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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
Thursday, April 25, 2024
12 p.m. EDT

Job No.: 532636
Pages 1 - 56
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 C O N T I N U E D

2 ALSO PRESENT:

3 HARUT AKOPYAN, A/V Technician

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EXHIBITS MARKED IN TODAY'S SESSION		
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P R O C E E D I N G S

JOEL DELMAN,

having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR PATENT OWNER

BY MR. PETERS:

Q Good morning, Mr. Delman.

A Good morning.

Q Where are you this morning?

A I am at home in Los Angeles.

Q Is anybody in the room with you?

A No. I am the only person in the house at
the moment.

Q Do you have any open lines of
communication with anybody outside of this Zoom
deposition?

A No, I do not.

Q What's your understanding as to why
you're being deposed today?

A I believe that I am being deposed on my
most recent -- or with respect to my most recent
declaration, my rebuttal declaration, before the
Patent Trial and Appeal Board.

1 Q You previously submitted an earlier
2 declaration in this case. Right?

3 A Yes, that's correct.

4 Q And you've been deposed previously in
5 this case as well.

6 Do you recall that?

7 A That is correct. I forget if that was
8 you or somebody. I think it was you, wasn't it?

9 Q It was actually not me. I did depose
10 you, however, in February in the district court.

11 A Got it. Okay.

12 Q How much time did you spend writing
13 your -- I guess you called it your rebuttal
14 declaration?

15 A I would really need to look at my
16 records. To be honest, I'm not great with time
17 estimates like that. If you'd like, I can open up
18 my file and take a look. I really wouldn't know
19 how many hours in total went into it.

20 Q Would you be confident in saying it was
21 more than ten hours?

22 A Oh, yes.

1 Q Do you have any materials with you?

2 A Yes. I have a binder -- well, actually,
3 I have divided it into two binders, one of which
4 contains clean copies of my rebuttal declaration,
5 as well as petitioner's reply to patent owner's
6 response. And the other is a large binder
7 containing many of the exhibits relevant to these
8 filings and the report.

9 Q Do you have any materials that are not of
10 record in this case in the IPR?

11 A To the best of my knowledge, no. As I
12 said, the binder with exhibits is a very large
13 document. I couldn't say for sure if there might
14 be something that's in that, an exhibit listed in
15 there which for some reason is not of record in
16 the IPR. I wouldn't know.

17 Q Do you have any materials that contain
18 any written notes?

19 A No.

20 Q Did you do anything to prepare for
21 today's deposition?

22 A Yes.

1 Q What did you do?

2 A I reviewed my declaration and certain
3 other documents and exhibits related to it, and
4 had a few phone calls with counsel.

5 Q When you say you reviewed your
6 declaration, you're referring to your rebuttal
7 declaration?

8 A Yes, that's right.

9 Q Did you review your first declaration for
10 this case?

11 A I don't recall that I read the entirety
12 of it. But because my rebuttal declaration cites
13 to that declaration at certain points, I
14 definitely looked at certain things in that
15 declaration, if not the entirety of it.

16 Q In preparing for your deposition did you
17 speak with Mr. Hatch?

18 A No, I did not.

19 Q Did you speak with anybody other than
20 counsel in preparing for the deposition?

21 A No, I did not.

22 Q Now, when I say "Mr. Hatch," you

1 understand I'm referring to Paul Hatch?

2 A Yes, I do.

3 Q Who is Paul Hatch?

4 A Paul is another expert who's been engaged
5 in this matter. He's submitted certain
6 declarations and reports related to issues that he
7 was engaged to consider and opine upon.

8 Q Do you know Mr. Hatch?

9 A I do. I would -- yes, I know Paul from
10 my days back in Chicago, and I have had
11 interaction with him on various litigation matters
12 over the years.

13 Q So you worked with him in Chicago,
14 outside of litigation matters?

15 A No, I didn't work with Paul. Paul -- I
16 would say Paul's firm was a competitor of my firm
17 in Chicago. But he was a colleague, friendly
18 relationship.

19 Q Do you have a professional opinion of
20 Mr. Hatch?

21 A I'm not sure exactly what you mean by "a
22 professional opinion." Maybe you can be more

1 specific in your question.

2 Q You don't know what I mean by
3 professional opinion?

4 MR. STEIN: Objection. Form.

5 A Do I think he is a good designer? Is
6 that what you're asking? Do I think he's a person
7 of integrity? I mean, a professional opinion can
8 probably encompass many, many things.

9 Q Well, let's start with designer. Do you
10 have a professional opinion of Mr. Hatch's
11 experience, capabilities, opinions on design?

12 A Yes. To my knowledge Paul is an
13 accomplished and well-regarded designer in the
14 industrial design profession.

15 Q What's that knowledge based on?

16 A By the way, I hear somebody clicking away
17 on a keyboard. I'm not sure who it is, but
18 it's -- maybe they can mute themselves. Thank
19 you.

20 Q That was your counsel.

21 A What was that knowledge based on? I
22 would say it's based on a few things. Firstly,

1 from my work in Chicago, I am familiar with the
2 work that Paul's firm did, at least around that
3 time period, and have seen and considered that
4 work and competed against Paul's firm for certain
5 projects back in -- back in those years.

