

1 UNITED STATES PATENT & TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 CASE IPR 2023-00180
4

5 LULULEMON ATHLETICA CANADA INC.)
6 AND LULULEMON USA INC.,)
7)
8 Petitioner,)
9)
10 vs.)
11)
12 NIKE, INC.,)
13)
14 Patent Owner.)
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11 The videotaped deposition of SCOTT McLEAN,
12 Ph.D., called by the Petitioner for examination,
13 taken pursuant to the applicable provisions of the
14 rules of the United States Patent and Trademark
15 Trial and Appeal Board, before Valerie Calabria,
16 CSR, RPR, taken at 70 West Madison Street, Suite
17 4200, Chicago, Illinois, on January 10, 2024, at
18 9:09 a.m.
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25

1 APPEARANCES:

2 MORRISON & FOERSTER LLP

BY: MS. JEAN NGUYEN

3 MR. MEHRAN ARJOMAND

707 Wilshire Boulevard, Suite 6000

4 Los Angeles, California 90017

213.892.5295

5 jnguyen@mofo.com

marjomand@mofo.com

6 appeared on behalf of the Petitioner;

7 ARNOLD & PORTER KAYE SCHOLER LLP

8 BY: MR. AARON P. BOWLING

70 West Madison Street, Suite 4200

9 Chicago, Illinois 60602

312.583.2300

10 aaron.bowling@arnoldporter.com

11 appeared on behalf of the Patent
Owner.

12 ALSO PRESENT:

13 Nick Page, videographer

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24 Reported By: Valerie M. Calabria, CSR, RPR

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DEPOSITION EXHIBITS

NUMBER/DESCRIPTION	IDENTIFIED
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Declaration	

1 THE VIDEOGRAPHER: Good morning. We are going
2 on the record at 9:09 a.m. on January 10th, 2024.
3 Please note that the microphones are sensitive and
4 may pick up whispering and private conversations.
5 Please mute your phones at this time. Audio and 09:10
6 video recording will continue to take place unless
7 all parties agree to go off the record.

8 This is Media Unit No. 1 of the
9 video-recorded deposition of Dr. Scott McLean,
10 Ph.D., taken in the matter of lululemon athletica 09:10
11 Canada Incorporated versus Nike, Incorporated. The
12 location of this deposition is being taken at the
13 offices of Arnold & Porter located at 70 West
14 Madison Street, Chicago, Illinois.

15 My name is Nick Page representing 09:12
16 Veritext, and I am the videographer. The court
17 reporter is Valerie Calabria, also from the firm
18 Veritext. I'm not related to any party in this
19 action, nor am I financially interested in the
20 outcome.

21 If there are any objections to
22 proceeding, please state them at the time of your
23 appearance. Counsel and all present will now state
24 their appearances and affiliations for the record,
25 beginning with the noticing party. 09:12

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1 Off the record at 9:10.

2 (Discussion had off the record.)

3 THE VIDEOGRAPHER: Back on the record at 9:14.

4 Will the counsel and all present
5 please now state their appearances and affiliations 09:14
6 for the record, beginning with the noticing
7 attorney.

8 MS. NGUYEN: Jean Nguyen with Morrison &
9 Foerster. With me is my colleague, Mehran
10 Arjomand. 09:15

11 MR. BOWLING: And Aaron Bowling of Arnold &
12 Porter representing Nike.

13 (Witness duly sworn.)

14 SCOTT McLEAN, Ph.D.,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY MS. NGUYEN:

19 Q. Good morning, Dr. McLean.

20 A. Good morning. 09:15

21 Q. Could you please state and spell your
22 full name for the record.

23 A. Yeah. Scott McLean. S-c-o-t-t, M-c,
24 capital -L-e-a-n.

25 Q. And I know you've been through a few 09:15

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1 depositions before, so I just wanted to set the
2 table a bit with, you know, typical questions.

3 Do you understand you have taken an
4 oath to tell the truth?

5 A. Yes. 09:15

6 Q. And is there any reason you cannot give
7 complete and accurate testimony today?

8 A. No.

9 Q. Again, so we'll try to take breaks every
10 hour. If you need a break before then, please let 09:15
11 me know. I may ask to finish my line of
12 questioning before we take a break. Is that okay?

13 A. Yes.

14 Q. And you are here to give deposition
15 testimony today. So I am going to be asking you a 09:16
16 series of questions. Please give verbal responses
17 to my questions because the court reporter cannot
18 pick up head nods or gestures. Is that okay?

19 A. Yep. Yep.

20 Q. And if there's a question you don't 09:16
21 understand that I've asked, please let me know. I
22 will repeat or rephrase. If you don't hear me,
23 also please let me know. If you provide an answer,
24 I will assume that you did understand my question.

25 A. Yep. 09:16

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1 Q. So just to make sure we're all on the
2 same page, you understand that you're here today to
3 discuss US Patent No. 10,923,225?
4 A. Correct, yes.
5 Q. And I'll refer to that as the '225 09:16
6 patent. Is that okay?
7 A. Yes.
8 Q. And then the IPR proceeding that you're
9 here to discuss is IPR 2023-00424?
10 A. Yes. 09:17
11 Q. And let me hand you Exhibit 2004 in this
12 IPR proceedings.
13 And, Dr. McLean, do you recognize
14 Exhibit 2004?
15 A. Yes. 09:17
16 Q. What is it?
17 A. It is my declaration.
18 Q. And you signed your declaration,
19 Exhibit 2004; is that correct?
20 A. That is correct. 09:17
21 Q. And sitting here today, is there
22 anything you would like to change in your
23 declaration?
24 A. No.
25 Q. And what did you do to prepare for 09:17

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1 today's deposition?

2 A. I'll just need to go to -- give me one
3 second to make sure. In paragraph 20 it lists the
4 materials that I considered. So what I reviewed
5 was lululemon's petition, Inter Partes Review, 09:18
6 Exhibits 1001 to 1013, the IPR; and some of the
7 other materials discussed herein, which included
8 some of the dictionary definitions, one of the
9 attachments regarding some of the NASA equipment,
10 which is attached to my declaration. 09:18

11 Q. Okay. Did you review Nike's response?

12 A. I did.

13 MR. BOWLING: Objection; form.

14 THE WITNESS: Can you be more specific with
15 that. 09:19

16 BY MS. NGUYEN:

17 Q. Yes. Did you review Nike's patent owner
18 preliminary response?

19 A. I did.

20 Q. And did you review Nike's patent owner 09:19
21 response?

22 A. As I say, I've listed in here what I
23 reviewed on paragraph 20. So I reviewed the
24 patent, the reference material, and the IPR.

25 Q. Okay. Did you review Dr. Ho's 09:19

Page 8

1 declaration?

2 A. Let me recall. I don't recall whether I
3 did, to be honest.

4 Q. And who did you meet with in preparation
5 for your deposition today? 09:20

6 A. I met with Aaron, and also I met with
7 David McMullen.

8 Q. And what is Aaron's last name?

9 A. Aaron Bowling.

10 Q. And how many times did you meet with 09:20
11 Aaron Bowling and David McMullen?

12 A. Approximately two times.

13 Q. And how much time did you spend total in
14 your meetings with Aaron Bowling and David
15 McMullen? 09:20

16 A. Probably around about three to four
17 hours max.

18 Q. And going back to your statement
19 regarding reviewing materials, were there any
20 materials that you reviewed that you did not 09:20
21 identify in your declaration?

22 A. No.

23 Q. Okay. If you could please turn to
24 Attachment A of Exhibit 2004. Do you recognize
25 Attachment A? 09:21

1 A. I do. That is -- yes.

2 Q. What is it?

3 A. It is my Exponent CV.

4 Q. Okay. And you have multiple degrees in
5 human movement studies from the University of 09:21
6 Queensland; is that right?

7 A. That is correct.

8 Q. And what is human movement studies?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: Can you rephrase that question. 09:21

11 BY MS. NGUYEN:

12 Q. Sure. So your Attachment A of your CV
13 lists a BSC in human movement studies, an MSC in
14 human movement studies, and a Ph.D. in human
15 movement studies. Do you see that? 09:21

16 A. I do.

17 Q. And what do your studies at the
18 University of Queensland -- what did it involve?

19 A. Obviously I can't recall everything it
20 involved. It was quite a while ago. But in 09:22
21 general, it involved the study of how the body
22 moves; the results of that movement, whether it be
23 injury or how to optimize performance in general.

24 Q. Okay. And with regard to the study of
25 how the body moves, the result of that movement, 09:22

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1 and whether it's related to injury or how to
2 optimize the performance, did those studies involve
3 any sort of sensors?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: Can you be more specific in 09:22
6 terms of what you mean by "sensors."

7 BY MS. NGUYEN:

8 Q. Sure. What is your definition of a
9 sensor?

10 A. My definition of a sensor? I'll 09:23
11 actually go to -- give me one moment. My
12 definition of a sensor is something that senses or
13 collects factual information.

14 Q. Okay. So did your study at the
15 University of Queensland in human movement studies 09:24
16 involve a sensor; something that senses or collects
17 factual information?

18 A. I can't remember everything, so I won't
19 profess to do that. But there were some pieces of
20 equipment, if I recall, that, by that definition, 09:24
21 sensed or collected factual information.

22 Q. And did your studies in human movement
23 studies involve computer science or computer
24 programming?

25 A. They involved a small portion of it at 09:25

Page 11

1 the time, yes.

2 Q. What do you mean by "a small portion"?

3 A. Well, in 1990 there weren't that many
4 computers that we had access to, so there wasn't
5 that much computer science or computer programming. 09:25
6 By the time I reached my Ph.D., it did incorporate
7 computer programming.

8 Q. Okay. And just before this, you had
9 mentioned some pieces of equipment that, by
10 definition, sense or collect factual data when I 09:26
11 asked whether your studies involved a sensor. Do
12 you remember that?

13 A. I do.

14 Q. Okay. What do you mean by "some pieces
15 of equipment"? 09:26

16 A. There were specific equipment types that
17 I used in my studies that did sense or collect
18 factual information.

19 Q. And what were these specific types of
20 equipment? 09:26

21 A. Again, I don't recall all of them, but
22 the ones that come to mind, an example would be a
23 force plate.

24 Q. Okay. Do you have another example of
25 equipment? 09:27

1 A. I also used an EMG, or electromyographic
2 sensor.

3 Q. And what types of factual information
4 was this force plate or EMG sensing?

5 A. Can you be more specific. Would you 09:27
6 like force plate or EMG?

7 Q. Let's start with force plate.

8 A. Force plate collects ground reaction
9 force in from that data. So it collects that
10 factual information. When someone steps on the 09:27
11 plate, it records that factual information of the
12 magnitude of force that they produced when someone
13 impacts that force plate.

14 Q. Okay. And with respect to the
15 electromyographic sensor? 09:28

16 A. The EMG, or the electromyographic
17 sensor, senses or collects factual information
18 regarding the muscle activation underneath where
19 that sensor is placed.

20 Q. Okay. And what type of -- sorry. 09:28
21 Scratch that.

22 With respect to the EMG sensor, once
23 the muscle activation information has been sensed
24 or collected, then what did you do with that
25 information? 09:29

A. I'll be sort of pretty generic because there were lots of specific things that I might do with that. But it can all be under the concept of that factual information was evaluated, analyzed, reviewed to inform performance or injury, et cetera.

Q. And who was evaluating, analyzing, or reviewing the factual information?

A. Primarily me.

Q. Okay. And when you say it informs performance, injury, or et cetera, can you give an example of what the factual information was informing.

A. I can. I'll give you an example. So let's use EMG as the example. So it gives factual information that can inform the level of fatigue in a muscle, or how tired the muscle is, which can then give you some baseline information regarding whether there is an increased risk of injury or muscle damage.

Q. Okay. So you would take a look at EMG information?

A. Yep.

Q. Evaluate, analyze, and review it?

A. Correct.

1 Q. And then your analysis of the EMG
2 information would then inform you of the level of
3 fatigue in a muscle?

4 A. It can.

5 Q. It can. 09:31

6 A. Correct.

7 Q. And when the information informed you of
8 the level of fatigue in a muscle, you then
9 determined whether there was an increased risk of
10 injury or muscle damage; is that right? 09:31

11 A. You can speculate or provide some level
12 of understanding that that may be an outcome.

13 Q. Okay. And in this speculation or
14 understanding, was this something that involved
15 looking at reports, or how did you come to this 09:31
16 speculation or understanding?

17 A. So initially, as you mentioned and I
18 mentioned, I would evaluate the factual information
19 sensed from the EMG sensor. I would then draw on
20 my own expertise at the time in understanding 09:32
21 things around human movement. And then based on
22 the factual information provided through the sensor
23 and my understanding of what a muscle should do or
24 shouldn't do, I was able to make inferences
25 regarding that risk. 09:32

1 Q. And you performed the analysis and
2 inferences using the EMG information; is that
3 right?

4 A. That EMG information was one aspect, in
5 addition, as I mentioned, to my own experience and 09:33
6 expertise, correct.

7 Q. Okay. Got it. And this EMG, what was
8 it connected to?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: Can you be more specific in 09:33
11 terms of what you mean by what it was connected to.
12 BY MS. NGUYEN:

13 Q. Sure. So you have an EMG. I'll call it
14 a device. You said earlier that it was attached to
15 your muscle? 09:33

16 A. Correct.

17 Q. Was the EMG a stand-alone unit?

18 A. At that time when I performed this work,
19 the sensor -- the EMG sensor -- would be connected
20 to a separate piece of equipment, tethered at the 09:33
21 time -- so with a cable -- to that separate piece
22 of equipment, which would store the information.
23 It may amplify or increase the signal. And that
24 stored information is what I would use.

25 Q. And this separate piece of equipment, 09:34

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1 what was it?

2 A. Basically, it is a storage device. In
3 other words, it stored the factual information that
4 was transmitted, or sensed, from the sensor and
5 transmitted to that storage equipment. It 09:34
6 basically stored the factual information.

7 Q. So this EMG sensor tethered to storage
8 equipment is one configuration, correct?

9 A. That is correct.

10 Q. Were there any other configurations? 09:35

11 MR. BOWLING: Objection; form.

12 THE WITNESS: Can you rephrase that.

13 BY MS. NGUYEN:

14 Q. Sure. So earlier you had agreed that
15 the EMG sensor tethered to storage equipment is one 09:35
16 configuration --

17 A. Correct.

18 Q. -- which would mean there are possibly
19 other configurations, correct?

20 A. To the best of my recollection and at 09:35
21 that time, that was the only configuration. EMG
22 sensing was relatively new at that time. So that
23 was the configuration that I was aware of at that
24 time.

25 Q. In 2001? 09:36

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1 A. In 2001 and also prior in my previous
2 work where EMG was first being used.

3 Q. Okay. So going back to what you had
4 testified earlier regarding the force plate --

5 A. Yep. 09:36

6 Q. -- was the force plate tethered to any
7 other device?

8 A. Yes. Similar to the EMG, the force
9 plate was tethered via a cable to another piece
10 of -- a separate, a different piece of storage -- 09:37
11 it's, again, storage equipment, which would store
12 that factual information that was collected or
13 sensed via the force plate. And it would store
14 that factual information in that separate location.

15 Q. Okay. So in other words, a sensor, 09:37
16 whether it's EMG or force plate, is connected to
17 storage equipment?

18 A. At that time it can be and was, correct.

19 Q. Does the storage equipment include
20 components other than a storage unit? 09:37

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Can you just restate and
23 rephrase that question.

