

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC.,	)	
	)	
Plaintiff,	)	
v.	)	No. 22-1377-MN-JLH
	)	
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	No. 22-1378-MN-JLH
	)	
Defendants.	)	
	)	
AND RELATED CASES	)	
AND CROSS-ACTIONS.	)	

DEPOSITION OF CRAIG ROSENBERG, PH.D.

9:00 a.m.
January 11, 2024

Reported By:

Judy Robinson, CCR #2171

Job no: 8510

Page 2 1 APPEARANCES 2 ATTORNEYS FOR APPLE INC.: 3 CARSON OLSHESKI, ESQ. 4 MARIE WEISFEILER, ESQ. 5 DESMARAIIS LLP 6 230 Park Avenue 7 New York, NY 10169 8 202.451.4931 9 colsheski@desmaraisllp.com 10 Mweisfeiler@esmaraisllp.com 11 12 ATTORNEYS FOR DEPONENT DEFENDANTS AND COUNTERCLAIMANTS, 13 MASIMO, CERCACOR, AND SOUND UNITED: 14 15 EDWARD CANNON, ESQ. 16 KNOBBE MARTENS OLSON & BEAR, LLP 17 2040 Main Street, 14 Floor 18 Irvine, California 92614 19 949.760.0404 20 ted.cannon@knobbe.com 21 22 Also Present: Shriv Vandantzen, Videographer 23 24 25	Page 4 1 BE IT REMEMBERED that the deposition upon oral 2 examination of CRAIG ROSENBERG, PH.D., was taken on 3 January 11, 2024, at 9:00 a.m., at Knobbe Martens, 925 4 4th Avenue, Seattle, Washington, 98104, before Judith A. 5 Robinson, CCR, Notary Public in and for the State of 6 Washington, residing at Federal Way, Washington; 7 Whereupon, the following proceedings were had, 8 to-wit: 9 VIDEOGRAPHER: We are now on the record. 10 Today's date is January 11th, 2024. And the time is 11 9:16 a.m., Pacific Standard Time. 12 This is the video-deposition of 13 Craig Rosenberg in the matter of Apple Inc., v. Masimo 14 Corporation and Sound United, LLC, filed in the United 15 States District Court, for the District of Delaware, 16 Case Number 22-1377-MN-JLH. 17 This deposition is taking place at 925 4th 18 Avenue, Seattle, Washington, 98104. 19 My name is Shriv Vandantzen. I'm the 20 videographer representing Transperfect Legal Solutions. 21 Would Counsel on the conference please 22 identify yourselves, and state whom you represent, 23 beginning with the questioning attorney. 24 MR. OLSHESKI: Carson Olsheski, with 25 Desmarais LLP, for Apple. My colleague, Marie
Page 3 1 INDEX 2 WITNESS EXAMINATION PAGES 3 CRAIG ROSENBERG, PH.D. 4 BY MR. OLSHESKI 5-290 5 BY MR. CANNON 290-297 6 7 EXHIBITS 8 NO. PAGE DESCRIPTION 9 1 30 Apple Watch 10 2 43 Exhibit A 11 3 51 U.S. Patent No. US 11,106,352 B2, 12 Date of Patent: August 31, 2021 13 14 4 57 Masimo W1, MASAD00010737-10756 15 16 5 60 U.S. Patent No. US 2010/0149036 A1 17 Pub. Date: June 17, 2010 18 6 86 Craig Rosenberg, Ph.D.'s Deposition 19 Transcript, December 5, 2023 20 21 7 99 Declaration of Craig Rosenberg, 22 Ph.D. 23 8 123 Opening Expert Report on Patent 24 Invalidity of Craig S. 25 Rosenberg, Ph.D. 9 190 Picture of Android Wear Watch 10 202 Rebuttal Expert Report of Craig 11 S. Rosenberg, Ph.D. on Noninfringement 12 of U.S. Patent No. 11,106,352 13 14 11 222 Reply Expert Report of Craig S. 15 Rosenberg, Ph.D., on U.S. Patent 16 No. 11,106,352 17 18 12 242 Declaration of Joe Kiani in Support 19 of Defendants' Opposition to 20 Plaintiff's Motion to Expedite Trial 21 22 23 24 25	Page 5 1 Weisfeiler, is here as well. Same law firm, also for 2 Apple. 3 MR. CANNON: Edward Cannon, of Knobbe 4 Martens, Olson & Bear, for Masimo, Sound United, and 5 Cercacor. 6 VIDEOGRAPHER: Our court reporter today is 7 Judy Robinson, representing Transperfect Legal 8 Solutions. 9 The court reporter will now swear in the 10 witness. 11 * * * * * 12 CRAIG ROSENBERG, Ph.D. 13 having been first duly sworn 14 on oath was examined 15 and testified as follows: 16 EXAMINATION 17 BY MR. OLSHESKI: 18 Q. Good morning. 19 A. Good -- good morning. 20 Q. My name's Carson. We haven't met, but it's nice 21 to meet you. 22 A. Nice to meet you too. 23 Q. Would you please state your full name for the 24 record? 25 A. Craig Stewart Rosenberg.

2 (Pages 2 to 5)

Page 86 1 BY MR. OLSHESKI: 2 Q. So the only meetings were yesterday; is that 3 right? 4 A. The only ones with -- you're asking for prep for 5 today's deposition? Yeah, the only meetings either in 6 person or over Zoom were yesterday. I did review on my 7 own as well, prior to yesterday. 8 Q. How much time did you spend preparing yesterday? 9 A. 8 to 10 hours. 10 Q. A full day? 11 A. A full day, yeah. 12 Q. Okay. All right. So is it your understanding 13 that through Masimo's interparties' review of the 352 14 patent, Masimo is arguing that the 352 patent is 15 invalid? 16 A. Yes. 17 Q. And you submitted a declaration in support of 18 Masimo's position that the 352 patent is invalid, right? 19 A. I did. 20 Q. And at -- at any point, have you had any concern 21 that your opinions in the 352 IPR were not consistent 22 with those you set forth in this case? 23 A. No. 24 Q. All right. I'm going to hand you an exhibit. 25 (Exhibit No. 6 was marked.)	Page 88 1 Your deposition was taken on December 5th, 2023, 2 correct? 3 A. That's correct. 4 Q. All right. On December 5th, 2023, you testified 5 under oath that your concise opinion as to what wake 6 screen user interface means is a user interface 7 displayed when the device wakes up, correct? 8 A. That's correct. 9 Q. All right. Now, you have your Masimo W1 in front 10 of you? Exhibit 1? 11 A. I do. 12 Q. Okay. Please wake up the Masimo W1. 13 A. I just did. 14 Q. Great. The screen that is displayed when the 15 Masimo W1 wakes up is the watch face screen, right? 16 A. That's correct. 17 Q. And the watch face screen on the Masimo W1 is a 18 wake screen user interface? 19 A. In mapping it to the claim language or in the 20 specifications of the 352 patent, it's -- it would be, 21 by definition, the wake screen because it is the screen 22 that appears when the device goes from its lower power 23 mode into its on-mode. 24 Q. And can you start an ECG from the watch face 25 without navigating to a different user interface?
Page 87 1 BY MR. OLSHESKI: 2 Q. Okay. All right. I'm marking your Deposition 3 Transcript in the IPR as Exhibit 6. There you go. 4 There you go. 5 All right. Exhibit 6 is a copy of your 6 deposition in the Masimo's IPR of the 352 patent, 7 correct? 8 A. Yes, it is. 9 Q. In other words, the Craig Rosenberg, PhD, who was 10 testifying on page 4 is you? 11 A. Yes, it is. 12 Q. Okay. Now, if you could, please, turn your 13 attention to page 38, line 6. 14 A. (Complies). I -- I see that. 15 Q. All right. A wake screen user interface is a 16 user interface that is displayed when the device wakes 17 up, correct? 18 A. Yes, that's correct. 19 Q. Are in -- on December 5th, 2023 -- well, hold on. 20 I just want -- let's get you comfortable on the date 21 first. 22 A. All right. 23 Q. Where is the date on this? 24 A. There it is. It's right here (indicating). 25 Q. Front page. Okay.	Page 89 1 A. Can you start an ECG without navigating? I don't 2 believe so. But like I said, the -- what I primarily 3 focused on was these various swipe gestures and not 4 related to the specifics of -- of the health monitoring 5 sensors -- 6 Q. Well -- 7 A. -- on this device. 8 Q. -- let's just check it out now. 9 A. Yeah. 10 Q. Can you -- can you see if you can start an ECG 11 from the watch face without navigating to a different 12 user interface? 13 A. Now when you say ECG -- yeah, I don't believe 14 there's any pressable buttons on the -- 15 Q. So can you start an ECG from the watch face? 16 A. I don't believe so, no. 17 Q. Okay. Please turn to page 42 of your deposition 18 transcript. 19 A. (Complies). 20 Q. All right. And it's going to be just a short 21 reading exercise for you, but I just want you to closely 22 -- carefully study 42 -- page 42, line 13; to page 43, 23 line 12. 24 A. Okay. 25 Q. And let me know when -- when you're ready.