6 I am familiar with Paul through our
7 professional organization, the Industrial
8 Designers Society of America. And I know that
9 Paul has been recognized for his work through the
10 IDSA, which carries weight to me regarding his
11 professional -- the quality of his work and his
12 professionalism in the realm of industrial design.

13 Q I know you mentioned that you have your
14 rebuttal declaration. Is that the redacted
15 version? I guess it doesn't really matter. Do --
16 go ahead.

17 A It is the redacted version, yes. I
18 believe it does have certain blacked out
19 paragraphs.

20 Q You can go ahead and refer to that. I am
21 going to ask you some questions about it.

22 MR. PETERS: But for the court reporter's

1 convenience I'm going to drop it into the chat as
2 well. It's the redacted version of Exhibit 1034.
3 It does not need to be marked.

4 (Deposition Exhibit 1034, previously
5 marked, not attached.)

6 Q Can you go to Page 17 of Exhibit 1034.

7 A Sure. I just discovered that one of my
8 seven cats somehow was in the room. I may need a
9 very brief break to get them out of here if they
10 decide to intrude.

11 I am at Page 17.

12 MS. LE: I apologize for interjecting,
13 but Alex is frozen, so he asked if we could take a
14 brief pause for him to get back online.

15 MR. PETERS: Yeah, let's go off the
16 record.

17 (A recess was taken.)

18 BY MR. PETERS:

19 Q Are you at Page 17, Exhibit 1034?

20 A Yes, I am.

21 Q Okay. And you see the illustration you
22 have in the middle of the page on the left that

1 involves Saikley's lancet cap?

2 A Yes, I do.

3 Q You've provided some colored annotations
4 to this figure.

5 Is that right?

6 A The figure that was used appears to have
7 been -- and I honestly don't recall which graphic
8 it was taken from. But it is annotated. But I
9 think it's annotated, you know, from the original
10 drawing that it was taken from. But I would need
11 to review the description of this illustration.

12 It has colors on it, I can say that.

13 Q Did you add those colors?

14 A I believe that was done by counsel.

15 Q Do you understand the colors in this
16 figure?

17 A In this figure -- and I'm just reviewing
18 what the -- what it states about this image.
19 Demonstrating -- the image is titled
20 "Demonstrating the grip and turn position of the
21 Saikley lancet cap."

22 I believe these colors are a carry-over

1 from the image that this was taken from on the
2 left. I don't know that the colors here are
3 annotated to show anything in particular, as this
4 graphic on Page 17 is -- is demonstrating a grip
5 and turn position, rather than the particular
6 features of the -- of the cap that may have been
7 colored for other purposes from the -- on the
8 image that it was originally taken from.

9 Q Okay. You said multiple times this was
10 taken from another image. So what image would
11 this have been taken from?

12 A Offhand, I don't recall. As I said, this
13 graphic on Page 17 is titled, "Demonstrating the
14 grip and turn position of the Saikley lancet cap."
15 You asked me if I knew what those colors meant.
16 And my response was that I -- in this context I
17 don't know that those colors or dotted line, for
18 example, is intended to be showing anything in
19 this box that it's featured in next to the
20 photograph of the person turning the key. Because
21 I believe this image may have been taken in part
22 from some other graphic.

1 I don't recall which other graphic it may
2 have been taken from.

3 Q Okay. So the orange portion on the right
4 of the cap, you don't know what the orange portion
5 represents?

6 MR. STEIN: Objection. Form.

7 A No --

8 MR. STEIN: Mischaracterizing.

9 A I didn't say I didn't know what that
10 highlight was intended to represent. I just said
11 in this particular image I don't think it's
12 intended for anything. That orange portion on the
13 right-hand side is intended to represent the
14 secondary sheath on the Saikley cap.

15 Q What is the red portion in this image
16 intended to represent?

17 MR. STEIN: Objection. Form.

18 A So my printout is a little weak on color.
19 By "red" you mean that very small rectangle on the
20 left-hand side?

21 Q Well, that's part of the red. It looks
22 like you've also colored in the twist-off cap, or

1 counsel has colored in the twist-off nub as sort
2 of a twist-off joint as red. Let me withdraw
3 that.

4 A That's what I --

5 Q Let me withdraw that and finish and get a
6 cleaner question.

7 A Okay.

8 Q Do you see the twist-off joint in this
9 figure?

10 A I do.

11 Q It looks like counsel has colored that
12 red for you.

13 Is that right?

14 MR. STEIN: Objection. Mischaracterizing
15 who did the drawing there.

16 A I don't believe counsel has done it for
17 me. Counsel did it at my direction and in
18 conjunction with my preparation of this report.
19 But, yes, I do see the twist-off joint, and it is
20 colored red.

21 Q And the dotted rectangle is also colored
22 red. Correct?

1 A That faint dotted line appears to be in
2 some shade of red. Whether it's the same or not
3 it's tough to tell.

4 But, yes.

5 Q What is the red portion of this figure
6 intended to represent?

7 A Well, as you noted, the solid red portion
8 is intended to represent the twist-off joint. And
9 the dotted line that extends to the right of that
10 twist-off joint is intended to represent in a
11 general sense, not in an accurate dimensional
12 sense but just in a general sense, the primary
13 sheath.

