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

- - - - - x
LIFESCAN, INC., :
Petitioner, : IPR2023-00712
v. :
FACET TECHNOLOGIES, LLC, : Patent 8,840,635
Patent Owner. :
- - - - - X

Deposition of JOEL DELMAN
Conducted Virtually
Tuesday, December 5, 2023
11:53 a.m. EST

Job No.: 513739
Pages 1 - 68
Reported by: Debra A. Whitehead

1 Deposition of JOEL DELMAN, conducted
2 virtually.

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5 Pursuant to notice, before Debra Ann Whitehead,
6 E-Notary Public in and for the State of Maryland.

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1 A P P E A R A N C E S

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C O N T E N T S

EXAMINATION OF JOEL DELMAN	PAGE
By Mr. Strang	5

EXHIBITS MARKED IN TODAY'S SESSION
(none marked)

EXHIBITS MARKED PRIOR TO TODAY'S SESSION
(Not Attached)

DEPOSITION EXHIBIT	PAGE
Exhibit 1002 Declaration of J. Delman	9
Exhibit 1005 U.S. Patent Application No. 2004/0138588 A1	13
Exhibit 1006 U.S. Patent Application No. 2005/0131441 A1	30
Exhibit 1018 U.S. Patent Application No. 2006/0241669 A1	51

1 P R O C E E D I N G S

2 JOEL DELMAN,

3 having been duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR PATENT OWNER

5 BY MR. STRANG:

6 Q Good morning, Mr. Delman.

7 I assume you have had your deposition
8 taken before. Correct?

9 A I have, yes.

10 Q And you have had your deposition taken
11 before in a PTAB proceeding.

12 Is that true?

13 A I have had my deposition taken of course
14 in district court, some state, international --
15 the ITC. I don't know if I've had a depo taken in
16 a PTAB before or not. I honestly forget.

17 Q Okay. Well, that's quite fine. Just I
18 think the key rule is that just to remember if you
19 need a break, ask your counsel. And at the end of
20 the line of questioning we'll take a break. And
21 if there's any reason that you cannot answer any
22 questions, you know, please let us know.

1 Do you have any questions before we
2 begin?

3 A No. No, I do not.

4 Q Real quick, off the record.

5 (A discussion was held off the record.)

6 BY MR. STRANG:

7 Q So, Mr. Delman, I see you have three
8 degrees after high school, a bachelor's in
9 economics, a J.D., and a master of design.

10 Is that correct?

11 A Yes, that is correct.

12 Q And did you ever practice law?

13 A I did, for a relatively short time
14 period.

15 Q Can you give me a little overview of what
16 you did while you were a practicing lawyer?

17 A Pull my hair out and cry a lot. But
18 other than that, I -- it was a corporate and
19 securities focus in the -- in the department that
20 I was at at the firm I was at.

21 Q So it didn't have anything to do with
22 patent law directly, then?

1 A No, it did not.

2 Q Do you understand mechanical drawings?

3 A In a general sense I believe I do, yes.

4 I guess the term "mechanical drawing" can be
5 applied to many different things, so I'm not
6 exactly sure what you're referring to. But I do
7 know how to read mechanical CAD drawings and such
8 when necessary. But I'm not an engineer.

9 Q Okay. So you do not have an engineering
10 degree. That's correct?

11 A That's correct, I do not have an
12 engineering degree. I have an industrial design
13 degree.

14 Q Did you ever design a lancet or a lancet
15 cap?

16 A Yes. The -- well, when you say "design,"
17 there's a great deal of -- so let me take that
18 back. You say lancet, not a lancing device.

19 I have been involved in certain programs
20 related to disposable lancets, quite a few years
21 back. I would not recall my exact contribution on
22 those projects. But my firm had several clients

1 in that market, and I certainly participated in
2 various ways on some of those programs.

3 When you say have I designed it, I would
4 not want to take personal credit for the design of
5 a lancet on my own, no.

6 Q When you use the term "lancing device,"
7 what did you mean by that term?

8 A So when I use the term "lancing device,"
9 that would be the device which a user places the
10 lancet into for purposes of taking their blood
11 sample with that lancet. So these are usually, as
12 you're probably familiar, a spring-loaded type of
13 mechanism which shoots the blade, the lancing
14 blade, forward into the person's -- the tip of the
15 person's finger or wherever they might be taking
16 their sample from, in order to get the blood
17 sample.

18 Q Now, you said you were involved in
19 certain programs related to disposable lancets.
20 Was that -- were you in reference to the lancing
21 devices with those disposable lancets?

22 A Well, in my report we include an example

1 of a lancing device that I was involved in. So
2 that device did not include, to the best of my
3 recollection, any proprietary lancet design. My
4 recollection is that that device used lancets
5 which were already available at the time.

6 Q Can you reach over, and I've been assured
7 you have a hard copy, a printed-out copy of
8 Exhibit 1002, which is your declaration.

9 (Exhibit 1002, previously marked, not
10 attached.)

11 A I do have that next to me right now, yes.

12 Q And can you verify that it doesn't have
13 any written, any notes any other markings other
14 than --

15 A It is a clean copy. It is a clean copy.

16 Q Excellent. Thank you.

17 Can you point to me the lancet that
18 you're referring to?

19 A The lancing device that I'm referring to?

20 Q Yes, please. I'm sorry. I misspoke.

21 A So the lancing device that I'm referring
22 to, there is discussion of it beginning on Page 13

1 or there is a photograph or that's a rendering,
2 actually, on Page 14, a photograph on Page 15,
3 another on Page 16. On 17 there is an example
4 from some of the research that was done on that
5 particular device. So I suppose that -- well,
6 there's, on Page 21 there's more from the research
7 on that device. Page 23 is an exploded view of
8 the device. Page 25 is some alternate designs
9 which were developed, just various stages in
10 conjunction with that project.

11 Q So all of these references that you just
12 listed off have to do with projects that you,
13 personally, worked on?

14 A Yes, that's correct.

15 Q Okay. Do you know what an isometric
16 drawing is?

17 A Yes.

18 Q What is an isometric drawing?

19 A Hard to put that into words. An
20 isometric drawing is a drawing -- well, a
21 perspective drawing is one where you have a --
22 putting it into words is a bit tougher.

1 A perspective drawing is one where you're
2 looking at a view of an object from a
3 three-dimensional perspective as opposed to a
4 direct side-on view or top view, bottom view,
5 elevations, et cetera.

6 But in a perspective drawing the product
7 gets smaller, to put it into layman's terms, as it
8 recedes in distance from the viewer's perspective
9 or from their eye.

10 An isometric view is very similar to a
11 perspective view in that regard, except that it
12 does not recede. There's no foreshortening in the
13 isometric view, which causes lines to recede in
14 space toward -- toward a single or -- a single
15 point in space.