24 BY MS. NGUYEN:

25 Q. Yeah. I'll repeat it, and let me know 09:38

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1 if it's confusing --

2 A. Yeah.

3 Q. -- the second time.

4 Does this storage equipment include
5 components other than a storage unit? 09:38

6 MR. BOWLING: Same objection.

7 THE WITNESS: To the best of my knowledge.

8 Again, I used that storage equipment to store the
9 information. I didn't design the information. So
10 I can't speak specifically to what components it 09:38
11 did or didn't contain. I never took the machine
12 apart, the equipment apart. So I used it as
13 something to store the information. So I cannot
14 speak to whether there are other components.

15 BY MS. NGUYEN: 09:38

16 Q. Okay. Was the storage equipment a hard
17 drive?

18 A. I'm pausing because I'm trying to
19 describe it as it was at the time. It could be
20 considered synonymous with a hard drive, with what 09:39
21 you would view a hard drive as today, which would
22 store that factual information. Whether it was a
23 hard drive, again, I really don't know what the
24 components were specifically.

25 Q. Okay. Was there a display for you to 09:39

Page 19

1 review the data?

2 A. On that piece of equipment, there was
3 not.

4 Q. And when you say "on that piece of
5 equipment," are you referring to the piece of 09:39
6 equipment tethered to the EMG sensor?

7 A. I'm referring to the storage equipment,
8 yes, that was tethered to the EMG sensor or the
9 force plate sensor.

10 Q. Was the same storage equipment tethered 09:40
11 to the EMG sensor and the force plate sensor?

12 A. No.

13 Q. Okay.

14 A. That would be separate pieces of storage
15 equipment. It would have been good if they were, 09:40
16 but it wasn't.

17 Q. Okay. So then when you were trying to
18 obtain the factual information from the storage
19 equipment, how did you obtain that factual
20 information? 09:40

21 A. That information, that factual
22 information, was obtained at the time via a floppy
23 disk, like a disk, that would then take that
24 information onto that disk.

25 Q. And how would you know that the 09:41

1 information on that floppy disk was ready to be
2 retrieved?

3 MR. BOWLING: Objection; form.

4 THE WITNESS: Can you rephrase that.

5 BY MS. NGUYEN: 09:41

6 Q. Yeah. I'll state it again.

7 How did you know that the factual
8 information stored on the floppy disk was ready to
9 be retrieved for your analysis?

10 A. Again, I'm pausing because I'm trying to 09:41
11 remember. It's -- at that time I would know that
12 the data was -- had been transferred to the disk
13 based on -- and, very honestly, once the disk
14 stopped making noise -- the transfer involved a
15 sound at that time. And so once that sound 09:42
16 stopped, that transfer had completed. Or that was
17 the assumption, the transfer had completed.

18 Q. Okay. And going back to your human
19 movement studies, would you say that human movement
20 studies has been a major focus in your career? 09:43

21 A. Yes, I think that's fair.

22 Q. And after your schooling at the
23 University of Queensland, you were then a
24 postdoctoral research fellow at the Cleveland
25 Clinic Foundation; is that right? 09:43

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1 A. Yes, that's correct.

2 Q. You were also a scientific specialist
3 and director at the Cleveland Clinic Foundation,
4 yes?

5 A. Yes, that is correct. 09:43

6 Q. And what did you do at the Cleveland
7 Clinic Foundation?

8 A. I continued my research in the areas of
9 human performance; human injury, risk determination
10 and prevention. 09:44

11 Q. And how long were you at the Cleveland
12 Clinic Foundation?

13 A. It's been a while, so let me reread the
14 exact dates. I was at the Cleveland Clinic
15 Foundation from 2000 to 2006. 09:44

16 Q. Okay. And you testified that your
17 research at the Cleveland Clinic Foundation
18 involved areas of human performance; human injury,
19 risk determination and prevention?

20 A. That is correct, yes. 09:45

21 Q. Were you working with EMG sensors at the
22 Cleveland Clinic Foundation?

23 A. I was, yes.

24 Q. And were these EMG sensors also tethered
25 to storage equipment? 09:45

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1 MR. BOWLING: Objection; form.

2 THE WITNESS: The EMG sensors that I used at
3 the Cleveland Clinic were tethered, again, to
4 another piece of equipment, which stored that
5 factual information. 09:45

6 BY MS. NGUYEN:

7 Q. Okay. And the piece of equipment that
8 was tethered to the EMG sensors that you used at
9 the Cleveland Clinic Foundation, did that piece of
10 equipment include a display? 09:46

11 A. In 2000, no. By 2006 -- actually, no.
12 Not by -- the piece of equipment that stored that
13 factual information did not have a display
14 incorporated.

15 Q. By 2006 did the piece of equipment that 09:46
16 was tethered to the EMG sensors that you used at
17 the Cleveland Clinic Foundation include any other
18 components?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: Similar to my previous 09:46
21 statement, I wasn't -- I used that piece of
22 equipment to store that factual information. I
23 wasn't aware of the makeup or the breakdown of that
24 piece of equipment beyond its purpose to store the
25 equipment. So I can't speak to whether it did or 09:47

Page 23

1 did not include any other components.

2 BY MS. NGUYEN:

3 Q. This piece of equipment that was
4 tethered to the EMG sensors --

5 MR. BOWLING: Sorry. If we want to go off the 09:47
6 record for one minute.

7 THE VIDEOGRAPHER: Off the record at 9:47.

8 (Short recess.)

9 THE VIDEOGRAPHER: Back on the record at 9:59.

10 BY MS. NGUYEN: 10:00

11 Q. Okay. Dr. McLean, if you recall, before
12 the break we were talking about a piece of
13 equipment at the Cleveland Clinic Foundation
14 tethered to EMG sensor. Do you remember that?

15 A. Yes. 10:00

16 Q. Okay. And this piece of equipment at
17 the Cleveland Clinic Foundation tethered to an EMG
18 sensor, did you have to plug in this piece of
19 equipment into an outlet?

20 A. Yes. 10:00

21 Q. Okay. So there were other components in
22 this piece of equipment at the Cleveland Clinic
23 Foundation; is that right?

24 MR. BOWLING: Objection; form.

25 THE WITNESS: Again, I don't know. 10:00

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1 BY MS. NGUYEN:

2 Q. And sticking with the Cleveland Clinic
3 Foundation, did your role as scientific specialist
4 and director or postdoctoral research fellow
5 involve computer science or computer programming? 10:01

6 A. Yes.

7 Q. Okay. Tell me about your involvement in
8 computer science or computer programming at the
9 Cleveland Clinic Foundation.

10 A. I would write computer programs. 10:01

11 Q. And what did the computer programs that
12 you wrote at the Cleveland Clinic Foundation, what
13 did the programs do?

14 A. They would process data, factual
15 information. 10:02

16 Q. And the computer programs processing
17 factual information, what information would be
18 output from the computer programs after processing?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: The results of the analysis. 10:02

21 BY MS. NGUYEN:

22 Q. And what were the results of the
23 analysis?

24 MR. BOWLING: Objection; form.

25 THE WITNESS: Can you be more specific on that 10:02

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1 question. Like --

2 BY MS. NGUYEN:

3 Q. Yeah. So earlier you had testified that
4 the computer programs that you wrote at the
5 Cleveland Clinic Foundation would output results of 10:03
6 the analysis. I'm trying to understand what you
7 mean by "the results of the analysis" in your
8 answer.

9 A. The results derived from the factual
10 information. 10:03

11 Q. Okay. And what were the results derived
12 from the factual information? What did they look
13 like?

14 MR. BOWLING: Objection; form.

15 THE WITNESS: Plots or graphs or tables. 10:03

16 BY MS. NGUYEN:

17 Q. Okay. And what did the plots or graphs
18 or tables tell you?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: It was -- it's specific to the 10:04
21 question being asked.

22 BY MS. NGUYEN:

23 Q. Can you give me an example of the
24 question being asked?

25 A. Yeah. Yes, I can. 10:04

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1 Q. And what's an example of the question
2 being asked?

3 A. Whether muscle was fatigued or not.

4 Q. And the computer programming that you
5 wrote for the computer programs at the Cleveland 10:04
6 Clinic Foundation, what type of programming
7 language did you use?

8 A. C++.

9 Q. And after the Cleveland Clinic
10 Foundation, you then became a professor at the 10:05
11 University of Michigan, right?

12 A. Yes.

13 Q. And at the University of Michigan when
14 you were a professor, did your work involve any
15 computer science or computer programming? 10:05

16 A. Yes.

17 Q. Did you use C++ when you were a
18 professor at the University of Michigan?

19 A. No.

20 Q. And how did you learn how to write 10:06
21 computer programs in C++?

22 A. Primarily self-taught.

23 Q. Did you have a book?

24 A. Yes.

25 Q. Do you remember the title of the book? 10:06

1 A. I do not, no.

2 Q. Did you teach yourself C++ using videos?

3 A. No.

4 Q. So you would agree -- scratch that.

5 Before this case, were you aware of 10:07

6 the Wiley Electrical and Electronics Engineering

7 Dictionary?

8 A. No.

9 Q. And before this case, were you aware of

10 the Oxford Dictionary of Computing? 10:08

11 A. No.

12 Q. Before this case, were you knowledgeable

13 about von Neumann machines?

14 A. No.

15 Q. I'm going to hand you Exhibit 1001. 10:08

16 Dr. McLean, do you recognize this

17 exhibit?

18 A. I do.

19 Q. What is it?

20 A. It is the '225 patent. 10:09

21 Q. And you cited parts of the '225 patent

22 in your declaration; is that right?

23 A. Yes.

24 Q. Did you cite parts of the '225 patent

25 that were relevant? 10:09

1 MR. BOWLING: Objection; form.

2 THE WITNESS: Yes.

3 BY MS. NGUYEN:

4 Q. Did you cite the best disclosures of the

5 '225 in your declaration? 10:09

6 MR. BOWLING: Objection; form.

7 THE WITNESS: I'm sorry. I didn't understand

8 your question.

9 BY MS. NGUYEN:

10 Q. Did you cite the best disclosures of the 10:09

11 '225 patent in your declaration?

12 MR. BOWLING: Same objection.

13 THE WITNESS: What do you mean by "best

14 disclosures"?

15 BY MS. NGUYEN: 10:10

16 Q. Did you cite the disclosures that you

17 thought were the best in the '225 patent in your

18 declaration?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: I provided relevant, appropriate 10:10

21 disclosures.

22 BY MS. NGUYEN:

23 Q. Did you consider every word of the '225

24 patent?

25 MR. BOWLING: Objection; form. 10:11

1 THE WITNESS: Yes.

2 BY MS. NGUYEN:

3 Q. And is there anything about the '225
4 patent that you don't understand?

5 MR. BOWLING: Objection; form. 10:11

6 THE WITNESS: No.

7 BY MS. NGUYEN:

8 Q. Okay. Please turn to column 45 of the
9 '225 patent, lines 12 to 14.

10 So it states "Transmitting by the 10:12
11 sensor device into the piece of workout equipment a
12 first set of data for operating a first function of
13 the piece of workout equipment."

14 Do you see that?

15 A. Yes. 10:12

16 Q. And if I refer to the limitation at
17 column 45, lines 12 to 14, as Limitation 1B, you
18 would understand?

19 A. I'm sorry. Can you say that again.

20 Aaron was turning pages at the same time. 10:13

21 MR. BOWLING: Sorry. Sorry.

22 BY MS. NGUYEN:

23 Q. Yeah. If I refer to the limitation at
24 column 45, lines 12 to 14, as Limitation 1B, would
25 you understand which limitation I'm referring to? 10:13

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1 A. Yes.

2 Q. And would you agree that Limitation 1B
3 requires a first set of data be transmitted by the
4 sensor device?

5 MR. BOWLING: Objection; form. 10:13

6 THE WITNESS: As I put in my declaration,
7 paragraph 58, Limitation 1B recites "Transmitting
8 by the sensor device into the piece of workout
9 equipment a first set of data for operating a first
10 function of the piece of workout equipment." 10:14

11 BY MS. NGUYEN:

12 Q. So you would agree that Limitation 1B
13 requires a first set of data be transmitted by the
14 sensor device; is that right?

15 MR. BOWLING: Objection; form. 10:14

16 THE WITNESS: Limitation 1B, as I said -- and
17 I'll just recite -- is "Transmitting, by the sensor
18 device and to the piece of workout equipment, a
19 first set of data for operating a first function of
20 the piece of workout equipment." 10:14

21 BY MS. NGUYEN:

22 Q. Does Limitation 1B recite "sensing or
23 collecting by the sensor device into the piece of
24 workout equipment a first set of data"?

25 A. Can you restate that question. 10:15

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1 Q. Yes. Does Limitation 1B recite "sensing
2 or collecting by the sensor device to the piece of
3 workout equipment a first set of data"?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: Limitation 1B recites -- I'll 10:15
6 say it again -- "Transmitting by the sensor device
7 into the piece of workout equipment a first set of
8 data for operating a first function of the piece of
9 workout equipment."

10 BY MS. NGUYEN: 10:15

11 Q. So you would agree that Limitation 1B
12 recites "transmitting," not "sensing or collecting"
13 by the sensor device --

14 MR. BOWLING: Objection; form --

15 BY MS. NGUYEN: 10:16

16 Q. -- correct?

17 MR. BOWLING: -- misstates the witness's
18 testimony.

19 THE WITNESS: Limitation 1B recites
20 "Transmitting by the sensor device into the piece 10:16
21 of workout equipment a first set of data for
22 operating a first function of the piece of workout
23 equipment."

24 BY MS. NGUYEN:

25 Q. Okay. Can you point me to where in 10:16

1 Limitation 1B it recites "sensing or collecting"?

2 A. I cannot.

3 Q. And in the '225 patent, what kind of
4 data does the sensor collect?

5 A. The types of data may include components 10:17
6 for measuring or sensing athletic performance data;
7 data related to athletic performance.

8 Q. Does the '225 patent disclose sensing or
9 collecting any other type of data by the sensor
10 device? 10:19

11 MR. BOWLING: Objection; form.

12 THE WITNESS: The '225 patent discloses a
13 sensing device that senses athletic performance
14 data.

15 BY MS. NGUYEN: 10:21

16 Q. Okay. So earlier when I asked you what
17 kind of data the '225 patent discloses as being
18 collected or sensed by the sensor device, you
19 answered data related to athletic performance?

20 A. Yes. 10:21

21 Q. Do you recall that?

22 A. Yes.

23 Q. And then when I asked if there were
24 other types of data disclosed in the '225 patent,
25 sensed or collected by a sensor device, you then 10:21

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1 said athletic performance data. Do you recall?

2 A. Yes.

3 Q. So in your opinion, is athletic

4 performance data the only data sensed or collected

5 by a sensor device in the '225 patent?

10:22

6 MR. BOWLING: Objection; form.

7 THE WITNESS: No.

8 BY MS. NGUYEN:

9 Q. Are there other types of data sensed or

10 collected by a sensor device in the '225 patent?

10:24

11 MR. BOWLING: Objection; form.

12 THE WITNESS: I'm sorry. Let me restate. The

13 system receives additional types of information,

14 but the sensor senses or collects performance data.

15 So, no, that's all it collects.

10:24

16 BY MS. NGUYEN:

17 Q. And, Dr. McLean, what do you mean by

18 "the system"?

19 A. If you go to paragraph 60, which recites

20 from the patent, first specification, "The system

10:24

21 receives input data in various ways, including

22 semiautomatically, in response to a user's

23 command."

24 Q. And when you say paragraph 60, you're

25 referring to paragraph 60 of your declaration; is

10:25

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1 that --

2 A. Correct, yes.

3 Q. And when you say the system receives
4 additional types of information that the sensor
5 senses or collects performance data, is it your 10:25
6 opinion that performance data is the only data that
7 the sensor device senses or collects?