14 Q Is the twist-off joint part of what
15 you've identified as the primary sheath?

16 A No. The twist-off joint -- the primary
17 sheath is the rectangular portion that extends
18 into the cap. The twist-off joint is not the
19 primary sheath itself.

20 Q Is the twist-off joint part of the
21 primary sheath?

22 A I'm actually going to refer for that

1 particular question back to my original
2 declaration, which I believe is numbered 1002, to
3 review that particular issue.

4 Q That's fine.

5 MR. PETERS: I'm going to introduce
6 Exhibit 1002 into the chat. It does not need to
7 be labeled.

8 (Deposition Exhibit 1002, previously
9 marked, not attached.)

10 Q Can you tell me what portion of Exhibit
11 1002 you're looking at?

12 A At the moment I'm flipping to Pages 70 --
13 well, let's see. I'm on the section with respect
14 to Saikley, as -- I'm not sure what page I'm
15 stopping on yet. But it appears to be in the area
16 of, it looks like Page 50, 51, and onward.

17 Actually, going back further. I
18 apologize. Actually, I'm on Page 39. So
19 throughout this section, which starts on Page 39
20 of my first declaration and extends through Page
21 46 of that declaration, the primary sheath is
22 described as the twist-off joint and the adjoining

1 portion of the cap into which the sharp needle is
2 embedded.

3 So it is "and." It's the twist-off joint
4 along with the adjacent rectangular dotted line
5 that shows the portion of the cap into which the
6 needle is embedded.

7 Q So am I understanding it correctly that
8 you're saying the twist-off joint is part of what
9 you've identified as the primary sheath?

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

12 A I was looking for -- to read from my
13 report exactly what I've stated. As it states on
14 Page 40, Paragraph 60 of my report, "The needle
15 tip enjoins the needle in a state where it is
16 embedded in the puncture needle cap. A PHOSITA
17 would understand that the sharp 50 of the
18 shortened lancet 76 is embedded in the twist-off
19 joint and adjoining portion of the protective
20 sterility cap 78."

21 So that's what I'm stating with respect
22 to what constitutes the primary sheath on Saikley.

1 Q Going back to Exhibit 1034.

2 A Just for clarity, that's the rebuttal
3 declaration?

4 Q That's right.

5 A Okay.

6 Q Go to Page 20.

7 A Twenty?

8 Q Yeah.

9 A Okay.

10 Q And you see on Page 20 you've reproduced
11 Figure 5C from the '635 patent.

12 Is that right?

13 A Yes; it's a Figure 5C along with Figure
14 4C adjacent to it, yes.

15 Q In your view, does primary sheath in
16 Figure 5C include the flange portion on the right?

17 MR. STEIN: Objection. Form.
18 Foundation.

19 MR. PETERS: I'll withdraw that.

20 Q So do you see that there is a flange on
21 the right side of Figure 5C?

22 A Yes, I do.

1 Q Do you agree that there's a primary
2 sheath in Figure 5C?

3 A There is a primary sheath in Figure 5C,
4 yes.

5 Q Is the flange part of the primary sheath
6 in Figure 5C?

7 MR. STEIN: Objection. Form.

8 A So I don't think you've -- the way you've
9 worded it, the flange itself is not the primary
10 sheath. But if what you mean -- as I understand
11 your question, if what you mean does the primary
12 sheath include that distance which the flange, or
13 the thickness of that flange, in other words --
14 gosh, I wish we would call it up on screen just so
15 I can be very clear and make sure you know what
16 I'm speaking about.

17 So that flange you're referring to,
18 Mr. Peters, has a certain thickness to it. Yes?

19 Q Would it help if I put it up on screen?
20 I can do that.

21 A Perhaps, yes. It wouldn't hurt. Yeah.
22 If you put it up on screen, I can maybe just

1 describe the lines in a way which we can be sure
2 we're both talking about the same ones.

3 Q Can you see that?

4 A Yes, I can. Thank you.

5 So in Figure 5C there is the flange on
6 the right-hand side. And as I stated, it has a
7 thickness to it. There are two lines, one on the
8 left and one on the right, which define the
9 thickness of that. And you are -- you are now
10 highlighting the left one with -- perfect. That's
11 great. Thank you.

12 So if you're asking me if that distance
13 defined by that thickness is included in the
14 primary sheath, in other words on the interior of
15 this -- of this cap, the answer is yes. The
16 flange itself is not a primary sheath, but the
17 distance from where the needle sharp would be
18 placed into the primary sheath, where it enters
19 the primary sheath, would include that distance
20 defined by the thickness of that flange.

21 Q Can we go to Page 21 of Exhibit 1034.

22 A Okay. I'm there.

1 Q You see at the top of Page 21 you have
2 annotated in purple bidirectional arrow which you
3 have labeled L?

4 A Yes, I see that.

5 Q And the title of this box you've titled
6 it "Exhibit 1001, Figure 5C, and appropriate
7 length measurement."

8 Do you see that?

9 A Yes, I do.

10 Q Is the bidirectional arrow labeled L in
11 this annotation of Saikley, is that the
12 appropriate length measurement for the gripping
13 handle portion?