16 That's how I would describe an isometric
17 view.

18 Q That single point in space, would you
19 call that a vanishing point?

20 A That is one term that may be used for a
21 point in space that perspective lines would recede
22 to, yes.

1 Q Do you know the difference between a
2 one-point perspective drawing and a two-point
3 perspective drawing?

4 A In a general sense I do, yes. I can't
5 say I draw -- consciously thinking about drawing
6 in one point or two point, but -- but I am
7 familiar with the distinction, yes.

8 Q In an isometric drawing, what is the
9 angle between the X, Y, and Z axes on --

10 MR. STEIN: Objection.

11 Q -- paper?

12 MR. STEIN: Sorry, John. Objection.
13 Foundation.

14 Q You may answer.

15 A Offhand, I don't recall. I could provide
16 what I think may be the right answer, but I don't
17 prefer to guess during a deposition. I would need
18 to check.

19 As a designer, I don't really have much
20 use for knowing the exact, you know, degrees that
21 are involved in an isometric drawing.

22 Q Can you pull out Saikley Exhibit 1005 in

1 this proceeding.

2 (Exhibit 1005, previously marked, not
3 attached.)

4 A Sure. Okay.

5 Q Do you see Figure 7A in Saikley?

6 A Let me turn to that.

7 Yes.

8 Q Do you know if Figure 7A is an isometric
9 drawing?

10 A I haven't examined it to determine. In
11 looking at it at glance, I couldn't tell you for
12 sure whether or not it is or is not. My eye seems
13 to show me a perspective -- you know, there
14 aren't -- there aren't long lines in a vanishing
15 point sense that give me a great deal of clue as
16 to whether it might be drawn with some degree of
17 perspective.

18 I couldn't tell whether it is drawn
19 intentionally as perspective or in an isometric
20 manner.

21 It looks like it may have some degree of
22 perspective, though, would be my guess, if I were

1 to just glance at it without taking -- taking a
2 ruler to see.

3 Q And what do you base that statement that
4 it could have some degree of perspective?

5 A My eye, looking at the picture, looking
6 at various lines which appear to be receding in
7 space. Also, isometric drawings tend to have --
8 well, yeah, I'd say that's probably my best -- my
9 best reason for saying it looks like it may be
10 drawn with some degree of perspective, but I could
11 not be sure.

12 Q Now, you said -- you started to say
13 isometric drawings tend to have, and then you
14 stopped.

15 Now, out of the context of Figure 7A,
16 what do isometric drawings tend to have?

17 MR. STEIN: Objection. Form.

18 A Certain isometric drawings can, at least
19 in my opinion but I've heard other designers say
20 similarly, designs in general work in perspective
21 and prefer to work in perspective.

22 The reason being that perspective from a

1 design standpoint, from an industrial design
2 standpoint, provides the viewer with what most
3 designers agree is a more lifelike and impactful
4 way to depict an image.

5 Certain isometric drawings, depending on
6 what they depict and how they depict it, can
7 appear artificial in comparison from the
8 industrial design standpoint. Because when we do
9 view things as human beings, we don't think about
10 it when we look at something in three dimensions,
11 but we see things in perspective. That's how the
12 human eye and the human brain work.

13 So I have heard and read that isometric
14 drawings run counter to the way a brain processes
15 things moving in space, such that they can look
16 somewhat artificial or -- or unusual in comparison
17 to a nicely drawn three-dimensional perspective
18 view.

19 Q Turning back -- pardon me. Turning back
20 to Figure 7A in Saikley, which again is Exhibit
21 1005 in this proceeding, do you see what is called
22 cylindrical collar 58?

1 A I see 58. In Figure 7A it is not labeled
2 cylindrical collar. But if you like, I'll take
3 your word that that's what it's called in the body
4 of the patent.

5 Q Well, we can call it Item 58. It kind of
6 doesn't matter --

7 A I just wanted to note it doesn't have a
8 callout the way certain of the other items, you
9 know, aspects of the drawing do.

10 Q Of course. That's quite apparent.

11 Now, what shape is Item Cylindrical
12 Collar 58?

13 A So when you ask me what shape it is, are
14 you asking me what shape the drawing is intending
15 to represent, or are you asking me what shape it
16 was actually drawn in?

17 Q Let's start --

18 A Those are two different things.

19 Q Exactly. Let's start with the first one.

20 What shape is the drawing intending to
21 represent?

22 A The drawing is intending to represent,

1 based on what I would assume from you're calling
2 it a cylindrical collar, which I'm guessing may
3 have come from the body of the patent, from
4 looking at some of the other patent figures, which
5 provide a POSITA with guidance that there are
6 other cylindrical shapes of that nature shown in
7 other figures, I'm guess -- I would assume as a
8 POSITA that it is depicting a circular or a very
9 shallow cylinder in form.

10 Q Okay. So the -- now let's go to the
11 second part. What are you asking me -- you said
12 you're asking me what shape it was actually drawn
13 in.

14 A Yeah.

15 Q My question is, is looking at that
16 cylinder, the base of that cylinder, what shape is
17 that actually drawn in?

18 MR. STEIN: Objection. Form.

19 A I am -- it appears to be an ellipse. And
20 I'm guessing that the -- that the artist who drew
21 the figure used an ellipse template to draw that
22 particular shape.

1 Q And it's -- and -- strike that.

2 And based on your earlier statement that
3 it's representing a cylinder, that is actually
4 representing a circle.

5 Is that correct?

6 MR. STEIN: Objection. Form.

7 A So 58 is not just that bottom surface.
8 If you're asking me about the entirety of 58, 58
9 is a three-dimensional form, which has vertical
10 walls with an elliptical form at its bottom
11 portion.

12 If you're just asking me about what was
13 used to draw that shape, as I said, it appears to
14 me that an ellipse template was utilized to draw
15 the ellipse at the bottom of 58. It appears that
16 an ellipse template, a shallower ellipse, was also
17 drawn at the top surface or top edge of 58. And
18 then, you know, straight lines were drawn between
19 them.

20 Q Well, now focusing on just the base of
21 Cylinder Collar 57 which is represented by that
22 ellipse.

1 Is that correct?

2 MR. STEIN: Objection. Form.

3 A No, that's not -- not correct. It's
4 represented by two ellipses, as well as two
5 lines -- two what appear to be straight lines
6 connecting those ellipses at either side, as well
7 as some, you know, shading or contour lines that
8 have been added to its outer surface. It's not
9 just an ellipse.

10 Q You said "it's represented by two
11 ellipses." What did you mean by "it's represented
12 by two ellipses"? What is the "it's"?

13 A You have asked me, I believe we're
14 talking about cylindrical collar, as you're
15 calling it, 58. Fifty-eight is pointing to a
16 cylindrical form which -- and perhaps I should ask
17 you to put this up on screen and highlight.

18 Because, you know, we're talking about
19 something where I'm looking at the image on my
20 end, you're speaking about the image. It wouldn't
21 do us -- either of us any favors if we happen to
22 be talking about different things, would it?