8 A. Yes.

9 Q. So you would agree that the sensor
10 device in the '225 patent does not sense or collect 10:26
11 identification information?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: The sensor collects or senses
14 factual information.

15 BY MS. NGUYEN: 10:27

16 Q. So in your opinion, does the sensor
17 sense or collect factual information that is
18 identification information?

19 MR. BOWLING: Objection, form.

20 THE WITNESS: So the sensor collects or senses 10:27
21 factual information related to athletic
22 performance.

23 BY MS. NGUYEN:

24 Q. Okay. So, Dr. McLean, does the sensor
25 device collect only athletic performance data? 10:29

1 MR. BOWLING: Objection; form.

2 THE WITNESS: As I said, the sensor senses or
3 collects factual information about performance
4 data, or factual information about performance.

5 BY MS. NGUYEN: 10:30

6 Q. And in your opinion, is identification
7 information factual information about performance?

8 A. Can you just reask that question.

9 Q. Yes. In your opinion, is identification
10 information factual information about performance? 10:30

11 MR. BOWLING: Objection; form.

12 THE WITNESS: No.

13 BY MS. NGUYEN:

14 Q. And factual information about
15 performance, would you agree that includes activity 10:31
16 data?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: Can you be more specific by what
19 you mean, "activity data."

20 BY MS. NGUYEN: 10:31

21 Q. Yes. So the '225 discusses activity
22 data; would you agree?

23 A. Yes.

24 Q. And, Dr. McLean, in your opinion, what
25 is activity data in the '225 patent? 10:32

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1 MR. BOWLING: Objection to form.

2 THE WITNESS: If you go to paragraph 39 of my
3 declaration, I'll actually read from the beginning.

4 I'll read it. "The specification in the '225

5 patent discloses using data as factual information 10:33

6 that is sensed or collected by a sensor. For

7 example, the specification discloses that the

8 athletic performance data presented by display may

9 include information based on the output from the

10 sensor, such as speed information, distance 10:33

11 information, or timing information, heart rate,

12 pulse rate, et cetera."

13 BY MS. NGUYEN:

14 Q. So would you agree that activity data in

15 the '225 patent is athletic performance data? 10:33

16 MR. BOWLING: Objection; form.

17 THE WITNESS: Yes.

18 BY MS. NGUYEN:

19 Q. Would you agree that activity data in

20 the '225 patent includes data associated with 10:34

21 activities?

22 MR. BOWLING: Objection; form.

23 THE WITNESS: It includes factual information

24 that's sensed by a sensor related to performance.

25

1 BY MS. NGUYEN:

2 Q. And is factual information that is
3 sensed by a sensor related to performance data or
4 activity data?

5 MR. BOWLING: Objection; form. 10:35

6 THE WITNESS: I'm going to go to paragraph 36,
7 which reflects my understanding. "Each independent
8 claim recites a first set of data and a first set
9 of activity data. Notably, both types of data are
10 sensed or collected by a sensor." 10:36

11 So there are two distinct types of
12 data.

13 BY MS. NGUYEN:

14 Q. So when you say there are two distinct
15 types of data, are you saying that "data" and 10:36
16 "activity data" do not have the same meaning?

17 A. I'm saying -- and I'll read it again.
18 "There's a first set of data and a first set of
19 activity data." I'm saying there are two sets of
20 data. 10:36

21 Q. In your opinion, does the first set of
22 data and the first set of activity data have
23 different meanings?

24 MR. BOWLING: Objection; form.

25 THE WITNESS: My opinion is there are two sets 10:36

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1 of data; a first set of data and a first set of
2 activity data.

3 BY MS. NGUYEN:

4 Q. Does the first set of data and the first
5 set of activity data have the same meaning? 10:37

6 MR. BOWLING: Objection; form.

7 THE WITNESS: What do you mean by "meaning"?

8 BY MS. NGUYEN:

9 Q. In your opinion, does "the first set of
10 data" mean the same thing as "the first set of 10:38
11 activity data"?

12 A. There are two sets of data; first set of
13 data and a first set of activity data. Two sets of
14 data.

15 Q. And in your opinion, are these two sets 10:38
16 of data different from each other?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: I think I'll just answer it
19 again the same way. There is a first set of data
20 and a first set of activity data. 10:39

21 BY MS. NGUYEN:

22 Q. So in your opinion, because there is a
23 first set of data and a first set of activity data,
24 does that mean first set of data is separate from a
25 first set of activity data? 10:39

1 MR. BOWLING: Objection; form.

2 THE WITNESS: I'm going to read from column 45

3 in the '225 patent, I'll just read the claim. "A

4 first set of data for operating a first function of

5 the piece of workout equipment and transmitting by 10:40

6 the sensor device into the piece of workout

7 equipment. A first set of activity data

8 corresponding to an activity performed by a user

9 during the first time period wherein the piece of

10 workout equipment is configured to display the 10:41

11 first set of activity data."

12 BY MS. NGUYEN:

13 Q. And by referring to the claim in column

14 45, you're referring to Claim 1; is that right?

15 A. That's correct, yes. 10:41

16 Q. Of the '225 patent?

17 A. Yep.

18 Q. Okay. So going back to paragraph 36 of

19 your declaration that you had just referred me

20 to -- 10:41

21 A. Yep.

22 Q. -- the second sentence, it says

23 "Notably, both types of data are sensed," i.e.,

24 measured or collected by a sensor --

25 A. Yes. 10:41

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1 Q. -- is that right?

2 And in this sentence, when you state
3 "both types of data," you're referring to first set
4 of data and first set of activity data, correct?

5 A. That is correct. 10:42

6 Q. And by saying "both types of data,"
7 would it be fair to say that, in your opinion, a
8 first set of data is one type of data, and a second
9 set of activity data is a second type?

10 A. What I'm saying is there is a first set 10:42
11 of data and a first set of activity data.

12 Q. And would you agree that a first set of
13 data and a first set of activity data are two types
14 of data?

15 A. I'm saying there's two sets of data. 10:42

16 Q. Would you agree they're two types?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: If you read the next sentence,
19 so both types of data are sensed.

20 BY MS. NGUYEN: 10:42

21 Q. In your opinion, does "both" mean two?

22 A. It does.

23 Q. So, Dr. McLean, going back to
24 column 1 -- or sorry -- column 45, Claim 1, that
25 you had just read -- 10:43

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1 A. Yes.

2 Q. -- does Claim 1 recite "sensing or
3 collecting" anywhere?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: No. 10:43

6 MS. NGUYEN: Okay. Can we take a break.

7 THE VIDEOGRAPHER: Off the record at 10:43.

8 (Short recess.)

9 THE VIDEOGRAPHER: Back on the record at
10 11:01. 11:01

11 BY MS. NGUYEN:

12 Q. Okay. Dr. McLean, let's turn back to
13 Limitation 1B.

14 A. Okay.

15 Q. More specifically, column 45 of the '225 11:01
16 patent, line 13 and 14, where it states "operating
17 a first function of the piece of workout
18 equipment." Do you see that?

19 A. Yes.

20 Q. And in your opinion, what does it mean 11:01
21 to be operating a first function of the piece of
22 workout equipment?

23 MR. BOWLING: Objection; form.

24 THE WITNESS: So as it says, "a first set of
25 data for operating a first function of the piece of 11:03

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1 workout equipment." It refers to using data to
2 control the workout equipment.

3 BY MS. NGUYEN:

4 Q. Okay. And what happens before this
5 operating a first function of the piece of workout 11:03
6 equipment?

7 MR. BOWLING: Objection; form.

8 THE WITNESS: Can you be more specific. What
9 happens before -- can you rephrase.

10 BY MS. NGUYEN: 11:04

11 Q. Yeah. So looking at the -- at Claim 1
12 of the '225 patent, I wanted to understand kind of
13 the steps involved and the sequence of steps. So
14 one step is operating a first function of the piece
15 of workout equipment; would you agree? 11:04

16 A. Yes.

17 Q. And what would be the step before the
18 step of operating a first function of the piece of
19 workout equipment?

20 MR. BOWLING: Objection; form. 11:04

21 THE WITNESS: The information is sensed or
22 collected by the sensor.

23 BY MS. NGUYEN:

24 Q. Okay. So in the '225 patent, the
25 information is sensed or collected by the sensor, 11:05

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1 and then what's the next step?

2 A. The next step, those sensed or
3 collected -- that sensed or collected factual
4 information is used to control that first function
5 of the equipment. 11:06

6 Q. So after the information is
7 sensor-collected by the sensor, the very next step
8 is to control?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: I don't know. 11:06

11 BY MS. NGUYEN:

12 Q. What do you mean by you don't know,
13 Dr. McLean?

14 A. So just one second. I'll read from
15 here. The first step, as I stated, the factual 11:06
16 information is sensed or collected. Those data are
17 then used to control the workout equipment.

18 Q. And when you say "those data are then
19 used to control the workout equipment," is that the
20 second step? 11:07

21 MR. BOWLING: Objection; form.

22 THE WITNESS: As I said, initially the factual
23 information is sensed or collected by the sensor,
24 and that information is then used to control the
25 workout equipment. 11:07

1 BY MS. NGUYEN:

2 Q. Right. Would you agree that the
3 information used to control the workout equipment
4 is step two?

5 MR. BOWLING: Objection; form. 11:08

6 THE WITNESS: What I know is those data are
7 used to control the workout equipment.

8 BY MS. NGUYEN:

9 Q. Okay. But you're not sure whether the
10 data used to control the workout equipment is or 11:08
11 isn't step two?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: Again, what I know is the
14 factual information that is sensed or collected by
15 the sensor is used to control the workout 11:08
16 equipment.

17 BY MS. NGUYEN:

18 Q. In some step?

19 A. The data that's sensed or collected is
20 the data used to control the workout equipment. 11:08

21 Q. Okay. Can you describe the sequence of
22 steps in the '225 patent --

23 MR. BOWLING: Objection to form.

24 BY MS. NGUYEN:

25 Q. -- according to Claim 1? 11:08

1 MR. BOWLING: Same objection.

2 THE WITNESS: You said according to Claim 1?

3 BY MS. NGUYEN:

4 Q. Yes.

5 A. The factual information that is sensed 11:09
6 or collected by the sensor device, those -- that
7 information, in accordance with the language of
8 Claim 1, is transmitted to the workout equipment to
9 control the workout equipment.

10 Q. Is there anything else in Claim 1 with 11:09
11 respect to the sequence of steps in the '225
12 patent?

13 MR. BOWLING: Objection; form.

14 THE WITNESS: As it states, "in transmitting
15 by the sensor device and to the piece of workout 11:10
16 equipment, a first set of activity data
17 corresponding to an activity performed by a user
18 during the first time period."

19 BY MS. NGUYEN:

20 Q. Okay. So just to make sure I understand 11:10
21 this correctly, factual information is first sensed
22 or collected by the sensor device; is that right?

23 A. Yes.

24 Q. And in your opinion, the factual
25 information that a sensor collected by the sensor 11:10

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1 device is then transmitted to the workout
2 equipment, correct?

3 A. The factual information sensed or
4 collected by the sensor is used to make subsequent
5 actions or decisions to control the workout 11:11
6 equipment.

7 Q. And what would a subsequent action or
8 decision to control the workout equipment be?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: If you go to paragraph 40 of my 11:11
11 declaration, I will read from the beginning. "The
12 specification of the '225 patent also discloses
13 using data to control workout equipment. Data
14 collected as a workout progresses also may be used,
15 if desired, to control the exercise equipment or 11:12
16 other workout athletic performance devices; for
17 example, to set or change intensity or resistance
18 levels, to shorten or lengthen workout times,
19 et cetera."

20 BY MS. NGUYEN: 11:12

21 Q. Okay. So one example, subsequent
22 action, or decision would be to set or change
23 intensity or resistance levels; is that right?

24 A. Yes.

25 Q. And another example, subsequent action, 11:12

1 or decision would be to shorten or lengthen workout
2 times, right?

3 A. Yes.

4 Q. Are there any other subsequent actions
5 or decisions that you can think of? 11:13

6 MR. BOWLING: Objection; form.

7 THE WITNESS: I think specifically the
8 subsequent actions or decisions relate to
9 controlling the workout equipment.

10 BY MS. NGUYEN: 11:13

11 Q. Okay. And in paragraph 40 of your
12 declaration, the e.g. that you had just discussed
13 says -- right? -- "to set or change intensity or
14 resistance level, to shorten or lengthen workout
15 times," followed by an "et cetera." So I'm trying 11:14
16 to understand what the "et cetera" covers. Is
17 there another example of a subsequent action or
18 decision, in your opinion?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: Another example may be increase 11:14
21 or decrease distance required to perform.

22 BY MS. NGUYEN:

23 Q. Okay. And when you say change intensity
24 or -- sorry -- set or change intensity or
25 resistance levels in paragraph 40 of your 11:16

1 declaration, does that include increasing the speed
2 as a subsequent action or decision?

3 MR. BOWLING: Objection; form.

4 THE WITNESS: Can you ask that again.

5 BY MS. NGUYEN: 11:17

6 Q. Yes. So paragraph 40 of your
7 declaration says "to set or change intensity or
8 resistance levels," and earlier you had testified
9 that set or changing intensity or resistance levels
10 is an example of a decision or subsequent action. 11:17

11 Do you recall that?

12 A. I do.

13 Q. Would increasing or decreasing speed be
14 an example of setting or changing intensity or
15 resistance levels? 11:17

16 A. Yes.

17 MR. BOWLING: Same objection.

18 THE WITNESS: Yes.

19 BY MS. NGUYEN:

20 Q. And would increasing or decreasing 11:17
21 incline be an example of setting or changing
22 intensity or resistance levels?

23 A. Yes.

24 Q. So would you agree that increasing or
25 decreasing speed is a decision or subsequent 11:18

1 action?

2 MR. BOWLING: Objection; form.

3 THE WITNESS: A subsequent action is based on
4 the factual information that is sensed or collected
5 from the sensor. 11:18

6 BY MS. NGUYEN:

7 Q. And would you agree that increasing or
8 decreasing incline is a decision or subsequent
9 action?

10 A. Based on the factual information that is 11:19
11 sensed or collected from the sensor, it is a
12 subsequent action that can be made.

13 Q. Okay. So, Dr. McLean, if we could go
14 back to the '225 patent, column 45, starting at
15 line 15. 11:19

16 A. Yep.

17 Q. Right? It states "Transmitting by the
18 sensor device and to the piece of workout
19 equipment, a first set of activity data
20 corresponding to an activity performed by a user 11:19
21 during a first time period wherein the piece of
22 workout equipment is configured to display the
23 first set of activity data."

24 A. Yes.

25 Q. Do you see that? 11:19

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1 A. Yes.

2 Q. So if I refer to the limitation at
3 column 45, lines 15 to 20, as Limitation 1C, would
4 you understand what I'm referring to?

5 A. Yes. 11:20

6 Q. So part of Limitation 1C states "display
7 the first set of activity data." Do you see that?

8 A. Yes.

9 Q. And in your opinion, what does "display
10 the first set of activity data" mean? 11:21

11 A. It displays the factual information that
12 is sensed or collected by the sensor.

13 Q. Okay. And would you agree that
14 displaying the factual information that is sensed
15 or collected by the sensor is an action? 11:22

16 MR. BOWLING: Objection; form.

17 THE WITNESS: It is factual information that
18 is sensed or collected by the sensor. And these
19 data presented were displayed, which may include
20 information -- and I'm reading now from -- I should 11:23
21 have said that -- paragraph 39 of my declaration.
22 "That displayed information may include information
23 based on output from the sensor such as speed,
24 distance information, timing information, heart
25 rate, pulse rate, et cetera." 11:23

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1 BY MS. NGUYEN:

2 Q. And this first set of activity data is
3 displayed, correct?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: "The first set of activity data 11:24
6 corresponding to an activity performed by a user
7 during a first time period wherein the piece of
8 workout equipment is configured to display the
9 first set of activity data."