14 MR. STEIN: Objection. Form.
15 Foundation.

16 Q Let me withdraw that question.

17 What is the bidirectional arrow labeled L
18 at the top of Page 21?

19 A That length is measuring, as I state in
20 Paragraph 32 on Page 19, it measures from the base
21 of the primary sheath to the edge of the secondary
22 sheath.

1 Q Is it a -- you say it's a length
2 measurement of the lancet cap in that same
3 sentence. Right?

4 MR. STEIN: Objection. Form.

5 Q I'll withdraw that. Let me just read the
6 sentence that you just read into the record but
7 the full sentence.

8 A Okay.

9 Q "As shown in Figure C of the '635 patent,
10 the length is measured from the base of the
11 primary sheath to the edge of the secondary
12 sheath."

13 My question is, in that sentence what do
14 you mean by "length"? Length of what?

15 A That sentence is in the context of the
16 dimension -- or for -- I guess we've used this
17 term before. And something just happened to my
18 screen here, hold on. Okay. Sorry.

19 This -- the entirety of that sentence, as
20 well as many of the other paragraphs surrounding
21 it, is a discussion of the dimensional limitations
22 as we've called them in the past. I don't know if

1 you're comfortable calling -- referring to them
2 that way here. That's what this sentence is
3 discussing.

4 Q So the dimension that you're referring to
5 is the length recited in the claims?

6 Is that what you're talking about?

7 MR. STEIN: Objection. Form.

8 A Yes, this -- this is -- the entirety of
9 these paragraphs is discussing the dimensional
10 limitations, which include the length that is
11 discussed in the claims of the '635 patent.

12 Q The length that you've provided on Page
13 21 was different than the length that you provided
14 in your original declaration in this IPR. Right?

15 MR. STEIN: Objection. Form.

16 A I'm not -- could you show me or point me
17 to my original declaration where you say that I
18 have provided something different? Offhand, I'm
19 not aware that I did.

20 Q Yeah. Can you look at Page 76 of Exhibit
21 1002.

22 A I don't believe that the length shown on

1 Page 76 is the same -- here I'm rebutting
2 Dr. Collins's arguments. So I don't think it is
3 an accurate statement to say that I've changed the
4 length or that I've somehow decided that it should
5 be measured differently.

6 The purpose of Figure -- Figure 5C on
7 Page 21, is, as is the entirety of this section
8 and declaration, to address arguments that were
9 presented by Dr. Collins. And that's what that
10 figure is responsive to.

11 I don't think it's at all a fair
12 comparison to Page 76 of my original report, which
13 was making a nonrebuttal argument to explain
14 something related to the same high-level topic of
15 the dimensional limitations, but I wasn't
16 responding to particular arguments of Dr. Collins.

17 Q So you stand by the length measurement
18 you provided on Page 76 of Exhibit 1002?

19 A I have not changed my opinions, any of
20 the opinions in Exhibit 1002.

21 Q So what did you mean by appropriate
22 length measurement at the top of Page 21 of

1 Exhibit 1034?

2 A Okay.

3 Q Let me withdraw that question.

4 Do you agree that the length that you've
5 annotated at the top of Page 21 is different than
6 the length that you annotated on Page 76 of your
7 original declaration?

8 A The line labeled L is a different line.
9 It's a different annotation. So I agree that I
10 have annotated Figure 5C on Page 21 of my rebuttal
11 declaration differently than I annotated the
12 figure on Page 76 of my initial declaration.

13 Q Which length measurement, in your
14 opinion, meets the length measurement required in
15 Claim 7 of the '635 patent?

16 THE WITNESS: I'm hearing some keyboard
17 again, I'm not sure who that is.

18 MR. STEIN: It's me.

19 A For purposes of responding to
20 Dr. Collins, my discussion of the way the length
21 should be measured on Page 21 is accurate. And
22 for the reasons that I annotated, the length

1 measurement on Page 76 of my initial report -- or
2 declaration, excuse me, that annotation is also
3 accurate.

4 So I'm not sure what exactly you're
5 asking. It seems perhaps a bit -- I mean, I would
6 need to review my initial declaration to see
7 exactly what I'm addressing with that annotation
8 here. Again, both are accurate statements, but
9 annotated differently for purposes of explaining
10 what I was explaining in each declaration.

11 Q When you say "accurate statements," are
12 you saying that they both read on Claim 7 of the
13 '635 patent?

14 A I think that both statements are accurate
15 as I read them in the context of each declaration.
16 I'm not sure what else I can -- I can say.

17 Q You can't say whether the length
18 measurement you provided on Page 21 of your
19 rebuttal declaration reads on the length
20 measurement requirements of Claim 7 of the '635
21 patent?

22 MR. STEIN: Objection. Form.

1 A I am discussing the length measurement or
2 the dimensional -- the dimensional limitations of
3 the '635 patent on Page 21 and the paragraphs
4 prior to Page 21. Yes, so it is a true statement
5 that that annotation is applicable to my arguments
6 with respect to responding to Dr. Collins'
7 arguments on the measurement on those dimensional
8 limitations.

9 Q But you can't just say yes or no whether
10 the length measurement on Page 21 reads on the
11 length measurement of Claim 7 of the '635 patent?

