out what the spe -- where 9:45

1 that -- that term is used in the specification, 9:45
2 again, and find out if it's somehow brought 9:45
3 out of context, if it's in context, or if I've 9:45
4 misunderstood, and, finally, come to -- and, if 9:45
5 not, then I'll look at the -- the intrinsic 9:45
6 evidence to find out if there's clarification, 9:45
7 which there sometimes is in a -- in the patent 9:45
8 history file -- the prosecution history file; and 9:45
9 come to rectify my opinion with what -- how it's 9:45
10 being used. 9:45
11 Q. Okay. And when you say "I look at 9:45
12 definitions," are you referring to dictionary 9:45
13 definitions? 9:45
14 A. I'm sorry? 9:45
15 Q. When you say "I look at definitions," 9:45
16 are you referring to dictionary definitions? 9:45
17 A. Yes. 9:46
18 Q. Okay. 9:46
19 A. In various dictionaries. 9:46
20 Q. How do you determine which dictionaries 9:46
21 to look at? 9:46
22 A. The context of the patent. 9:46
23 Q. Okay. And then you said you look 9:46
24 at intrinsic evidence to find out if there's 9:46
25 clarification. Which intrinsic evidence are you 9:46

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1	referring to?	9:46
2	A. I believe I stated, in particular, the	9:46
3	patent history file --	9:46
4	Q. Okay. So the proc --	9:46
5	A. -- where there might be a	9:46
6	clarification --	9:46
7	Q. I see.	9:46
8	A. -- limiting a claim term.	9:46
9	Q. In this IPR proceeding, did you look at	9:46
10	the prosecution history?	9:46
11	A. I did.	9:46
12	Q. Did that inform your opinion at all with	9:46
13	respect to any claim terms?	9:46
14	A. I don't believe I referred to it, so	9:46
15	I -- I -- I would not say that.	9:46
16	Q. Okay. And aside from the prosecution	9:46
17	history, did you consider any other intrinsic	9:46
18	evidence?	9:47
19	A. In particular, I -- I considered the	9:47
20	-- the patent itself, the -- the disclosure	9:47
21	-- the specification.	9:47
22	Q. The specification. Okay.	9:47
23	A. And -- sorry. And how it was used in a	9:47
24	previous term -- previous claim.	9:47
25	Q. By "previous claim," you mean a claim	9:47

1	that has a lower number?	9:47
2	A. Yes.	9:47
3	Q. I see.	9:47
4	And are you required to consider the	9:47
5	prosecution history when determining the meaning	9:47
6	of a term?	9:47
7	A. It's something I can use. I don't know	9:47
8	that I'm required to use it.	9:47
9	Q. Okay. Are you required to consider	9:47
10	dictionary definitions?	9:47
11	A. I believe dictionary def -- definitions	9:47
12	would be some extrinsic evidence that are not	9:47
13	right there in the claim itself or in the	9:48
14	specification.	9:48
15	Q. So, then, are you required to consider	9:48
16	dictionary definitions?	9:48
17	A. Only if the claim term isn't clear.	9:48
18	Q. Only if the claim term isn't clear to	9:48
19	you, correct?	9:48
20	A. That's correct.	9:48
21	Q. I see.	9:48
22	And then earlier you said you look at	9:48
23	various dictionary definitions. What happens if	9:48
24	the dictionary definitions conflict?	9:48
25	A. Then it has to be fit in with the	9:48

1 context in order to determine what interpretation 9:48
2 needs to be used. 9:48
3 Q. Okay. What do you mean by "fit in the 9:48
4 context"? 9:48
5 A. That's best described by giving an 9:48
6 example. Let's just take the word r-e-a-d. 9:48
7 Q. R-e-a-d. Okay. 9:48
8 A. It could be read. It could be read. 9:49
9 Present tense or past tense. And how one 9:49
10 interprets it in a sentence deter -- depends on 9:49
11 the context of where it's utilized. 9:49
12 Q. Mm-hmm. 9:49
13 So read, present tense, is -- could be 9:49
14 different than read, past tense; is that correct? 9:49
15 A. That's correct. 9:49
16 Q. Okay. And read, present tense, is a 9:49
17 verb, is that right, based on how you phrased 9:49
18 that? 9:49
19 A. Read is typically a verb, yes. 9:49
20 Q. Okay. What about if read is a noun? 9:49
21 MR. SEBBA: Objection; form. 9:49
22 THE WITNESS: Would you give me an 9:49
23 example of where read is used as a noun? 9:49
24 BY MS. NGUYEN: 9:49
25 Q. Sure. So I used to play the saxophone, 9:50

1 and it has a read. 9:50

2 A. That's not r-e-a-d. I specifically said 9:50

3 r-e-a-d. 9:50

4 Q. Okay. So spelled the specific way, it 9:50

5 has different -- well, strike that. 9:50

6 Okay. So, Dr. Stone, are you required 9:50

7 to construe the claims from the perspective of a 9:50

8 patent examiner? 9:50

9 MR. SEBBA: Objection; form. 9:50

10 THE WITNESS: I don't know what an 9:50

11 examiner -- a pat -- how a patent examiner would 9:50

12 do it. I know I'm expected to construe the 9:50

13 claims -- excuse me -- I believe as a person of 9:50

14 ordinary skill in the art would understand them. 9:50

15 BY MS. NGUYEN: 9:50

16 Q. Okay. And are you required to interpret 9:50

17 the patent claims from the perspective of someone 9:50

18 reading them today? 9:50

19 MR. SEBBA: Objection; form. 9:50

20 THE WITNESS: It's my understanding that 9:50

21 I should interpret them in the form of -- that 9:51

22 someone of ordinary skill in the art would 9:51

23 understand them at the time the patent was filed. 9:51

24 BY MS. NGUYEN: 9:51

25 Q. And when was the patent filed for this 9:51

1 IPR proceeding? 9:51

2 A. I'd have to look at the patent again to 9:51

3 remember the exact date. 9:51

4 Q. Okay. Dr. Stone, is it your 9:52

5 understanding that, if a patent specification 9:52

6 describes an example, that the claims must cover 9:52

7 that example? 9:52

8 MR. SEBBA: Objection; form. 9:52

9 THE WITNESS: I don't believe that's the 9:52

10 case. I don't believe the claims have to cover 9:52

11 every example that might be given. 9:52

12 BY MS. NGUYEN: 9:52

13 Q. Okay. Does -- do the claims have to 9:52

14 cover one example? 9:52

15 MR. SEBBA: Objection; form. 9:52

16 THE WITNESS: I don't -- it's my 9:52

17 understanding that claims cannot cover things 9:52

18 that are outside the scope of what has been 9:52

19 disclosed, to the best of my recollection. I'd 9:52

20 have to clarify that. But when you say "cover 9:52

21 one example," I'm not sure what you mean by that. 9:53

22 BY MS. NGUYEN: 9:53

23 Q. When you say "outside the scope of what 9:53

24 has been disclosed," what are you referring to? 9:53

25 MR. SEBBA: Objection; form. 9:53

1	THE WITNESS: Could you -- what	9:53
2	I'm referring to is in the claims, one cannot	9:53
3	suddenly claim something for which there has not	9:53
4	been an adequate disclosure that a person of	9:53
5	ordinary skill in the art could practice it.	9:53
6	BY MS. NGUYEN:	9:53
7	Q. Okay. Adequate disclosure where?	9:53
8	A. In the specification.	9:53
9	Q. Okay. And then what do you mean by	9:53
10	"a person of ordinary skill in the art could	9:54
11	practice it"? What does it refer to?	9:54
12	MR. SEBBA: Objection; form.	9:54
13	THE WITNESS: My best understanding is	9:54
14	that -- be able to utilize each and every element	9:54
15	of that claim in a -- either a method or a	9:54
16	device.	9:54
17	BY MS. NGUYEN:	9:54
18	Q. Okay. So is it your opinion that as	9:54
19	long as the specification discloses an example,	9:54
20	that the claims cover the disclosed example?	9:54
21	A. I don't understand your question.	9:55
22	Q. Okay. So earlier we were talking about	9:55
23	the claims covering one example. Do you recall	9:55
24	that?	9:55
25	A. I recall that.	9:55