10 BY MS. NGUYEN: 11:25

11 Q. Okay. So, Dr. McLean, when you say the
12 piece of workout equipment is configured to display
13 the first set of activity data, would you agree
14 that the piece of workout equipment then displays
15 the first set of activity data? 11:27

16 MR. BOWLING: Objection; form.

17 THE WITNESS: What do you mean by "then
18 displays"?

19 BY MS. NGUYEN:

20 Q. So, again, the claim recites "Wherein 11:27
21 the piece of workout equipment is configured to
22 display the first set of activity data," right?

23 A. Correct, yes.

24 Q. Would you agree that the piece of
25 workout equipment displays the first set of 11:27

1 activity data?

2 A. In light of the claim in the patent,
3 yes.

4 Q. Okay. Would you agree that the piece of
5 workout equipment displaying the first set of 11:27
6 activity data is a subsequent action?

7 MR. BOWLING: Objection; form.

8 THE WITNESS: Using the factual information
9 the sensor collected, the display can be a
10 subsequent action using that -- displaying that 11:28
11 factual information.

12 MR. BOWLING: Jean, we've been going for a
13 little over an hour. Do you guys want to take a
14 break soon?

15 MS. NGUYEN: Yeah, sounds good. 11:28

16 MR. BOWLING: Whenever.

17 MS. NGUYEN: Yeah, let's take one.

18 MR. BOWLING: Okay.

19 THE VIDEOGRAPHER: Off the record at 11:28.

20 (Short recess.) 11:46

21 THE VIDEOGRAPHER: Back on the record at
22 11:46.

23 BY MS. NGUYEN:

24 Q. Okay. Dr. McLean, during this last
25 break or any of the previous breaks, have you 11:46

1 discussed any parts of this proceeding with
2 counsel?

3 A. No.

4 Q. Dr. McLean, what is your definition of a
5 command? 11:47

6 A. In light of the patent in the '225, my
7 definition of a command is a set of instructions or
8 information that is -- set of instructions that
9 would control a piece of equipment, as an example.

10 Q. Okay. Can you give me examples of 11:48
11 commands?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: A simple example of a command,
14 in general, would be telling your dog to sit.
15 That's a command. 11:48

16 BY MS. NGUYEN:

17 Q. So in your opinion, would telling a dog
18 to sit control a piece of equipment?

19 A. So I just meant a simple example. Are
20 you referring to with regard to a piece of 11:49
21 equipment?

22 Q. Well, I'm referring to your definition
23 that you provided, which you said --

24 A. Right.

25 Q. -- my definition of a command is a set 11:49

1 of instructions or information that would control a
2 piece of equipment.

3 A. Yeah. Let me restate that as a command
4 is a set of instructions. And with relation to a
5 piece of equipment, yes, a set of instructions that 11:49
6 would control a piece of equipment.

7 Q. Okay. Can you give me an example of a
8 command that would control a piece of equipment.

9 MR. BOWLING: Objection to form.

10 THE WITNESS: I'll actually go to paragraph 59 11:49
11 of my declaration. If you go to the second
12 sentence, it says "The bug 601 sends a command to
13 the treadmill telling it to increase speed to a
14 specific amount." So that's an example of a
15 command. 11:50

16 BY MS. NGUYEN:

17 Q. Okay. Would you consider instructions a
18 command? Sorry. Would you consider an instruction
19 a command?

20 MR. BOWLING: Objection; form. 11:50

21 THE WITNESS: In light of the patent and
22 interpreting it in that sense, a command -- I'm
23 sorry. To your point, an instruction is an example
24 of or common with a command.

25

1 BY MS. NGUYEN:

2 Q. And would you consider a control signal
3 a command?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: Can you give me an example of 11:51
6 what you mean by a control signal.

7 BY MS. NGUYEN:

8 Q. What does a control signal mean to you?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: I think I'd need more context to 11:51
11 understand what you mean by that when you say what
12 does a control signal mean to me. Can you give me
13 some context or an example so I can help.

14 BY MS. NGUYEN:

15 Q. Yeah. If somebody came up to you and 11:51
16 said, "Dr. McLean, I need you to take a look at
17 this control signal," what would that mean to you?

18 MR. BOWLING: Objection; form --

19 THE WITNESS: Without --

20 MR. BOWLING: -- calls for speculation. 11:52

21 THE WITNESS: Without, like, having the
22 information in front of me and being able to look
23 at this so-called control signal, I don't know what
24 that would mean to me.

25

1 BY MS. NGUYEN:

2 Q. Okay. So if I told you a control signal
3 is a signal used to control a piece of workout
4 equipment, would that mean a command is a control
5 signal? 11:52

6 MR. BOWLING: Objection; form.

7 THE WITNESS: Again, without actually seeing
8 the signal and being able to understand what the
9 signal is, I really can't answer that question.

10 BY MS. NGUYEN: 11:52

11 Q. Okay. Can you -- okay. Scratch that.

12 In your opinion, is a command factual
13 information that is sensed or collected?

14 MR. BOWLING: Objection; form.

15 THE WITNESS: In my opinion, a command is a 11:53
16 decision or subsequent action drawn from the
17 factual information that is sensed or collected.

18 BY MS. NGUYEN:

19 Q. Okay. So going back to paragraph 59 of
20 your declaration, which you just pointed me to. 11:53

21 A. Yep. Give me one second. Yes.

22 Q. I believe the passage that you were
23 reciting is "The bug 601 sends a command to the
24 treadmill 150 telling it to increase speed to a
25 specific amount"; is that right? 11:54

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1 A. Yes.

2 Q. Okay. So would it be fair to say that
3 the command is controlling the treadmill?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: What I'm stating is the bug 11:54
6 sends a command to the treadmill telling it to
7 increase speed to a specific amount.

8 BY MS. NGUYEN:

9 Q. Okay. Would you agree that telling it
10 to increase speed to a specific amount is 11:55
11 controlling the treadmill?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: What I'm saying is, you know, as
14 I've written, the bug -- the command -- it sends a
15 command to the treadmill telling it to increase 11:55
16 speed to a specific amount.

17 BY MS. NGUYEN:

18 Q. Okay. Perhaps you can help me
19 understand this sentence. So the bug sends a
20 command to the treadmill, correct? 11:55

21 A. Correct.

22 Q. And in your opinion, this command is
23 telling the treadmill to increase speed?

24 A. Correct.

25 Q. Correct. So is this command a form of 11:56

1 controlling the treadmill?

2 MR. BOWLING: Objection to form.

3 THE WITNESS: Without -- again, without
4 actually having that treadmill --

5 BY MS. NGUYEN: 11:56

6 Q. Okay.

7 A. -- in front of me, I don't know enough
8 about the treadmill to tell you what it is and
9 isn't doing. But, again, the command tells the
10 treadmill to increase the speed. 11:56

11 Q. Okay. What does it mean by a command
12 telling it to increase speed?

13 A. It instructs it. It's a set of
14 instructions, a command or instructions, that tells
15 the treadmill to increase or decrease speed by a 11:56
16 given amount.

17 Q. Do you know what this command or
18 instruction to tell the treadmill to increase or
19 decrease speed looks like?

20 MR. BOWLING: Objection; form, calls for 11:57
21 speculation.

22 THE WITNESS: I don't know.

23 BY MS. NGUYEN:

24 Q. Okay. So, Dr. McLean, earlier you were
25 discussing with me storage equipment. Do you 11:58

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1 remember that?

2 A. I do, yes.

3 Q. Would you agree that storage equipment
4 has memory?

5 MR. BOWLING: Objection; form. 11:58

6 THE WITNESS: Without actually seeing this
7 storage equipment, I can't speak to whether it does
8 or doesn't have memory.

9 BY MS. NGUYEN:

10 Q. Okay. So let's talk about the storage 11:58
11 equipment that you saw while you were at the
12 Cleveland Clinic Foundation. Did that storage
13 equipment from the Cleveland Clinic Foundation that
14 you saw have memory?

15 MR. BOWLING: Objection; form. 11:59

16 THE WITNESS: It had an ability to store data,
17 factual information, for a period of time. So it
18 could store historical factual information.

19 BY MS. NGUYEN:

20 Q. And was this stored factual information 11:59
21 in memory?

22 A. Can you define for me what you mean by
23 "memory."

24 Q. I don't have a definition of memory. Do
25 you? 12:00

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1 MR. BOWLING: Objection; form.

2 THE WITNESS: Within what context, I guess?

3 BY MS. NGUYEN:

4 Q. To a POSITA. What is the definition of

5 memory to a POSITA? 12:00

6 MR. BOWLING: Objection; form.

7 THE WITNESS: Memory as in general memory, or

8 are you being more specific?

9 BY MS. NGUYEN:

10 Q. General memory to a POSITA. 12:00

11 MR. BOWLING: Objection; form.

12 THE WITNESS: I don't think there is a general

13 definition. It's very much context specific.

14 BY MS. NGUYEN:

15 Q. Okay. So earlier you talked about 12:00

16 floppy disks. Do you remember that?

17 A. I do.

18 Q. Would you consider floppy disks memory?

19 MR. BOWLING: Objection; form.

20 THE WITNESS: I would consider a floppy disk a 12:01

21 temporary storage system.

22 BY MS. NGUYEN:

23 Q. Would you consider a temporary storage

24 system memory?

25 MR. BOWLING: Objection; form. 12:01

1 THE WITNESS: Again, without the context of
2 knowing what that temporary storage system is, I
3 can't speak to whether it is or isn't memory.

4 BY MS. NGUYEN:

5 Q. Okay. So would it be fair to say that 12:01
6 you can't speak to whether the floppy disks that
7 you handled was memory?

8 MR. BOWLING: Objection; form.

9 THE WITNESS: My opinion and my definition of
10 what a floppy disk is is, as I mentioned, a 12:01
11 temporary storage system; storing factual
12 information that's being sensed or collected.

13 MR. BOWLING: Lunch just got here, by the way.
14 It's in the rooms if anybody wants to eat.

15 MS. NGUYEN: Okay. Just a few more questions. 12:02
16 BY MS. NGUYEN:

17 Q. Dr. McLean, in your opinion, would data
18 pointing to a memory location be considered factual
19 information that is sensed or collected?

20 MR. BOWLING: Objection; form. 12:02

21 THE WITNESS: Can you restate that one. I got
22 a little --

23 BY MS. NGUYEN:

24 Q. Yes. So I stated, Dr. McLean, in your
25 opinion, would data pointing to a memory location 12:02

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1 be considered factual information that is sensed or
2 collected?

3 MR. BOWLING: Same objection.

4 THE WITNESS: I think, again, without seeing
5 this storage system, without having exposure to it, 12:03
6 I can't speak specifically to and answer that
7 question specifically.

8 BY MS. NGUYEN:

9 Q. Okay. In the context of the '225, in
10 your opinion, would data pointing to a memory 12:03
11 location be considered factual information that is
12 sensed or collected?

13 MR. BOWLING: Objection to form.

14 THE WITNESS: In light of the '225, I view
15 data as being factual information that is sensed or 12:03
16 collected.

17 BY MS. NGUYEN:

18 Q. Okay. That didn't answer my question.
19 In the context of the '225, in your opinion, would
20 data pointing to a memory location be considered 12:04
21 factual information that is sensed or collected?

22 MR. BOWLING: Objection; form.

23 THE WITNESS: So can you give me an example
24 within the '225 of a memory location.
25

1 BY MS. NGUYEN:

2 Q. Yes. Have you read the '225 patent?

3 A. Mm-hmm.

4 Q. So in your review of the '225 patent,

5 did you understand data pointing to a memory 12:04

6 location?

7 MR. BOWLING: Objection; form.

8 THE WITNESS: Yes.

9 BY MS. NGUYEN:

10 Q. Okay. So data pointing to a memory 12:05

11 location, would you consider this data pointing to

12 a memory location to be factual information that is

13 sensed or collected?

14 MR. BOWLING: Objection; form.

15 THE WITNESS: I would view data that's sensed 12:06

16 or collected to be factual information.

17 BY MS. NGUYEN:

18 Q. Would you view data pointing to a memory

19 location to be sensed or collected data -- sorry --

20 to be sensed or collected factual information? 12:06

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Well, I'll say again that the

23 data is factual information that is sensed or

24 collected.

25

1 BY MS. NGUYEN:

2 Q. Okay. Does that include data pointing
3 to a memory location?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: I keep going back to the same 12:07
6 statement, which is in light of -- in the context
7 of the '225, data is factual information that is
8 sensed or collected from which decisions or
9 subsequent actions can be made. That's my
10 interpretation of data within the patent. 12:08

11 BY MS. NGUYEN:

12 Q. Okay. So what is your interpretation of
13 data pointing to a memory location?

14 A. Are you able to direct me to --

15 MR. BOWLING: Objection; form. 12:08

16 THE WITNESS: Can you just direct me
17 specifically to where you're referencing the memory
18 location?

19 BY MS. NGUYEN:

20 Q. Well, I'm referring to the knowledge of 12:08
21 a POSITA.

22 MR. BOWLING: Objection; form.

23 I don't know if --

24 THE WITNESS: A POSITA would understand, as I
25 said, the customary meaning of data in the context 12:08

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1 of the claims to mean factual information that is
2 sensed or collected from which decisions or
3 subsequent actions can be made.

4 BY MS. NGUYEN:

5 Q. Okay. And how is data pointing to a 12:08
6 memory location sensed or collected?

7 MR. BOWLING: Objection; form, calls for
8 speculation.

9 THE WITNESS: I think, for me, unless I
10 actually see this sequence, this memory, as you 12:08
11 call it, or storage system, I can't answer that
12 more specifically than I have. I can't give you
13 that. I don't want to opine on something I can't
14 physically see or interact with.

15 BY MS. NGUYEN: 12:09

16 Q. Okay. So you've seen storage equipment?

17 A. I have.

18 Q. And you've worked on computer programs?

19 A. I have.

20 Q. Have you seen memory? 12:09

21 MR. BOWLING: Objection; form.

22 THE WITNESS: I've seen storage equipment that
23 stored factual information collected from a sensor.

24 BY MS. NGUYEN:

25 Q. And is storage equipment that stores 12:09

1 factual information collected from a sensor memory?

2 MR. BOWLING: Objection; form.

3 THE WITNESS: I think it goes back to what I

4 said earlier. Unless I actually see this piece of

5 equipment and actually look at the components of 12:09

6 that piece of equipment and have it in front of me,

7 I can't speculate regarding memory versus storage.

8 BY MS. NGUYEN:

9 Q. Okay. Are you familiar with the term

10 "read-only memory"? 12:10

11 A. I am.

12 Q. ROM? Okay. So you are familiar with

13 memory?

14 MR. BOWLING: Objection; form.

15 BY MS. NGUYEN: 12:10

16 Q. Are you familiar with random-access

17 memory, RAM?

18 A. I am familiar with the term, yes.

19 Q. Okay. So you've seen memory, correct?

20 MR. BOWLING: Objection; form. 12:10

21 THE WITNESS: I'm familiar with the terms.

22 BY MS. NGUYEN:

23 Q. Okay.

24 A. I haven't seen memory. I'm confused by

25 that question. 12:10

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1 Q. Okay. So let me rephrase it. Are you
2 familiar with memory?