12 MR. STEIN: Objection. Form. Asked and
13 answered.

14 A I think perhaps Paragraph 32 on Page 19
15 of my rebuttal declaration is a good summation of
16 what I'm talking about in this declaration and
17 using that illustration to illustrate.

18 Paragraph 32 starts, "With regards to the
19 length measurement of the lancet cap, I disagree
20 with Dr. Collins' assertion that the length should
21 be measured between the tip of the needle embedded
22 in the primary sheath and the edge of the

1 secondary sheath. As shown in Figure 5C of the
2 '635 patent, the length is measured from the base
3 of the primary sheath to the edge of the secondary
4 sheath."

5 And Paragraph 33 goes on to state, "As
6 shown in the figure of the patent, the length is
7 measured from where the needle sharp enters the
8 primary sheath, not where the needle sharp
9 terminates within the primary sheath," which is
10 what Dr. Collins was arguing for. "When measured
11 this way, the length of Saikley's cap remains at
12 least equal to the lateral span and at least equal
13 to the much smaller lancet thickness."

14 That's what the Figure 5C and appropriate
15 length measurement at the top of Page 21 is
16 illustrating, and what it's been annotated to
17 illustrate.

18 Q And the figure on Page 79 of Exhibit 1002
19 does not illustrate the length being measured from
20 the base of the primary sheath to the edge of the
21 secondary sheath, does it?

22 MR. STEIN: Page 79 or 76, Steve?

1 MR. PETERS: Sorry, 76.

2 A That's okay. I understood.

3 It does not show that. It shows it being
4 measured in a different way, which is illustrative
5 of the arguments that I am presenting in Exhibit
6 1002, which was not rebutting anything that
7 Dr. Collins has stated.

8 Q Okay. Does the length measurement you
9 provide on Page 76 of Exhibit 1002 read on Claim 7
10 of the '635 patent?

11 MR. STEIN: Objection. Form.

12 Q I'll withdraw it and ask a better
13 question.

14 Does the length measurement you provided
15 on Page 76 of Exhibit 1002 teach the length
16 recited in Claim 7 of the '635 patent?

17 MR. STEIN: Objection. Form.

18 A So Page 75 of Exhibit 1002 has a Section
19 F beginning on Page 75 titled, Discussion of Claim
20 7. And in Paragraph 106 states that Claim 7 adds,
21 "wherein the gripping handle portion defines a
22 length at least equal to its lateral span."

1 I go on to state that on the top of Page
2 76, Paragraph 107, "Because Saikley's Figure 7A
3 also shows that the length of its cap 78 is
4 significantly larger than the cap's lateral span."
5 And of course all of my analysis of Saikley was
6 not relying solely on the image here, but on the
7 entirety of Saikley's disclosures and teachings.
8 It says that the length of its cap 78 is
9 significantly larger than the cap's lateral span.
10 This additional limitation of Claim 7 is also
11 disclosed.

12 So, yes, this image on Page 76 is
13 addressing Claim 7 and illustrating that the
14 limitation is met by Saikley.

15 Q And specifically it's met by the length
16 that you've shown on Page 76 of the cap. Correct?

17 MR. STEIN: Objection. Form.

18 A As I've illustrated it, it is met by that
19 length, yes. That does not mean that there is
20 anything contradictory or somehow not in sync with
21 what is shown on Page 76 to what is shown on Page
22 21 of my rebuttal declaration, which also presents

1 arguments but in the context of Dr. Collins'
2 arguments. The length measurement is met.

3 Q It's met using two different definitions
4 for the length?

5 Is that what you're saying?

6 A No. I'm showing that the length
7 measurement is met through the illustration on
8 Page 76 of my initial declaration. And I am
9 showing that even in rebutting Dr. Collins's
10 arguments, the length measurement is met.

11 Q So let me see if I understand this
12 correctly. On Page 21 of Exhibit 1034, that
13 length measurement that you show there at the top
14 is not the length measurement that you rely on for
15 teaching the length recited in Claim 7.

16 Is that right?

17 MR. STEIN: Objection. Form.
18 Mischaracterizes.

19 A Perhaps the best way that I can describe
20 the length measurement annotated at the top of
21 Page 21 of my rebuttal declaration is that I am
22 explaining, illustrating, teaching the length

1 dimension in the context of Dr. Collins's -- of
2 responding to Dr. Collins's arguments. And in
3 doing so, there is nothing conflicting with or
4 contrary to what I stated in the section starting
5 on Page 75 of my initial declaration, where we're
6 talking about -- apples and oranges are not
7 perhaps the best analogy.

8 I'm doing two different things with these
9 declarations, and it is not surprising that my
10 explanation and annotation might be somewhat
11 different between those two documents because I'm
12 doing two different things with those two
13 documents.

14 If Dr. Collins had not presented the
15 arguments he had regarding the length dimension, I
16 would not have needed to respond as I did on Page
17 21 of my rebuttal report, and the pictures on Page
18 76 would still stand, just as they continue to do.

19 Q The picture on Page 76 does not reflect
20 the appropriate length measurement, does it?

21 MR. STEIN: Objection. Form.
22 Mischaracterizing.

1 A I don't agree. It depicts the length
2 measurement that I was arguing and explaining on
3 Pages 75 and 76 of my initial declaration.