1 Q. And then your answer was that it's your 9:55
2 understanding that the claims cannot cover things 9:55
3 that are outside the scope of what has been 9:55
4 disclosed. 9:55
5 A. That's correct. 9:55
6 Q. And then when I asked you what you 9:55
7 referred to as what has been disclosed, you said 9:55
8 the specification? 9:55
9 A. That's correct. 9:55
10 Q. So if the specification discloses the 9:55
11 one example, do the claims have to cover that one 9:55
12 example? 9:55
13 MR. SEBBA: Objection; form. 9:55
14 THE WITNESS: No. The example -- I'm 9:55
15 thinking of it backwards. Like, the examples 9:55
16 that are given in the disclosure must cover 9:56
17 what's claimed in the claims. 9:56
18 BY MS. NGUYEN: 9:56
19 Q. The examples that are given in the 9:56
20 disclosure -- by "disclosure" referring to the 9:56
21 specification, correct? 9:56
22 A. Sorry. Specification. Yes. 9:56
23 Q. Okay. So then if the specification 9:56
24 describes an example of an invention, then are 9:56
25 the claims limited to that example? 9:56

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1 MR. SEBBA: Objection; form. 9:56

2 THE WITNESS: If I recall -- if I would 9:56

3 -- you would hand me one of the patents, there's 9:56

4 an interesting comment right before the claims in 9:56

5 most all of the patents. 9:57

6 (Exhibit No. 1001, U.S. Patent No. 9:57

7 10,232,220 B2, was introduced.) 9:57

8 MR. SEBBA: Thank you. 9:57

9 BY MS. NGUYEN: 9:57

10 Q. And, Dr. Stone, while you're looking at 9:57

11 that, I just handed you Exhibit 1003 in this IPR 9:57

12 proceeding. 9:57

13 MR. SEBBA: I think you got the number 9:57

14 wrong. 9:57

15 MS. NGUYEN: Sorry. 1001. 9:57

16 BY MS. NGUYEN: 9:57

17 Q. Dr. Stone, do you recognize this 9:57

18 exhibit? 9:57

19 A. I do. 9:57

20 Q. What is it? 9:57

21 A. It is the -- what has been referred to 9:57

22 as the '220 patent, the patent at issue in this 9:58

23 particular IPR. 9:58

24 Q. Okay. And this one does -- doesn't 9:58

25 include my usual and customary that I've seen. 9:58

1	A. (Reviews document.)	9:58
2	I'm -- I don't recall the statement well	9:59
3	enough to declare it right now. But it -- it's	9:59
4	typical that a -- a person would understand how	9:59
5	to combine these various things that have been	9:59
6	disclosed -- a person of skill in the art -- and	9:59
7	I -- again, I'm not going to try to re -- recall	9:59
8	it, but let's go back to your question.	9:59
9	Could we read that back?	9:59
10	Q. So my question was if the specification	9:59
11	describes an example of an invention, then are	9:59
12	the claims limited to that example?	9:59
13	MR. SEBBA: Objection; form.	9:59
14	THE WITNESS: To just that example? One	9:59
15	example?	9:59
16	BY MS. NGUYEN:	9:59
17	Q. Let's start with one example, yes.	10:00
18	MR. SEBBA: Objection; form.	10:00
19	THE WITNESS: I would want to discuss	10:00
20	that with counsel. I don't recall specifically	10:00
21	that particular limitation.	10:00
22	I would say if there was only one	10:00
23	example in the disclosure, and nothing that would	10:00
24	-- a person of ordinary skill in the art would	10:00
25	be directed to in the disclosure beyond that	10:00

1 example, then the claims could not go beyond that 10:00
2 -- beyond what a person of ordinary skill in the 10:01
3 art could practice based on that disclosure of 10:01
4 that example. 10:01
5 BY MS. NGUYEN: 10:01
6 Q. Okay. What if there are two examples? 10:01
7 A. Then the claims can include the material 10:01
8 if they're -- if it would be obvious to combine 10:01
9 those two by a person of ordinary skill in the 10:01
10 art. 10:01
11 I -- again, I would want to discuss this 10:01
12 with counsel before rendering a legal opinion. 10:01
13 Q. What do you mean by "material"? 10:01
14 A. In which context? 10:01
15 Q. So you answered, "then the claims can 10:02
16 include the material"? 10:02
17 A. The information. 10:02
18 Q. What do you mean by "information"? 10:02
19 A. The claims can cover the material that 10:02
20 has been disclosed. I think that's the best way 10:02
21 of putting it. The claims may cover the material 10:02
22 that has been disclosed in the specification. 10:02
23 Q. Okay. So we're almost at an hour. Why 10:03
24 don't we take a break? 10:03
25 A. Okay. 10:03

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1	THE VIDEOGRAPHER: The time is 10:03	10:03
2	a.m. This ends Unit 1. We're off the record.	10:03
3	(Recess taken.)	10:03
4	THE VIDEOGRAPHER: The time is 10:19	10:19
5	a.m. This begins Unit Number 2. We're on the	10:19
6	record.	10:19
7	BY MS. NGUYEN:	10:19
8	Q. Okay. Dr. Stone, did you speak with	10:19
9	anybody during the break?	10:19
10	A. Yes.	10:20
11	Q. Okay. Did you speak with counsel?	10:20
12	A. Yes.	10:20
13	Q. And did you speak with counsel about the	10:20
14	proceeding at all?	10:20
15	A. I asked if I were to ask a question	10:20
16	about X, would that be incorrect? And he said,	10:20
17	yes, that would be, so don't. So I didn't ask	10:20
18	the questions.	10:20
19	Q. Sorry. When you said "about X," -- oh,	10:20
20	I see. You're referring to -- got it.	10:20
21	Okay. Dr. Stone, what is your	10:20
22	understanding of obviousness?	10:20
23	A. I'm sorry?	10:20
24	Q. What is your understanding of the term	10:20
25	obviousness?	10:20

1 A. It's a long description here that I have 10:20
2 concerning what obviousness would be. 10:20

3 So beginning with Paragraph 30, the 10:21
4 prior art combination must provide a reasonable 10:21
5 expectation -- expectation of success. Then 10:21
6 they give some -- an example here. Cannot come 10:21
7 from hindsight recognition or the benefits or the 10:21
8 advantages. Can't look back and say, oh, that 10:21
9 would have been good to do. One must place a 10:21
10 shoe -- one's self in the shoes of a person of 10:21
11 the ordinary skill in the art at the relevant 10:21
12 field of the technology at the time of the 10:21
13 alleged invention in order to determine the 10:21
14 obviousness. 10:21

15 Only consider what was known at the time 10:21
16 of the invention. Ignore the knowledge that's 10:21
17 currently held of the inventions. Cannot be used 10:21
18 as a roadmap to reconstruct or piece together 10:21
19 the -- that the claims of the patents at issue 10:21
20 cannot be used as a roadmap to reconstruct or 10:21
21 piece together the prior art. 10:21