1 So can I ask you, can you put this
2 drawing up on screen and you can highlight or
3 point to, you know, particular things you're
4 talking about? Because the last thing I'd want to
5 do is give you a response about something that I
6 think you're talking about, when you're actually
7 asking me about something else.

8 Q We can put it up on screen, but keep in
9 mind that the record will not have an image of
10 that right away. But we can do that.

11 MR. STRANG: Adam --

12 A I just want to be sure we're talking
13 about the same thing, Mr. Strang, that's all.

14 MR. STRANG: Alan, can you put up Page 5
15 of Exhibit 1005. Can you just zoom in on Figure
16 7A, Alan.

17 A Okay. So if you could just use your
18 cursor to point to anything in particular that
19 you're asking me about. You know, you don't need
20 to highlight it or, you know, take out the pencil
21 kind of thing. Just so I'm sure we're talking
22 about the same thing.

1 MR. STRANG: Alan, can you -- I think can
2 you give me control of your cursor, or it has to
3 be me -- or it has to be you?

4 Q Can you see my cursor --

5 A I can. That's perfect. Thank you.

6 Q So I'm now putting my cursor on the 58.

7 A Yes, I see that.

8 Q And that arrow goes to one of the two
9 vertical lines that you -- or pardon me, one of
10 the two straight lines that you discussed earlier
11 as connecting the two ellipses. Correct?

12 A That's correct. It would be my
13 understanding, however, based on this figure as
14 well as looking at, you know -- you know, I have
15 not looked into the patent to see if 58 is only
16 referring to that outer surface of the cylinder or
17 if it is the entirety of what forms that cylinder,
18 meaning both the top and bottom surfaces and edge
19 as well.

20 I am assuming, without looking at the
21 patent, that 58 points to the entirety of that
22 cylinder, and that seems to be what you were

1 asking me about. If you're only asking me about
2 that outer surface that runs circum -- you know,
3 around the edge of that cylinder, please let me
4 know.

5 Q Will do. For the sake of this
6 discussion, I am discussing the solid
7 three-dimensional cylinder that 58 is pointing
8 to --

9 A Very good.

10 Q -- being its base, its top, and the
11 circumference around it.

12 A Thank you.

13 Q And by "its base," I'm now pointing to
14 its base, which is the ellipse that you referred
15 to earlier, but on the portion closest to the
16 label Figure 7A.

17 A Uh-huh.

18 Q Do you see that?

19 A Yes, I do.

20 Q And is that ellipse portraying an ellipse
21 or a circle?

22 MR. STEIN: Objection. Form.

1 THE WITNESS: I'm sorry, I spoke over
2 you, Alex.

3 MR. STEIN: Objection. Form.

4 A That ellipse is portraying what I believe
5 to be a circular shape, but they have utilized an
6 ellipse to do so in this view, which is either a
7 perspective view or potentially an isometric view.

8 Q And it appears as an ellipse or an oval
9 because it's at some angle to the paper.

10 Is that correct?

11 MR. STEIN: Objection. Form.

12 A That's correct.

13 Q I didn't hear your answer, I'm sorry.

14 (Discussion off the record with the court
15 reporter.)

16 Q Now I'd like to direct your attention to
17 Item 82.

18 Do you see Item 82?

19 A Yes, I do.

20 Q And can you tell me -- and please feel
21 free to use your clean hard copy of Saikley. Can
22 you please tell me what Item 82 is?

1 A I just want to see if it's labeled
2 differently in one figure from another because I'm
3 not looking at a description of 7A here; it seems
4 to be 7C.

5 Q Yeah, I think you'll need to look up a
6 paragraph. I think it's Paragraph 50 towards the
7 bottom.

8 A Oh, yes. Okay. It is labeled pretty
9 similarly.

10 They call 82, or the patent refers to 82,
11 a hollow cup or solid, quote, pin cushion, end
12 quote, type area 82 can be provided at the
13 opposite end of the cap.

14 Q What shape is being portrayed by Item 82?

15 A I would not be able to tell you from 7A
16 what that shape is. It's somewhat ambiguous the
17 way it is drawn and the angle at which it is seen.

18 Q On Figure 7A, do you see End Cap 78?

19 A Yes.

20 Q Do you know -- or let me scratch that.

21 Would a POSA understand how the user
22 grips End Cap 78 in Figure 7A?

1 A In the context of looking at Figure 7A,
2 reading Figure 7A, with the various textual
3 support within the body of the patent description,
4 et cetera, I believe that a POSA would understand
5 how 7 -- 7A can be held.

6 I mean, of course, people can hold things
7 in all sorts of ways. I believe it can be
8 understood how it is intended to be held.

9 Q And how would it -- was it -- strike
10 that.

11 And how would it be intended to be held,
12 as you just stated?

13 A Well, I think -- let me see if there's
14 any specific description within the body of the
15 patent that enlightens a POSA as to what was
16 intended within the body of the patent.

17 I don't know that it specifies in words
18 this type of grip within the body of the patent.
19 But reading the description of the patent, the
20 intention for this large cap to make handling
21 easier in the -- to solve the known problem of
22 those with lower manual dexterity and visual --

1 sometimes visual impairment in handling something
2 like this, a POSA would understand that this cap
3 was likely intended to be held in what I would
4 call, and what others might also call, a key grip.
5 Which would be between a thumb and the side or pad
6 of a facing finger, much the way you might grab
7 your house key when you are opening your door.

8 Q Could you turn to Page 80 of Exhibit
9 1002, your clean copy of your own declaration.

10 A Uh-huh. Okay.

11 Yes, I'm there.

12 Q And do you see the figures you have
13 marked -- I guess it's technically in Paragraph
14 79, but it's on Page 59 of your declaration, the
15 paragraphs you have marked -- or pardon me, the
16 figures you have marked demonstratives?

17 A Hold on one second. I apologize. I
18 thought you said Page 80.

19 Q I apologize. I did say Page 80. I meant
20 to say Paragraph 80 --

21 A No problem.

22 Q -- Page 59.

1 A Okay.

2 Yes, I see that demonstrative there.

3 Yes.

4 Q Now, you recently stated that Figure 7A
5 of Saikley would be held in the -- I think you
6 said "key grip." And is that key grip shown in
7 the demonstrative here?

8 A Yes, that would be a version of a -- of a
9 key grip.

10 Q And that's the key grip you were
11 referring to just now?

12 A Yes. Though, as I believe I stated, you
13 know, people give name -- designers give names to
14 things to make it easier to discuss in, you know,
15 presentations and design conversations, et cetera.
16 That is certainly a key grip, as shown in the
17 photograph there.

18 That isn't to say, however, that another
19 person might grab a key slightly differently or
20 grab the tab of Saikley slightly differently,
21 rather than using the side of their finger as you
22 see in the demonstrative in that photo.