4 Q Okay. So on Page 21 of your rebuttal
5 report, that measurement doesn't reflect the
6 appropriate length measurement, does it?

7 MR. STEIN: Objection to form.
8 Mischaracterizing.

9 A It reflects the appropriate length
10 measurement in the context of what's appropriate
11 to respond to Dr. Collins's arguments.

12 Q Not the appropriate length measurement in
13 the context of Claim 7 of the '635 patent?

14 MR. STEIN: Objection. Form.

15 A It's a different issue. I'm responding
16 to Dr. Collins's arguments. It's the appropriate
17 way for me to show the length measurement in
18 response to Dr. Collins.

19 Would it have been appropriate for me to
20 show that same thing in my initial declaration?
21 No, because I wasn't responding to Dr. Collins's
22 arguments in my initial declaration.

1 Q Can you go to Page 9 of Exhibit 1034.

2 A Yes, I'm there.

3 THE WITNESS: Alex, if I can ask about
4 the keyboard. Apologies.

5 MR. STEIN: I don't know with my mic, but
6 I'll try to mute a little more.

7 THE WITNESS: Sometimes if you press the
8 space bar it's an automatic mute. I don't know if
9 it works that way in Zoom.

10 A So yes, Mr. Peters, I'm on Page 9.

11 Q Okay. At the top of Page 9 do you see
12 this, I guess it's a 3D print?

13 What is this at the top of Page 9 on the
14 right side?

15 A It is a photograph of a 3D printed model
16 of Saikley.

17 Q Where did you obtain this -- well, first
18 of all, did you take this photograph?

19 A I did not take the photograph.

20 Q Did you handle this 3D printed model?

21 A Yes, I did.

22 Q Where did you obtain it from?

1 A I obtained it from counsel.

2 Q Were you involved in the creation of the
3 3D printed model?

4 A So on Page 8 it states that I looked at
5 and handled the 3D model of the Figure 7A lancet
6 as seen in the photo below -- photo taken below by
7 Mr. Paul Hatch of the 3D model.

8 I was involved in discussion of creating
9 the 3D model. I did not build the model. That
10 was I believe entirely done by Mr. Hatch.

11 Q You didn't provide any instructions as to
12 how the model should be built?

13 A No; that was all done by Paul, to my
14 knowledge.

15 Q This is not a functioning lancet.
16 Correct?

17 MR. STEIN: Objection. Form.

18 A My assumption is that it is not a
19 functioning lancet. I did not, however, twist the
20 top off to see if a blade had been included. I
21 can't say for sure that it has not. But given the
22 3D printed nature of the model, my guess would be

1 there is no -- no blade in there.

2 MR. PETERS: Why don't we go off the
3 record.

4 (A recess was taken.)

5 BY MR. PETERS:

6 Q Welcome back, Mr. Delman.

7 A Thank you.

8 Q Did you speak with counsel during the
9 break?

10 A No, I did not.

11 Q Can you go to Paragraph 71 of Exhibit
12 1034.

13 A Paragraph 71.

14 Q That's right.

15 A What page is that on for --

16 Q It starts on Page 39.

17 A Okay, I'm there.

18 Q This paragraph and surrounding paragraphs
19 are under a heading that's actually on Page 38
20 that says, There is no nexus between the claimed
21 invention of the '635 patent and sales of the
22 Delica and Delica Plus lancets.

1 Do you see that?

2 A Yes, I do.

3 Q You provided an expert report in district
4 court presenting --

5 (Discussion off the record; technical
6 difficulty.)

7 Q Now, Mr. Delman, do you recall, did you
8 submit an expert report in the district court that
9 also presented opinions on there being no nexus
10 between claimed dimension of the '635 patent and
11 sales of the Delica and Delica Plus lancets?

12 MR. STEIN: Objection. Scope. This
13 deposition is about the IPR, not the district
14 court case.

15 A I recall submitting a declaration which
16 did discuss certain aspects of secondary
17 considerations. I would need to refer to that
18 report, or more particularly that section of the
19 report, to really refresh my memory as to exactly
20 what -- what I stated about that subject in that
21 report.

22 Q Much of what you've submitted here is

1 nearly identical, if not exactly identical to that
2 report. And I asked you a few questions on that.
3 And if you'd like -- in the district court I asked
4 you a few questions on that. If you'd like, I can
5 provide you with the transcript of that
6 deposition, you can refer to the answers that you
7 provided there. Or I can ask you them again
8 regarding the IPR declaration.

9 MR. STEIN: Yeah, what was the question
10 there?

11 Q So I plan to ask you a few questions that
12 are identical to questions that I asked you in
13 deposition in the district court about testimony
14 that you offered there, which is nearly identical
15 to what you've said in the IPR.

16 If you'd like, I can provide you with the
17 transcript of your answers in the district court.
18 Otherwise --

19 MR. PETERS: And, Alex, please feel
20 free --

21 A Sure.

22 Q Okay.

1 A Though I'll say if you're going to be
2 asking me things about the district court matter,
3 I'll need to refer to my district court report
4 that you are, you know, referring to on that
5 subject.