22 You have to place yourselves in the 10:21
23 shoes of a person of ordinary skill in the art 10:22
24 that was trying to address the problems or issues 10:22
25 as they understood it at the time of the 10:22

1 invention; and ignore the knowledge that you 10:22
2 currently have -- that you have -- that would 10:22
3 have been knowledge that was developed since that 10:22
4 time. 10:22

5 Now, when there's some recognized reason 10:22
6 to solve a problem, there are a finite number of 10:22
7 identified predictable solution. A person of 10:22
8 ordinary skill in the art may have a reason to 10:22
9 pursue the known options within his or her 10:22
10 technical grasp. 10:22

11 And then, finally, that the U.S. 10:22
12 Patent and Trademark Office may rely on certain 10:22
13 example rationales in reviewing the patent 10:22
14 applications to understand whether the subject 10:22
15 matter of the claims is obvious. So they would 10:22
16 make that determination of obviousness at that 10:22
17 point in time. 10:22

18 So then it gives some examples of what 10:22
19 would make obviousness. Things that have to be 10:22
20 there that you can combine prior art elements 10:23
21 according to known methods to yield predictable 10:23
22 results; simple substitution of one known element 10:23
23 from another to obtain predictable results; use 10:23
24 of a known technique to improve similar devices, 10:23
25 methods or products in the same way; applying a 10:23

1 known technique to a known device to yield 10:23
2 predictable -- or improvements to yield 10:23
3 predictable results; and that it would be, 10:23
4 obviously, to try choosing from a finite number 10:23
5 of identified predictable solutions with a 10:23
6 reasonable expectation of success. 10:23
7 So I could go on reading my definition, 10:23
8 but those were what I utilized in determining 10:23
9 whether or not the -- the claimed material was 10:23
10 obvious. 10:23
11 Q. And just to clarify, were you looking 10:23
12 at Paragraph 30 and other paragraphs in your 10:23
13 declaration? 10:23
14 A. Yes. 10:23
15 Q. Okay. And what is your understanding of 10:23
16 reasonable expectation of success? 10:24
17 A. From my perspective, I look at a 10:24
18 technological material, the information about it, 10:24
19 the basic science; look at how it's going to be 10:24
20 combined and make a determination that it's 10:24
21 probably going to work. That's the best way I 10:24
22 would describe a reasonable expectation of 10:24
23 success. 10:24
24 Q. And when you say "technological 10:24
25 material," what are you referring to? 10:24

1 A. Any of the material that describes a 10:24
2 similar technology existing at the time of the 10:24
3 original patent claim -- patent issue, I should 10:24
4 say -- publication. 10:24

5 Q. So existing at the time of when the 10:24
6 patent was published; is that right? 10:24

7 A. There's been a difference in when a 10:25
8 patent can be -- what can be considered prior 10:25
9 art and when and who gets a patent and so forth. 10:25

10 My best understanding is at the time of 10:25
11 the invention, depending on what the definition 10:25
12 of at the time of the invention is by the Patent 10:25
13 and Trademark Office. And that's -- my 10:25
14 understanding is that's changed. 10:25

15 Q. And what is the time of the invention 10:25
16 for the '220 patent? 10:25

17 A. I can give you the date of the patent, 10:25
18 and a prior publication date, would have been 10:25
19 2000 -- February 1st, 2018. And it's a 10:25
20 continuation of a patent that was filed on 10:25
21 November 23rd, 2016; and that, indeed, there are 10:26
22 elements in here where I described the date of 10:26
23 the invention when I go to the '220 patent. 10:26

24 So I, frankly, don't recall what the law 10:26
25 was at the time of the '220 patent. I only know 10:26

1 that it's considered to be the application that 10:26
2 the -- I -- I -- I don't recall off the top of my 10:27
3 head. 10:27

4 Q. Okay. So you don't know what the time 10:27
5 of the invention is for the '220 patent? 10:27

6 MR. SEBBA: Objection; form. 10:27

7 THE WITNESS: I just said I don't recall 10:27
8 off the top of my head. I've looked at it, I've 10:27
9 discussed before, but I do not recall the answer 10:27
10 as I sit here at the moment. 10:27

11 BY MS. NGUYEN: 10:27

12 Q. Do you recall how to determine the time 10:27
13 of the invention '220 patent? 10:27

14 A. I can determine the time that the date 10:27
15 of the patent was issued, and I can determine 10:27
16 when it was first published. I don't know 10:27
17 whether they used notebooks or other materials. 10:27
18 I don't recall that. In the past I have done 10:27
19 patents where the determination of the invention 10:27
20 was based on individual notebooks. I don't 10:27
21 recall what the law was at the time determining 10:27
22 the date of the invention, as I sit here right 10:27
23 now. 10:27

24 Q. When you say, "you don't recall whether 10:28
25 they used the notebooks or the material," who are 10:28

1	you referring to?	10:28
2	MR. SEBBA: Objection; form.	10:28
3	THE WITNESS: It's a matter of patent	10:28
4	law. Determining when the invention was has	10:28
5	sometimes been determined in court. I don't know	10:28
6	how -- I do not recall how it would have been	10:28
7	determined at the time of this particular	10:28
8	invention.	10:28
9	BY MS. NGUYEN:	10:28
10	Q. So earlier you gave me the date of the	10:28
11	patent and a prior publication date.	10:28
12	A. I did.	10:28
13	Q. Which one did you use in determining	10:29
14	-- or in your analysis of the '220 patent?	10:29
15	MR. SEBBA: Objection. Mischaracterizes	10:29
16	the testimony.	10:29
17	THE WITNESS: I believe that I use the	10:30
18	prior publication date, but I do not recall off	10:30
19	the top of my head for certain.	10:30
20	BY MS. NGUYEN:	10:30
21	Q. And what is the prior publication date	10:31
22	for the '220 patent?	10:31
23	A. It lists February 1st, 2018.	10:31
24	But it also lists a continuation of an	10:31
25	application filed on November 23rd, 2016.	10:32

1 Q. Okay. Earlier you said -- or you 10:32
2 mentioned hindsight recognition or benefits. 10:32
3 What were you referring to? 10:32
4 MR. SEBBA: Objection; form. 10:32
5 THE WITNESS: I'm trying to look at my 10:33
6 complete sentence. 10:33
7 Oh, the complete sentence, "I also 10:33
8 understand from counsel that the obviousness 10:33
9 combination cannot come from hindsight 10:34
10 recognition of the benefits or advantages 10:34
11 of the combination." 10:34
12 The benefits would be, oh, you know, 10:34
13 if you put these two together, we'd be able to 10:34
14 solve this problem. But you can't use hindsight 10:34
15 for that. You'd have to use what was known at 10:34
16 the time. 10:34
17 So the benefits was a recognition that, 10:34
18 if I do these two, it will end up with something 10:34
19 that doesn't -- a better way or does a better 10:34
20 something; somehow provides an improvement. 10:34
21 BY MS. NGUYEN: 10:34
22 Q. Okay. So when you say "you can't use 10:34
23 hindsight; you have to use what was known at the 10:34
24 time," can you explain that to me? 10:34
25 A. I think those words are obvious. 10:34