23 (Pages 86 to 89)

Page 90	Page 92
1 A. Okay. I've read that. 2 Q. All right. "A posita's understanding in reading 3 the 352 patent as to what would make something a home 4 screen is that it needs to be different from the wake 5 screen, and it needs to have a plurality of icons that 6 correspond to a different application"; is that correct? 7 A. The -- correspond to different applications, 8 plural, yeah. In -- in the eyes, that's what I'm -- I 9 just -- I think you said applications singular when you 10 read it into the record, and what I said in the 11 testimony in my previous transcript is -- 12 Q. Okay. 13 A. -- that corresponds to different applications. 14 Q. Let me clean it up. 15 A. Uh-huh. 16 Q. "A posita's understanding in reading the 352 17 patent as to what would make something a home screen is 18 that it needs to be different from the wake screen, and 19 it needs to have a plurality of icons that correspond to 20 different applications." 21 That's what makes it a home screen, right? 22 A. I -- I think yes. That comes directly from claim 23 1 of the 352 patent. 24 That said, I -- I'm not trying to read in or read 25 out any -- what the posita's understanding of home	1 That's what makes it a home screen correct? 2 MR. CANNON: Objection, mischaracterizes the 3 testimony. 4 A. I was mapping -- I guess, I -- I was taking that 5 from claim 1 of the 352 patent, where it describes the 6 -- that home screen in that very broad sense. But that 7 -- it should be understood the claim language needs to 8 be understood in light of the specification, and 9 specification shows examples of home screens. 10 So there's -- yes, I said that. That's -- that's 11 exactly what I said, but I'm not trying to read out home 12 -- you know, the word home. A posita does come into 13 their analysis with an understanding of what that could 14 entail. 15 BY MR. OLSHESKI: 16 Q. Okay. And there's not a bunch of very specific 17 things that it needs to have to be a home screen in the 18 352 patent, right? 19 A. No. I -- I think it's plain and ordinary 20 meaning. A posita would understand what a home screen 21 is, a rotating "X" isn't a home screen. You know, there 22 could be plenty examples. I used that example earlier 23 and that's why I said a rotating X. 24 Certain -- certain screens would resonate with a 25 posita as being yes, that's a home screen; others would
Page 91	Page 93
1 screen is. It seems to be fairly broad in terms of the 2 claim language, but the posita comes in to -- you know, 3 with -- with knowledge from their background and 4 training about what home screens are. 5 There's examples of home screens in the figures 6 of 352. 7 Q. Yeah. 8 A. So, for example, if you had a screen with, you 9 know, an "X" on it and it just rotated around in a 10 circle, that could be different from a wake screen, and 11 it could be different from a widget screen. 12 But a posita wouldn't look at, oh, there's a 13 screen with just a graphic that's just rotating. That 14 would do -- I'm trying to be clear here that there's -- 15 there -- a posita comes in to their analysis with 16 understandings as well. 17 Q. Okay. I think you -- so now, I'm just going to 18 ask a very specific and narrow question, though. 19 A. Sure. 20 Q. So on December 5th, 2023, you testified under 21 oath that a posita's understanding in reading the 352 22 patent as to what would make something a home screen is 23 that, "It needs to be different from the wake screen and 24 it needs to have a plurality of icons that correspond to 25 different application."	1 say no, that's -- that's not a home screen. And there 2 are examples in 352 of a home screen. I believe it's 3 essentially the iOS home screen that's found on the 4 Apple phones. 5 Q. So -- and this is my fault. I think I put a 6 double negative on the record, so I just have to ask it 7 again. 8 A. Sure. 9 Q. Are there a bunch of very specific things that it 10 needs to have to be a home screen in the 352 patent? 11 A. Are -- are you asking my specific answer here? 12 Q. Yeah -- well, hold on. Hold on. Let's take a 13 step back here. 14 A. What the context is -- 15 Q. Let me withdraw the question. 16 All right. Dr. Rosenberg, on December 5th, 2023, 17 you testified under oath that there's not a bunch of 18 very specific things that it needs to have to be a home 19 screen in the 352. 20 You -- that's your testimony, right? 21 A. That was my testimony, yes. Because I -- I did 22 -- or I wasn't talking about posita knowledge of -- and 23 understanding of plain and ordinary meaning of home 24 screen. 25 That -- that's -- yes, that was my testimony.

24 (Pages 90 to 93)

Page 94	Page 96
1 And -- and I still stand by it, and I'm adding 2 additional context because you're asking me about it, is 3 that home screens with -- there's certain things a 4 posita would say, yep, that looks like a home screen. 5 That's probably a home screen. 6 And there's other screens that a posita would 7 say, no, why would a still graphic that you could do 8 nothing on, just using a hypothetical example. You 9 know, a picture of a monkey, let's say. A screen like, 10 that why is that a home screen? That wouldn't resonate 11 as being a home screen. 12 Yet it is -- it could be different from the wake 13 screen. It could be different from a widget screen, but 14 it doesn't necessarily make it a home screen. 15 Q. Okay. So I just want to make sure I understand 16 this, though. You know, the testimony that -- that I 17 just had you, you know, review to yourself, which was 18 Exhibit 6 and it was the portion 42 -- page -- I'm 19 sorry. Withdrawn. 20 Do you stand behind absolutely, unequivocally, 21 the testimony that you provided in the IPR on page 42, 22 line 21, through page 43, line 11? 23 A. I would. I'm adding -- because you asked, I'm 24 adding some additional context on what a posita would 25 understand to be a home screen. And I talk about -- I	1 A. I see that, yes. 2 Q. Okay. So just a very specific question right 3 now: On December 5th, 2023, you testified under oath: 4 "That -- that is -- that would be a posita's 5 understanding in reading the 352 patent as to what would 6 make it a home screen. It needs to be different from 7 the wake screen, and it needs to have a plurality of 8 icons that correspond to different applications. That 9 would" -- "that's what makes it a home screen." 10 That was your testimony under oath, correct, Dr. 11 Rosenberg? 12 A. Yes, that's what I -- I said. 13 Q. Okay. And you stand behind that? 14 A. I -- I think it was perhaps incomplete, I guess 15 is the way. 16 Q. Okay. 17 A. I do stand behind that, but I'm adding -- because 18 you asked, I'm adding additional information hopefully 19 to be as responsive as I can to your -- your question, 20 which is a home screen connotes a certain understanding 21 of what a home screen -- the purpose of a home screen. 22 Q. So you do not stand behind your testimony in the 23 352 IPR without further qualification; am I 24 understanding you correctly? 25 A. Maybe that's a legal argument as to whether I
Page 95	Page 97
1 talk about that in my report, which I can turn to and -- 2 if you'd like. 3 Q. No, no. I just wanted an answer to my question. 4 So you do stand behind it, you do not stand 5 behind it? 6 A. I -- I wouldn't characterize it as one of those 7 two alternatives. I -- I think that to -- to meet the 8 lengths of -- of the language of the patent, yes, it 9 needs to be different from the wake screen. It needs to 10 have a plurality of icons that correspond to different 11 applications. 12 But to expound on this, which I perhaps should 13 have added but didn't because I wasn't asked about it, 14 is that a posita comes in to an analysis and an 15 understanding based upon their background, education, 16 training, and home screen connotes a certain idea. 17 Home screen is in the patent itself. There's 18 examples of home screen in the figures of the patent. 19 I'm not trying to read in any additional limitation or 20 read out any additional limitation, but as I've said a 21 few times now, I could think of screens that are 22 different from a wake screen that wouldn't meet the -- a 23 posita's understanding of a home screen. 24 Q. All right. So line -- page 42, line 23; 25 beginning there, "that -- that is"; do you see that?	1 stand behind it or not. I'm trying to -- I think one of 2 the rules of an expert is to educate and, you know, to 3 make sure their opinions are well understood. 4 And -- and I'm trying to add some additional -- I 5 -- I have -- two or three times, I've added examples of 6 what would meet this super broad description of a home 7 screen but a posita wouldn't understand it to be a home 8 screen. 9 Q. Okay. So I'm not asking -- asking about standing 10 behind it in any kind of legal way. I'm just talking 11 about, like, someone who's testifying and has taken 12 oath, and understands an oath; does that make sense? 13 A. It makes sense, yes. 14 Q. Okay. So my question is: Is it the case that 15 you do not stand behind your testimony in the -- in the 16 deposition of the -- the 352 IPR without further 17 qualification? 18 A. I think this could be taken out of context and 19 used -- used it to say well, a monkey screened it. It 20 shows an animated monkey. That's a home screen. And a 21 posita would understand that a monkey screen is a home 22 screen. 23 And I'm trying to -- trying to be a teacher here, 24 and that's -- that's one of the roles of an expert, to 25 help the jury understand what a posita would understand