1 I certainly know people with lower
2 dexterity in particular who might grab a key
3 between the pad of their thumb and more the pad of
4 their index finger, or even sometimes utilizing
5 three fingers, the pad of both their index finger
6 and their third finger on the opposite side of
7 their thumb.

8 So I don't want to make it sound as if
9 that's the only way to grip a surface like this or
10 a form like this, because a designer would never
11 intend something to only be able to be comfortably
12 held in one singular manner that way.

13 Q Earlier you said, quote, "I believe it
14 can be understood how it is intended to be held."
15 And then I asked you, "How would it be intended to
16 be held as you just stated." And I thought you
17 said, "It would be intended to be held with a key
18 grip."

19 Did I accurately cover that, or do you
20 want to explain it further?

21 MR. STEIN: Objection. Form.

22 A That is what I said. And in further

1 questions about the grip shown in the
2 demonstrative, I simply said that when you call
3 something a key grip and you're showing me a
4 demonstrative showing one hand, one individual's
5 hand turning a key, I merely added to that that a
6 key grip is not an absolute singular way of
7 holding something of that form as shown in that
8 demonstrative. That someone with impairment in
9 their grip or arthritis in their fingers could
10 hold it utilizing other versions of that same
11 general way of holding something that I discussed
12 with you just now.

13 Q So just to close the loop on this, when
14 you said "key grip" originally as far as the
15 intent of the design, what did you mean?

16 A I meant a grip that -- to point you to
17 the demonstrative you've shown me -- is generally
18 in the form of the demonstrative on Page 59. With
19 the caveat that there is some allowance for
20 flexibility in the way someone would hold a -- a
21 large flat handling tab of that nature.

22 You want -- you seem to want to -- me to

1 say that a key grip -- unless I misunderstand your
2 question -- is one absolute single thing. It is a
3 type of grip which may look somewhat different
4 from the demonstrative you've pointed me to on 59,
5 depending on the individual and depending on the
6 actual size and shape of -- of what they're
7 holding on to.

8 Q Could you please turn to your clean copy
9 of Iio, Exhibit 1006.

10 A Sure. Hold on one second.

11 Okay.

12 (Exhibit 1006, previously marked, not
13 attached.)

14 Q And just to make the record clear,
15 because I'm not sure how to pronounce this
16 individual's name, but it's spelled I-I-O. And I
17 have been saying it Iio.

18 Do you have any preferred pronunciation,
19 Mr. Delman?

20 A I have been calling him just about the
21 same, so that's fine. Thank you.

22 Q Okay. Could you turn to Figures 9A

1 through 9C in Iio.

2 A Okay.

3 Q In Figure 9A, do you see the drawing of a
4 finger? And by "finger," I'm not limiting it to
5 fingers other than the thumb.

6 Do you see a drawing of one of the -- of
7 a human finger of any of the five on the hand?

8 MR. STEIN: Objection. Form.

9 A In Figure 9A there is a depiction of a
10 finger. I would need to look in the body of the
11 patent to see whether or not that is called out in
12 the patent as a thumb or as something else. I
13 don't recall how it is described, if at all.

14 Q And Figure 9B, do you see, is the cap --
15 is the lancet cap still installed on the lancet?

16 MR. STEIN: Objection. Form.

17 A In Figure 9B, yes, the cap appears to
18 still be installed on the lancet.

19 Q And in Figure 9C, does that depict the
20 cap after it's been removed?

21 A Yes, Figure 9C illustrates with an arrow
22 that the cap has been pulled, pulled back to the

1 left in this figure, revealing the lancet blade.

2 Q Would a person of ordinary skill in the
3 art understand how the user would grasp the lancet
4 cap?

5 A I don't totally understand your question.
6 Are you asking if the user would
7 understand how to grasp a lancet cap from the
8 three figures 9A, B, and C that you've just asked
9 me about, solely from those figures?

10 Q No. My question is, would a person of
11 ordinary skill in the art, reading Iio as a whole,
12 understand how the user is intended to grab the
13 lancet cap when removing --

14 MR. STEIN: Objection. Objection. Form.

15 A Yes, they would.

16 Q And how would a person of ordinary skill
17 in the art understand -- let me rephrase that.

18 And what would the person of ordinary
19 skill in the art's understanding of the
20 intended -- user's intended grasping of the cap?

21 A That they would grasp the cap on -- I
22 guess in label -- excuse me, in Figure 9A through

1 C, there is an area marked 91. Let's see what
2 they call that.

3 Okay. So from -- from reading Iio in
4 conjunction with the figures and the description,
5 a POSITA would understand that the user would grip
6 the lancet cap around the outer surface of the
7 cylindrical gripping portion, which -- I don't
8 want -- 91 is not labeled the way I would -- if
9 you were to take a look at another image in --
10 another figure in Iio, if you were to take a look
11 at Figure 8, for example, you would see this outer
12 circumferential surface of this gripping area,
13 this cylindrical gripping area, between the
14 primary and secondary sheaths, and they would grip
15 it on that -- on that area.

16 Q Just to make sure we're on the same page,
17 you're talking about on Figure 9B, for example,
18 where 91 is labeled. I know 91 is referring to
19 the whole cap. But if I follow that squiggly
20 line, it's pointing to the largest cylinder of the
21 cap.

22 Is that correct?

1 A That's correct. I believe we are talking
2 about the same portion of the cap.

3 Q And that, what you called a gripping
4 area, the cylindrical gripping area to be precise,
5 that's the words you used, how would the user grip
6 the cap on that gripping area?

7 A This would be the label I might call it
8 is a tripod grip or a version of a -- of a twist
9 grip. Such that they would use two or three
10 fingers to -- their thumb, index finger, and
11 possibly their third finger, to place on that
12 outer cylindrical surface for purposes of twisting
13 and pulling the cap off of the lancet blade.

14 Q What would be the orientation of the
15 thumb?

16 A That's a very difficult question to
17 answer without a pencil and paper or a photograph
18 to refer you to. How can I verbally describe the
19 orientation of -- of a thumb? I honestly am not
20 sure how to describe it verbally in a way that
21 might not be misconstrued or misunderstood.

22 Yeah, I'm not sure if I have any images

1 in my declaration that refer to -- to that sort of
2 a grip, a demonstrative that you might point me to
3 to discuss using as a reference.

4 Q Well, yeah, let's take this piece-wise,
5 and maybe we can get there. Because neither of us
6 want any ambiguity in your testimony. I just want
7 to know what your opinion is.