1 Hindsight is looking back from a position where 10:35
2 you've learned a lot of material now and, oh, 10:35
3 knowing this, I could combine those and solve 10:35
4 that problem. You can't use hindsight. 10:35
5 Q. And what do you mean by "you've learned 10:35
6 a lot of material now"? 10:35
7 A. Knowledge is increasing -- I'm told it's 10:35
8 more than doubling every decade. So you can't 10:35
9 use that new knowledge to look back on a problem 10:35
10 back then and say, oh, well, if I had combined 10:35
11 those two, I would be able to solve that problem. 0:35
12 That's not permitted. 10:35
13 Q. Okay. So earlier you had testified that 10:36
14 you're not allowed to ignore the knowledge that 10:36
15 you currently have. Do you recall that? 10:36
16 A. Wait a minute. You're not allowed to 10:36
17 ignore the knowledge that -- I think you must 10:36
18 ignore any new knowledge in determining 10:36
19 obviousness. You can't use new knowledge that 10:36
20 would have been accrued -- excuse me -- that 10:36
21 would have been generated since the time of the 10:36
22 invention. 10:36
23 Q. Okay. And then you testified that 10:36
24 there are nine number of identified predictable 10:37
25 solutions. 10:37

1 A. Nine? A known number. I don't think I 10:37
2 said "nine." A finite number. 10:37
3 Q. Yeah. That's what the transcript says. 10:37
4 Okay. That's fine. 10:37
5 A. Probably should have been a "finite 10:37
6 number." 10:37
7 Yes. Specifically, my paragraph reads, 10:37
8 "And there are a finite number of identified 10:37
9 predictable solutions." 10:37
10 Q. Which paragraph are you referring to? 10:37
11 A. It's 27f. 10:37
12 Q. And how many known solutions are there 10:37
13 in 27f -- or, sorry, in 27? 10:37
14 A. How many solutions or how many 10:37
15 paragraphs -- subheadings? I don't understand 10:37
16 your question. 10:37
17 Q. You called them solutions, but -- sorry. 0:37
18 In Paragraph 27, you are providing a 10:38
19 list of factors; is that right? 10:38
20 A. That's correct. 10:38
21 Q. Do you recall whether you talked about 10:38
22 any of these factors in your declaration, aside 10:38
23 from Paragraph 27? 10:38
24 A. I'd have to read each of the paragraphs. 0:38
25 I don't have it memorized. 10:38

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1	Q. Okay. Dr. Stone, what is your	10:39
2	understanding of a person of ordinary skill in	10:39
3	the art?	10:39
4	MR. SEBBA: Objection; form.	10:39
5	THE WITNESS: What I used in this	10:39
6	particular analysis was accepting what Lululemon	10:39
7	had suggested was a per -- a person of ordinary	10:39
8	skill in the art; that the person would have had	10:39
9	a bachelor's degree in engineering, computer	10:39
10	science, industrial design, biomechanics or	10:39
11	a related field, and at least two years of	10:40
12	experience researching, developing, designing	10:40
13	and/or testing fitness or physiological sensors,	10:40
14	wearable devices, physiological or biomechanical	10:40
15	devices, remote control systems or interfaces	10:40
16	and/or network-based applications and/or	10:40
17	equivalent -- or the equivalent experience or	10:40
18	education.	10:40
19	BY MS. NGUYEN:	10:40
20	Q. So you agree with this level of ordinary	10:40
21	skill in the art?	10:40
22	A. I accepted that as a basis for my de --	10:40
23	my declaration.	10:40
24	Q. You accepted it because you agree; is	10:40
25	that right?	10:40

1 MR. SEBBA: Objection. Mischaracterizes 10:40
2 testimony. 10:40
3 THE WITNESS: I accepted it because I 10:40
4 did not find a disagreement with any of those 10:40
5 elements. 10:40
6 BY MS. NGUYEN: 10:40
7 Q. You accepted -- 10:40
8 A. I might have stated it differently 10:40
9 myself. I accepted it as a basis to do my 10:40
10 analysis. 10:41
11 Q. Okay. Dr. Stone, how do you feel 10:41
12 -- sorry. Strike that. 10:41
13 How do you fit into the level of 10:41
14 ordinary skill in the art? 10:41
15 A. I believe I'm an expert in the skill 10:41
16 of the art, but I have hired and worked with 10:41
17 numerous engineers who would meet that 10:41
18 requirement. 10:41
19 Q. You hired and worked with numerous 10:41
20 engineers at your previous company; is that 10:41
21 right? 10:41
22 A. Companies. 10:41
23 Q. Companies. 10:41
24 What about some of the students that you 10:42
25 work with at Virginia Tech? 10:42

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1 A. I don't believe that those students yet 10:42
2 would quite meet all of those requirements. 10:42
3 Q. Is there a reason why these students 10:42
4 would not meet all of the requirements? 10:42
5 A. Most of the students I'm working with 10:42
6 have not yet achieved their bachelor's degree. 10:42
7 I'm teaching in the senior design area. And they 10:42
8 don't have years of experience re -- researching, 10:42
9 developing, designing or testing fitness or 10:42
10 similar equipment just yet. 10:42
11 Q. Okay. And earlier you said, "I believe 10:42
12 I'm an expert in the skill in the art." Do you 10:42
13 recall that? 10:42
14 MR. SEBBA: Objection; form. 10:42
15 THE WITNESS: I believe I'm an expert 10:42
16 and have more than ordinary skill in the art as 10:43
17 described. 10:43
18 BY MS. NGUYEN: 10:43
19 Q. Okay. So you have a level that is 10:43
20 higher than a POSITA; is that right? 10:43
21 A. That's correct. 10:43
22 Q. How many years of experience do you have 10:43
23 researching, developing, designing and/or testing 10:43
24 fitness or physiological sensors? 10:43
25 MR. SEBBA: Objection; form. 10:43

1 THE WITNESS: Approximately 45. 10:43
2 BY MS. NGUYEN: 10:43
3 Q. How many years of experience do you have 10:43
4 researching, developing, designing and/or working 10:43
5 with network-based applications? 10:43
6 A. Approximately 23 -- nope. Sorry. 25. 10:44
7 Q. Okay. Dr. Stone, you have the '220 10:45
8 patent in front of you, correct? 10:45
9 A. Yes. 10:45
10 Q. Okay. And do you agree that the Exhibit 10:45
11 1001, the '220 patent that's in front of you, is 10:45
12 complete and accurate? 10:45
13 A. It appears to be. 10:45
14 Q. Okay. And you cited parts of the '220 10:45
15 patent in your declaration; is that right? 10:45
16 A. Yes. 10:45
17 Q. Did you cite parts of the '220 patent 10:45
18 that are relevant? 10:45
19 A. Yes. 10:45
20 Q. Okay. Did you cite the best disclosures 10:45
21 of the '220 patent in your declaration? 10:45
22 MR. SEBBA: Objection; form. 10:45
23 THE WITNESS: I cited the ones that I 10:45
24 believed were needed to be cited. 10:45
25 BY MS. NGUYEN: 10:45

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1 Q. Okay. And did you omit citing the parts 10:46
2 of the '220 patent that you did not believe 10:46
3 needed to be cited? 10:46

4 MR. SEBBA: Objection; form. 10:46

5 THE WITNESS: I had no reason to cite 10:46
6 parts that I didn't think needed to be cited, so 10:46
7 I didn't cite parts that I didn't think needed to 10:46
8 be cited. 10:46

9 BY MS. NGUYEN: 10:46

10 Q. Did you consider every word of the '220 10:46
11 patent? 10:46

12 MR. SEBBA: Objection; form. 10:46

13 THE WITNESS: I read every word of the 10:46
14 '220 patent and cited the words that I believed 10:46
15 to be relevant. 10:46