25 (Pages 94 to 97)

Page 98 1 is what a home screen is. 2 Q. Okay. So let's slightly switch gears. 3 A. All right. 4 Q. Is it your opinion that a home screen user 5 interface means a screen different from the wake screen 6 user interface that includes a plurality of application 7 icons corresponding to different applications? 8 A. I think that -- that is needed, but I think 9 that's need in the eyes of the patent. I mean, we -- we 10 can talk about what's a home screen, not in the eyes of 11 a patent or in the eyes of the patent. 12 But in the eyes of the patent so-to-speak in the 13 context of the patent, that is needed, yes. 14 Q. Is anything else needed to make something a home 15 screen user interface? 16 A. I'd like to read from two paragraphs of my 17 rebuttal report, which I -- I think will answer your 18 question of -- of what's needed or what a posita would 19 understand. 20 Q. All right. Well, let me -- let me show you. So 21 -- I want to -- 22 A. Uh-huh. 23 Q. -- a -- a different document first, and then we 24 can go with that. 25 A. Okay.	Page 100 1 A. Yes, that's my understanding. 2 Q. And another way we refer to that hypothetical 3 person is a posita? 4 A. Correct, agree. 5 Q. And in this case, a posita doesn't need to have 6 any particular experience with respect to watches, 7 right? 8 A. As I explained earlier in the deposition, a user 9 interface designer human factors engineer, the same 10 principles apply. At least, as far as the asserted 11 claims in terms of swipe directions, which screens are 12 displayed. 13 You've talked about, you know, there's nothing 14 really different about no additional constraints on the 15 watch versus a tablet versus a phone. So, yes, I -- I 16 agree that's the proper skill set needed to -- for the 17 posita to have. 18 They don't need to have -- first off, you can't 19 get a degree in watches, right? You -- there's no 20 degree in watches, per se. 21 Q. You can go to a watch making school? 22 A. You could but -- but I potentially would argue 23 for an electronic computer device with a graphical user 24 interface using gestural input, that would not -- still, 25 that would not be the right skill set.
Page 99 1 Q. Hang with me for a second. 2 (Exhibit No. 7 was marked.) 3 BY MR. OLSHESKI: 4 Q. All right. 5 A. Should I put this -- 6 Q. You can put it in the pile. However you -- you 7 prefer to organize things. 8 Here we go. I'm marking as Exhibit 7 a copy of 9 your declaration of Masimo IPR. Exhibit 7 is a 10 declaration you submitted in Masimo's IPR of the 352 11 patent, correct? 12 A. That's correct. 13 Q. All right. And its petition for interparties' 14 review of the 352 patent, you understand that Masimo was 15 arguing that the 352 patent was invalid, right? 16 A. Yes. 17 Q. Your declaration was submitted in support of 18 Masimo's position that Apple's 352 patent was invalid, 19 correct? 20 A. That's correct. 21 Q. And you understand the claim construction and 22 patent validity are generally analyzed from the 23 perspective of a hypothetical person of ordinary skill 24 in the art as of the effective filing date of the 25 patent, right?	Page 101 1 Q. Okay. So we're -- we're -- we're talking about a 2 hypothetical person, so perhaps we can use some 3 imagination and it's possible that this posita would not 4 even know what a watch is, right? 5 A. I would find that highly unlikely. But, I mean, 6 if you -- if you look at my definition of one of 7 ordinary skill in the art, they've gone through 8 engineering school. They've a couple years' degree. 9 For not -- for a posita to not know a watch, meaning not 10 a definition of an ordinary skill in the art. 11 Whether you use my definition or Dr. Turveen's, 12 for someone to say gosh, this is novel. I really don't 13 know what this is. I would find that bizarre and highly 14 unlikely. 15 Q. But your definition of posita doesn't require any 16 specific experience with watches? 17 A. As -- as we discussed previously, yes. 18 Q. All right. 19 A. I agree with that given -- given the claims, 20 given that we're talking about switching screens, using 21 gestural inputs. Given that the patent, itself, says 22 that it equally applies to computers, and tablets, and 23 phones, and watches. 24 Q. Are you now -- ultimately, it was your opinion 25 that all claims of the 352 patent would have been

26 (Pages 98 to 101)

Page 102	Page 104
1 obvious to a posita at the relevant time in view of 2 certain prior art; is that right? 3 A. That's right. 4 Q. And you declared that all statements you made in 5 your declaration in Masimo's petition for IPR were true, 6 correct? 7 A. Yes. 8 Q. And do you know that if you had willfully made 9 false statements in your declaration in support of 10 Masimo's petition for IPR, you could have been punished 11 by fine or imprisonment or both under Section 1001 of 12 Title 18 of the United States code, correct? 13 A. Yes. My understanding is it's -- there -- there 14 would be severe consequences for intentionally lying. 15 Q. Bear with me for a second. So if we turn to -- 16 if we turn to the very back page of the -- your 17 declaration, you see the reference to section 1001 of 18 Title 18 of the United States Code right above your 19 signature? 20 A. I do. 21 Q. Did you review that section before submitting 22 your declaration? 23 A. I -- no, I -- I have not read what Title 18 says 24 or Section 1001. I -- I did not read that. 25 Q. You know the Title -- you know that that	1 assessment was made from the perspective of a posita, 2 right? 3 A. Yes. In -- in light of the patent -- basically, 4 these are claim terms, yes. 5 Q. Right. In other words, you're not interpreting 6 the -- the claim scope from the perspective of an expert 7 in the field, but as a personal of ordinary skill, 8 right? 9 A. Yes, from the perspective of a person of ordinary 10 skill. 11 Q. All right. And one of the user interfaces -- I 12 -- okay. Withdrawn, on that one. 13 In your view, the claim language surrounding the 14 phrase "home screen user interface" defines the scope of 15 that phrase, right? 16 A. I think this -- this scope and understanding by a 17 posita, when reading claim language, is important by the 18 specification as well. 19 So you don't just read the claims in isolation 20 and the -- a posita looks at the entire intrinsic record 21 more so than just the claims itself. That's why 22 previously I said, you know, there's examples of home 23 screen in the figures. 24 Q. Well, of course. But, like, widget screen user 25 interface, that shows up, like, twice in the
Page 103	Page 105
1 provision applies to -- to statements submitted in IPR, 2 right? 3 A. That's my understanding. 4 Q. Okay. And you did tell the truth in your 5 declaration in support of Masimo's petition for IPR, 6 right? 7 A. Absolutely. 8 Q. All right. Now, if we turn your attention to 9 paragraph 37, please. 10 A. (Complies). I'm there. 11 Q. Okay. So when preparing your declaration in 12 support of Masimo's petition for IPR of the 352 patent, 13 you assessed the meaning of various user interface 14 screens recited in the claims, right? 15 A. I did. 16 Q. And one of those that you assessed the meaning of 17 was wake screen interface? 18 A. Yes. 19 Q. Another was home screen user interface? 20 A. Right. 21 Q. Another was widget screen user interface? 22 A. Yes, I did. 23 Q. And, finally, control panel user interface? 24 A. Yes. 25 Q. And in that perspective -- or I'm sorry. That	1 specification, right? 2 A. There's figures as well. 3 Q. Okay. So I just want -- let me just find out if 4 this statement is correct. 5 Is it your view that the claim language 6 surrounding the phrases "wake screen user interface, 7 home screen user interface, widget screen user 8 interface, and control panel user interface," defines 9 the scope of those phrases? 10 A. I don't think in isolation. That's what I just 11 previously answered. Not in -- when -- when read in 12 light of the full specification and the file history. 13 Q. Okay. But in paragraph 37 of your declaration, 14 you swore under penalty of perjury: "In my view, the 15 claim language surrounding these phrases defines the 16 scope of these phrases." 17 You did that, right? 18 A. That's what I said, but I think it's well 19 understood in -- in patent law that claim language is 20 understood. It's -- it's not just read in isolation. 21 When -- a posita doesn't just analyze claims 22 themselves. They analyze the full specification, they 23 analyze all of the figures, they analyze the full 24 history. So there may be lots of things that I didn't 25 say, but it should be well understood.