8 Let's go to Page 59 again of your -- a
9 clean copy of your exhibit -- of your declaration,
10 pardon me.

11 A Okay.

12 MR. STEIN: Page or paragraph? I know we
13 had some confusion earlier.

14 MR. STRANG: Page 59.

15 A Yes, I'm on Page 59 at the moment, yeah.

16 Q And do you see the picture of the person
17 holding the key?

18 A Yes.

19 Q And the axis of their thumb is roughly
20 parallel to the axis of the key itself. Correct?

21 A In that photograph, I agree that is
22 roughly the case, yes.

1 Q Would a person grab the -- what you
2 referred to as the cylindrical gripping handle of
3 Iio's cap with their thumb and that same
4 orientation, with the length axis of the thumb
5 roughly parallel to the axis, the center of the
6 cylinder?

7 A That is one way that they might. But as
8 I discussed, when discussing the grip of a key in
9 a, quote/unquote, key grip, different users,
10 particularly those with different ability levels
11 or disability levels with respect to grasping
12 things, arthritis in certain fingers, et cetera,
13 might grasp Iio in a manner where their thumb was
14 more perpendicular to that same axis you've just
15 discussed. It's certainly possible that they
16 would.

17 Their thumb would absolutely be on that
18 outer surface of the cylinder, as we've discussed.
19 But as to its exact orientation, I'm sure that if
20 I were doing a design project and interviewing and
21 filming users with a prototype shaped like Iio, we
22 would find some people grasping it as they do on

1 Page 59 in that orientation of their thumb, and
2 others grasping it with more of an angular
3 orientation to that long -- longitudinal axis that
4 you've described.

5 Q When you say "a more angular
6 orientation," what do you mean by that?

7 A Well, you stated, I believe, that page --
8 the photograph on Page 59 depicts a user's thumb
9 that is fairly parallel to the longitudinal axis
10 of that key, or parallel to the blade of the key
11 that's going into the lock.

12 When I say "a more angular orientation,"
13 it would be less than parallel. So there may be
14 people who would grip the cylinder of Iio using a
15 thumb that is fairly parallel to the long axis of
16 Iio, but there are others who might do so with
17 less than a parallel angle -- less than a parallel
18 orientation to the way their thumb lies on that
19 surface.

20 So again, that's why industrial designers
21 make prototypes, that's why industrial designers
22 test prototypes and watch people using them;

1 because we see certain variability in the way
2 people hold things based on their abilities and
3 other factors.

4 Q So looking to a person of ordinary skill
5 in the art understanding of Iio and its design,
6 how would the -- would the user be grasping it
7 with the thumb in the same orientation as in the
8 key?

9 MR. STEIN: Objection. Asked and
10 answered.

11 A Unless I'm misunderstanding your
12 question, it seems to be the one I just answered,
13 but perhaps I can clarify a bit.

14 As I said, I believe that a POSITA would
15 expect that many users would have their thumb on
16 that outer cylindrical surface of Iio in a similar
17 orientation to the key on Page 59. But that other
18 users might have their thumb at a more -- more of
19 an angle rather than parallel to that longitudinal
20 axis.

21 There are even some users who may, due to
22 their abilities, et cetera, have their thumb in

1 a -- in a manner which is almost more
2 perpendicular to that longitudinal axis. I
3 haven't tested Iio with users of lancets, so I
4 could not tell you.

5 But I am telling you that I cannot say
6 and a POSITA who understands the way people use
7 and hold things would not say that the only way
8 they're going to see that thumb oriented is the
9 way it's shown on Page 59.

10 Q Now, when you say "more perpendicular,"
11 of course we're dealing with three dimensions, and
12 more perpendicular can be the person coming at it
13 from a slightly different angle, or it could be
14 that if you look at the picture on Page 59, it's
15 rotated in the plane of the paper itself so that
16 the person's coming from, say, underneath and the
17 thumb is oriented in a way so that the width of
18 the thumb is basically parallel to the length of
19 the key handle.

20 Do you follow what I'm saying?

21 A I do. And I appreciate the way you're
22 trying to describe it, Mr. Strang. Maybe I can

1 offer another analogy to describe visually what
2 I'm saying. And again, it is somewhat challenging
3 to talk about pictures and words when, you know,
4 one can't draw something on the picture or, you
5 know, point to something.

6 Look at the user's thumbnail, if you
7 would, on Page 59?

8 Q Yes. Thank you.

9 A You'd agree that that thumbnail, the
10 center of that thumbnail, if you would, is
11 pointing directly -- or pretty much directly at
12 the lock that the -- that the -- that the key is
13 inserted into. Yes?

14 Q Correct.

15 A Okay. So let's pretend or assume that
16 that is 12 o'clock, so to speak, on a clock face.

17 Q And the clock face is parallel to the
18 paper itself?

19 A To the paper? I'm not sure. The clock
20 face is -- the clock face is the flat surface of
21 that key. Okay?

22 Q Okay. Got it.

1 A And there's -- at 12 o'clock on that
2 clock face is where the key is entering that lock,
3 and pretty much where that fingernail is pointing.

4 Right?

5 Q Yes.

6 A So I say that the user might hold this
7 grip of Iio with more of an angle -- at more of an
8 angle rather than parallel to its longitudinal
9 axis.

10 What I mean is that their fingernail,
11 instead of pointing to 12 o'clock, would be
12 pointing more to perhaps 11 or 10 o'clock. Nine
13 o'clock would be perfectly perpendicular to that
14 axis, if you would. I suppose there may be
15 someone with certain -- certain level of comfort
16 that might hold it completely perpendicular at 9
17 o'clock with their fingernail pointing that way.

18 But what I'm saying is, there may be a
19 range of fingernails pointing to 11 o'clock or 10
20 o'clock and everything in between. I don't
21 believe that a POSITA would understand that they
22 always have to have a thumb pointing at 12

1 o'clock. That would be an unreasonable
2 expectation of any -- of any user.

3 Q What would the POSITA design for with
4 regard to the orientation -- I think I got -- I'm
5 sorry. It didn't come out smoothly.

6 What would the POSITA design for with
7 regard to that orientation of the thumb?

8 MR. STEIN: Objection. Form.

9 Q You can answer.

10 A So this is something of a hypothetical in
11 the sense that I am -- I am not designing -- I
12 have not designed a -- Saikley, I have not
13 designed that object.

14 But to try to get into the head of a
15 POSITA who did, and a good designer designs with a
16 certain degree of flexibility in mind for a range
17 of users who are going to be using this product.

18 They would understand that the gripping
19 surface is as I've described, that outer
20 cylindrical form. But the POSITA would -- would
21 be motivated to make that form sufficiently long
22 in its longitudinal -- so when we're talking about

1 a cylinder, we're talking about a cylinder -- and
2 I'm going to talk with my hands on the screen
3 here. We're talking about a cylinder that is
4 somewhat longer than it might be otherwise.

5 By adding additional length to that
6 cylinder, it provides the necessary flexibility in
7 the way a user would grab onto that surface, as
8 opposed to a surface which was not long enough,
9 which would require a user to cram their finger on
10 in a certain very particular way, which is not
11 what designers generally want, to force any user,
12 let alone one with limited manual dexterity, to
13 do. You want to provide them with a surface
14 that's long enough to do exactly what we've been
15 talking about.