16 BY MS. NGUYEN: 10:46

17 Q. Okay. Is there anything about the '220 10:46
18 patent that you don't understand? 10:46

19 A. I don't think so. 10:46

20 Q. Okay. Can you point me to where in your 10:46
21 declaration you talk about the '220 patent? 10:46

22 A. Page 14, technical background, paragraph 10:47
23 -- beginning with Paragraph 41 and 42, is where I 10:47
24 described the '220 patent. 10:47

25 Q. Okay. And in Paragraph 42 of your 10:47

1 declaration, you copied independent Claim 11; is 10:47
2 that right? 10:47
3 A. That's correct. 10:47
4 Q. And there is a limitation in the middle 10:47
5 of the claim labeled bracket 11C. Do you see 10:47
6 that? 10:47
7 A. I do. 10:47
8 Q. And what is a Limitation 11C? 10:47
9 A. "Record athletic activity performed by a 10:47
10 user." 10:47
11 Q. Okay. Do you talk about the '220 patent 10:47
12 in other portions of your declaration? 10:47
13 A. I'm certain I refer to it -- I refer to 10:47
14 it in nume -- numerous other places, I believe. 10:47
15 Q. Okay. Maybe we can turn to Paragraph 50 10:48
16 of your declaration. 10:48
17 A. Okay. 10:48
18 Q. Would you agree that Paragraph 50 of 10:48
19 your declaration talks about the '220 patent? 10:48
20 A. Yes. 10:48
21 Q. And in your opinion, is Figure 2 of the 10:48
22 '220 patent an example of 11C, "Record athletic 10:48
23 activity performed by a user"? 10:48
24 A. If you don't mind, I'm going to look at 10:48
25 the description of what the patent says that 10:48

1 Figure 2 is about. 10:48

2 It says, "Figures 2 and 3 illustrate an 10:49

3 example of an athletic information monitoring 10:49

4 device that may be employed according to various 10:49

5 examples of the invention." 10:49

6 So it is a device which may be employed 10:49

7 according to various examples of the invention. 10:49

8 I think that's how I would word it, and I would 10:49

9 stay with that. 10:49

10 Q. So would -- is Figure 2 of the '220 10:49

11 patent an example of 11C, "Record athletic 10:49

12 activity performed by a user"? 10:49

13 MR. SEBBA: Objection; form. 10:49

14 THE WITNESS: It is an example of a 10:49

15 device which can be employed according to various 10:49

16 examples of the exhibit. I believe, if I look 10:49

17 at the entirety of the specification, I can 10:49

18 determine what is claimed by 11 -- by the element 10:49

19 11C. 10:50

20 BY MS. NGUYEN: 10:50

21 Q. Okay. So you've looked at the entirety 10:50

22 of the specification before, correct? 10:50

23 A. I have. 10:50

24 Q. Do you recall discussing in your 10:50

25 declaration 11C? 10:50

1	A. Yes.	10:50
2	Q. Did you discuss 11C in Paragraph 50 of	10:50
3	your declaration?	10:50
4	A. Yes.	10:50
5	Q. Can you point me to where you discuss	10:50
6	11C in Paragraph 50 of your declaration?	10:50
7	A. I'm sorry. Claim 1 is what's being	10:50
8	talked about in Claim 50 and it's talking about	10:50
9	the term "record." And I mentioned Claim 11 --	10:50
10	well, that's -- that's calling out 11C here	10:50
11	at -- in the last line of that particular	10:50
12	paragraph.	10:51
13	Q. Okay. So what does Paragraph 50 of your	10:51
14	declaration discuss?	10:51
15	A. It discusses the use of "record" and/or	10:51
16	"recorded" in the -- in the patent, and I'm using	10:51
17	that to affirm the meaning of my understanding of	10:51
18	"record" in Claim 11.	10:51
19	Q. Okay. When you say "affirm the meaning	10:51
20	of my understanding of 'record' in Claim 11,"	10:51
21	would you agree that Figure 2 is cited in	10:51
22	Paragraph 50 of your declaration?	10:52
23	A. Yes. Figure 2 is cited in my	10:52
24	declaration.	10:52
25	Q. And would you agree that Figure 2	10:52

1 affirms the meaning of your understanding of 10:52
2 "record" in Claim 11? 10:52
3 A. With the discussion of what is there, 10:52
4 and the rest of the exhibits, the totality of it, 10:52
5 affirms what I understand to be the meaning of 10:52
6 the term "record" in Claim 11. I'm not going to 10:52
7 break it up into parts. 10:52
8 Q. Okay. So when you say "the discussion 10:52
9 of what is there," are you referring to the cites 10:52
10 in Paragraph 50 of your declaration? 10:52
11 A. I'm referring to Paragraph 50, to the 10:52
12 citations that are there. And then my summary in 10:52
13 Paragraph 50, "Therefore, when Claim 1 recites 10:52
14 to the monitoring system that recorded athletic 10:52
15 activity, in my opinion, a person of ordinary 10:53
16 skill in the art would understand that Claim 1 is 10:53
17 using 'record' to mean measure or capture and 10:53
18 save -- and save." 10:53
19 Q. And you agree that you cited to 10:53
20 Figure 2 of the '220 patent, correct? 10:53
21 A. What I cited in Figure 2 of the 10:53
22 Fig -- '220 patent illustrates one example of an 10:53
23 athletic information monitoring device that may 10:53
24 be employed according to various examples of 10:53
25 the invention to measure athletic information 10:53

1 corresponding to a user's activity. 10:53
2 That's what I said. 10:53
3 Q. So is Figure 2 of '220 patent an example 10:53
4 of what is claimed in Claim 11? 10:53
5 MR. SEBBA: Objection; form. 10:53
6 THE WITNESS: Figure 2 is an 10:54
7 illustration of a device that helps inform 10:54
8 what is claimed as "record" in Claim 11. 10:54
9 BY MS. NGUYEN: 10:54
10 Q. And when you say "what is claimed as 10:54
11 record in Claim 11," are you referring to Element 10:54
12 11C, "Record athletic activity performed by a 10:54
13 user"? 10:54
14 A. If I said "claim" for this claim, it -- 10:54
15 to inform what is the meaning of the term record 10:54
16 in -- Claim Term 11C -- or, sorry, in Claim 11C. 10:55
17 Technically the element of Claim 11 -- 11C. 10:55
18 MS. NGUYEN: Okay. Why don't we take a 10:55
19 break? 10:55
20 THE VIDEOGRAPHER: Time is 10:55 a.m. 10:55
21 This ends Unit 2. We're off the record. 10:55
22 (Recess taken.) 10:55
23 THE VIDEOGRAPHER: The time is 11:13 11:13
24 a.m. This begins Unit Number 3. We're on the 11:14
25 record. 11:14