3 A. I'm familiar with the terms, yes.

4 Q. Okay. Are you familiar with data
5 pointing to memory? 12:10

6 MR. BOWLING: Objection to form.

7 THE WITNESS: I'm familiar with data being
8 stored. I don't know how else to answer it. I'm
9 not -- that's my answer.

10 BY MS. NGUYEN: 12:11

11 Q. So would you agree that you're not
12 familiar with data pointing to memory?

13 A. Again --

14 MR. BOWLING: Objection; form.

15 THE WITNESS: -- I'm familiar with data being 12:11
16 stored. And without seeing the piece of equipment
17 that you're -- or the memory that you referred to,
18 I can't speculate on that.

19 BY MS. NGUYEN:

20 Q. So since you're familiar with the data 12:11
21 being stored, would this data being stored include
22 data pointing to memory?

23 MR. BOWLING: Objection; form.

24 THE WITNESS: I'm still not sure I'm
25 understanding your question. What I'm familiar 12:11

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1 with is the factual information being sensed or
2 collected, being transmitted to the storage
3 equipment.

4 BY MS. NGUYEN:

5 Q. Are you familiar with other types of 12:12
6 factual information?

7 MR. BOWLING: Objection; form.

8 THE WITNESS: Can you be a little bit more
9 specific than that.

10 BY MS. NGUYEN: 12:12

11 Q. Yes. So you testified I'm familiar
12 with -- sorry. Your testimony is "What I'm
13 familiar with is the factual information being
14 sensed or collected, being transmitted to the
15 storage equipment." 12:12

16 So my question is are you familiar
17 with other types of factual information?

18 MR. BOWLING: Objection; form.

19 THE WITNESS: Yes.

20 BY MS. NGUYEN: 12:12

21 Q. Okay. What's an example of other types
22 of factual information?

23 MR. BOWLING: Objection; form.

24 THE WITNESS: The date.
25

1 BY MS. NGUYEN:

2 Q. Okay. Anything else?

3 MR. BOWLING: Objection; form.

4 THE WITNESS: The time.

5 BY MS. NGUYEN: 12:12

6 Q. And in your opinion, is the date or time
7 sensed or collected?

8 MR. BOWLING: Objection; form.

9 THE WITNESS: In light of the patent, factual
10 information or data refers to factual information 12:13
11 that is sensed or collected, and as we discussed
12 earlier, pertaining to performance.

13 BY MS. NGUYEN:

14 Q. So is it your opinion that data in the
15 '225 must pertain to performance? 12:13

16 MR. BOWLING: Objection; form.

17 THE WITNESS: I'm just going to read from
18 paragraph 38 that states my opinion in my
19 declaration. "In my opinion, POSITA in 2006 would
20 understand that the ordinary and customary meaning 12:13
21 of data in the context of the claims of the '225
22 patent means factual information that is sensed or
23 collected and from which decisions or subsequent
24 actions can be made."

25

1 BY MS. NGUYEN:

2 Q. Okay. So earlier you said "in light of
3 the patent, factual information or data refers to
4 factual information that is sensed or collected,
5 and as we discussed earlier, pertaining to 12:14
6 performance."

7 A. Mm-hmm.

8 Q. Right? And then you referred me to
9 paragraph 38. And does paragraph 38 talk about
10 performance? 12:14

11 A. No.

12 Q. So I'm just trying to understand. In
13 your opinion, does data in the '225 pertain to
14 performance?

15 MR. BOWLING: Objection; form. 12:15

16 THE WITNESS: I'll read from '225, column 2,
17 line -- bear with me -- line 21. It says "Such
18 systems and methods may include components for
19 measuring or sensing athletic performance data
20 and/or for storing and/or displaying desired 12:16
21 information associated with the athletic
22 performance of the user."

23 MS. NGUYEN: Okay. Shall we take a lunch
24 break?

25 MR. BOWLING: Sure. 12:17

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1 THE VIDEOGRAPHER: Off the record at 12:16.
2 (Lunch recess taken from
3 12:16 p.m. to 1:15 p.m.)
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1 A F T E R N O O N S E S S I O N

2 THE VIDEOGRAPHER: Back on the record at 1:15.

3 EXAMINATION (resumed)

4 BY MS. NGUYEN:

5 Q. All right. Good afternoon, Dr. McLean. 12:17

6 A. Good afternoon.

7 Q. Let me hand you Exhibit 1003. Do you
8 recognize this exhibit?

9 A. I do.

10 Q. Okay. What is it? 01:15

11 A. This is the Abbondanza patent.

12 Q. Okay. And before your work on this
13 case, were you familiar with the Abbondanza
14 reference?

15 A. No. 01:15

16 Q. Did you find this reference yourself?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: Can you ask that -- can you
19 rephrase what you mean by find it myself.

20 BY MS. NGUYEN: 01:16

21 Q. Did you discover Abbondanza independent
22 from counsel?

23 A. No.

24 Q. Did you understand everything described
25 within Abbondanza? 01:16

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1 A. Yes.

2 Q. And about how much time did you spend
3 reviewing Abbondanza?

4 A. Probably two to three hours.

5 Q. So let's turn to your declaration, 01:16
6 paragraph 53.

7 A. Okay.

8 Q. Below the figure shown on native page 21
9 of your declaration, it states "During the
10 activity, the pulse rate sensor 225 senses user 01:17
11 110's pulse rate, and infrared pulse transmitter
12 227 transmits user 110's pulse rate to base unit
13 250."

14 A. Yes.

15 Q. Okay. Would you agree that Abbondanza's 01:17
16 pulse rate sensor senses or collects pulse rate?

17 A. Yes.

18 Q. And then if we go to paragraph 70 of
19 your declaration --

20 A. Yep. 01:18

21 Q. -- the second sentence in paragraph 70
22 states "The instructions in Abbondanza are not
23 transmitted by the sensor as recited in the
24 claims."

25 A. Yes. 01:18

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1 Q. So would you agree that Abbondanza's
2 base unit transmits instructions to an exercise
3 machine?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: I'm going to read from that same 01:18
6 paragraph as my response. So the controller --
7 actually, let me read the entire paragraph just to
8 give context.

9 "A POSITA in 2006 would understand
10 the instructions that lululemon relies upon in 01:18
11 Abbondanza are not a first set of data. The
12 instructions in Abbondanza are not transmitted by
13 the sensor as recited in the claims. Abbondanza's
14 instructions are generated by the base unit.
15 Abbondanza explains that the user's pulse rate is 01:19
16 received by a controller that resides in the base
17 unit via infrared pulse rate transmitter 227.

18 "The controller then processes the
19 data and determines if the pulse rate is within
20 that user's target heart rate range. Next, 01:19
21 controller generates instructions that cause the
22 treadmill device 230 to either speed up or slow
23 down. A POSITA would thus understand that
24 Abbondanza's instructions are themselves subsequent
25 actions performed in response to receiving the 01:19

1 pulse rate data."

2 BY MS. NGUYEN:

3 Q. So going back to my question, would you
4 agree that Abbondanza's base unit transmits
5 instructions to an exercise machine? 01:19

6 A. The controller generates instructions
7 that cause the treadmill device to either speed up
8 or slow down.

9 Q. Okay. Would you agree that the
10 controller in the base unit transmits instructions 01:20
11 to an exercise machine?

12 A. Yes.

13 Q. So going back to what you just read in
14 the middle of paragraph 70 where it says "a
15 controller that resides in base unit 250," do you 01:20
16 see that?

17 A. I do, yes.

18 Q. Okay. And then the next line, you say
19 "The controller then processes the data and
20 determines if the user's pulse rate is within that 01:20
21 user's target heart rate range."

22 A. Yes.

23 Q. Okay. So would you agree that the
24 controller has processing capabilities?

25 A. Yes. 01:20

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1 Q. And since the controller is residing in
2 the base unit, would you agree that the base unit
3 has processing capabilities?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: I would agree that the 01:21
6 controller has processing capabilities.

7 BY MS. NGUYEN:

8 Q. And you agree that the controller is
9 within the base unit?

10 A. Resides within -- 01:21

11 Q. Resides within the base unit?

12 A. -- the base unit. Yes.

13 Q. Okay. Let me hand you Exhibit 1004.

14 Dr. McLean, are you familiar with Exhibit 1004?

15 A. I am, yes. 01:21

16 Q. What is it?

17 A. This is the Pyles patent.

18 Q. Okay. And before your work on this
19 case, were you familiar with the Pyles reference?

20 A. No. 01:22

21 Q. And do you understand everything
22 described within Pyles?

23 A. Yes.

24 Q. About how much time did you spend
25 reviewing Pyles? 01:22

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1 A. About two hours.

2 Q. So let's turn to paragraph 64 --

3 A. Okay.

4 Q. -- of your declaration.

5 A. Yep. 01:22

6 Q. So in paragraph 64, you state, second

7 sentence, "lululemon argues that Pyles'

8 location" -- "local storage in an exercise machine

9 offers a simplified structure by reducing the

10 number of separate components and eliminates the 01:22

11 need to transfer activity data over an internet

12 connection."

13 A. Yes.

14 Q. Would you agree that Pyles's local

15 storage is simpler due to a reduced number of 01:23

16 simple components?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: What do you mean by "simpler"?

19 BY MS. NGUYEN:

20 Q. Sorry. Simplified structure. 01:23

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Without seeing all of the

23 components together, it's hard for me to opine

24 whether it's, in my opinion, simplified or not.

25

1 BY MS. NGUYEN:

2 Q. Okay. So in your opinion, if Pyles is
3 reducing the number of separate components, would
4 this reduced number of separate components offer a
5 simplified structure? 01:24

6 MR. BOWLING: Objection to form.

7 THE WITNESS: I would have to be able to
8 evaluate this structure to be able to determine
9 whether it's simplified, and I don't have the
10 ability to do that. 01:24

11 BY MS. NGUYEN:

12 Q. Okay. Did you evaluate this structure
13 in analyzing Pyles?

14 A. I evaluated the patent.

15 Q. By "patent," are you referring to Pyles? 01:25

16 A. Yeah, Pyles. I didn't evaluate the
17 structure.

18 Q. Okay. Did you evaluate the structure
19 when analyzing the combination of Pyles with Acres?

20 MR. BOWLING: Objection; form. 01:25

21 THE WITNESS: Can you ask that again.

22 BY MS. NGUYEN:

23 Q. Yeah. So I asked did you evaluate the
24 structure when analyzing the combination of Pyles
25 with Acres? 01:25

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1 MR. BOWLING: Same objection.

2 THE WITNESS: What do you mean by "structure"
3 exactly?

4 BY MS. NGUYEN:

5 Q. Yeah. So I'm referring to the structure 01:25
6 discussed in paragraph 64, second sentence of your
7 declaration.

8 A. Which I'll just read that. So
9 "lululemon argues that Pyles' local storage in an
10 exercise machine offers a simplified structure by 01:25
11 reducing the number of separate components and
12 eliminates the need to transfer activity data."

13 So what I've evaluated is the Pyles
14 patent in the way that the patent defines the
15 invention. And I've evaluated that in combination 01:26
16 with Acres. Sorry.

17 Q. Okay. So, Dr. McLean, have you ever
18 worked with exercise equipment?

19 A. I have.

20 Q. Okay. Describe your work with exercise 01:27
21 equipment to me.

22 A. I've used it. I've run on it. I've
23 used it as a user. I've also evaluated exercise
24 equipment for potential risk to a user.

25 Q. Okay. So would your work with exercise 01:27

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1 equipment include a treadmill?

2 A. Yes.

3 Q. And does the treadmill have some sort of
4 display or interface?

5 A. Which treadmill? 01:27

6 Q. The treadmills that you were working
7 with.

8 A. Yes.

9 Q. So would you consider these treadmills
10 to include a computer? 01:28

11 MR. BOWLING: Objection; form.

12 THE WITNESS: Without -- and I never pulled a
13 treadmill apart, so without actually having that
14 treadmill, I didn't -- wasn't able to opine or
15 couldn't consider, didn't consider it. 01:28

16 BY MS. NGUYEN:

17 Q. Do you know whether the treadmills that
18 you've worked with include local storage?

19 A. I don't. I don't know.

20 Q. Do you know whether the treadmills that 01:28
21 you've worked with communicated with other devices?

22 MR. BOWLING: Objection; form.

23 THE WITNESS: Based on what I did with the
24 treadmills, I don't know.

25

1 BY MS. NGUYEN:

2 Q. Do you know whether the treadmills that
3 you worked with included a processor?

4 A. Again, I don't know.

5 Q. Don't know. Okay. When you worked with 01:29
6 these treadmills, did you have any other devices
7 that you were working with?

8 MR. BOWLING: Objection; form.

9 THE WITNESS: Yes.

10 BY MS. NGUYEN: 01:29

11 Q. Okay. Can you give me examples of the
12 other devices that you were working with.

13 A. I can. A tape measure, a camera, and an
14 inclinometer.

15 Q. Okay. And you're generally familiar 01:30
16 with treadmills; is that right?

17 A. Yes.

18 Q. Do any of the treadmills that you're
19 familiar with include heart rate sensors?

20 A. Yes. 01:30

21 Q. Okay. And are these heart rate
22 sensors -- do they attach to the human body?

23 MR. BOWLING: Objection; form.

24 THE WITNESS: Can you be a little more
25 specific in what you mean by "attach to the body." 01:30

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1 BY MS. NGUYEN:

2 Q. Do any of these heart rate sensors used
3 with treadmills touch the human body?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: They can. 01:31

6 BY MS. NGUYEN:

7 Q. Okay. How do the treadmills that touch
8 the human body -- sorry. Scratch that.

9 Would you say you're an expert on
10 exercise equipment? 01:31

11 MR. BOWLING: Objection; form.

12 THE WITNESS: I'm not sure what you mean an
13 expert on exercise equipment. Can you be -- like,
14 with regard to...

15 BY MS. NGUYEN: 01:31

16 Q. Yeah. Working with exercise equipment.

17 MR. BOWLING: Objection; form.

18 THE WITNESS: My expertise in exercise
19 equipment is primarily with being able to evaluate
20 that equipment in terms of risk of the equipment 01:31
21 itself. And I have used that equipment as part of
22 my previous research to evaluate performance or
23 risk.

24 BY MS. NGUYEN:

25 Q. So are you familiar with how treadmills 01:32

1 operate, based on your experience?

2 MR. BOWLING: Objection; form.

3 THE WITNESS: I'm familiar with how they
4 operate within the realms of how I use them --

5 BY MS. NGUYEN: 01:32

6 Q. Okay.

7 A. -- for that role.

8 Q. Can you explain to me how they operate.

9 MR. BOWLING: Objection; form.

10 THE WITNESS: Within the realms of how I use 01:32
11 them, you turn it on, you adjust the speed, you
12 adjust a grade or an incline, and basically that's
13 how I use them for my performance assessment.

14 BY MS. NGUYEN:

15 Q. Okay. And how does the treadmill sense 01:33
16 heart rate?

17 MR. BOWLING: Objection to form.

18 THE WITNESS: The treadmills that I used sense
19 heart rate by putting your hands on a sensor pad.

20 BY MS. NGUYEN: 01:33

21 Q. Okay. Do you know whether the sensor
22 pad is transmitting heart rate information to
23 another component in the treadmill?

24 MR. BOWLING: Objection; form.

25 THE WITNESS: I didn't -- I don't know how the 01:33

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1 treadmill or what the treadmill transferred or
2 didn't transfer. I literally used the sensors only
3 to measure heart rate. I didn't use them or didn't
4 try and understand how the data was transferred or
5 transmitted. 01:34

6 BY MS. NGUYEN:

7 Q. Okay. So once you put your hands on the
8 sensor pad, then what?

9 MR. BOWLING: Objection; form.

10 THE WITNESS: Can you be more specific. What 01:34
11 do you mean by "then what"?

12 BY MS. NGUYEN:

13 Q. Do you keep your hands on the sensor pad
14 the whole time you're running?

15 MR. BOWLING: Objection; form. 01:34

16 THE WITNESS: I think it's contextually sort
17 of relevant. So depending on the task really
18 dictates, A, whether you do interact with the
19 sensor or, B, how long for.