16 If they feel comfortable pointing their
17 fingernail 12 o'clock, then they've got the
18 surface area to do that. If they feel more
19 comfortable grabbing it in a way where their
20 fingernail points to 10 o'clock, the surface area
21 accommodates that as well.

22 So a POSITA would provide a sufficient

1 surface area in the length of that grip to allow
2 for it to be held in a general way that we've been
3 discussing. It's the same type of a grip, but
4 with some variability -- I've been using the word
5 "flexibility," I'll use the word "variability"
6 instead -- in the -- in the manner that a POSITA
7 would expect a large number of people with
8 different abilities and different size hands to
9 grab onto it.

10 Q Now, you said, By adding additional
11 length to a cylinder so that it is somewhat longer
12 than it might be otherwise.

13 What is the relative ratio between the
14 diameter of the cylinder and the length of the
15 cylinder that you're talking about?

16 MR. STEIN: Objection. Foundation.

17 A You mean in the hypothetical that I just
18 responded to?

19 Q Yeah. Because we have been talking about
20 Iio. Correct? Which has a cylindrical gripping
21 area in your terms.

22 Is the cylinder longer or shorter than

1 its diameter?

2 MR. STEIN: Objection. Form.

3 A Let me just turn to the Iio section in my
4 report for a moment, if I can.

5 Q Certainly.

6 A So I'm not exactly understanding what
7 proportions you're asking about. If you could
8 repeat the question or maybe expand on it just a
9 bit.

10 Q Sure. Now, a cylinder has a diameter and
11 a height or length, depending on its orientation.

12 Right?

13 A Yes. Or as I believe the patent may
14 refer to, to a length and a span.

15 Q So a cylinder has a span.

16 Is the span the diameter?

17 A Yes, I think we should, rather than
18 calling it a height, that can be a bit confusing
19 in -- when you're talking about a length of a
20 cylinder and then a separate height. I think if
21 we could use the terms the length of the cylinder
22 being the -- the length that is parallel to the --

1 the long axis that we've been speaking about on
2 the lancet, and the span being its diameter or
3 width.

4 Q Now, looking at your Figure 9C, you have
5 in your declaration, Page 115.

6 Do you see that? You've got an annotated
7 version there.

8 A Yeah, let me just turn to that.

9 So Paragraph 115?

10 Q Page 115.

11 A Page 115. Okay.

12 Yes. So I see that's a -- the side view
13 showing 91, yes, in green, the gripping handle
14 portion.

15 Q And 91, that green gripping handle
16 portion, it has -- it is representing a cylinder,
17 but in 2-D so it looks like a rectangle. Correct?

18 A That's correct.

19 Q And which is larger, the diameter of that
20 cylinder or the length of that cylinder?

21 A As shown in 91, the length of that
22 cylinder is larger than the diameter of that

1 cylinder.

2 Q Now, going back to Page 59, which we
3 talked about at length, that's the one with the
4 demonstrative in the key and also Saikley.

5 Correct?

6 A Correct.

7 Q Now, you said earlier that Iio -- and
8 pardon me if I -- I misparaphrase you. Feel free
9 to correct me. But that a person of ordinary
10 skill in the art would understand that Iio's
11 designed for various different grips. Correct?

12 MR. STEIN: Objection. Form.

13 A I think that is too generous a
14 paraphrase, in the sense that it is not -- it
15 doesn't include the accuracy that I had in my
16 response, which is Iio is designed to be gripped
17 on a certain area, in a certain way. But within
18 that there is a range. You are asking me for some
19 very specific -- you are asking me some very
20 specific questions about the orientation of the
21 user's thumb. And my response is, they may orient
22 it differently, as we've just discussed at some

1 length.

2 That isn't a different type of a grip.
3 It isn't holding it in a different place. It's
4 simply accommodating the way users will have some
5 degree of variance within any given grip amongst a
6 user group, depending on their abilities, the size
7 of their fingers, et cetera, et cetera.

8 For example, just to give you an analogy,
9 if you have a pair of scissors, most people grip a
10 pair of scissors, I mean, in a similar way. But
11 if you actually look at how people grip those
12 scissors -- and I've designed scissors before, and
13 watched people use them -- there is a variance
14 within -- there's a range within that standard
15 grip, so to speak, that you can expect users to
16 hold things in.

17 And that's what I said. I didn't say
18 that Iio would be designed for all kinds of
19 different grips. It's designed to be gripped in
20 the way I described, with the degree of variance
21 that we've just discussed.

22 Q That's the part that I'm trying to focus

1 on. Exactly can you bound that degree of
2 variance? I mean, how --

3 A I'm sorry, I didn't quite hear the
4 question.

5 Q You just mentioned a degree of variance.
6 What are the bounds of your degree of variance?

7 MR. STEIN: Objection. Form.

8 A I have not developed any bounds. I'm
9 speaking about this in a very hypothetical way, in
10 a general sense, to describe to you how a POSITA
11 would understand the way this is gripped. I have
12 not developed any bounds for that degree of
13 variance, nor without engaging in an intensive
14 design program for which such bounds were required
15 would I be able to do so.

16 MR. STRANG: I notice we've been going
17 for about an hour. Alex, do you mind if we take a
18 break? I'm sure your witness needs one as bad as
19 I do. Or I hope -- I suspect he does.

20 THE WITNESS: No problem. I appreciate
21 that.

22 (A recess was taken.)

1 BY MR. STRANG:

2 Q Thank you, Mr. Delman.

3 During the short break we just came back
4 from, did you talk to counsel Alex Stein during
5 the break?

6 A No, I did not.

7 Q Did you talk to anybody else?

8 A No, I did not.

9 Q Could we go back to your declaration, the
10 clean hard copy that you have, Exhibit 1002.

11 A Okay.

12 Q And could you go to Page -- page, not
13 Paragraph -- 88.

14 A Okay, I'm there.

15 Q And do you see where you've reproduced an
16 annotated Stout's Figures 8A and 8B?

17 A Yes.

18 Q Now, in Figure 8B, that is with the cap
19 and the lancet inserted into the device. Correct?

20 A Yes.

21 Q How does the user -- strike that.

22 Would a person of ordinary skill in the

1 art understand how the user grasps that cap to
2 pull it out?

3 A I believe that they would. I'd like to
4 turn to Stout and see what Stout may say in
5 particular about it, the patent itself.

6 Q Sure thing. I believe you should have a
7 clean copy of Stout, which is marked in this
8 proceeding as Exhibit 1018.

9 A I do, yes. Figure 8.

10 (Exhibit 1018, previously marked, not
11 attached.)

12 A So the patent itself describes what it
13 calls a removal surface, which it's labeled as
14 145, being positioned on the free end of its
15 upright, and the lancet removal opening is
16 preferably correspondingly T-shaped -- end cap --
17 cap -- wedge or a pen which is inserted ...