1 BY MS. NGUYEN: 11:14

2 Q. Okay. Dr. Stone, you didn't communicate 11:14

3 with anybody about the substance of this 11:14

4 proceeding since the start of the proceeding. 11:14

5 A. No. 11:14

6 Q. Okay. Earlier you mentioned asking a 11:14

7 question about X to counsel. Do you recall that? 11:14

8 A. Yes. 11:14

9 Q. Did you ask anything else? 11:14

10 A. No. 11:14

11 Q. Okay. Did they answer your question? 11:14

12 A. Counsel asked my question -- answered 11:14

13 the question that I asked and said, "that would 11:14

14 be discussing, so you can't ask that question." 11:14

15 Q. Understood. 11:14

16 Okay. Let's turn to Paragraph 43 of 11:14

17 your declaration -- actually, let's turn to 11:15

18 Paragraph 53. 11:15

19 Please read Paragraph 53 to yourself and 11:15

20 let me know when you're done. 11:15

21 A. (Reviews document.) 11:15

22 Yes. 11:16

23 Q. Okay. What does Paragraph 53 of your 11:16

24 declaration discuss? 11:16

25 A. It discusses, as I conclude, that 11:16

1 a person would understand, in view of the 11:16
2 specification, that it is the athletic data 11:16
3 display configuration device, not the athletic 11:16
4 activity monitoring system, that writes athletic 11:16
5 data to memory. 11:16

6 So it's discussing the chain of events 11:16
7 and the devices that record -- that write the 11:16
8 athletic data to memory or record the athletic 11:16
9 data. 11:16

10 Q. What do you mean by "chain of events"? 11:16

11 A. Well, we're talking about "recorded" in 11:16
12 Claim 1 requires merely more than writing data to 11:17
13 memory. So we have the sensing, or measurement, 11:17
14 and capturing process that ultimately is to 11:17
15 record the athletic data. 11:17

16 Q. So by "chain of event," do you mean 11:17
17 merely more than writing data to memory? 11:17

18 A. Yes. 11:17

19 Q. And you would agree that Paragraph 53 of 11:17
20 your declaration discusses Claim 1 of the '220 11:17
21 patent, right? 11:17

22 A. It discusses Claim 1 and then informs 11:17
23 how to understood "record" when it's used in 11:17
24 Claim 11. 11:17

25 Q. So Paragraph 53 of your declaration 11:17

1 discusses the meaning of "record" in Claim 11; is 11:18
2 that right? 11:18

3 A. Paragraph -- or, sorry, Claim 1 uses the 11:18
4 term "recorded" and gives me context with which 11:18
5 to understand the claim -- the term "record" in 11:18
6 Claim 11. 11:18

7 Q. What do you mean by "context"? 11:18

8 A. It's my understanding that when a term 11:18
9 is used in one claim, then that same term, or 11:18
10 meaning of that term, is what is meant when it's 11:18
11 used, again, unless there's something which would 11:18
12 make it being -- have a different meaning. 11:18

13 Q. Is there a specific context in Paragraph 11:18
14 53 that you're referring to? 11:18

15 A. Well, I can read it out loud. It's -- 11:19
16 it's very straightforward of what's happening 11:19
17 here. 11:19

18 "A person of ordinary skill in the art 11:19
19 would understand that 'recorded' -- in Claim 1 11:19
20 'recorded' requires more than merely writing data 11:19
21 from memory. The specification explains that 11:19
22 it is the athletic data display configuration 11:19
23 device, 601, not the athletic activity monitoring 11:19
24 system recited in Claim 1, that writes athletic 11:19
25 data to memory. Athletic data recorded by 11:19

1 the athletic information monitoring device 11:19
2 is transmitted to the athletic information 11:19
3 collection and display device, which includes 11:19
4 the athletic data collection module, 505." 11:19
5 "As shown in Figure 5, the athletic 11:19
6 information collection and display device, 501, 11:19
7 includes an interface for receiving data from the 11:19
8 athletic information monitoring device. Once the 11:19
9 athletic data collection module has collected 11:19
10 the process signals provided by the athletic 11:20
11 information monitoring device, the athletic data 11:20
12 collection module, 505, transmits the athletic 11:20
13 data to an athletic data display configuration 11:20
14 device, 601, through the interface module, 507. 11:20
15 The athletic data display configuration, 601, 11:20
16 includes an athletic data storage, 607. It's 11:20
17 here the system stores the athletic data in 11:20
18 athletic data storage for future use. This, 11:20
19 thus, leaves my opinion -- or, thus, it is my 11:20
20 opinion that a person of ordinary skill in 11:20
21 the art would understand, in view of the 11:20
22 specification, that it is the athletic data 11:20
23 display device, not the athletic monitoring 11:20
24 system, that writes athletic data to memory." 11:20
25 So "record" has to capture or measure 11:20

1 -- sorry. It has to sense, measure and capture. 11:21
2 Q. Okay. Thank you for that. 11:21
3 So looking at the first cite in 11:21
4 Paragraph 53 of your declaration, you cite, in 11:21
5 the first instance, the '220 patent, Column 16, 11:21
6 Line 4 to 6; is that right? 11:21
7 A. Yes. 11:21
8 Q. So would you agree that Column 16, Line 11:21
9 4 to 6, informs your meaning of the word "record" 11:21
10 in Claim 11? 11:21
11 A. It was part of what informed my 11:21
12 understanding. 11:21
13 Q. Okay. What else informed your 11:21
14 understanding? 11:21
15 A. I have other cites here that we go 11:21
16 through. 11:21
17 Q. Yes, which would be -- what is the next 11:21
18 cite? 11:21
19 A. Well, we have Column 16, 4 through 6. 11:21
20 We have references to the figure -- sorry, the 11:22
21 figures, 601 -- or the elements of 601, 201, 501 11:22
22 and 505, 503, 507. And we have paragraph -- or 11:22
23 Column 17, Lines 1 through 5; Column 17, Lines 44 11:22
24 through 46; and Column 17, Line 50 through 53. 11:22
25 Q. So Columns 16, Lines 4 to 6; figures 11:22

1 -- or Elements 601, 201, 501, 505, 503, 507; 11:23
2 Column 17, Lines 1 to 5; Column 17, Lines 44 to 11:23
3 46; and Column 17, Line 50 to 53, all inform you 11:23
4 of the meaning of "record"; is that right? 11:23
5 A. I think you missed Element 607, and I'm 11:23
6 not sure I had 201 before -- yeah. We had 201. 11:23
7 But those informed me of how to 11:23
8 understand "record" in Claim 11C. 11:23
9 Q. Dr. Stone, does your declaration contain 11:24
10 all of your opinions with respect to the '220 in 11:24
11 this IPR proceeding? 11:24
12 A. All of my opinions? I have no other 11:24
13 opinions that I can recall. 11:24
14 MS. NGUYEN: Okay. So it sounds like 11:24
15 lunch is here. Why don't we take a lunch break 11:24
16 to avoid food getting cold? 11:24
17 THE VIDEOGRAPHER: Time is 11:24 a.m. 11:24
18 We're off the record. 11:24
19 (Lunch recess taken.) 11:25
20 THE VIDEOGRAPHER: The time is 12:04 12:05
21 p.m. We're on the record. 12:05
22 BY MS. NGUYEN: 12:05
23 Q. Okay. Good afternoon, Dr. Stone. 12:05
24 A. Good afternoon. 12:05
25 Q. Please take a look at Paragraph 78 of 12:05