20 BY MS. NGUYEN: 01:34

21 Q. Okay. And does the treadmill display
22 your heart rate sensor?

23 MR. BOWLING: Objection; form.

24 THE WITNESS: No.

25

1 BY MS. NGUYEN:

2 Q. Sorry. Does your treadmill display your
3 heart rate?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: It will display a measurement 01:34
6 that relates to heart rate.

7 BY MS. NGUYEN:

8 Q. Do you know whether the treadmill is
9 using the heart rate measurement to control
10 functions of the treadmill? 01:35

11 MR. BOWLING: Objection; form.

12 THE WITNESS: I don't know. I don't know.

13 MR. BOWLING: Give me a minute to object, if
14 you don't mind.

15 THE WITNESS: Sorry. I get excited. 01:35

16 MR. BOWLING: That's okay.

17 BY MS. NGUYEN:

18 Q. So would you agree that you are not
19 familiar with the internal operation of a
20 treadmill? 01:35

21 MR. BOWLING: Objection; form.

22 THE WITNESS: I would agree that I'm not
23 familiar with every component of every treadmill;
24 what goes into formulating that treadmill.

25

1 BY MS. NGUYEN:

2 Q. Okay. But you would agree that you are
3 familiar with some components inside a treadmill;
4 is that right?

5 MR. BOWLING: Objection; form. 01:36

6 THE WITNESS: Again, I'm familiar with the
7 operation of the treadmill. I'm familiar with
8 components such as a sensor. But in terms of
9 familiarity with components within a treadmill, I
10 don't know. 01:37

11 BY MS. NGUYEN:

12 Q. So you don't know how the heart rate
13 information received by the sensor is then
14 displayed by the treadmill?

15 MR. BOWLING: Objection; form. 01:37

16 THE WITNESS: Without having the treadmill, a
17 specific treadmill, without being able to evaluate
18 that treadmill, I can't speculate or opine on how
19 the heart rate is transmitted or displayed.

20 BY MS. NGUYEN: 01:37

21 Q. But you would agree that the heart rate
22 is transmitted, correct?

23 A. Again, without --

24 MR. BOWLING: Objection; form.

25 THE WITNESS: I'm sorry. 01:37

Without having a given treadmill in front of me, I can't speculate on how/whether/if it's transmitted.

BY MS. NGUYEN:

Q. So earlier when you testified that your expertise is in exercise equipment, would you agree that your expertise is limited to solely the operation of exercise equipment?

MR. BOWLING: Objection; form, misstates the
witness's testimony. 01:39

THE WITNESS: I think my expertise would be dictated by the specific piece of exercise equipment, which, without seeing it, I can't state or opine on what my expertise with that particular piece of equipment is.

BY MS. NGUYEN:

Q. So, Dr. McLean, as you're sitting here today, are you saying that you cannot opine on exercise equipment unless we bring the exercise equipment to the deposition? 01:40

MR. BOWLING: Objection; form, misstates the witness's testimony.

THE WITNESS: I'm saying that exercise
equipment is highly varied and very different, and
my expertise is dictated by that particular piece 01:40

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1 of exercise equipment. Without having more
2 information on what type of equipment that is and
3 what that equipment is, I don't feel comfortable or
4 confident in saying what my level of expertise is.

5 BY MS. NGUYEN: 01:41

6 Q. In formulating your opinion regarding
7 the '225, did you need to rely on a particular
8 piece of exercise equipment?

9 MR. BOWLING: Objection to form.

10 THE WITNESS: No. 01:41

11 BY MS. NGUYEN:

12 Q. So you were able to formulate your
13 opinion regarding the '225 without a particular
14 piece of exercise equipment?

15 MR. BOWLING: Objection; form. 01:41

16 THE WITNESS: I formulated my opinions based
17 on my expertise in the area as a POSITA in 2006 --

18 BY MS. NGUYEN:

19 Q. Okay.

20 A. -- and in my expertise with sensors and 01:41
21 data and factual information.

22 Q. And what is your expertise in this area?
23 Does it include exercise equipment?

24 MR. BOWLING: Objection; form.

25 THE WITNESS: Can you be a little bit more 01:42

1 specific with what you mean by that because I --
2 with regard to exercise equipment.

3 BY MS. NGUYEN:

4 Q. Yeah. I'm trying to understand what
5 your area of expertise is in, right? So earlier 01:42
6 you said that you cannot answer questions related
7 to a specific piece -- sorry -- you cannot answer
8 questions related to exercise equipment because
9 it's highly varied and your expertise is dictated
10 by that particular piece of exercise equipment. 01:43

11 A. Let me restate that in this way. The
12 way I apply my expertise is typically dictated by
13 the piece of equipment and the question to be
14 answered.

15 Q. Okay. And the application specific to a 01:43
16 piece of equipment, is that consistent with a
17 POSITA's understanding?

18 MR. BOWLING: Objection; form.

19 THE WITNESS: Can you try and rephrase that
20 question. 01:43

21 BY MS. NGUYEN:

22 Q. Yeah. So you said "the way I apply my
23 expertise is typically dictated by the piece of
24 equipment." Is it your opinion that a POSITA would
25 apply a particular expertise based on a particular 01:43

1 piece of equipment?

2 MR. BOWLING: Objection; form, calls for
3 speculation.

4 THE WITNESS: Again, without having or getting
5 more understanding of what the piece of equipment 01:44
6 is, I can't speak to other, you know, people or
7 their expertise. I can speak to mine. And my
8 expertise as a POSITA in 2006 allowed me to
9 evaluate exercise equipment using that expertise.

10 BY MS. NGUYEN: 01:44

11 Q. But in order for you to speak, you need
12 a specific piece of equipment; is that right?

13 MR. BOWLING: Objection to form.

14 THE WITNESS: I apply my expertise based on my
15 understanding of what that particular piece of 01:44
16 equipment is. I am not in the position to apply my
17 expertise to a broad term "exercise equipment"
18 without understanding what that particular piece of
19 equipment is.

20 BY MS. NGUYEN: 01:45

21 Q. Okay. So then let's talk about the '225
22 which recites "piece of workout equipment."

23 A. Yep.

24 Q. So does the '225's piece of workout
25 equipment refer to a specific type of workout 01:45

1 equipment?

2 A. No, it does not.

3 Q. Okay. So in formulating your opinion on
4 the '225, are you considering a specific type of
5 workout equipment, or are you considering a piece 01:45
6 of workout equipment more generally?

7 MR. BOWLING: Objection to form.

8 THE WITNESS: I'm actually going to read from
9 paragraph 17 of my declaration which speaks to my
10 expertise and experience. 01:46

11 "In preparing my declaration, I have
12 relied upon my expertise and experience as stated
13 herein in the fields of biomechanics, biomedical
14 engineering, and wearable sensor technology; my
15 underlying knowledge of the principles of physics, 01:47
16 physiology, and human performance and activity; my
17 extensive personal research and experimentation;
18 and books and publications across these
19 complementary fields; my opinions and conclusions
20 supported by established and accepted principles 01:47
21 and practices in the fields of biomechanics,
22 engineering, and human performance and activity
23 testing."

24 BY MS. NGUYEN:

25 Q. And does paragraph 17 of your 01:47

1 declaration talk about a specific piece of workout
2 equipment?

3 A. It does not.

4 Q. But, Dr. McLean, you're unwilling to
5 answer the questions unless I refer you to a 01:47
6 specific piece of workout equipment?

7 MR. BOWLING: Objection; form, misstates the
8 witness's testimony.

9 THE WITNESS: Again --

10 MR. BOWLING: Just let me finish my objection. 01:47

11 THE WITNESS: Without having a particular
12 question and a particular piece of equipment, it's
13 impossible for me to apply my expertise if I don't
14 know what the equipment is. But I can use my
15 expertise as stated to understand the specifics, 01:48
16 the claims of the patent, and the specifications of
17 the patent.

18 BY MS. NGUYEN:

19 Q. Okay. And so when I ask questions about
20 treadmills, is that a particular piece of workout 01:48
21 equipment?

22 MR. BOWLING: Objection; form.

23 THE WITNESS: It's a general description for a
24 piece of equipment.

25

1 BY MS. NGUYEN:

2 Q. Okay. Let me hand you Exhibit 1002.

3 Dr. McLean, do you recognize this exhibit?

4 A. Yes.

5 Q. What is it? 01:49

6 A. This is the Acres patent.

7 Q. And before your work on this case, were
8 you familiar with Acres?

9 A. No.

10 Q. Did you review the entirety of Acres? 01:49

11 A. I did.

12 Q. About how much time did you spend
13 reviewing Acres?

14 A. About two and a half hours.

15 Q. And is there anything in Acres that you 01:49
16 don't understand?

17 MR. BOWLING: Objection to form.

18 THE WITNESS: No.

19 BY MS. NGUYEN:

20 Q. Okay. If we could turn to paragraph 59 01:50
21 of your declaration.

22 A. Yep.

23 Q. So first sentence, you state "In the
24 Acres system, rather than a first set of data, the
25 bug device sends a command to the exercise 01:50

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1 equipment."

2 A. Yes.

3 Q. Do you see that?

4 A. I do.

5 Q. Would you agree that Acres's bug 01:50
6 transmits a command to an exercise machine?

7 A. As I state, the bug device sends a
8 command to the exercise equipment.

9 Q. Would you agree that "send" means
10 transmits? 01:51

11 MR. BOWLING: Objection; form.

12 THE WITNESS: It depends on the context.

13 BY MS. NGUYEN:

14 Q. Okay. When would "send" mean transmit?

15 MR. BOWLING: Same objection. 01:51

16 THE WITNESS: If instructions are in light of
17 Acres, for example, with that information or
18 instructions -- sorry -- when instructions are sent
19 to the treadmill, that would be an example of
20 transmit. 01:52

21 BY MS. NGUYEN:

22 Q. Okay. If we could turn to paragraph 48
23 of your declaration.

24 A. Did you say 48?

25 Q. Yes. 01:52

1 A. Yep.

2 Q. So in paragraph 48 of your declaration,
3 you discuss Acres' heart rate monitor; is that
4 right?

5 A. In 48 I discuss the bug being worn on 01:53
6 the clothing and the bug can wirelessly communicate
7 with an external heart rate monitor, or the bug can
8 have a heart rate monitor integrated within itself.

9 Q. And then the last sentence of
10 paragraph 48, you're discussing monitoring and 01:53
11 logging heart rate data; is that right?

12 A. Yeah. I'll read the sentence.

13 "If an exerciser is carrying the bug
14 and has it enabled, then the user's physical
15 activity, including heart rate data for each time 01:53
16 period and any optional parameters, is monitored
17 and logged."

18 Q. And would you agree that Acres's heart
19 rate monitor is a sensor that senses or collects
20 data? 01:54

21 MR. BOWLING: Objection; form.

22 THE WITNESS: I want to read from the start
23 again because I want to explain that. So the bug
24 can wirelessly communicate with an external heart
25 rate monitor or the bug can have a heart rate 01:54

1 monitor integrated within itself.

2 BY MS. NGUYEN:

3 Q. Okay. Is Acres's heart rate monitor
4 sensing or collecting?

5 A. Which of those two are you asking about? 01:54

6 Q. We'll start with the first one. Is
7 Acres's heart rate monitor sensing?

8 MR. BOWLING: Objection to form.

9 THE WITNESS: The external heart rate monitor
10 is sensing or collecting heart rate. 01:55

11 BY MS. NGUYEN:

12 Q. Okay. And the integrated heart rate
13 monitor of Acres, is it sensing or collecting heart
14 rate?

15 MR. BOWLING: Objection to form. 01:55

16 THE WITNESS: It is being sensed or collected.

17 BY MS. NGUYEN:

18 Q. Sorry. I didn't understand that answer.
19 What is being sensed or collected?

20 A. Sorry. Heart rate would be sensed or 01:55
21 collected.

22 Q. In Acres, heart rate is sensed or
23 collected by a heart rate monitor; is that right?

24 A. So I'll say it again. It can either be
25 sensed or collected by the external heart rate 01:56

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1 monitor or the heart rate monitor that is
2 integrated within the bug.

3 Q. Dr. McLean, what's the difference
4 between sensing and collecting?

5 A. Again, I think it's contextually 01:57
6 reliant.

7 Q. Okay. So let's take a look at
8 paragraph 36 of your declaration.

9 A. Yep.

10 Q. The last sentence, you say "Stated 01:58
11 differently, data as used in the claims is factual
12 information that is sensed or collected by a
13 sensor."

14 A. Correct.

15 Q. So I'm trying to understand what you 01:58
16 mean in your sentence by "sensed or collected."

17 A. I think another way to look at it would
18 be detected or collected. It sensed --

19 Q. Okay.

20 A. -- or collected. Detected or collected. 01:58

21 Q. Okay. What is the meaning of
22 "collected"?

23 MR. BOWLING: Objection to form.

24 THE WITNESS: Again, I think it depends on
25 context. 01:58

1 BY MS. NGUYEN:

2 Q. Okay. When you wrote this sentence,
3 what was your meaning of "collected"?

4 A. So that factual information obtained
5 through the sensor is collected or obtained by the 01:59
6 sensor; gathered or obtained.

7 Q. Okay. So is -- in your opinion, in this
8 sentence of paragraph 36 of your declaration, does
9 "sensed" have a different meaning than "collected"?

10 A. In light of the patent, "sensed or 01:59
11 collected" means obtained.

12 Q. So when you say sensed or collected
13 means obtained, does that mean, in your opinion,
14 sensed and collected have the same meaning?

15 MR. BOWLING: Objection; form. 02:00

16 THE WITNESS: It's my opinion that, within the
17 '225, "sensed or collected" relates -- both relate
18 to obtaining the factual information.

19 BY MS. NGUYEN:

20 Q. Okay. I'm still a little confused here. 02:01
21 So I asked, in your opinion, in the '225, does
22 "sensed and collected" have the same meaning. And
23 you answered "'sensed or collected' both relate to
24 obtaining the factual information." So does that
25 mean "sensed or collected" has the same meaning? 02:01

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1 MR. BOWLING: Objection; form.

2 THE WITNESS: In light of the patent, the
3 application of that term is the same: "obtain."

4 BY MS. NGUYEN:

5 Q. So in your opinion, in light of the 02:02
6 patent, "sensed" means obtain, right?

7 A. Yes.

8 Q. And in your opinion, in light of the
9 patent, "collected" means obtain?

10 A. Yes. 02:02

11 Q. Okay. Okay. Got it. Let me have you
12 turn to native page 16 of your declaration.

13 A. 16?

14 Q. Yes. Okay. So at the bottom of native
15 page 16 of your declaration is Footnote 1. Do you 02:02
16 see that?

17 A. I do.

18 Q. Okay. And in Footnote 1, second
19 sentence, you state "Computers associated with
20 workout equipment are von Neumann machines." 02:02

21 A. Yes.

22 Q. Okay. So would you -- would it be fair
23 to say that workout equipment in the '225 patent
24 includes a computer?

25 MR. BOWLING: Objection; form. 02:03

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1 THE WITNESS: Again, without knowing more
2 about the equipment --

3 BY MS. NGUYEN:

4 Q. Okay.

5 A. -- I won't opine on whether it does or 02:03
6 does not include a computer.

7 Q. Okay. So then when you wrote Footnote 1
8 and stated "Computers associated with workout
9 equipment are von Neumann machines," were you
10 referring to workout equipment that includes 02:03
11 computers?