18 Okay. Yes, I believe that a POSITA would
19 understand how a user would be expected to grasp
20 and remove the lancet cap here.

21 Q And what would that understanding be?

22 A It appears that there is this removal

1 surface that's generally labeled 145. But
2 without -- maybe we could put this up on screen
3 and -- yeah. I really do dislike talking about
4 pictures in the abstract. I think it just allows
5 for way too much possible confusion.

6 So if you'd like to put these up on
7 screen.

8 THE WITNESS: And perhaps I can have
9 control of the cursor, Alan, so that I can point
10 to things as I'm speaking?

11 MR. STRANG: Yeah, I agree. Alan, if you
12 could put up Exhibit 1002, Page 88, please.

13 Yeah. If we could just zoom in on those
14 pictures 8A and 8B next to each other, that way we
15 can see them in context. And let me know once
16 Mr. Delman has control of the mouse.

17 A/V TECHNICIAN: He has control.

18 MR. STRANG: Okay. Thank you, Alan.

19 A Thank you.

20 So are you able to see my cursor, which
21 is now on Figure 8B, kind of making a little
22 circle around 144 here?

1 Q Actually, all I see is a cursor that's
2 perfectly still to the right of 140 and above, and
3 above the uppermost red dot, the dotted line
4 marked S.

5 A I'll tell you what. In case there's a
6 delay, I'm placing my cursor right on the Number
7 144 of Picture 8B. Is that where you see it?

8 Q No. It hasn't moved.

9 (Discussion off the record; technical
10 difficulty.)

11 Q Yeah, now there is a delay, but I do see
12 your cursor.

13 A Okay. And right now I've left it on 144,
14 just right on top of the number on Figure 8B on
15 the right there.

16 Is that where it's sitting at the moment
17 or ...

18 Q Not on my screen.

19 MR. STRANG: Alex, is it there on your
20 screen?

21 MR. STEIN: It seems like there is a bit
22 of a delay, but it comes and goes, so it's a

1 little hard to tell.

2 (Discussion off the record with the A/V
3 technician.)

4 A Okay. So if you could please repeat the
5 question for me, Mr. Strang.

6 Q Yeah. You stated that a person of
7 ordinary skill in the art would understand how a
8 user would grip the lancet cap in Stout to remove
9 it in Figure 8B.

10 And my question was, and what would that
11 understanding be?

12 A So from my read of the patent description
13 of these figures, in conjunction with the figures,
14 you have this -- they call it a curved surface. I
15 would call it an angular surface. And I'm kind of
16 running my cursor back and forth on top of this
17 triangular form you see here.

18 Q Yes.

19 A So it seems that the patent describes
20 this surface of the triangle -- and my cursor is
21 now resting on the upper surface here -- as useful
22 in the grip. So I believe that you would have a

1 thumb placed in general on this side of the -- of
2 the cap. And you would have at least an index
3 finger, possibly a second finger, on the opposite
4 side, squeezing.

5 But that this surface, this angular
6 surface here, would be useful in placing and
7 pushing the lancet into place in the device
8 through the device opening. And that to remove
9 the lancet would be done with the same type of a
10 grip. And my understanding would be that this
11 opposite angled surface here can be useful for
12 improving the leverage or purchase that the user
13 would have on this cap as they twist and pull.
14 But by offering this surface to pull against, I
15 believe a POSITA would understand that the
16 intention there is to provide a greater security
17 during that aspect of the operation.

18 Q Okay. Thank you.

19 MR. STRANG: We can put the figure down.
20 I'd like to move on to the next topic.

21 Q Mr. Delman, you said that you did have
22 some experience in at least in projects involving

1 lancets, including the device.

2 Are you aware of the Delica and the
3 Delica Plus lancets?

4 MR. STEIN: Objection. Form. Scope.

5 A I am aware of them certainly through my
6 engagement on this matter. Whether I was aware of
7 them at the time of the project, I -- at this
8 moment I don't recall.

9 Q Do you recall if you were aware of them
10 at the time of the drafting of your declaration?

11 MR. STEIN: Objection. Form.

12 I caution the witness to be careful not
13 to discuss any privileged communications.

14 Q You can answer the question insofar as
15 whether or not -- yes or no whether or not you
16 were aware of the Delica lancet and the Delica
17 Plus lancet.

18 A I certainly looked at a wide range of
19 lancet -- lancets and lancing devices at the time.
20 I am cautioned by Mr. Stein's warning to be
21 careful about certain privileged conversations or
22 exchanges of information between myself and

1 counsel.

2 So I would prefer to just leave the
3 answer at that. I was aware of a great many
4 lancets at the time.

5 Q And you're not willing to confirm whether
6 you were aware of the Delica or the Delica Plus?

7 MR. STEIN: Same objections.

8 A I am willing to confirm that from my
9 personal -- I would certainly say that from a
10 personal standpoint I have seen and had seen these
11 lancets prior to my declaration.

12 I am not discussing anything with respect
13 to conversations or disclosures between myself and
14 counsel in saying that.

15 Q Agree. And I don't want to get into
16 that. I just want to know whether or not you had
17 seen them. And you say, yes, you have seen the
18 Delica and the Delica Plus lancets. Correct?

19 A Yeah. Correct.

20 Q And when you say you have seen them, do
21 you mean you have seen one in real life or you've
22 seen a picture of one?

1 A I had seen them in real life.

2 Q Can you estimate the size of the Delica
3 lancet?

4 MR. STEIN: Objection. Form. Objection,
5 scope.

6 A No, I'm bad with those kinds of things.
7 Someone asked me the other day to like -- about a
8 car. And I know cars really well. And they said,
9 about how long is that C-30? I'm like, I really
10 couldn't put a number on it for you. I've always
11 been one to want to take my calipers out or take a
12 ruler out before measuring something. I couldn't
13 give you an estimate.

14 Q Can you turn to your declaration, Exhibit
15 1002, and Paragraph 103, which is on Page 74.

16 A Page 74. Okay, I'm on Page 74.

17 Q And do you see in Paragraph 103 where
18 you're discussing Saikley and you state --
19 discussing Saikley. And you said, quote, Noting
20 that it is, quote, made much larger than usual to
21 aid handling, end quote of Saikley, and also end
22 quote of your declaration.

1 What does Saikley mean there by larger
2 than usual?

3 A Well, I think I'm going to -- while I
4 appreciate the quote that I've placed in my
5 declaration, given your question I think the best
6 thing to do is to turn to Saikley and make sure
7 I'm reading that in its entire context.

8 Q Agree. And please do. Just so the
9 record is clear, you've got your hard copy, the
10 clean copy of Saikley, which is Exhibit 1005.

11 A Correct. And it looks like that quote
12 comes from Paragraph 49. Am I correct? I don't
13 have that page open right -- is that correct,
14 Mr. Strang? Is it --

15 Q That's what the cite says. I'm going to
16 double-check. I think it's probably in Paragraph
17 50, because Paragraph 49 is the heading.