1 your declaration. 12:05

2 A. Yes. 12:06

3 Q. Okay. And would you agree that 12:06

4 Paragraph 78 of your declaration discusses a 12:06

5 prior art reference called Johnson? 12:06

6 A. Yes. 12:06

7 Q. Okay. Before you began working on 12:06

8 this case, were you familiar with the Johnson 12:06

9 reference? 12:06

10 A. Not to my recollection. 12:06

11 Q. Okay. Do you remember if you found the 12:06

12 Johnson reference yourself? 12:06

13 A. Yes. I remember. 12:06

14 Q. Okay. So did you find Johnson? 12:06

15 A. No. 12:06

16 Q. And did you review Johnson in its 12:06

17 entirety? 12:06

18 A. I reviewed Johnson, and, in particular, 12:06

19 I analyzed the references that were made in 12:06

20 Lululemon's filings. 12:06

21 Q. By "Lululemon's filings," which 12:06

22 documents are you referring to? 12:07

23 A. Well, Lululemon has the initial 12:07

24 application to the IPR. And their expert 12:07

25 reports, testimony, I reviewed those. 12:07

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1 Q. Okay. So -- 12:07
2 A. Reviewed and analyzed those, I should 12:07
3 say. 12:07
4 Q. So you reviewed and analyzed the 12:07
5 references made in Lululemon's filings; is that 12:07
6 correct? 12:07
7 A. I just said what I meant, yes, that 12:07
8 -- the references that they made in their 12:07
9 filings, that's correct. 12:07
10 Q. What do you mean by "references"? 12:07
11 A. When they would -- what I mean by 12:07
12 references is what they pointed to as evidence 12:07
13 for their position, as in, I should say, what 12:07
14 Lululemon and their representatives pointed to as 12:07
15 evidence for their position. 12:08
16 Q. Okay. And did you understand everything 12:08
17 described within Johnson? 12:08
18 A. To the best of my knowledge, I didn't 12:08
19 recall -- I don't recall anything I didn't 12:08
20 understand. 12:08
21 Q. Okay. Do you know how much time you 12:08
22 spent reviewing Johnson? 12:08
23 A. No. Don't recall. 12:08
24 Q. One hour? 12:08
25 A. I don't recall. 12:08

1 Takes longer than that to read a patent. 12:08

2 Q. Okay. So turning back to Paragraph 78 12:08

3 of your declaration, there is a figure in 12:08

4 Paragraph 78 of your declaration. Do you see 12:08

5 that? 12:08

6 A. I do. 12:08

7 Q. Okay. And would you agree that this 12:08

8 figure is Figure 23 of Johnson? 12:08

9 A. That's what it says. 12:08

10 Q. And Figure 23 of Johnson has 14 12:08

11 rectangles, which I think you call tiles; is that 12:08

12 right? 12:08

13 A. I don't think I'm calling it tiles in 12:09

14 Paragraph 78. I call it a tile, and I also call 12:09

15 it a milestone achievement tag. 12:09

16 Q. Okay. So in your opinion, is a tile a 12:09

17 milestone achievement tag? 12:09

18 A. That's what I called it here. I'm not 12:09

19 going to -- I'm not changing my position. 12:09

20 Q. Okay. And what is your definition of a 12:09

21 tile? 12:09

22 A. Best describing a tile is it's a -- an 12:09

23 area that's blocked off and separated from 12:09

24 others, and whether a similar or a pattern, we 12:10

25 can look it up in a dictionary, but I think we've 12:10

1 all seen tiled floors. These are arranged in a 12:10
2 fashion as one would see on tiling of a floor. 12:10
3 It's a convenient way of putting how they're 12:10
4 arranged. 12:10
5 Q. Okay. So a tile is an arrangement in 12:10
6 Figure 23; is that right? 12:10
7 A. A tile is an element that has been 12:10
8 arranged in a tile-like pattern. 12:10
9 Q. What's a "tile-like pattern"? 12:10
10 A. Look at most bathroom floors and you'll 12:10
11 see a tile-like pattern. I don't think I need to 12:10
12 do a definition of that. 12:10
13 Q. Okay. In the context of Figure 23, is 12:10
14 this a bathroom-like floor? 12:10
15 A. It's in a pattern similar to what one 12:10
16 see there -- a tiling pattern. 12:10
17 Q. Similar to a bathroom floor? 12:10
18 A. Or a kitchen floor that's laid with 12:11
19 vinyl tile or similar-type things, walls that 12:11
20 are -- now it's very popular in a kitchen to 12:11
21 use subway tiles. I think it's a use -- that's 12:11
22 the common definition of what a tile is. It's a 12:11
23 pattern. 12:11
24 Q. Okay. So then in Figure 23, is it your 12:11
25 opinion that there are 14 tiles? 12:11

1 A. Well, certainly there are 14 what I've 12:11
2 previously called tags that are arranged in a 12:11
3 tile pattern. 12:11
4 Q. Okay. So there are 14 tags arranged in 12:11
5 a tile pattern; is that right? 12:11
6 A. I would say that, yes. 12:11
7 Q. Okay. And each tile is associated with 12:11
8 one user; is that right? 12:11
9 A. That appears to be the case. 12:11
10 Q. Okay. So then if we look at the bottom 12:11
11 left tile, it has a picture of a dog and the name 12:11
12 daDwag, spelled D-a-d-w-a-g; is that right? 12:12
13 A. I think dawg is -- is d-a-w-g, but if 12:12
14 it's D-W-A-G it's DWAG. 12:12
15 Q. Sure. Okay. So the bottom left tile 12:12
16 has a picture of a dog and the name daDwag? 12:12
17 A. Yes. 12:12
18 Q. What else does that tile in the bottom 12:12
19 left have? 12:12
20 A. It has a number at the top, and it looks 12:12
21 like it's a date at the bottom, or it could be a 12:12
22 time. I'm not certain. It's not a very clear 12:12
23 image to read. 12:12
24 Q. Is the number at the top 500? 12:13
25 A. I would interpret it as that. It's very 12:13

1 difficult to read it. 12:13

2 Q. Okay. And what does the number 500 12:13

3 represent? 12:13

4 A. Well, it's said to be described of the 12:13

5 milestone achievements whether Johnson -- is used 12:14

6 in Johnson to identify whether a user has met the 12:14

7 workout milestone, but it refers to the 500-mile 12:14

8 club, so one assumes that's when he's achieved 12:14

9 500 miles. 12:14

10 Q. So D-a-d-w-a-g has achieved 500 miles; 12:14

11 is that right? 12:14

12 A. I would assume that. 12:14

13 Q. And looking at Figure 23, has anybody 12:14

14 else achieved 500 miles? 12:14

15 A. Indeed, there are other tags that show 12:14

16 500 miles of achievement. 12:15

17 (Exhibit No. 1005, U.S. Patent 12:15

18 Application Publication No. 2009/0150178 A1, was 12:15

19 introduced.) 12:16

20 BY MS. NGUYEN: 12:16

21 Q. Okay. So I am handing you Exhibit 1005. 2:16

22 Dr. Stone have you seen Exhibit 1005 12:16

23 before? 12:16

24 A. Yes. 12:16

25 Q. And if I refer to Exhibit 1005 as the 12:16

1 Sutton reference, you would understand what I'm 12:16
2 referring to? 12:16
3 A. Yes. 12:16
4 Q. Did you find the Sutton reference 12:16
5 yourself? 12:16
6 A. No. 12:16
7 Q. And in forming your opinion, did you 12:16
8 review Sutton? 12:16
9 A. I did. 12:16
10 Q. Did you review Sutton in its entirety? 12:16
11 A. I read Sutton in its entirety. 12:16
12 Q. And did you understand everything 12:16
13 described within Sutton? 12:16
14 A. I did not find anything I did not 12:17
15 understand. 12:17
16 Q. Please turn to Figure 5 of Sutton. 12:17
17 What does Figure 5 of Sutton show? 12:17
18 A. Figure 5 of Sutton shows a map. Under 12:17
19 description it has some names of people who rode 12:17
20 the cross bike. It has a time stamp of who's 12:17
21 submitted it, what the sport is and then it has 12:17
22 some parameters for someone for the time they 12:17
23 -- time, pace, speed, heart rate, calories that 12:17
24 were used during some event. 12:17
25 Q. Okay. What are the names of the people 12:18