27 (Pages 102 to 105)

Page 106	Page 108
1 You don't just understand exactly what's meant by 2 claim language in isolation with blinders on, not 3 looking at any other thing. 4 Q. All right. So the -- the claims of the 352 5 patent expressly recite that, "Home screen user 6 interface is different from the wake screen user 7 interface, and includes a plurality of application icons 8 corresponding to different applications"; is that 9 correct. 10 A. That's correct. 11 Q. And if you could turn your attention to paragraph 12 38, please. 13 A. (Complies). 14 Q. All right. Well, maybe this is what you were 15 getting at before. You write at the top here: "I also 16 assessed whether the labels 'wake home widget' and 17 'control panel' independently impose additional 18 limitations upon those defined by the surrounding claim 19 language"; do you see that? 20 A. I do. 21 Q. Is that sort of what you were referring to when 22 you were saying, hey, you need to look at the 23 specification and the file history holistically? 24 A. I think that enters into it. I just think 25 whenever someone is analyzing claim language, it's	1 claim language? 2 A. Yes. 3 Q. Is it true that you assessed whether the label 4 "home" -- or is it -- withdrawn. 5 Is it true that you assessed whether the label 6 "widget" independently imposed additional limitations 7 beyond those defined by the surrounding claim language? 8 A. Yes. 9 Q. Okay. Is your answer the same for "control"? 10 A. It is. 11 Q. Okay. And the wake screen user interface is the 12 user interface that's displayed as soon as a device 13 weeks up, right? 14 A. It is. 15 Q. And that's true for the Masimo W1? 16 A. Yes. 17 Q. Um -- 18 A. But you're say -- that -- yeah, that would be the 19 wake screen interface, the -- the clock face. The clock 20 screen. 21 Q. All right. So let's turn your attention, please, 22 to paragraph 44. Oh, wait. I'm sorry. I want to ask a 23 question here. 24 So if you -- let's -- let's turn to the bottom of 25 page -- or I'm sorry. The bottom of paragraph 38. Are
Page 107	Page 109
1 understood that the posita will understand that claim 2 language in light of the full specification and figures' 3 file history, as -- as well as posita knowledge, which 4 we've gotten to -- into a little bit of too. 5 What the posita brings in to -- into it even 6 before seeing the patent for the first time. 7 Q. All right. So is it true that you assessed 8 whether the label "home" independently imposed 9 additional limitations beyond those defined by the 10 surrounding claim language? 11 A. Ask the question one more time. I want to -- 12 Q. Sure. 13 A. -- understand it. 14 Q. So is it -- so I -- I'm sort of just breaking 15 down the first sentence of -- of paragraph 38, so you 16 can see what I'm -- what I'm -- what I'm doing. 17 A. All right. 18 Q. Is it true that you assessed whether the label 19 "home" independently imposed additional limitations 20 beyond those defined by the surrounding claim language? 21 A. Yes, I see that. And what -- so what's -- is it 22 true that I did that? Yes, I assessed it. 23 Q. Okay. Is it true that you assessed whether the 24 label "wake" independently imposed additional 25 limitations beyond those defined by the surrounding	1 you there? 2 A. I'm there. 3 Q. Okay. You write: "In my opinion, a posita would 4 not read the term 'home' as imposing any additional 5 limitation. Rather, in my view, the labels 'home, 6 widget, wake, and control panel' are merely convenient 7 and concise shorthand terms to identify and distinguish 8 the different user interfaces"; do -- do you see that? 9 A. I do see that. 10 Q. And that's your statements under penalty of 11 perjury, right? 12 A. Yeah. And what I mean by that is the patent 13 that's using these labels "home, widget, and wake." But 14 as I've said multiple times in the deposition, a posita 15 comes in to -- in to analyzing any patent with their 16 past history, and their training. 17 They -- they look at the specification. There's 18 examples of the home screen, and -- and what it is and 19 what -- what it is not. I used examples of this 20 rotating "X" or a monkey. So I -- I wouldn't want this 21 statement to be interpreted as, yep, a posita would 22 totally understand a screen with -- with a -- an 23 animated monkey that does nothing else is a home screen 24 because a posita wouldn't understand that. 25 Q. Okay.

28 (Pages 106 to 109)

Page 110	Page 112
1 A. So I -- I just thought that was understood. And 2 like I said earlier, I do add a little more detail as to 3 what a posita would understand in some of my other 4 reports. 5 Perhaps I -- I could have expounded more on the 6 background of what positas bring in to -- you know, they 7 have some under -- a posita would have some 8 understanding of what widgets are and what home screens 9 are. 10 Q. So -- so for -- for example, the language -- 11 A. Uh-huh. 12 Q. -- surrounding the claim phrase "widget screen 13 user interface" is detailed and specific enough to set 14 forth the meaning of that claim phrase, right? 15 A. It's -- it's -- well, you say detailed and 16 specific. I would characterize it as being incredibly 17 broad. 18 Q. Okay. So -- but what you -- you wrote in 19 paragraph 38 in the third sentence, you -- you write: 20 "The language surrounding these claim phrases is 21 detailed and specific enough to set forth meaning of the 22 claim phrases"; do you see that? 23 A. I do see that. 24 Q. You stand behind that? 25 A. Perhaps I wasn't as articulate or as verbose as	1 A. Even if the Judge -- the Judge is the trier of 2 fact versus a jury, I'd still think that's the role of 3 the expert. 4 Q. Are you going to amend the declaration that you 5 already submitted to clear -- clear all this stuff up? 6 A. I -- I'm happy to if offered the opportunity. 7 Q. Well -- 8 A. I don't know if its past the time in which that 9 is, you know, appropriate or allowable. But I -- I 10 would hope that my testimony here, as well as my 11 testimony in paragraphs 52 and 53 of my rebuttal 12 report add some clarity -- 13 Q. Uh-huh. 14 A. -- as to what a posita would understand. 15 Q. So focusing, again, on the -- the sentence: "The 16 language surrounding these claim phrases is detailed and 17 specific enough to set forth the meaning of the claim 18 phrases." So I want to ask a -- a couple just more 19 specific questions. 20 So is it true or false that the language sounding 21 the phrase "wake screen user interface" is detailed and 22 specific enough to set forth the meaning of that claim 23 phrase? 24 A. In combination with review of the minutes, which 25 I think all claim terms should be understood. They
Page 111	Page 113
1 -- as I -- I could have been. 2 Q. You do not stand behind what you wrote here in 3 paragraph 38? 4 A. As I said multiple times, I think there are 5 examples. One could come up with examples of a home 6 screen that would be -- that wouldn't pass the sniff 7 test if you will, the laugh test, whatever, as being 8 that's definitely a home screen in the eyes of a posita. 9 Q. So you state: "Perhaps it wasn't as articulate 10 or verbose" -- 11 A. (Indiscernible cross-talk.) 12 Q. -- or "as verbose as" -- "as you could have 13 been." 14 Does that mean you think that this should be 15 cleared up a little bit more to get the full context? 16 A. And that's exactly what I'm trying to do here at 17 the deposition. I'm -- I'm trying to educate, and I 18 think that's one of the roles of a expert is to be able 19 to educate the jury and give them the full opinion. You 20 know, the -- the context to support a -- a full opinion. 21 Q. Well, this declaration was submitted before the 22 patent trial and appeal board. You know that, right? 23 A. I -- I do, but I still think that's the role of 24 an expert, you know. 25 Q. So are you going to --	1 should be understood in light of reading the full spec, 2 all of the intrinsic record essentially. 3 Specification, which include the figures and the 4 file history. 5 Q. Okay. So in your declaration in the "P" tab, you 6 said: "The language surrounding these claim phrases is 7 detailed and specific enough to set forth the meaning of 8 the claim phrases." You -- you told that to the "P" 9 tab? 10 A. I did because, like I said 10, 20 minutes ago, I 11 would think that it's well understood that all claim 12 language is understood in light of the full spec. That 13 that's just a given. 14 Q. Okay. So now, in addition to the language 15 surrounding the claim phrases, someone in this case 16 needs to do a review of the specification in all of the 17 intrinsic record to arrive at an understanding of what a 18 wake screen user interface would be; is that correct? 19 A. I -- my understanding is that is the proper way 20 to understand claim terms. It -- it should not -- that 21 -- that a posita would be negligent in only reading the 22 claims and saying, I know exactly what this teaches. 23 I'm putting my blinders on for the specification and the 24 file history, and I know exactly what it needs. 25 So I thought it was well understood that as the