12 A. Footnote 1 relates to workout equipment
13 that includes computers.

14 Q. Would you agree that Footnote 1 relates
15 to workout equipment in the '225 patent? 02:04

16 MR. BOWLING: Objection to form.

17 THE WITNESS: Without knowing more about that
18 equipment --

19 BY MS. NGUYEN:

20 Q. Okay. 02:05

21 A. -- I can't speculate.

22 Q. Would you disagree that Footnote 1
23 relates to workout equipment in the '225 patent?

24 A. I think my answer is the same. Without
25 knowing more, I can't agree or disagree. 02:05

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1 Q. Okay. Would there be a reason to
2 include Footnote 1 in your declaration related to
3 the '225 patent if Footnote 1 were not related to
4 the '225 patent?

5 MR. BOWLING: Objection; form. 02:05

6 THE WITNESS: Can you restate that question
7 for me, just as I read.

8 BY MS. NGUYEN:

9 Q. Yes. Would there be a reason to include
10 Footnote 1 in your declaration related to the '225 02:05
11 patent if Footnote 1 were not related to the '225
12 patent?

13 MR. BOWLING: Objection; form, misstates the
14 witness's testimony.

15 THE WITNESS: Footnote 1 relates to the 02:06
16 distinction between data and instructions, which is
17 relevant to my evaluation and assessment of the
18 patent.

19 BY MS. NGUYEN:

20 Q. And by "the patent," you mean the '225 02:06
21 patent?

22 A. The '225.

23 MR. BOWLING: Jean, we've been going about an
24 hour. Do you want to take a break at some point
25 soon? 02:07

1 MS. NGUYEN: Yes. Hold on one second. Can I
2 finish?
3 MR. BOWLING: Yeah. Go ahead.
4 BY MS. NGUYEN:
5 Q. Okay. So staying with Footnote 1, when 02:07
6 you discuss computers associated with workout
7 equipment, were you looking at a specific piece of
8 workout equipment when you were making this
9 statement?
10 MR. BOWLING: Objection; form. 02:07
11 THE WITNESS: No.
12 BY MS. NGUYEN:
13 Q. Okay. Footnote 1, when you discuss
14 computers associated with workout equipment, was
15 this based on your general knowledge of workout 02:08
16 equipment?
17 MR. BOWLING: Objection; form.
18 THE WITNESS: This is based on my general
19 knowledge of computers, with the majority of
20 computers being von Neumann machines. 02:08
21 MS. NGUYEN: Okay. We can take a break.
22 THE VIDEOGRAPHER: Off the record at 2:08.
23 (Short recess.)
24 THE VIDEOGRAPHER: Back on the record at 2:20.
25

1 BY MS. NGUYEN:

2 Q. Okay. So, Dr. McLean, earlier when we
3 were discussing, you had told me that you have
4 expertise in computer programming. Do you recall
5 that? 02:21

6 A. Yes.

7 Q. And you had said that you had experience
8 writing computer programs in C++ --

9 A. Yes.

10 Q. -- correct? 02:21

11 And in your experience being an
12 expert in computer programming, what is your
13 definition of a control signal?

14 MR. BOWLING: Objection; form.

15 THE WITNESS: I never used that term in my own 02:21
16 area of work. So I don't think I'm in a position
17 to state what I -- how I would define "control
18 signal" in terms of computer program because I've
19 never used that term.

20 BY MS. NGUYEN: 02:21

21 Q. Okay. And in your own area of work and
22 expertise, have you heard of the term "control
23 signal"?

24 A. In my area of expertise, I don't recall
25 if I've heard that word. I don't use that term, so 02:22

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1 I don't recall if I've heard that term.

2 Q. Okay. Do you have an opinion as to what
3 "control signal" means, sitting here today?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: I honestly don't know. Without 02:22
6 understanding the context around it, I couldn't --
7 I wouldn't feel comfortable formulating an opinion.

8 BY MS. NGUYEN:

9 Q. And in forming your opinion for this IPR
10 proceeding, have you seen the term "control 02:22
11 signal"?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: I don't recall.

14 BY MS. NGUYEN:

15 Q. Let me hand you -- 02:24

16 A. Thank you.

17 Q. -- Exhibit 1011. Dr. McLean, do you
18 recognize this exhibit?

19 A. I don't think so, no. I don't recall if
20 I have. 02:26

21 MS. NGUYEN: Okay. Can we take a break?

22 MR. BOWLING: Sure.

23 THE VIDEOGRAPHER: Off the record at 2:28.

24 (Short recess.)

25 THE VIDEOGRAPHER: Back on the record at 2:35. 02:35

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1 BY MS. NGUYEN:

2 Q. Okay. Dr. McLean, if I could have you
3 turn to paragraph 35 of your declaration.

4 A. Yes.

5 Q. So at the bottom of paragraph 35, last 02:36
6 sentence, you provide your definition of data as
7 meaning factual information that is sensed or
8 collected and from which decisions or subsequent
9 actions can be made; is that right?

10 A. Yes. 02:36

11 Q. Okay. If I could have you then turn to
12 the '225 patent, column 12, starting at line 13.

13 A. Yep.

14 Q. Line 13 says "Data derived from the
15 physical or physiological data from the sensing 02:37
16 devices."

17 Do you see that?

18 A. "Any desired way of placing data derived
19 from," yes.

20 Q. Okay. So is this data derived from the 02:37
21 physical or physiological data, as stated in
22 column 12, line 13 to 14, of the '225 patent
23 included in data as part of your definition of
24 data?

25 MR. BOWLING: Objection; form. 02:37

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1 THE WITNESS: I want to read the last sentence
2 of the paragraph before on line 9, column 12, to
3 give context.

4 "Once input to the electronic device,
5 the input data may be further processed, if 02:39
6 necessary or desired, and then displayed to the
7 user in desired form on the display panel. Any
8 desired way" -- then to your point -- "Any desired
9 way of placing data derived from the physical or
10 physiological data from the sensing devices through 02:39
11 in the proper form or format for display on or
12 output from electronic device may be provided
13 without departing from the invention."

14 So data that you're referring to here
15 can be or may be further processed, if necessary or 02:40
16 desired, then displayed to the user.

17 BY MS. NGUYEN:

18 Q. Okay. So is it your opinion that data,
19 as you've defined, includes the data discussed at
20 column 12, lines 13 to 14, of the '225 patent? 02:41

21 A. So first I'm going to read from my
22 declaration, paragraph 38.

23 "In my opinion, a POSITA in 2006
24 would understand that the ordinary and customary
25 meaning of 'data' in the context of the claims of 02:41

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1 the '225 patent means factual information that is
2 sensed or collected from which decisions or
3 subsequent actions can be made."

4 If I then go to column 12, this
5 relates to subsequent actions that can be made on 02:41
6 that factual information.

7 Q. When you say "if I then go to column 12,
8 this relates to" --

9 A. Column 12 -- sorry -- line 9. I'll
10 start there. "Once input into the electronic 02:42
11 device, the input data may be further processed, if
12 necessary or desired."

13 In that instance it relates to
14 subsequent actions can be made on the factual
15 information or as I've defined "data" within my 02:42
16 expert declaration.

17 Q. Okay. Then data, as discussed in
18 column 12, line 13 -- is the data discussed at
19 column 12, line 13, included in data as you have
20 defined it? 02:43

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Column 12, line 13 -- and I'll
23 state it again -- any desired way of placing data
24 derived from the physical or physiological data
25 from the sensing device. So line 13 relates to the 02:43

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1 subsequent action from the factual information that
2 is being sensed or collected from the sensor.

3 BY MS. NGUYEN:

4 Q. So, Dr. McLean, is the answer to my
5 question a "no"? 02:44

6 A. The answer is that the data described on
7 line 13, column 12, is the data derived or the
8 subsequent action based on the factual information
9 that is being sensed or collected from the sensor.

10 Q. Okay. So is it your opinion that data, 02:45
11 as you've defined it, includes the data discussed
12 at column 12, line 13?

13 A. Line 13 -- I'll say it again. Any
14 desired way of placing data derived from the
15 physical or physiological data from the sensing 02:45
16 devices, line 13, data corresponds to a subsequent
17 action that is being made based on the factual
18 information sensed or collected from the sensor.

19 Q. So is that a "yes" to my question? I'm
20 really confused. 02:46

21 A. Let me --

22 Q. Let me ask my question again. Is it
23 your opinion -- yes or no -- that data, as you've
24 defined it, includes the data discussed at
25 column 12, line 13? 02:46

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1 MR. BOWLING: Objection; form.

2 You can answer the question however
3 you like. You don't have to answer it yes or no.

4 THE WITNESS: The way I answered is line 13
5 corresponds to a subsequent action based on factual 02:46
6 information sensed or collected from the sensor.

7 BY MS. NGUYEN:

8 Q. Okay. Would you agree that data in
9 column 12, line 13, is not included in data, as
10 you've defined it? 02:47

11 MR. BOWLING: Objection; form, misstates the
12 witness's testimony.

13 THE WITNESS: Line 13 corresponds to a
14 subsequent action -- I keep answering it the same
15 way -- that's based on factual information sensed 02:48
16 or collected from the sensor.

17 BY MS. NGUYEN:

18 Q. So you agree? I don't --

19 A. I'll try this again. So I'm going to
20 read 38. 02:48

21 "In my opinion, a POSITA in 2006
22 would understand that the ordinary and customary
23 meaning of 'data' in the context of the claims of
24 the '225 patent means factual information that is
25 sensed or collected and from which decisions or 02:48

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1 subsequent actions can be made."

2 I'm going to read from line 9 in
3 column 12 in the '225 patent.

4 "Once input to the electronic device,
5 the input data may be further processed, if 02:48
6 necessary or desired, and then displayed to the
7 user in desired form on the display panel. Any
8 desired way of placing data derived from the
9 physiological" -- or "the physical or physiological
10 data from the sensing activities" -- "from the 02:49
11 sensing devices through in the proper form or
12 format for display on or output from electronic
13 device may be provided without departing from the
14 invention."

15 So, again, line 13, "any desired way 02:49
16 of placing data derived from" corresponds to a
17 subsequent action based on factual information
18 sensed or collected by the sensor.

19 Q. And in your opinion, is data derived
20 from physical or physiological data included in 02:50
21 your definition of "data"?

22 A. The data is a subsequent action of the
23 factual information collected or sensed.

24 Q. And is a subsequent action of the
25 factual information collected or sensed included in 02:50

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1 your definition of "data"?

2 MR. BOWLING: Objection; form.

3 THE WITNESS: It is derived from data sensed
4 or collected.

5 BY MS. NGUYEN: 02:51

6 Q. When you say it is derived from --

7 A. The data defined on line 13 is derived
8 from the factual information collected or sensed by
9 the sensor.

10 Q. So would you agree that derived data is 02:51
11 not factual information collected or sensed by the
12 sensor?

13 MR. BOWLING: Objection; form, misstates the
14 witness's testimony.

15 THE WITNESS: I'm saying that on line 13 the 02:52
16 data described on line 13 corresponds to derived
17 from the factual information collected or sensed by
18 the sensor.

19 BY MS. NGUYEN:

20 Q. So would you agree that line 13, data is 02:52
21 derived from data?

22 MR. BOWLING: Objection the form.

23 THE WITNESS: Line 13 corresponds to data that
24 is being derived from that factual information
25 sensed or collected by the sensor. 02:53

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1 BY MS. NGUYEN:

2 Q. And your definition of "data" is factual
3 information sensed or collected by the sensor?

4 A. Yes.

5 Q. Okay. So sticking with the '225 patent, 02:53
6 if you could turn to column 14, line 66 to 67.

7 A. Okay.

8 Q. Sorry. Line 55 -- 65.

9 A. 65?

10 Q. Yes, to 67. 02:54

11 A. Okay.

12 Q. It says "The sensing system 408, if any,
13 may process the sensor data, change its form or
14 format, or otherwise manipulate the data prior to
15 sending it on to other parts of the system 400." 02:54

16 A. Yes.

17 Q. Would it be fair to say that under your
18 definition of "data," your definition includes the
19 data discussed at column 14, lines 65 to 67?

20 MR. BOWLING: Objection; form. 02:54

21 THE WITNESS: Line 65 -- I'll read from
22 line 65 again.

23 "The sensing system, if any, may
24 process the sensor data, change its form or format,
25 or otherwise manipulate the data prior to sending 02:55

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1 it on to other parts of the system."

2 I'll go back to my definition of
3 "data," paragraph 38 of my expert declaration,
4 which says "Data, in the context of the '225
5 patent, means factual information that is sensed or 02:55
6 collected from which decisions or subsequent
7 actions can be made."

8 Line 65 corresponds to subsequent
9 actions that can or may be made based on the
10 factual information sensed or collected from the 02:56
11 sensor.

12 BY MS. NGUYEN:

13 Q. Okay. So, Dr. McLean, just to make sure
14 I understand this correctly, would you agree that
15 data of a subsequent action is excluded from your 02:57
16 definition of "data"?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: So as I've stated in
19 paragraph 38, my ordinary and customary meaning
20 would understand -- a POSITA in 2006 would 02:57
21 understand that the ordinary and customary meaning
22 of data in the context of the claims of the '225
23 patent means factual information that is sensed or
24 collected and from which decisions or subsequent
25 actions can be made. 02:58

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Line 65, where it says "The sensing system, if any, may process the sensor data" corresponds to the subsequent actions that are made on the factual information sensed or collected by the sensor.

BY MS. NGUYEN:

Q. Okay. So, Dr. McLean, it's really a simple question. Paragraph 38 of your declaration, your definition is factual information that is sensed or collected and from which decisions or subsequent actions can be made; is that correct?

A. Correct.

Q. We've repeated it several times, so we know what your definition is. Does your definition, as stated in paragraph 38 of your declaration, exclude subsequent actions?

MR. BOWLING: Objection; form.

THE WITNESS: My definition of data -- and I know I've read it a few times -- corresponds to factual information that is sensed or collected from which decisions or subsequent actions can be made.

Line 65 where it says the sensor system may process the sensor data corresponds to a subsequent action.

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1 BY MS. NGUYEN:

2 Q. Okay. So, again, my question was does
3 your definition, as stated in paragraph 38 of your
4 declaration, exclude data of subsequent actions,
5 and you responded with your definition of data. 02:59

6 A. I also responded with that line 65
7 corresponds to a subsequent action.

8 Q. Putting aside line 65, paragraph 38 your
9 declaration --

10 A. Yep. 03:00

11 Q. -- factual information that is sensed or
12 collected and from which decisions or subsequent
13 actions can be made, does it exclude subsequent
14 actions?

15 MR. BOWLING: Objection; form. 03:00

16 THE WITNESS: The definition that's stated of
17 "data" corresponds to the factual information
18 sensed or collected.

19 BY MS. NGUYEN:

20 Q. So would you agree that your definition 03:00
21 excludes data of subsequent actions?

22 MR. BOWLING: Objection to form.

23 THE WITNESS: In consideration of the entire
24 patent and the claims and the specifications, my
25 definition of data, which states factual 03:01

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1 information sensed or collected, corresponds to
2 that: Factual information that is sensed or
3 collected.

4 BY MS. NGUYEN:

5 Q. What do you mean by "corresponds to"? 03:01

6 A. It's basically that -- so my -- based on
7 my review of the entire patent and my understanding
8 of the entire patent and the claims, the ordinary
9 and customary meaning of data means factual
10 information that is sensed or collected. 03:02

11 Q. So would you agree that your definition
12 of data includes data of subsequent actions?

13 MR. BOWLING: Objection; form.

14 THE WITNESS: My definition is as stated.
15 It's data is factual information sensed or 03:03
16 collected from which decisions or subsequent
17 actions can be made.