1 under the description? 12:18

2 A. It says that they rode the cross bike. 12:18

3 That's -- you want to know the names? Stacy, 12:18

4 Dirk, Digel and Jeff. 12:18

5 Q. Okay. And in Figure 5, there is at the 12:18

6 top a user that submitted the map; is that right? 12:18

7 A. Yes. 12:18

8 Q. And what is the name of this individual 12:18

9 that submitted the map? 12:18

10 A. Joe Fabris. 12:18

11 Q. And Figure 5 is for cross bike; is that 12:19

12 right? 12:19

13 A. I would assume that's correct. 12:19

14 Q. Okay. Can you turn to Figure 10 of 12:19

15 Sutton? What does Figure 10 show? 12:19

16 A. It appears to be showing an invitation 12:19

17 and some, apparently, RSVPs for an event to take 12:19

18 place on November 21st. 12:19

19 Q. Do you know what type of event will take 12:19

20 place on November 21st? 12:19

21 A. It says the sport is running. 12:19

22 Q. Okay. Does Figure 10 show anything 12:19

23 else? 12:19

24 A. I'm sorry? 12:19

25 Q. Does Figure 10 show anything else? 12:20

1 A. It shows a number of things. What -- in 12:20
2 particular, it says who was invited. 12:20
3 Q. Yes. 12:20
4 A. Okay. And some friends and, apparently, 12:20
5 a group that was invited. And where the event it 12:20
6 to take place. 12:20
7 Q. Okay. So Mitch Drew is one invited 12:20
8 friend; is that right? 12:20
9 A. Yes. 12:20
10 Q. Are there other invited friends? 12:20
11 A. Yes. 12:20
12 Q. What are they or who are they? 12:20
13 A. Hank Lawson, Charles Alexander, Dirk 12:20
14 Rohloff, Bert Keely and Doug Steedman and a 12:20
15 group, the Working Day Runners. 12:20
16 MS. NGUYEN: Okay. Let's take a break. 12:21
17 THE VIDEOGRAPHER: Time is 12:21 p.m. 12:21
18 We're off the record. 12:21
19 (Recess taken.) 12:21
20 THE VIDEOGRAPHER: The time is 12:39 12:39
21 p.m. This begins Unit Number 4. We're on the 12:39
22 record. 12:39
23 BY MS. NGUYEN: 12:39
24 Q. Okay. Dr. Stone, good afternoon. 12:39
25 A. Good afternoon. 12:39

1 Q. Okay. We have no further questions. 12:40
2 MR. SEBBA: Okay. We're gonna take a 12:40
3 quick break to look at our notes before to see if 12:40
4 we need any redirect. 12:40
5 THE VIDEOGRAPHER: The time is 12:39 12:40
6 p.m. We're off the record. 12:40
7 (Recess taken.) 12:40
8 THE VIDEOGRAPHER: Time is 12:47 p.m. 12:47
9 We're on the record. 12:47
10 EXAMINATION 12:47
11 BY MR. SEBBA: 12:47
12 Q Dr. Stone, how are you? 12:47
13 A. Very well. Thank you. 12:47
14 Q. Can you please turn to Paragraph 15 of 12:47
15 your declaration? 12:47
16 A. Yes. 12:47
17 Q. Okay. Are you there? 12:47
18 A. I am. 12:47
19 Q. All right. Can you review this? 12:47
20 A. Yes. 12:47
21 Q. Okay. What date did you use to analyze 12:47
22 the prior art? 12:47
23 A. Well, in spite of my prior lack of 12:47
24 recollection, I have here August 9th, 2010. And 12:47
25 when I prepared my report and I reviewed it, 12:47

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1 that's the date that I used. 12:47

2 Q. Okay. And just to be clear, it's your 12:47

3 understanding that's the date of invention of the 12:47

4 '220 patent? 12:47

5 A. That's my understanding. 12:47

6 Q. Okay. And let's turn to the '220 12:48

7 patent, which is Exhibit 1001. 12:48

8 On the second page, on the top left you 12:48

9 see a line marked 60? 12:48

10 A. Yes. 12:48

11 Q. And what's listed on that? 12:48

12 A. It says a provisional application, 12:48

13 Number 61/371,842, was filed on August 9th, 2010. 12:48

14 Q. Okay. And that's the date you used for 12:48

15 the date of invention? 12:48

16 A. That's correct. 12:48

17 Q. Okay. And then the other thing I would 12:48

18 like to do is can we turn to Page -- or, excuse 12:48

19 me, Paragraph 35 of your declaration -- excuse 12:48

20 me, Paragraph 34 of your declaration. 12:48

21 Are you there? 12:48

22 A. Yes. 12:48

23 Q. Okay. And so it's -- the second 12:48

24 sentence here says that you understand from 12:48

25 counsel that the PTAB will defer to the ordinary 12:49

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1 and customary meaning that the terms would have 12:49
2 to a person of ordinary skill in the art at the 12:49
3 time of the invention, correct? 12:49

4 A. Yes. 12:49

5 Q. And sometimes when you're reviewing a 12:49
6 patent you have to determine what the ordinary 12:49
7 and customary meaning is or what a claim 12:49
8 construction is, correct? 12:49

9 A. Correct. 12:49

10 Q. And in what circumstances do you have to 12:49
11 do that? 12:49

12 A. Well, like, I think I gave an example 12:49
13 earlier of the word r-e-a-d, which you'd have to 12:49
14 look at the context to determine whether it's 12:49
15 read or read. And again, here, you have to look 12:49
16 at the claim language, the context that surrounds 12:49
17 it to determine what the usual and customary 12:49
18 meaning is. 12:49

19 Q. And so you have to do -- do you have to 12:49
20 do that anytime you're not sure what the ordinary 12:49
21 and customary meaning would be from the claim 12:49
22 alone? 12:49

23 MS. NGUYEN: Objection; form. 12:50

24 THE WITNESS: If I'm not sure of what it 12:50
25 means when I first read it, I would have to look 12:50

1 at further context. 12:50
2 MR. SEBBA: Okay. No further questions. 2:50
3 MS. NGUYEN: Sorry. Take a break. 12:50
4 THE VIDEOGRAPHER: Time is 12:50 p.m. 12:50
5 We're off the record. 12:50
6 (Recess taken.) 12:52
7 THE VIDEOGRAPHER: Time is 12:52 p.m. 12:53
8 We're on the record. 12:53
9 FURTHER EXAMINATION 12:53
10 BY MS. NGUYEN: 12:53
11 Q. Okay. Dr. Stone, did you talk to 12:53
12 counsel during the break about your testimony 12:53
13 with respect to the redirect? 12:53
14 A. Yes. 12:53
15 MS. NGUYEN: We have no questions. 12:53
16 THE VIDEOGRAPHER: Time is 12:53 p.m. 12:53
17 We're off the record. 12:53
18 (Deposition concluded -- 12:53 p.m.) 12:53
19 12:53
20
21
22
23
24
25

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 31st day of October, 2023.



Ryan K. Black, RPR, CLR, Notary Public

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2
3 Please read your deposition over carefully
4 and make any necessary corrections.

5 You should state the reason in the appropriate
6 space on the errata sheet for any corrections
7 that are made.

8 After doing so, please sign the errata sheet
9 and date it.

10 You are signing same subject to the changes
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13 It is imperative that you return the
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17 fail to do so, the deposition transcript may be
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