29 (Pages 110 to 113)

Page 114	Page 116
1 part of -- of patent law, if you will, that the -- this 2 whole process of -- of what a posita understands is 3 claim terms are understood in light of the full 4 specification. 5 So I didn't spell that out explicitly because 6 it's -- I -- I thought everyone agrees with that. I 7 would be surprised if you would disagree with that. 8 Q. So someone -- reading what you said here in 9 paragraph 38, "The language surrounding the claim 10 phrases is detailed and specific enough to set forth the 11 meaning of" -- "of the claim phrases." 12 You know that in an IPR petition, that's part of 13 the intrinsic record, right? 14 A. What's part of the intrinsic record? 15 Q. Yes. You know, the -- the declaration that 16 you're submitting, you know, in support of -- of -- of 17 Masimo's position of invalidity of the 352 patent, that 18 becomes part of 352 file history, right? 19 A. I guess I don't know one way or the other, but I 20 know it's part of their -- the case. And I -- I don't 21 -- I didn't know that one way or the other. 22 Q. And this is a public document? 23 A. I assume so. 24 Q. Right. So a posita -- I'm trying to understand 25 the -- the scope of something like -- like wake screen	1 BY MR. OLSHESKI: 2 Q. Dr. Rosenberg, do you still have Exhibit 7 in 3 front of you? 4 A. I do. 5 Q. Okay. Did you discuss the substance of your 6 testimony over break? 7 A. No. 8 Q. Okay. With anyone? 9 A. With anyone. 10 Q. Okay. If you could, please, turn your attention 11 to paragraph 44 of Exhibit 7. 12 A. I am there. 13 Q. All right. In your opinion, in view of the 14 surrounding claim language in claims 1, 9, and 17, "home 15 screen user interface should be construed to mean a 16 screen different from the wake screen user interface, 17 and that includes a plurality of application icons 18 corresponding to different applications," correct? 19 A. Well, as we discussed extensively prior to the 20 lunch break, I -- I'm not reading out homes -- home -- 21 what a posita would understand when reading this 22 specification of what a home screen would be or 23 wouldn't. 24 The -- there is a connotation of what a home 25 screen is, and I gave several examples of things that
Page 115	Page 117
1 user interface. 2 You understand that that posita could come across 3 paragraph 38 of your IPR declaration, right? 4 A. A posita could come across it, yes, assuming it's 5 public. 6 Q. And the posita would read what you said. It 7 says: "The language surrounding these claim phrases is 8 detailed and specific enough to set forth the meaning of 9 the claim phrases." That could happen? 10 A. That could happen, yes. 11 Q. And you testified that a posita who took you at 12 your word on that, would be negligent, right? 13 A. Well, I think it would be negligent to analyze 14 the meaning of claim language without looking at the 15 full spec and the full intrinsic record. That would be 16 negligent, and that's my testimony. 17 MR. OLSHESKI: Okay. Let's do a break. I 18 don't -- yeah. Let's go off record. 19 You all want to do lunch now? 20 REPORTER: Can we go off the record? 21 VIDEOGRAPHER: The time is 12:08 p.m. We're 22 going off the record. 23 (Off the record.) 24 VIDEOGRAPHER: The time is 12:46 p.m. We're 25 back on the record.	1 wouldn't be a home screen. So I -- I think that I'm -- 2 I'm adding -- given your questioning, adding the -- I 3 think the very reasonable comment that a posita, when 4 analyzing claim language, looks to the specification, 5 and they find figures in the patents such as the one on 6 page 352 of examples of home screen. 7 Q. All right. But the -- the statement in -- in 8 paragraph 44, that's a statement that you made under 9 oath, right? 10 A. It is, yes. 11 Q. And, you know, it's important to be truthful when 12 you're under oath? 13 A. Of course. 14 Q. And you endeavored to be truthful and accurate 15 when you made the statement in paragraph 44? 16 A. Yes, and I -- I am truthful. I don't think there 17 should be any insinuation that I was ever lying at any 18 point in this case because you keep coming back to 19 truthful. 20 I'm just -- I'm adding additional clarity of -- 21 that positas come in to analyzing a patent. Not only, 22 you know, with their education and training and then, it 23 is proper and required that they look at the -- the full 24 intrinsic record. 25 You don't just analyze a claim term in isolation.

30 (Pages 114 to 117)

Page 118	Page 120
1 Q. And please allow me to apologize for making 2 insinuations. 3 A. Yes. 4 Q. That's not what I'm trying to do. I -- I'm just 5 asking questions. 6 So with that in mind, is -- is the statement in 7 paragraph 44 true? 8 A. It's -- yes. This is -- this is required, and I 9 would add onto it that, please don't read out what a 10 posita would understand by home screen user interface as 11 that posita would understand that both from their 12 education and training, as well as the spec -- the 13 intrinsic record. 14 So, yes, it's true, and I hope it's understood 15 that it should definitely be understood that positas 16 need to. In my understanding, that's improper and it 17 would be improper if they only looked at claim language. 18 Q. Right. And so, the 352 patent, you studied it 19 closely, and you looked at the entire written 20 description, right? 21 A. I did. 22 Q. And if you just go over to paragraph 45, the 23 bottom of -- of page 33, you see the statement, "The 24 written description"? 25 A. I see that, yes.	1 A. I -- your question was I didn't provide any -- 2 what? 3 Q. Well -- 4 A. What was the -- 5 Q. -- what I'm trying to understand is you're saying 6 okay, well, we've these -- these two requirements, 7 right? We got these requirements that a home screen 8 user interface means it's different from a wake screen 9 user interface and it includes a plurality of 10 application icons corresponding to different 11 applications. 12 We can agree the home screen user interface 13 requires those two things, right? 14 A. I would agree. 15 Q. Now, is it your position in this case in the 16 Delaware litigation that home screen -- user interface 17 requires something more than those two elements? 18 A. In understand -- a posita's understanding of what 19 would be a home screen. The plain and ordinary meaning 20 of home screen would not be -- to use my absurd example, 21 an animated monkey that does nothing more than -- than 22 waves at you. 23 That -- yes, it would require home screen would 24 be understood in light of figures that they would read, 25 such as figure 4A, and posita's knowledge. So that, to
Page 119	Page 121
1 Q. All right. So you write: "The written 2 description generally does not describe the home screen 3 user interface in detail"; you see that, right? 4 A. The written description doesn't, but it does give 5 pictorial examples through the figures. 6 Q. In -- so you endeavored to set forth the relevant 7 portion of this specification in the figures when 8 figuring out what home screen user interface meant 9 during the course of making your IPR declaration, right? 10 A. I -- I did include example figure 4A, but I 11 believe there's several -- several figures. As you 12 know, there's a lot of figures in this patent. 13 Q. All right. In paragraph 46, it begins 14 "therefore"; do you see that? 15 A. I see that paragraph. 16 Q. And after analyzing the written description in 17 the figures, you wrote: "A posita would have understood 18 that the claim language says that the home screen 19 includes a plurality of application icons," but does not 20 say it includes applications only; do you see that? 21 A. I see that, yes. 22 Q. And you didn't provide any other context to glean 23 from the figures or from the -- the specification in 24 your analysis of -- of home screen user interface in the 25 IPR declaration, right?	1 me, it didn't need to be stated. That -- that's what a 2 posita brings to the table when they read this patent. 3 And they read more than just the claim language. They 4 read the entire intrinsic record because that's what's 5 proper. 6 Q. And the intrinsic record, it doesn't actually 7 talk about watches, right? 8 A. It does, actually. You pointed me to in the top 9 of figure -- column 2. 10 Q. I did, I did. So let me ask a better question. 11 A. Uh-huh. 12 Q. The intrinsic record in this case, there's -- 13 there's nothing that sets forth requirements for a home 14 screen user interface on a watch that differ from a home 15 screen user interface on any other type of electronic 16 device, right? 17 A. Yeah. I think you had a line of questioning 18 about that very early in the deposition, that there's no 19 additional constraints I think is how you asked it. 20 They are imposed by a watch versus a phone. 21 Q. So a posita -- trying to understand all of the 22 context that you're describing, you know, the entire 23 intrinsic record, the specification. 24 If a posita were trying to understand what a home 25 screen user interface, you know, watch, required versus