6 Q My questions will be limited to your IPR
7 declaration.

8 A Uh-huh.

9 Q But there is substantial overlap, so this
10 may be a useful reference for you.

11 A Okay. Well, I appreciate that.

12 Q Exhibit 1 --

13 MR. STEIN: Is that -- is it designated
14 as confidential or anything from the court, Steve?
15 Because we had that little scuffle there.

16 MR. PETERS: Yeah, it's not.

17 A It looks like you just shared that with
18 me, Mr. Peters?

19 MR. PETERS: Yeah. If we could mark that
20 as Exhibit 1.

21 (Delman Deposition Exhibit 1 marked for
22 identification, not attached.)

1 A It looks like it just came through.

2 Q So I'd like to refer you to Paragraph 71
3 of your rebuttal declaration first.

4 A Okay.

5 MR. STEIN: Before we get too far, now
6 that the exhibit has been introduced, I'll object
7 to the admissibility of the exhibit on scope and
8 relevance grounds.

9 A I'm sorry, is there a question on the
10 table? Because if there is, I'm not aware.

11 Q No, there's not.

12 A Okay.

13 Q In Paragraph 71 of Exhibit 1034, in the
14 second sentence you stated, "The Delica/Delica
15 Plus lancets are installed into a lancing device,
16 and this overall lancing system is then used to
17 puncture the skin of a user to draw an adequate
18 sample of blood."

19 Do you see that?

20 A I do.

21 Q My question for you is, who installs
22 lancets into the lancing device?

1 And I can refer you to the same question
2 that I asked you, Page 44, Exhibit 1, starting at
3 Line 16.

4 A Thank you.

5 So your question, as you noted, there
6 will be substantial overlap. It sounds very
7 similar.

8 My question is, "Who installs Facet
9 lancets into a lancing device."

10 My response was, "In general that would
11 be the person who's going to be utilizing the
12 lancet to take a sample of their blood. Sometimes
13 when it's done for children, it might be a parent
14 or caregiver, for example, or with an elderly
15 person it might be a caregiver or family member."

16 I would agree with my response that I've
17 just read back from that prior deposition. I
18 think it's accurate and complete.

19 Q Okay. When the lancets are purchased,
20 they're not already installed in a lancing device.

21 Correct?

22 And you can see that I asked that

1 question at Line 24 of the same page.

2 MR. STEIN: Objection.

3 A I do. Let me read my response.

4 My response to that question was on Page
5 45 of the deposition transcript, starting at Line
6 3. "That's correct, they are usually sold
7 separate, sometimes they come in a kit which
8 includes a lancing device. But they would
9 generally not be installed. You would not have a
10 lancet installed when you purchase it."

11 I believe that is an accurate statement
12 as well, and how I would respond to the same
13 question today.

14 Q When a consumer purchases the lancets,
15 the lancets are capped with a protective cap.

16 Is that right?

17 And you can that I asked that question
18 starting at Line 17 of Page 45.

19 MR. STEIN: Objection. Form.

20 A My answer at the time was "yes."

21 And I believe my answer today, yes would
22 be an accurate answer to your question today as

1 well.

2 Q The user removes the protective sterility
3 cap.

4 Is that right?

5 MR. STEIN: Objection. Form.

6 A At the time starting on Page 46, Line 5,
7 I stated, "Yes. As I said, it can sometimes be a
8 caregiver, but the consumer who is going to be
9 utilizing the lancet would remove the cap."

10 I believe that's an accurate statement --
11 response to your question today as well.

12 Q So the product that the consumer buys is
13 the lancet with a cap on it. Correct?

14 A Response was, starting at Line 12 of the
15 same page, "If the consumer is purchasing a
16 package of lancets, they would receive a package
17 of lancets that have the lancet blade generally
18 embedded into a cap, yes."

19 I believe that is an accurate response to
20 the same question today.

21 Q And the lancet blade embedded in the cap
22 is the product that they buy. Right?

1 MR. STEIN: Objection. Form. Continued
2 objection to the admissibility of the referenced
3 exhibit.

4 A My response at the time, starting on Line
5 20 of Page 46, was, "Well, they don't buy the
6 blade in a cap. They buy the entirety of that
7 product, which encompasses the lancet body and,
8 et cetera. But they buy the lancets in their
9 unopened state, unused state."

10 And I think that is responsive to your
11 question today as well.

12 Q Let's go to Paragraph 72 of Exhibit 1034.

13 A Okay.

14 Q So in the first sentence of Paragraph 72
15 you state, "If one considers the overall lancing
16 system to be the product," and then you go on.

17 Right?

18 In the second sentence you state, "Even
19 if one considers the lancet on its own to be the
20 product," and you go on from there.

21 My question for you is, have you taken a
22 position as to whether the product is the lancet

1 on its own or the overall lancing system? And I
2 would refer you to Page 50, Line 13, of Exhibit 1.

3 MR. STEIN: Objection. Form. And
4 maintain the objection to the referenced exhibit.
5 We're here to discuss his declaration.

6 A Could you please repeat the question that
7 I'm being asked.

8 Q Sure. In Paragraph 72 of Exhibit 1034,
9 have you taken a position as to whether the
10 product is the lancet on its own or the overall
11 lancing system?