18 BY MS. NGUYEN:

19 Q. Okay. So I'm just trying to understand.
20 Does your definition of data include or exclude 03:03
21 data of subsequent actions?

22 MR. BOWLING: Objection to form.

23 THE WITNESS: My definition includes from
24 which subsequent actions can be made.

25

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1 BY MS. NGUYEN:

2 Q. And what does "from which" mean to you?

3 A. In my definition --

4 MR. BOWLING: Objection; form.

5 THE WITNESS: Sorry. 03:03

6 In my definition, decisions or
7 subsequent actions are made based on the factual
8 information that is sensed or collected.

9 BY MS. NGUYEN:

10 Q. So "from which" means based on? 03:04

11 A. Using.

12 Q. "From which" means using?

13 A. That's how I define it.

14 Q. But "data," in your opinion, means
15 factual information that is sensed or collected, 03:04
16 correct?

17 A. Correct.

18 Q. And data, in your opinion, does not
19 include "and from which decisions or subsequent
20 actions can be made," correct? 03:05

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Can you restate that last one.

23 BY MS. NGUYEN:

24 Q. Yes. So data -- the definition of
25 "data," in your opinion, does not include "and from 03:05

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1 which decisions or subsequent actions can be made,"
2 correct?

3 MR. BOWLING: Objection; form.

4 THE WITNESS: My definition of "data" states
5 "factual information that is sensed or collected 03:05
6 and from which decisions or subsequent actions can
7 be made."

8 BY MS. NGUYEN:

9 Q. So earlier when I asked you does your
10 definition include or exclude data of subsequent 03:06
11 actions, you answered "my definition includes from
12 which subsequent actions can be made."

13 Do you recall that?

14 A. I do.

15 Q. Does your definition of data include 03:06
16 data of subsequent actions?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: My definition is as stated;
19 factual information that is sensed or collected and
20 from which decisions or subsequent actions can be 03:06
21 made.

22 BY MS. NGUYEN:

23 Q. Okay. Dr. McLean, can I have you turn
24 to column 14, line 55.

25 A. 55. Yes. 03:07

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1 Q. At line 55 it's discussing Sensors A
2 and/or B, and then it says "and data from these
3 sensors is sent to the sensing system's processing
4 system, e.g., or microprocessor."

5 A. Yes.

03:07

6 Q. Would you agree that the sensing system
7 includes a microprocessor?

8 MR. BOWLING: Objection; form.

9 THE WITNESS: I agree with what's stated,
10 which is "data from these sensors is sent to the 03:08
11 sensing system's processing system."

12 BY MS. NGUYEN:

13 Q. Would you agree that the sensor device
14 includes a microprocessor?

15 MR. BOWLING: Objection; form.

03:08

16 THE WITNESS: The sensing system incorporates
17 a microprocessor.

18 BY MS. NGUYEN:

19 Q. Would you agree that the sensor device
20 is a computer? 03:08

21 MR. BOWLING: Objection; form.

22 THE WITNESS: Without being able to see the
23 system, I am not comfortable or in a position to
24 really opine whether it is or is not a computer.

25

1 BY MS. NGUYEN:

2 Q. Is it your opinion that a microprocessor
3 is not a computer?

4 MR. BOWLING: Objection; form.

5 THE WITNESS: Again, without seeing the 03:09
6 microprocessor and understanding more about the
7 microprocessor, I can't unequivocally state whether
8 it is or is not a computer.

9 BY MS. NGUYEN:

10 Q. And based on your experience as an 03:09
11 expert in the field of computer programming, you
12 can't opine as to whether a microprocessor is a
13 computer?

14 MR. BOWLING: Objection; form.

15 THE WITNESS: As an expert in computer 03:10
16 programming, I'm an expert in writing computer
17 programs. And, again, without seeing the computer
18 or whatever machine I'm working on, whether it be a
19 microprocessor or incorporated microprocessor or
20 not, I can't opine on whether it is or isn't a 03:10
21 computer without seeing it.

22 BY MS. NGUYEN:

23 Q. And in order to form your opinion on the
24 '225, do you need to see the sensing system's
25 microprocessor? 03:11

1	A.	No.
---	----	-----

2 Q. Okay. So are you able to determine
3 whether the sensing system in the '225's
4 microprocessor is a computer?

5	MR. BOWLING: Objection; form.	03:11
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6	THE WITNESS: Based on what is written from	
7	lines 50 to 60 in column 14, I am able to state	
8	that -- and I'll read it -- "Data from these	
9	sensors is sent to the sensing system's processing	
10	system -- as an example, a microprocessor -- which	03:11
11	optionally may cause the data to be stored."	

12 So what I can deduce from that is
13 that it incorporates a sensing system and a
14 processing system.

15	BY MS. NGUYEN:	03:12
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16 Q. When you say it incorporates a sensing
17 system and a processing system, what are you
18 referring to?

19 A. Sorry. That based on those ten lines
20 that we've been talking about in this example -- 03:12
21 I'll read it again -- "Data associated with an
22 athletic performance is sensed by Sensors A and/or
23 B, and data from these sensors is sent to the
24 sensing system's processing system."

25	Q. Okay. And would you agree that a	03:12
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1 computer performs processing?

2 A. A computer can perform processing.

3 Q. So would you agree that a computer is a
4 processing system?

5 MR. BOWLING: Objection; form. 03:13

6 THE WITNESS: Again, without seeing a
7 particular computer, I can't be that generic. I
8 can't state unequivocally that a computer is a
9 processing system.

10 BY MS. NGUYEN: 03:13

11 Q. Would a POSITA agree that a computer is
12 a processing system?

13 MR. BOWLING: Objection; form.

14 THE WITNESS: A POSITA would similarly not
15 opine unless given all of the information on that 03:13
16 system.

17 BY MS. NGUYEN:

18 Q. A POSITA given all of the knowledge a
19 POSITA has would not opine on whether a computer is
20 a processing system? 03:13

21 A. Without seeing the system and
22 understanding more about the system, a POSITA isn't
23 comfortable in opining on that.

24 MS. NGUYEN: Okay. Let's take a break.

25 THE VIDEOGRAPHER: Off the record at 3:13. 03:14

1 (Short recess.)

2 THE VIDEOGRAPHER: Back on the record at 3:22.

3 BY MS. NGUYEN:

4 Q. Okay. Dr. McLean, going back to your
5 definition of "data" in paragraph 38 of your 03:23
6 declaration -- and, again, everyone knows what
7 paragraph 38 of your declaration states -- is data
8 derived from sensed data within your definition of
9 data as already stated in paragraph 38 of your
10 declaration? 03:23

11 MR. BOWLING: Objection; form.

12 THE WITNESS: My definition of data is derived
13 from or is developed based on the entirety of the
14 patent and the information provided in the
15 specification of the patent, which -- I won't read 03:24
16 the whole paragraph -- "is factual information that
17 is sensed or collected from which decisions or
18 subsequent actions can be made."

19 Line 13 on column 12, I think -- no,
20 sorry. Was it line 13? It was. Line 13 on 03:24
21 column 12 of the patent, which describes data
22 derived from -- or refers to a subsequent action
23 based on the factual information sensed or
24 collected.

25

1 BY MS. NGUYEN:

2 Q. Okay. So I'm not talking about line 13
3 or a specific passage in the '225. I'm not asking
4 for your definition, as stated several times in
5 your testimony and on paragraph 38 of your 03:25
6 declaration.

7 I'm just asking a very simple
8 question. Is data sensed -- sorry -- is data
9 derived from sensed data within your definition of
10 data? 03:25

11 MR. BOWLING: Objection; form.

12 THE WITNESS: Data derived is a subsequent
13 action of the sensed or collected factual
14 information.

15 BY MS. NGUYEN: 03:25

16 Q. Okay. I'm not quite sure that answered
17 my question. Again, very simple question. Is data
18 derived from sensed data within your definition of
19 data?

20 MR. BOWLING: Objection; form. 03:26

21 THE WITNESS: My definition is based on the
22 '225 patent, my understanding of the '225 patent;
23 and the ordinary and customary meaning of data in
24 the context of that patent is factual information
25 sensed or collected. This is defined across the 03:27

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1 specifications, across the patent, and that's my
2 understanding -- that's how I've defined my
3 definition of data.

4 BY MS. NGUYEN:

5 Q. Okay. So does your definition of data 03:27
6 include data derived from sensed data, or does it
7 exclude data derived from sensed data?

8 MR. BOWLING: Objection; form.

9 THE WITNESS: Derived data is a subsequent
10 action. 03:29

11 BY MS. NGUYEN:

12 Q. So your definition of data excludes
13 derived data, correct?

14 A. My definition of data considers derived
15 data as a subsequent action. 03:29

16 Q. And "considers" means exclude, right?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: "Considers" means considers.

19 BY MS. NGUYEN:

20 Q. "Considers" means exclude, right? 03:29

21 MR. BOWLING: Objection; form, asked and
22 answered.

23 THE WITNESS: I don't know another way to
24 respond. "Considered," for me, means considered.

25 I don't know how else to respond to that. 03:29

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1 BY MS. NGUYEN:

2 Q. Your definition of data considers
3 derived data as a subsequent action. So does that
4 mean your definition of data excludes derived data?

5 MR. BOWLING: Objection; form. 03:30

6 THE WITNESS: My definition considers derived
7 data as a subsequent action.

8 BY MS. NGUYEN:

9 Q. So is data a subsequent action?

10 MR. BOWLING: Objection; form. 03:30

11 THE WITNESS: In relation to your question
12 about derived data, derived data is a subsequent
13 action.

14 BY MS. NGUYEN:

15 Q. And derived data is different from data; 03:30
16 is that right?

17 MR. BOWLING: Objection; form.

18 THE WITNESS: It depends on the context.
19 That's a pretty broad statement.

20 BY MS. NGUYEN: 03:31

21 Q. You said derived data is a subsequent
22 action, right?

23 A. Mm-hmm.

24 Q. Would you agree that data is a
25 subsequent action? 03:31

1 MR. BOWLING: Objection; form.

2 THE WITNESS: In reviewing and in light of the
3 patent, I view derived data as a subsequent action.

4 BY MS. NGUYEN:

5 Q. But you do not view data as a subsequent 03:31
6 action?

7 MR. BOWLING: Objection; form.

8 THE WITNESS: Within the patent, data, as
9 defined based on my review of the patent and the
10 specifications and the claims, data means factual 03:31
11 information that is sensed or collected.

12 BY MS. NGUYEN:

13 Q. Does derived data mean factual
14 information that is sensed or collected?

15 MR. BOWLING: Objection; form. 03:31

16 THE WITNESS: Within my definition and my
17 review of the patent, derived data is a subsequent
18 action.

19 BY MS. NGUYEN:

20 Q. And in your view, are data and 03:32
21 subsequent action two different elements?

22 A. In my review --

23 MR. BOWLING: Objection; form.

24 THE WITNESS: Sorry. In my review and in my
25 definition, a subsequent action -- let me rephrase 03:32

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1 that. Factual information is sensed or collected,
2 from which subsequent actions can be made.

3 BY MS. NGUYEN:

4 Q. So in your view, are data and subsequent
5 action two different elements? 03:32

6 A. In my view, based on my review of the
7 patent, factual information is sensed or collected.
8 Decisions or subsequent actions are made, from
9 which or from that factual information that is
10 sensed or collected. 03:33

11 Q. So two different elements?

12 MR. BOWLING: Objection; form.

13 THE WITNESS: No. I'll say that again. We
14 have factual information that is sensed or
15 collected, from which decisions or subsequent 03:33
16 actions can be made.

17 BY MS. NGUYEN:

18 Q. Okay. Is there a reason why you're not
19 willing to answer my question, Dr. McLean?

20 MR. BOWLING: Objection; argumentative, 03:33
21 misstates the witness's testimony.

22 THE WITNESS: I feel like I'm answering it.
23 My definition is based on my review of the patent
24 and the claims and the specification. And based on
25 that review, the ordinary, customary meaning of 03:33

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1 data in that context means factual information that
2 is sensed or collected, from which decisions or
3 subsequent actions can be made.

4 MS. NGUYEN: Okay. We have no further
5 questions.

03:34

6 MR. BOWLING: Nothing from us.

7 THE VIDEOGRAPHER: This deposition is off the
8 record at 3:34.

9 FURTHER DEPONENT SAITH NAUGHT

10 (Proceedings concluded at
11 3:34 p.m.)

12

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ERRATA SHEET

I, SCOTT McLEAN, Ph.D., have read the foregoing transcript of my deposition taken on January 10, 2024, and except for any corrections noted below, it is a true and correct transcript of my deposition given on the date aforesaid.

CORRECTIONS BASED ON ERRORS IN
REPORTING OR TRANSCRIPTION

PAGE LINE

SCOTT McLEAN, Ph.D.

STATE OF ILLINOIS)
COUNTY OF)
Subscribed and sworn to before me
this day of , 2024.

[Seal]

Notary Public

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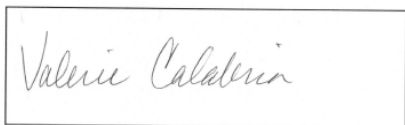
1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)

3 I, Valerie M. Calabria, CSR, RPR, do hereby
4 certify that SCOTT McLEAN, Ph.D., was duly sworn by
me to testify the whole truth, and that the
5 foregoing deposition was recorded stenographically
by me and was reduced to computerized transcript
under my direction, and that the said deposition
6 constitutes a true record of the testimony given by
said witness.

7 I further certify that the reading and
8 signing of the deposition was not waived, and that
the deposition was submitted to Mr. Aaron P.
9 Bowling, Patent Owner's counsel, for signature.

10 I further certify that I am not a relative or
employee or attorney or counsel of any of the
11 parties, or a relative or employee of such attorney
or counsel, or financially interested directly or
12 indirectly in this action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this 12th day of January, 2024.

15 
16
17

Valerie M. Calabria, CSR, RPR
Illinois CSR License 084-003928

1 Aaron P. Bowling, Esq.

2 aaron.bowling@arnoldporter.com

3 January 12, 2024

4 RE: LULULEMON ATHLETICA CANADA INC. vs. NIKE, INC.

5 January 10, 2024, Scott McLean, Ph.D. (JOB NO. 6376159)

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
11 a Veritext office.

12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
13 Transcript - The witness should review the transcript and
14 make any necessary corrections on the errata pages included
15 below, notating the page and line number of the corrections.
16 The witness should then sign and date the errata and penalty
17 of perjury pages and return the completed pages to all
18 appearing counsel within the period of time determined at
19 the deposition or provided by the Code of Civil Procedure.

20 ___ Waiving the CA Code of Civil Procedure per Stipulation of
21 Counsel - Original transcript to be released for signature
22 as determined at the deposition.

23 ___ Signature Waived - Reading & Signature was waived at the
24 time of the deposition.

25
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1 _X_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF
2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.
9 ___ Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

1 LULULEMON ATHLETICA CANADA INC. vs. NIKE, INC.

2 Scott McLean, Ph.D. (JOB NO. 6376159)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

8 _____

9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

11 _____

12 REASON_____

13 PAGE_____ LINE_____ CHANGE_____

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15 REASON_____

16 PAGE_____ LINE_____ CHANGE_____

17 _____

18 REASON_____

19 PAGE_____ LINE_____ CHANGE_____

20 _____

21 REASON_____

22 _____

23 _____

24 WITNESS _____ Date _____

25 _____

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& 1:1 2:2,7	106:12,22	1c 51:3,6	46:11 47:12
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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