31 (Pages 118 to 121)

Page 122 1 in a mobile phone for example, this posita wouldn't find 2 any particularly useful information in the specification 3 or in the intrinsic record; is that fair to say? 4 A. I think that's fair to say. Not that I recall, 5 but a posita would come in to -- in to the analysis with 6 the knowledge of the differences between a watch and a 7 phone primarily when it comes to screen real estate, and 8 the need to limit what information can be displayed at a 9 time. 10 So the design of the home screen would need to -- 11 to change necessarily on a device with, you know, 1 12 square inch of display space versus 20 square inches of 13 display space. Something like that. 14 Q. All right. In paragraph 46 where you write: 15 "The home screen user interface includes a plurality of 16 application icons corresponding to different 17 applications; do you see that sentence? 18 A. I do. 19 Q. By "plurality" you mean more than one? 20 A. I do. 21 Q. Is that what you mean any time you say plurality? 22 A. That's my understanding of the definition of 23 plurality. 24 Q. Okay. 25 A. More than one.	Page 124 1 Q. Okay. Now, let's turn your attention, please, to 2 paragraph 20 of your opening report. 3 A. Yes, I'm looking at paragraph 20. 4 Q. You write: "I've been asked to consider the 5 state-of-the-art for each asserted patent as of 6 May 16th, 2017, which I understand is the earliest claim 7 priority date of the asserted patent"; do you see that? 8 A. Yeah. That's unartfully articulated. There's 9 only one patent. 10 Q. Okay. 11 A. Rather than "each of the asserted patent" 12 probably shouldn't be there. There's only one patent 13 I'm working on. 14 Q. Just a typo? 15 A. Yes. 16 Q. Okay. Do you have any opinions on the 17 state-of-the-art for any patents other than the 352 18 patent? 19 A. No, I don't. 20 Q. Typos are no big deal in big expert reports, 21 right? 22 A. They can be common, yes. 23 Q. It happens? 24 A. It does happen. 25 Q. Okay. All right. If you turn your attention to
Page 123 1 Q. All right. And let's look at a new exhibit. 2 It's a large one. All right. This is going to be your 3 opening expert report, Exhibit 8. 4 (Exhibit No. 8 was marked.) 5 BY MR. OLSHESKI: 6 Q. There you go. 7 A. All right. 8 MR. OLSHESKI: I believe after the 9 deposition, you had wanted to discuss some sort of, 10 like, agreement for, like, printing off experts or 11 whatever. We're -- we're amenable. 12 BY MR. OLSHESKI: 13 Q. Exhibit 8 is your expert report, right? 14 A. Yes, it is. 15 Q. All right. It's actually your opening expert 16 report on "Patent Invalidity of Blank"? 17 A. Yeah, I see that blank there. The -- the 18 invalidity of my name, right? 19 Q. Yeah. It's just a typo, right? 20 A. Yes. 21 Q. It's supposed to be regarding the 352 patent? 22 A. I see and I agree. 23 Q. Okay. Do you have opinions on the validity of 24 any other patents that have been asserted in this case? 25 A. No.	Page 125 1 paragraph 26, please. 2 A. Okay. 3 Q. You write: "I am an engineer by training and 4 profession"; do you see that? 5 A. I do. 6 Q. You are an engineer by training and profession? 7 A. Correct. 8 Q. Are you licensed as a professional engineer? 9 A. No, I -- I did not get a PE accreditation. I 10 never chose to pursue that accreditation. 11 Q. Why not? 12 A. It wasn't -- many software engineers, it -- it 13 seems to be more geared toward mechanical engineering, 14 structural engineering, industrial engineering as 15 opposed to -- I -- I would say it would be very rare for 16 a software engineer to have a PE accreditation. 17 Q. Have you considered becoming licensed as a 18 professional engineer? 19 A. No because I don't see how it would help. I -- 20 I'm not interested in that accreditation. I don't think 21 it would -- working for my own company, doing primarily 22 software engineering projects, that would -- my 23 understanding is re -- requiring me to study a lot of 24 things that are completely unrelated. 25 Engineering is a very broad profession, as you

32 (Pages 122 to 125)

Page 198	Page 200
1 Android where Android OS that are in the watch, they may 2 or may not, so. Because you're asking specifically 3 what's in the report. I did verify for myself that it 4 did come out before, but you're asking some very 5 specific questions as if, well, if it's not in the 6 report, it's not true. 7 I disagree with that premise. And -- but to the 8 extent to answer your question very directly, I would -- 9 I would look in those four places to see if -- if they 10 talk about version numbers. 11 Q. Well, what were you looking at when you wrote 12 paragraph 143? 13 A. 143? 14 Q. Yep, of your opening report. 15 A. Oh. Just various websites. Like I said, just 16 yesterday I went -- I went to the -- well, the one that 17 came up first was the Wear OS Wikipedia page, which has 18 a complete version history. 19 And it shows that -- that Android Wear 1.5.0 came 20 out in June of 2016. But -- but you can find that on 21 multiple different websites. It doesn't have to be 22 Wikipedia. 23 Q. Okay. Well, let's turn your attention, please, 24 to paragraph 151. 25 A. (Complies). You got it.	1 Asus ZenWatch discloses or makes obvious Limitation 1F? 2 A. Yes, I -- I think so. You see my analysis is 3 under Apple's apparent interpretation of the claim, 4 where it goes to this main menu screen. Which is under 5 Apple's apparent interpretation of the screen. 6 But I'm not sure. Maybe that's not the -- the 7 aspect of the question you're -- I -- I do agree that 8 Asus ZenWatch discloses or makes obvious this 9 limitation. I think that was -- you just asked a simple 10 question. 11 Q. Okay. Well, let me ask a -- a different one 12 then. 13 Does the Asus ZenWatch disclose Limitation 1F? 14 A. It does. 15 Q. All right. And, you know, you offer the opinion 16 when "main menu" is shown; is that correct? 17 A. Yes. 18 Q. The main menu of the Asus ZenWatch, that's what 19 you're calling home screen? 20 A. As I said a moment ago, under Apple's apparent 21 interpretation of the claim, "such a main menu user 22 interface constitutes a home screen user interface. See 23 Apple final infringement contentions Exhibit E1" at 25 24 -- page 25. 25 Q. Well, forget Apple's interpretation; I'm asking
Page 199	Page 201
1 Q. So paragraph 151, rather the picture directly 2 above it of your opening report regarding invalidity, 3 shows a clock screen user interface on the Asus 4 ZenWatch; is that right? 5 A. It does. 6 Q. And on the Asus ZenWatch, when you wake it, it 7 displays a clock phase, right? 8 A. Yes, it does. Same as the -- the Masimo. 9 Q. And the clock face on the Asus ZenWatch shows a 10 watch face, as well as the date? 11 A. Well, in this -- in this picture, it's a little 12 unclear. I see "Okay Google." I see an hour hand. I 13 see a minute hand. I see a second hand. I see touch to 14 reconnect. 15 Q. Monday, the 23rd? 16 A. Monday, the 23rd, yes. Looks like the date to 17 me. 18 Q. And in your opinion, the clock screen of the Asus 19 ZenWatch is a wake screen user interface, correct? 20 A. Yes, I -- that's my opinion. 21 Q. If you please move done to paragraph 156. 22 A. (Complies). 23 Q. Here, you write that -- you've got the discloses 24 or makes obvious thing again. 25 Can you confirm whether or not you believe the	1 for your interpretation. 2 So the main menu of the Asus ZenWatch, under your 3 interpretation, is that a home screen? 4 A. No. 5 Q. Why not? 6 A. Because these are controls. 7 Q. Okay. So when we're applying your claim 8 interpretation, the Asus ZenWatch does not disclose or 9 make obviously the 352 patent, correct? 10 A. Wait -- wait a minute. I'm sorry, I may have 11 misspoke there. This -- I was referring to the controls 12 for Limitation 1G. 13 (Clarification by reporter.) 14 BY MR. OLSHESKI: 15 Q. Okay. So -- 16 A. So -- go ahead with your question. 17 Q. Under your interpretation of -- of the claim, is 18 the menu screen of the Asus ZenWatch a -- a home screen? 19 A. Yes, it is. 20 Q. And "the icons, when selected, cause a device to 21 display a corresponding application user interface"; do 22 you see that in paragraph 157? 23 A. I do see that. 24 Q. All right. Now, if you could, please, move down 25 to paragraph 159. And that's where you set forth that