18 A Gotcha. You're right about that.

19 Well, you're right. Paragraph 49 states,
20 Large lancet cap for handling. So let me read
21 Paragraph 50.

22 So I believe the quote is pulled from

1 this sentence or this larger group of sentences,
2 referring to the shorter length of the lancet
3 blade itself, I believe.

4 This short length might make the lancet
5 difficult for the user to handle and install. So
6 the protective cap 78 that is removed before use
7 should be made much larger than usual to aid
8 handling. Okay.

9 And what exactly was your question about
10 this larger than usual to aid handling quote?

11 Q Well, not to put -- to put too much of a
12 fine point on it, what is the usual size for a
13 protective cap in the context of Saikley and this
14 paragraph?

15 A Well, I think that this paragraph implies
16 that the usual size is smaller than the one that
17 they're describing. I don't think it gives
18 dimensions. In fact, I'm sure it does not give
19 dimensions. It is -- it is talking about this in
20 a general sense, that for this certain reason that
21 they provide, because it might otherwise make it
22 difficult for the user to handle and install, the

1 cap should be made much larger than usual to aid
2 handling.

3 And mind you, it just doesn't say larger
4 than usual, it says "much larger," there is a
5 descriptor "much larger than usual" for the
6 purpose of aiding handling.

7 I don't believe that the patent states
8 how large or small a cap might otherwise be on a
9 different design. It is speaking in a comparative
10 manner that this cap is supposed to be much
11 larger.

12 Q Well, that's exactly the problem. So
13 what is much larger than what, Mr. Delman?

14 MR. STEIN: Objection. Form.

15 A Much larger than the caps which might be
16 found on more standard-sized capped lancet
17 devices.

18 Q And how large are those caps?

19 MR. STEIN: Objection. Form.

20 A If you gave me a range of such caps to
21 measure here, Mr. Strang, I'd be happy to measure
22 them for you and tell you exactly how large they

1 are.

2 All that this patent states is that as
3 large or small as they may be, it is teaching a
4 POSITA to design a cap that is much larger than
5 usual to aid handling. That's what it teaches.
6 It doesn't teach how large, small, or otherwise
7 shaped the usual size caps are. It's a
8 comparative statement.

9 Q Would a POSITA at the relevant time,
10 which is the 2009 time frame, understand what the
11 usual size cap is?

12 MR. STEIN: Objection. Form.

13 A They would have had access to a broad
14 range of lancets and lancet caps to benchmark
15 against and to measure, take measurements from,
16 and to test in their prototyping stage, and
17 compare the performance of a much larger cap that
18 they were instructed to design by this patent to
19 the standard smaller caps which were available at
20 the time.

21 Q Do you know what size those standard
22 smaller caps which were available at that time

1 were?

2 MR. STEIN: Objection. Form.

3 A Without having samples to measure, I
4 would not know what size they were offhand, no.

5 Again, if you would like to -- I mean, at
6 this point you can't ship me a package. But if
7 you wish to ship me a package of samples and tell
8 me to have my calipers handy, I would have been
9 happy to do so.

10 Q Have you ever seen a lancet cap as wide
11 as an adult human thumb?

12 MR. STEIN: Objection. Form.

13 A On a commercial -- on a commercially
14 available lancet cap or in a prototype?

15 Q Commercially available.

16 A I don't recall that I have. That isn't
17 to say that I may not have -- that I may have. I
18 may have. But at the -- as I sit here today, I
19 don't recall a specific example as large as you
20 just stated.

21 Q How about a prototype?

22 A Yes.

1 Q Where?

2 A So as I believe you know, I directed to
3 have samples, prototype samples made of Saikley
4 and Iio some time ago, based solely on the figures
5 that we've been discussing this morning. And I
6 have seen that prototype which resulted from that
7 exercise.

8 I could not give you the exact dimensions
9 of that prototype as I sit here right now without
10 having it to measure. But my recollection is it
11 was as large or larger than the standard thumb pad
12 of an average thumb. That is my recollection.
13 But it's been a while since I examined them.

14 MR. STRANG: Alex, have you produced
15 those prototypes in the district court or the
16 PTAB?

17 MR. STEIN: My recollection is that, yes,
18 those have been -- those are part of the district
19 court case. But I think we'd have to, you know,
20 look at that more specifically. But I'm fairly
21 confident that, yes, those would have been
22 produced.

1 MR. STRANG: Thank you. I have -- I
2 don't know about the district court side, I'm only
3 on the PTAB, so ...

4 No further questions.

5 MR. STEIN: Okay. If we can pause for,
6 you know, maybe give me about 20 minutes just to
7 collect my notes, and then we'll see if we have
8 any redirect.

9 MR. STRANG: Sounds great. Thanks, Alex.

10 MR. STEIN: Thank you.

11 THE WITNESS: Thank you, Mr. Strang.

12 (A recess was taken.)

13 MR. STEIN: Thank you for your testimony
14 here today, Mr. Delman. I have no questions.

15 MR. STRANG: That makes it a wrap. Thank
16 you for your time, Mr. Delman.

17 THE WITNESS: Thank you very much,
18 Jonathan, appreciate it.

19 (Off the record at 1:53 p.m. EST.)
20
21
22

ACKNOWLEDGMENT OF DEPONENT

I, JOEL DELMAN, do hereby acknowledge
that I have read and examined the foregoing
testimony, and the same is a true, correct and
complete transcription of the testimony given by
me, and any corrections appear on the attached
Errata sheet signed by me.

(DATE)

(SIGNATURE)

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C E R T I F I C A T E

I, Debra Ann Whitehead, E-Notary Public in and for
the State of Maryland, do hereby certify:

That JOEL DELMAN, the witness whose
deposition is hereinbefore set forth, was duly sworn
by me before the commencement of such deposition and
that such deposition was taken virtually and is a
true record of the testimony given by such witness.

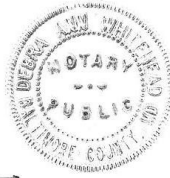
I further certify that the adverse party,
LIFESCAN, INC., was represented by counsel at the
deposition.

I further certify that the deposition of
JOEL DELMAN occurred virtually, on Tuesday, December
5th, 2023, from 11:53 a.m. to 1:53 p.m. EST.

1 I further certify that I am not related to
2 any of the parties to this action by blood or
3 marriage, I am not employed by or an attorney to any
4 of the parties to this action, and that I am in no
5 way interested, financially or otherwise, in the
6 outcome of this matter.

7
8 IN WITNESS WHEREOF, I have hereunto set my
9 hand this 6th day of December, 2023.

10
11 My commission expires:
12 April 30, 2027



16
17 *Joel Delman*

18 E-NOTARY PUBLIC IN AND FOR THE
19 STATE OF MARYLAND
20
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