12 A Well, Paragraph 72, as you noted, is part
13 of a discussion of nexus starting on Page 38 with
14 respect to commercial success, or the secondary
15 consideration of commercial success that was
16 argued by Dr. Collins.

17 And in Paragraph 72 it seems clear that I
18 am -- and perhaps other paragraphs surrounding
19 it -- that I am discussing the possibility of
20 various features in both the overall system as
21 well as even if the lancet on its own is the
22 product.

1 So I am analyzing this from both
2 perspectives in this section. I don't know that
3 I've taken a position, as you state, that it's one
4 or the other. I'm analyzing it from both
5 perspectives and presenting my opinion in that
6 context.

7 Q Let's go to Paragraph 74 of Exhibit 1034.

8 A Okay.

9 Q The first sentence of Paragraph 74 you
10 state, "Patent owner's assertions of
11 co-extensiveness are also contradicted by patent
12 owner's marking practices with respect to its FMT
13 lancets (i.e., the rebranded Delica lancets), in
14 which patent owner admits that these lancets may
15 be covered by multiple Facet patents."

16 Do you see that?

17 A Yes, I do.

18 Q Under your understanding, is it possible
19 for a product to be co-extensive with a claim of a
20 patent if that product is also covered by other
21 patents?

22 A Well, the first thing I'd want to do,

1 because it seems like you're asking me about a
2 legal principle, or my understanding of that
3 potentially, I want to look back at the Legal
4 Principles section from my Exhibit 1002 report
5 from which those principles are cited in this
6 declaration.

7 So what I state in Paragraph 76 at the
8 top of Page 43 of my rebuttal declaration is that
9 I consider it significant that patent owner admits
10 that its FMT lancets may be covered by at least
11 two additional utility patents and two design
12 patents. This supports my opinion that the '635
13 patent is not co-extensive with either the FMT
14 lancets or the overall Facet lancing system.
15 Patent owner does not attempt to explain how the
16 '635 patent could be co-extensive with the Facet
17 lancet or the Facet lancing system in light of the
18 other patents that may cover these products.

19 That's the extent of my opinion with
20 respect to the other patents that I'm discussing
21 here, that I consider it significant and that it
22 supports my opinion.

1 I don't have an opinion with respect to
2 whether it's possible for a patent to be -- to be
3 co-extensive, even if it may be covered by other
4 patents -- or excuse me, a product to be
5 co-extensive with a patent even if it may be
6 covered by other patents. I haven't rendered any
7 opinion or legal conclusion on that issue, as I
8 understand your question.

9 Q Can you go to Page 62 of Exhibit 1 and
10 read through --

11 A Page 62 of Exhibit -- what's Exhibit 1?
12 I apologize.

13 Q The transcript from the deposition.

14 A Thank you.

15 Q And just look through starting at Line 14
16 to the end of the page, and let me know whether
17 that informs your opinion?

18 A Well, so what I conclude in this section
19 you've referred me to, which has asked me much the
20 same question, my answer seems to be very
21 consistent with what I've just said.

22 What I'm stating in Paragraph 606 is the

1 fact that -- and I'm reading starting at Line 14
2 on Page 64 of the deposition transcript.

3 What I'm stating in Paragraph 606 is the
4 fact that the lancets may be covered by at least
5 two additional utility patents and two additional
6 design patents supports my opinion. Again, it's
7 not the black line that means my opinion is
8 correct. It supports my opinion and provides
9 further evidence for my opinion that the '635
10 patent is not co-extensive with either the FMT
11 lancets or the overall Facet lancing system.

12 I go on to state that I've not reviewed
13 those particular additional patents and understood
14 them in the context of the lancets to understand
15 how they may or may not specifically support what
16 I just stated, but it provides evidence that it's
17 not co-extensive.

18 That's my answer today, and that was my
19 answer during this prior deposition. It supports
20 my opinion, and I haven't stated any legal
21 conclusion as to whether, you know, it could be
22 co-extensive even if it's covered by other

1 patents.

2 MR. PETERS: Okay. Let's go off the
3 record.

4 (A recess was taken.)

5 MR. PETERS: I have no further questions,
6 Mr. Delman, subject to redirect.

7 MR. STEIN: Okay. So if we can have sort
8 of ten more minutes just to review notes and
9 stuff, I'll circle back.

10 (A recess was taken.)

11 MR. STEIN: Well, thank you, Mr. Joel,
12 Mr. Delman, for your time here today. We
13 appreciate your testimony and the time you spent
14 with us today. But no redirect questions from our
15 side.

16 MR. PETERS: Thank you, Mr. Delman.

17 (Off the record at 1:55 p.m. EDT.)

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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.

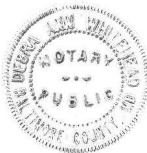
I further certify that the adverse party,
LIFESCAN, INC., was represented by counsel at the
deposition.

I further certify that the deposition of
JOEL DELMAN occurred virtually, on Thursday, April
25th, 2024, from 12 p.m. to 1:55 p.m. EDT.

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 30th day of April, 2024.

10
11 My commission expires:
12 April 30, 2027



16 Joel Delman

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

Transcript of Joel Delman
Conducted on April 25, 2024

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