51 (Pages 198 to 201)

Page 202	Page 204
1 the Asus ZenWatch Discloses Limitation 1F; do you see 2 that? 3 A. I do, yes. 4 Q. And you agree with that statement? 5 A. Yes, I do. 6 Q. Okay. Now -- so it's your opinion, then, that 7 the Asus ZenWatch includes a home screen that is 8 different from the wake screen, correct? 9 A. I do. The wake -- the wake screen in this case 10 is the -- the watch face, and the home screen is the -- 11 the application icons. 12 Q. All right. And you signed your -- your opening 13 expert report, you know, that -- like all the other 14 stuff you signed in this case, that was under penalty of 15 perjury, right? 16 A. That's right. 17 Q. An you signed it on November 22nd, 2023? 18 A. What page -- 19 Q. It's page 131. 20 A. Yeah, that's -- that's the correct date. 21 Q. All right. Now, let's take a look at your 22 rebuttal expert report, please. 23 (Exhibit No. 10 was marked.) 24 BY MR. OLSHESKI: 25 Q. Here you go. Let's mark it as Exhibit 10. Can I	1 Q. All right. Now, you write: "The home screen of 2 a watch is the watch face"; do you see that? 3 A. Yes. Previously, I referred to it as a health 4 watch, but rather -- a health watch. So I'm -- I'm 5 talking about the Masimo W1 is a health watch, but in 6 general, yes, I agree with that. 7 Q. Okay. And you expand on that opinion and state 8 more specifically: "The home screen of a health watch 9 is the screen that displays the time, and various health 10 metrics, since displaying that information is the 11 primary purpose of a health watch"; do you see that? 12 A. I do, yes. 13 Q. And that's your opinion, correct? With respect 14 to the Masimo W1, the home screen of the Masimo W1 is 15 the watch face, right? 16 A. That's my opinion for the Masimo watch, yes. 17 Q. As we just saw, that wasn't your opinion for the 18 Asus ZenWatch, right? 19 A. That's what I just testified forth, but I -- I 20 just want to -- I want to review that because I wasn't 21 aware of any inconsistencies. And to the extent you're 22 pointing out inconsistency, I just want to, in my mind, 23 confirm that that's true or that I am misremembering in 24 some way. 25 Q. How much time do you think you need for that
Page 203	Page 205
1 put a sticker on yours? 2 A. You may. Thank you. 3 Q. All right. Please turn your attention to 4 paragraph 54. 5 A. (Complies). 6 Q. Are you there? 7 A. I'm at paragraph 54. 8 Q. Okay. And just to get it out of the way, you 9 signed your rebuttal report under penalty of perjury, 10 right? 11 A. I -- I did. You probably don't intend it, but I 12 -- I dislike the insinuation that I'm purposeful lying 13 at any point. And this perjury implies, like, a 14 purposeful lying and that just is not going on. 15 Q. It's -- 16 A. Yes. To answer your question, I signed under it. 17 Q. It's just a question. I'm not -- 18 A. Yeah. 19 Q. -- insinuating anything. 20 I'm just asking you signed this report under 21 penalty of perjury on December 15th, 2023, correct? 22 A. That is correct, yes. 23 Q. All right. So let's turn your attention to 24 paragraph 54, please. 25 A. I'm looking at 54.	1 exercise? 2 A. Five minutes or less. 3 Q. Okay. 4 MR. OLSHESKI: Okay. Well, why don't we 5 take a break. 6 MR. CANNON: I don't think he needs to 7 review on a break. The expert can testify and can refer 8 to the documents during his testimony. 9 MR. OLSHESKI: Okay. 10 BY MR. OLSHESKI: 11 Q. Go ahead. 12 A. Are we still on the record, then? 13 Q. Yeah. We're reviewing on the record, and take 14 the time that you need. 15 A. Okay. (Complies). 16 All right, I'm ready. Oh, we're still on the 17 record. 18 In reviewing my opening expert report, I only 19 offered an opinion under Apple's apparent interpretation 20 of the claim, and didn't offer an opinion in the opening 21 expert report other than that I do offer an opinion on 22 the reply report as to what constitutes a home screen on 23 a watch device or a -- or a watch face device. 24 Q. All right. So in your opening report, you don't 25 analyze anticipation or obviousness by the Asus ZenWatch

52 (Pages 202 to 205)

Page 206	Page 208
1 under your interpretation of the appropriate claim 2 scope; is that correct? 3 A. Well, I'm not pointing to a -- a -- I don't see 4 that in writing. Perhaps I'm -- I'm missing a section, 5 but I believe -- I'm not missing a section, perhaps it's 6 somewhere else in the report. 7 But this would be the appropriate place where it 8 would be, and it seems like my analysis is the analysis 9 of under Apple's apparent interpretation of the claim. 10 Q. So there's not any analysis, as far as you can 11 tell, under your interpretation of the claim, correct? 12 A. I agree. 13 Q. And you believe your interpretation of the claim 14 is correct? 15 A. Can you be more specific? 16 Q. Well, you reference "Apple's apparent 17 interpretation." 18 A. Uh-huh. 19 Q. Which suggests that you have your own 20 interpretation as well; is that right? 21 A. Yes, I do. And I think I laid that out in my 22 reply report. 23 Q. In your opening report, though, you don't analyze 24 Claim Element 1F for the Asus ZenWatch, correct? 25 A. My understanding is if Apple believes that for	1 Q. And that's your actual opinion under your view of 2 the appropriate claim scope that the clock screen on the 3 Asus ZenWatch is the home screen, right? 4 A. Well, I mean, I'm -- I'm responding on the fly 5 here because I -- I didn't do that analysis. I only did 6 the analysis of under Apple's apparent interpretation of 7 the claim. 8 MR. OLSHESKI: All right. Let's take a 9 break. 10 WITNESS: Sure. 11 VIDEOGRAPHER: The time is 3:26 p.m. We're 12 going off the record. 13 (Off the record.) 14 VIDEOGRAPHER: The time is 3:35 p.m. We're 15 back on the record. 16 BY MR. OLSHESKI: 17 Q. Earlier, we discussed security patches; do you 18 recall that? 19 A. I do, yes. 20 Q. Can a security patch be included in a broader 21 operating system update? 22 A. I -- I see no reason why not. Yeah, I don't see 23 a reason why it couldn't be. 24 Q. And have you ever seen that before, where a 25 security patch was included in a broader operate --
Page 207	Page 209
1 infringement, this constitutes a home screen, then it's 2 appropriate to apply the same logic analysis that Apple 3 has applied to for in -- their infringement arguments, 4 for their invalidity -- or I'm sorry, their validity 5 arguments. 6 So that's what I have done. 7 Q. Okay. But as far as the Asus ZenWatch goes, 8 paragraph 156. Your actual opinion is that this menu 9 screen that you point to here is not a home screen, 10 right? 11 A. I -- I think it would be more appropriate for a 12 watch interface that the home screen be the watch face, 13 the primary purpose of the watch. 14 Q. So you believe that -- 15 A. Yes. 16 Q. -- the image on the left, where it says leftwards 17 -- sorry, withdrawn. 18 Under your interpretation of the claim scope, the 19 clock screen in the Asus ZenWatch is actually the home 20 screen user interface, correct? 21 A. I -- I think that is a very reasonable 22 understanding and interpretation given the functionality 23 of a watch, that the clock face screen is a home screen 24 in the same way that I -- I talk about noninfringement. 25 That the watch face screen on the W1 is its home screen.	1 operating system update? 2 A. I don't know specifically, but I imagine that's 3 -- I imagine that that's the case. If -- if a software 4 company is going to roll out a new -- a new version of 5 software, they're likely to roll out whatever they want 6 to. 7 And it doesn't need to be independent of a 8 security patch. But as I testified before, security 9 patches don't effect the relevant user interface 10 behavior. 11 Q. All right. Now, if you could turn your attention 12 to paragraph 205, please. We'll talk about the Samsung 13 Galaxy S8. 14 A. Paragraph 205, you said? 15 Q. Yes. 16 A. In my opening report? 17 Q. Yes. 18 A. (Complies). I'm at 205. 19 Q. All right. The Samsung Galaxy S8 that you 20 inspected, you used Android version 9, correct? 21 A. Yes, I did. 22 Q. And Android version 9 was not available before 23 May 16th, 2017, correct? 24 A. That's correct. 25 Q. And did you inspect any Samsung Galaxy S8's in

53 (Pages 206 to 209)

Page 234	Page 236
1 claim that comes from Apple's final infringement 2 contentions where -- where it's the watch face is not 3 the home screen according to Apple but the -- the menu 4 screen is. 5 Q. And to be sure, is your view that the clock 6 screen on the LG Watch Style is the home screen, 7 correct? 8 A. The what? The clock screen is the home screen? 9 Q. Yeah. 10 A. Yeah. I think as I said in the -- the reply 11 report, for a -- for a watch device, wearable, a 12 wearable watch device, that -- that makes more sense to 13 me. 14 Q. And just to confirm, in your analysis of 15 Limitation 1F for the LG Watch Style, you only set forth 16 your analysis under Apple's apparent interpretation. 17 You do not set forth any analysis under what you 18 believe is the correct interpretation of the claim; is 19 that fair to say? 20 A. That's fair to say. In my reply report, I -- I 21 -- I talk about, though I think we did -- we spoke about 22 this earlier in the deposition. How the -- a watch -- a 23 clock screen, a watch face screen, makes sense as being 24 a home screen for a -- a watch device. 25 I was analyzing this under Apple's apparent	1 Q. So what part of Claim Limitation 1F is Apple 2 misconstruing under its apparent interpretation of the 3 claim? 4 A. The -- I -- I -- I -- when I'm thinking about 5 this, I'm not thinking about this as a claim 6 construction issue. This doesn't get into the 7 difference between Apple's and, you know. 8 The -- the issue of application, I think, most -- 9 more relate to widgets and controls versus, you know, 10 icons that launch applications. So here, the -- as you 11 see how the LG Watch Style operates as well as Asus 12 ZenWatch, you can swipe from a wake screen and you can 13 get to a -- a collection of -- of functions of icons 14 that launch applications. 15 And if Apple believes that that is the infringing 16 mode of the W1, where you -- you swipe in one direction, 17 you get to the main menu screen of W1, and you launch 18 those applications, then I'm just pointing out that the 19 LG Watch Style and Asus ZenWatch is doing the same 20 thing. 21 Q. So just focusing on the part where you say, 22 "Under Apple's apparent interpretation of the claim." 23 A. Yes. 24 Q. Now, all I want to understand is are you talking 25 about Claim Limitation 1F as a whole, all 150 or so
Page 235	Page 237
1 interpretation of the claim to -- to point out that the 2 mismatch that I saw between their infringement arguments 3 and their validity arguments. 4 Q. So I noticed you cited Apple's infringement 5 contentions in paragraph 293; do you see that? 6 A. I do. 7 Q. You didn't actually cite any claim construction 8 briefing or anything of that nature, correct? 9 A. I did not cite a claim construction briefing, 10 true. 11 Q. And, you know, you say "Under Apple's apparent 12 interpretation of the claim"; do you see that? 13 A. Yes, I do see that. 14 Q. What is "Apple's apparent interpretation" of the 15 claim? 16 A. Well, that -- my -- at a high-level, my 17 understanding is that you can swipe in a direction from 18 a wake screen, and get to a home screen, and the home 19 screen has various applications. And if Apple is 20 correct, then the Asus ZenWatch and the LG Watch Style 21 both disclose that. 22 Q. So is there a specific claim term or phrase that 23 you believe Apple is misinterpreting? 24 A. No, I don't think this hinges on a -- a claim 25 term or phrase.	1 words of it, or is there a specific word or phrase that 2 you think that Apple is misinterpreting? 3 A. Do you have the LG Watch Style here? The term 4 application and whether an application, you know, 5 includes -- can a control be an application? Various 6 nuances around that. But in general I'm just referring 7 to more of a macroeconomics level. You get to a wake 8 screen. You swipe in one direction. You get to a -- 9 what Apple's calling a home screen, and it has a 10 plurality of application icons. You can watch them. 11 So I don't necessarily believe that -- that -- 12 that dispute around applications enters in here. I -- I 13 see it more entering into a limitation around the widget 14 screen. 15 Q. All right. Let's turn your attention to page 60, 16 please. And this is going back to Asus ZenWatch, but it 17 applies equally to LG Watch Style. 18 A. Okay. 19 Q. The bottom of page 60, a footnote tab. You say: 20 "My presentation of opinions under Apple's apparent 21 claim construction should not be interpreted as 22 agreement with or acquiescence to Apple's apparent claim 23 construction"; do you see it? 24 A. I do. 25 Q. Was that something you wrote or something the

60 (Pages 234 to 237)

Page 258	Page 260
1 limitations around the appearance. But if you 2 do the proper thing, if a posita does what's 3 proper and looks at the -- the entire 4 specification, as well as combining it with 5 their knowledge, education, and training, they 6 would know what passes the sniff test from 7 what's a widget screen user interface and what's 8 not similar -- our, you know, similar 9 description of when we're talking about home 10 screens. 11 Q. And do the claims of the claims of the 12 '352 patent require any particular type of 13 widget to be included on the widget screen user 14 interface? 15 A. No. 16 Q. All right. Now, does the label 17 "widget" independently impose additional 18 limitations beyond those defined by the 19 surrounding claim language? 20 A. Does the name "widget" impose 21 limitations? Is that the question? 22 Q. Well, yes. Let me -- no need to 23 belabor it. Can you open Exhibit 7 again? 24 A. Was that my rebuttal report? 25 Q. The IPR declaration.	1 is not a term of art per se. But a posita would 2 understand what a widget screen is or what a 3 widget is and that it's not so broad when a 4 posita reads the patent that a widget screen 5 could be any screen at all -- to use my -- my 6 ridiculous example of, you know, an animated 7 monkey waving at you, no posita would say, yes, 8 that's a widget screen interface. 9 So that's -- in the same way that I 10 didn't say that a posita needs to have eyesight 11 in order to evaluate a user interface, I don't 12 say -- I -- I don't describe how a posita comes 13 into this analysis with their -- their skill, 14 their background, their education, their 15 training, and that they reviewed the entire 16 spec, the intri- -- intrinsic record including 17 figures that show good examples of what a widget 18 screen interface -- you know, an example of what 19 it -- what that is. 20 Q. Okay. So the monkey waving at you, 21 that's the -- the ridiculous example of -- 22 that -- that you just provided, right? 23 A. It is. 24 Q. Okay. So the -- the animated monkey 25 waving at you, it would not include a plurality
Page 259	Page 261
1 A. Okay. 'Cause I'm using my own 2 versions, so I don't -- this one isn't labeled. 3 But which page or paragraph? 4 Q. Paragraph 38, page 30. 5 A. All right. 6 Q. Right. So you write: "I also assessed 7 whether the labels wake, home, widget, and 8 control panel independently impose additional 9 limitations beyond those defined by the 10 surrounding claim language. In my opinion, a 11 posita would not have understood those labels to 12 impose any such additional limitations." 13 Do you see that? 14 A. I do see that. 15 Q. So the question is simply: "Does the 16 label widget independently impose additional 17 limitations beyond those by the surrounding 18 claim language? 19 A. Again -- and we had these extensive 20 discussions around home and home screen, but 21 widget and widget screen would be interpreted 22 the same way that -- that a posita would 23 understand what a widget is and -- and you could 24 design a screen that would -- would not pass 25 that sniff test. I keep using that term which	1 of user interface objects corresponding to 2 different applications, would it? 3 A. No. In that absurd example, it would 4 not. 5 Q. So it would not be a widget screen user 6 interface under the claims of the '352 patent? 7 A. Yeah, that would be one of the reasons 8 why, but that might not be the only reason why. 9 Q. Right. So, I mean, you're giving this 10 example about a waving monkey, but the waving 11 monkey would not be a widget screen user 12 interface? 13 A. Right. Yes, I think we're in agreement 14 there. 15 Q. Okay. Now, please turn your attention 16 to paragraph 68 of the rebuttal report. 17 A. Okay. I am at 68 of my rebuttal 18 report. 19 Q. All right. In this photograph 20 underneath 168 we see the watch status screen, 21 correct? 22 A. We do. 23 Q. It includes icons for battery level, 24 Bluetooth status, vibration mode, bedtime 25 setting, health data, and watchband tightness,

66 (Pages 258 to 261)